

LPA No.2431 of 2016 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.2431 of 2016 (O&M)

Date of decision: 21.03.2017

M/s Vishwas Dhaliwal Cold Store

....Appellant

Versus

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: - Ms. Reeta Kohli, Sr. Advocate, with
Mr. Rahul Sharma, Advocate, for the appellant.

RAMENDRA JAIN, J.

Present Letters Patent Appeal under Clause X of the Letters Patent has been filed assailing the judgment dated 24.08.2016, whereby CWP No.19224 of 2012 filed by the appellant has been dismissed.

2. Put pithily, the appellant is a partnership firm registered as a Small Scale Unit with the Department of Industries, Punjab. The case set up by the appellant is that the Ministry of Agriculture, Government of India, set up an autonomous society known as “National Horticulture Board” (hereinafter referred to as the “Board”) with a view to promote integrated development of commercial horticulture. The Board formulated various schemes for the development of Horticulture Sector, which are as under:-

“Scheme-1: Development of Commercial Horticulture through
Production and Post Harvest Management of
Horticulture Crops,

LPA No.2431 of 2016 (O&M)

- Scheme-2: Capital Investment Subsidy Scheme for construction/expansion/modernization of Cold Storages/Storages of Horticulture Produce,
Scheme-3: Technology Development and Transfer for promotion of Horticulture,
Scheme-4: Market Information Service Horticulture Crops,
Scheme-5: Horticulture Promotion Service.”

3. The appellant planned to set up a cold storage project with the project costs of ₹ 230.00 lakh but the Board later on changed the norms to set up new cold storage w.e.f. April 2010, enhancing the cost of the project from ₹ 230.00 lakh to ₹ 325.00 lakh. The appellant is concerned with Scheme-2 i.e. “Capital Investment Subsidy Scheme for construction/expansion/modernization of Cold Storages/Storages of Horticulture Produce”. As per this scheme, the Scheme-2 is for installation of cold storage for preservation of fruits and vegetables with an installed capacity of 1,00,000 bags per season/5000 MT. The appellant set up its cold storage with two chambers having capacity of 5000 MT with project cost of ₹ 325.00 lakh in the land situated in Khata/Khasra No.381/656 and 666, village Darraj, Tehsil Barnala, District Barnala. The projected cost of the appellant of ₹ 325.00 lacs included capital of ₹ 70 lakh, subsidy from National Bank for Agriculture and Rural Development (NABARD)/ National Horticulture Board (NHB) of ₹ 120.00 lakh and term loan of ₹ 135.00 lakh. The appellant, in view of the assistance to be provided by the Board, with the legitimate expectation, availed the sanctioned term loan from the State Bank of Patiala Tapa Branch of ₹ 135.00 lakh for construction of cold storage and purchase of machinery for cold storage @

LPA No.2431 of 2016 (O&M)

5.50% above basic rates i.e. 8.50% and the effective rate of interest inter-chargeable on the loan account is 14.00%. It is further averred that after sanctioning of the above said term loan by the State Bank of Patiala, the appellant filed the application to the Board for financial assistance i.e. subsidy claim through online submission of application for grant of Letter of Intent (LOI). The appellant also submitted ₹ 10,000/- by way of bank draft. In the pre-inspection of the project conducted on 20.04.2011, the Assistant Director, Industries, made the following observations:-

- “1. Land development started on 15.10.2009.
2. Status of cold store building civil/pre engineered as on inspection date-completed.
3. Installation of power transformer and electricity supply equipment-completed.
4. Installation of Refrigeration cooling system-completed.
5. Type of produce proposed to be stored-potato.
6. Whether cold storage is functioning-yes, 20th April, 2011.
7. Remark of inspection officer-project is in running condition.
8. Recommendation of Pre-inspection officer-95% work of the project has been completed, construction work as floor of shed, boundary wall are in progress.”

4. The appellant had availed the term loan of ₹ 135.00 lakh from the Bank on the assurance extended by respondents No.2 and 3 that it would be granted LOI under Scheme-2 of the Board, but vide letter dated 18.07.2011, the appellant was informed that its request for grant of LOI has been rejected because 95% work of the cold storage has already been completed and only 5% work of plaster of walls is left. The appellant challenged the order dated 18.07.2011 by way of writ petition before this Court, which has been dismissed vide impugned order dated 24.08.2016. Hence, this appeal.

LPA No.2431 of 2016 (O&M)

5. Learned counsel for the appellant contended that the project was in terms of the scheme of the respondent-board. The LOI was only for the purpose of release of subsidy for which the appellant was fully entitled to. Since the appellant had already applied for the LOI, therefore, it hardly makes any difference that the work of construction of cold storage has already been completed at the time of pre-inspection.

6. We have heard learned counsel for the appellant and perused the paper-book.

7. The relevant provision of Scheme-2 reads as under: -

“A. System of Letter of Intent (LoI) – LoI to be obtained by the promoter prior to undertaking construction of cold storage needs to be introduced.”

8. Learned Single Judge has rightly observed that *“there is no dispute that the petitioner had applied for the LOI after completion of 95% construction work of its cold storage, whereas it has been specifically provided in the scheme that the LOI has to be obtained by the promoter prior to undertaking construction of the cold storage. The argument of the petitioner that the construction was raised prior to the LOI on the basis of a legitimate expectation that the petitioner would be released 40% subsidy in terms of the guidelines of 2010 is totally misplaced. The petitioner should have availed LOI at the first instance before starting the construction as it could not have offended the provisions of the Scheme in which the words “prior to undertaking construction” have been specifically used which cannot be interpreted in any other manner.”*

9. We not find any illegality or perversity in the impugned judgment.

LPA No.2431 of 2016 (O&M)

- 10. Dismissed.
- 11. Since the appeal has been dismissed on merits, the application filed under Section 5 of the Limitation Act for condonation of delay in filing the appeal is left open.

(RAMENDRA JAIN)
JUDGE

March 21, 2017	(AJAY KUMAR MITTAL)
R.S.	JUDGE
Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No