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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9066/2018

G. K. AGRO COLD STORAGE PVT LTD. Petitioner

Through: Mr Ruchir Gupta and Mr Ganesh C. Sharma, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr Ravi Prakash, CGSC with Mr Nitish Gupta, Advocate for R-1.

Ms Anjali Bablani and Mr Akhand Pratap Singh, Advocate for R-4.

Mr Rajesh Kumar Gautam, Advocate for R-5/Canara Bank.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.08.2018

CM No.34900/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 9066/2018 & CM No.34899/2018

2. Issue notice. The learned counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition impugning a communication dated 06.08.2018 (hereafter 'the impugned order') sent by the National Horticulture Board (hereafter 'NHB'), whereby the subsidy of ₹118.17 lakhs released to the petitioner has been recalled. The aforesaid

subsidy was provided in connection with the project for setting up of a cold storage plant. A plain reading of the impugned order indicates that the sole reason for withdrawing the subsidy is the alleged failure on the part of the petitioner in completing the project.

4. In terms of the subsidy release letter, the time limit for completion of the project was stipulated to be a maximum period of eighteen months commencing period from the date of disbursement of the first instalment of the term loan. This period could be extended for a further period of three months, if the reasons for delay were considered justified by the concerned financial institution(s) and was agreed to by the NHB. In the impugned order, it is stated that the time taken for completion of the project was in excess of twenty-four months and, therefore, the subsidy has been recalled.

5. The petitioner states that the first instalment of the term loan was disbursed by respondent no.5 (Canara Bank) on 09.01.2014. It is stated that the project was complete by May, 2015 and the petitioner applied for a Completion Certificate on 05.05.2015. The same was granted on 15.07.2015.

6. The learned counsel appearing for the respondents has also handed over a copy of the joint inspection report dated 24.08.2018 and has drawn the attention of this Court to certain observations made therein. The said observations are to the effect that there are certain technical deviations and certain components are missing. He states that in view of the said joint inspection report, it is obvious that the project was not completed within time. He also referred to a letter dated 13.02.2017, which indicates that certain works were incomplete at the material time.

7. A plain reading of the joint inspection report (as relied upon by the learned counsel for the respondent) indicates that certain components were found missing. It was also observed that certain other arrangements – such as “strip/air curtains wherever considered essential” – were required to be made. However, it is also important to note that the said inspection report found the unit to be in operation and loaded with “*ginger, water melon and other products.*”

8. It is also relevant to note that the joint inspection report dated 24.08.2018 also mentions the status of the project as under:-

“Present commercial status is good. Promoter is already engaged in business of fruit and others in Azadpur mkt.”

9. The learned counsel appearing for the petitioner contends that merely because certain components were found missing cannot be construed to mean that the project was not completed.

10. The letter dated 13.02.2017 referred to by the learned counsel for the respondent also indicates that most of the pending works are similar to those mentioned in the joint inspection report dated 24.08.2016.

11. This Court is not inclined to examine the controversy whether the pending works/missing components are significant enough so as to be construed as non-completion of the project. However, it is apparent that respondent has not considered the contentions as advanced by the petitioner in this regard; the impugned order is silent as to this aspect.

12. In the aforesaid view, this Court considers it apposite to set aside the impugned order and remand the matter to NHB for a consideration afresh. It is so directed.

13. The petitioner is at liberty to make a representation within a period of two weeks. The concerned officer shall take an informed decision after affording the petitioner an opportunity to be heard.

14. The petition is disposed of in the above terms. The pending application is also disposed of.

AUGUST 29, 2018
MK

VIBHU BAKHRU, J