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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 950/2018 and CM APPL. 4024/2018**

SCHNEIDER ELECTRIC INDIA PVT. LTD..... Petitioner
Through: Mr Gaurav Mahajan and Mr
Saksham Babbar, Advocates.

Versus

UNION OF INDIA AND ANR. Respondents
Through: Mr Ripu Daman Bhardwaj,
CGSC with Mr T.P. Singh,
Advocate for R-1/UOI.
Mr S. Nanda Kumar, Ms Tanu
Priya Gupta, Ms Deepika
Nanda Kumar and Ms Palani
velu, Advocates for BIS.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **23.04.2019**

VIBHU BAKHRU, J

1. The petitioner claims to be a Global Specialist in Energy Management in Automation. The petitioner is, *inter alia*, engaged in the manufacture of Low Voltage Capacitors at its facility in Bengaluru, Karnataka. The petitioner claims that it has over 80% of the market share of the said product in India.
2. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “i. Issue a writ, order or direction in the nature of writ of Mandamus to Respondent No. 1 and 2 to consider the representation made by the Petitioner vide its letter dated 30 January 2018;
- ii. Issue a writ, order or direction in the nature of writ of Mandamus to Respondent No. 1 and 2 to grant the Petitioner a personal hearing for the extension of time till 1 April 2019;
- iii. Issue an order or direction to Respondent no.1 and 2 not to impose the implementation of the Order dated 01.08.2017.

3. The controversy in the present petition relates to the Electrical Capacitors (Quality Control) Order, 2017 (hereafter ‘the Quality Control Order’). The said order was notified by respondent no.2 (Central Government) on 01.08.2017 in exercise of powers conferred under Section 14 of the Bureau of Indian Standards Act, 1986 and came into force with effect from 01.02.2018.

4. In terms of Section 3 of the Quality Control Order, manufacture, import, storage or distribution of electrical capacitors that did not conform to the specified standards and did not bear the standard mark of the Bureau, was proscribed. Section 3 of the Quality Control Order is set out below:

“3. Prohibition of manufacture, storage, sale and distribution etc.-

- (1) No person shall by himself or through any person on his behalf manufacture, import, store or store for sale, sell or distribute any electrical capacitors, which do not conform to the specified standards

and which do not bear Standard Mark of the Bureau:

Provided that nothing in this Order shall apply in relation to export of Electrical Capacitors meant for export, which conform to any specification required by the foreign buyer.

- (2) The sub-standard or defective electrical capacitors which do not conform to the specified standard shall be so identified and destroyed beyond use within a month from the date of manufacture.”

5. In terms of Section 4(1) of the Quality Control Order, all manufacturers of electrical capacitors were required to make an application to the Bureau for obtaining license for use of the standard mark.

6. It is averred by the petitioner that it welcomes the Quality Control Order and is not averse to imposition of a quality standard in respect of the products in question. The principal grievance of the petitioner stems from the process and the time taken for certification for the products in question (Capacitors). The petitioner claims that in order to comply with the Quality Control Order, the petitioner is required to submit test reports of its product from either of the specified laboratories. The Central Power Research Institute (CPRI) and Electrical Research and Development Association (ERDA) are the only two organisations that are authorised to carry out the necessary test essential for grant of certification. It was averred by the petitioner that the said two organisations had informed the petitioner that they

would not be in a position to complete the necessary test within a short span of time, and the test were likely to take any time between 75 to 135 days.

7. It is contended on behalf of the petitioner that the implementation of the Quality Control Order, without sufficient time to obtain the necessary reports, would effectively result in complete closure of its business, as it would be illegal for the petitioner to even hold the stocks already manufactured by it pending receipts of the requisite test reports and the necessary certification.

8. It is in the aforesaid context that the petitioner had prayed that directions be issued to the respondents to consider its representation and to further extend the time for implementation of the order till 01.04.2019.

9. In view of the practical difficulty articulated by the petitioner in this petition, this Court had, by an order dated 02.02.2018, stayed the implementation of the Quality Control Order.

10. Mr Nand Kumar, the learned counsel appearing for respondent no.2 (Bureau of Indian Standards) points out that sufficient time has already elapsed since passing of the interim order dated 02.02.2018, and the grievance of the petitioner regarding sufficient time required for completing the necessary test does not survive.

11. He also drew the attention of this Court to a Circular dated 23.01.2018 issued by the Central Marks Department III, whereby the

rigors of the mandate of the Quality Control Order were relaxed. In terms of the said Circular, relaxation was granted with regard to certain tests stated therein. In terms of the said Circular, certain test could be conducted in-house and the said results would be accepted pending completion of the test by the Indian authorities.

12. At this stage, it would be relevant to refer to paragraph 3 of the Circular dated 23.01.2018 and the same is set out below:-

“3. In simplified procedure for Grant of Licence/ Inclusion of varieties of Electrical Capacitors as per IS 2993, IS 13340 (Part 1) & IS 13585 (Part 1), the relaxation on testing shall be permitted as below:

A. The Applicant/Licensee may submit an Independent Test Report issued by laboratories permitted under simplified procedure guidelines indicating conformity to all the tests excluding the following type tests:

IS 2993 – Endurance test, Damp heat test

IS 13340 (Part 1) – Ageing test, Thermal Stability

IS 13585 (Part 1) – Ageing test, Thermal Stability test

B. The Applicant/Licensee shall submit an in-house test report covering the type tests exempted at A above

or

The Applicant/ Licensee shall submit an Independent Test Report not more than 1 year old issued by laboratories permitted under

simplified procedure guidelines for the type tests exempted at A above

- C. In case the Applicant submits an in-house test report covering the type tests exempted at A above,
- a. The Applicant/ Licensee shall also simultaneously produce evidence that the exempted type tests are under process at any laboratory permitted under simplified procedure guidelines and the laboratory shall be able to issue the Test Report within a definite time period (date shall be indicated), which shall then be made available by the Applicant/ Licensee to BIS.
 - b. An undertaking shall also be obtained from the Applicant/ Licensee on his letterhead that, in the event of failure of the sample in the above test(s) or his inability to submit the test report within 10 days of the date confirmed by the laboratory, the licence, if granted shall be processed for cancellation/ the varieties so included shall be withdrawn.”

13. Concededly, the three tests as specified in the Circular dated 23.01.2018 (IS 2993 – Endurance test, Damp heat test; IS 13340 (Part 1) Ageing test, Thermal Stability; and IS 13585 (Part 1) Ageing test, Thermal Stability test – are long duration tests and require considerable time.

14. In view of the above, respondent no.2 is not insisting on submission of the said test reports by the specified agencies (CPRI and

ERDA) as a pre-condition for granting certification. However, the applicant is required to satisfy respondent no.2 that it has already undertaken in-house tests to verify the quality/standard and has further submitted the samples of the products for independent tests to be conducted by the specified laboratories.

15. It is not disputed that other tests, that are required to be conducted (tests other than the tests exempt under the Circular dated 23.01.2018), do not require much time.

16. Considering the above and taking into account that much time has passed since filing of the present petition, the petitioner's grievance regarding insufficiency of time for completion of the necessary tests does not survive.

17. The learned counsel appearing for the petitioner states that in respect of certain products, all test reports have been furnished to respondent no.2, however, the necessary license has not been granted. Clearly, this is not the subject matter of the present petition. In the event, the certification has been unjustifiably withheld by respondent no.2, the petitioner would be at liberty to avail of appropriate remedies.

18. In view of the above, the interim order stands vacated and the petition is disposed of. The pending application also stands disposed of.

VIBHU BAKHRU, J

APRIL 23, 2019/RK