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

\+ **W.P.(C) 8265/2018**

M/S OCL INDIA LIMITED AND ANR. ..... Petitioners

Through: Mr Gopal Jain, Sr. Advocate, Ms Vanita Bhargav, Mr Aseem Chaturvedi, Ms Wamika Trehan, Ms Nikhar Luthra and Mr Milind Sharma, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Amit Mahajan, CGSC with Ms Mallika HIremath and Mr Olson Nair, Advocates for R-1 and R-2.
Mr Ramesh Babu, Ms Manisha Singh and Ms Sanya Panjwani, Advocates for RBI/R-3 and R-4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **18.07.2019**

CM No.31188/2019

1. This is an application filed by the petitioner, *inter alia,* seeking a change in the cause title of the present petition.

2. The petitioner states that during the pendency of the present petition, the National Company Law Tribunal, Chennai Bench, approved a scheme of arrangement and amalgamation between Orissa Cement Limited (OCL India Limited) i.e. petitioner no.1, Dalmia Cement East Limited and certain other entities. It is stated that in terms of the scheme of arrangement and amalgamation, the concerned division of the petitioner was hived off to Dalmia Cement (Bharat) Limited, which is now the successor in interest of

the concerned division.

3. The petitioner states that Dalmia Cement(Bharat) Limited has now stepped in the shoes of the petitioner in respect of the undertaking concerned with the present petition.

4. In view of the above, Dalmia Cement (Bharat) Limited is impleaded as petitioner no.1 in place of OCL India Ltd.

5. The application is disposed of.

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6. At the outset it is stated that reference to the petitioner hereafter refers to petitioner no.1 and includes petitioner no.1's predecessor in interest – OCL India Ltd.

7. The petitioner has filed the present petition, *inter alia,* impugning a communication dated 19.06.2018. This communication also referred to another letter dated 08.06.2018 issued by respondent no. 3 (The Reserve Bank of India - RBI).

8. By the said impugned communication dated 19.06.2018, RBI returned the petitioner's application dated 05.04.2018 for compounding contraventions relating to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000. The impugned letter also refers to the letter dated 08.06.2018 sent by RBI informing the petitioner that its application for compounding can be made only after the transactions done in contravention with the guidelines under the Foreign Exchange Manaement Act, 1999 (FEMA) are approved/regularized by the RBI. In terms of the said letter, the petitioner was advised to approach the Trade Division, Foreign Exchange Department, RBI, through the Authorized Dealer (AD).

9. The petitioner is engaged in the business of exporting refractory

material. It is averred in the petition that the petitioner's average annual turnover during the period 2007-08 to 2012-13 was approximately ₹33.68 crores.

10. In terms of the relevant regulations, the petitioner is required to realise the export proceeds within a period of one hundred and eighty days of effecting the export shipments. Admittedly, as on 31.03.2011, a sum of ₹24,21,358/- was outstanding for a period exceeding one hundred and eighty days. Thus, it is admitted that the petitioner had violated the relevant regulations, inasmuch as, it had failed to realise export proceeds to the aforesaid extent within the stipulated period.

11. It is the petitioner's case that the said amount was receivable from separate buyers spread over seven countries and they had failed to remit the amount payable, despite the petitioner pursuing them to do so. The petitioner also states that after 31.03.2011, it had made further efforts to realise the outstanding sale proceeds and export proceeds; and had succeeded in realising ₹6,20,487/- against three bills that were outstanding for a period exceeding one hundred and eighty days.

12. The petitioner claims that the total outstanding amount, which is beyond the period of one hundred and eighty days, now amounts to only ₹20,57,687/-. It is the petitioner's case that recovery of the said amount is not feasible as the costs involved for pursuing recovery of the said amount would be far in excess of the said value.

13. It is the petitioner's case that in terms of the RBI circular, it is entitled to self-write-off the said amount as the same is within the specified limit. The only impediment in the way of the petitioner in doing so is posed by the investigation commenced by the Enforcement Directorate. In terms of

RBI's Master Circular dated 01.01.2016, the facility for self-write-off is not available in cases where the Export Declaration Forms (EDF) are under investigation of agencies like the Enforcement Directorate, Directorate of Revenue Intelligence, Central Bureau of Investigation, or the outstanding bills are subject matter of a civil/criminal suit.

14. Since at the material time, the Enforcement Directorate had already commenced proceedings under Sections 7, 42(1) and 42(2) of FEMA, the petitioner was precluded from seeking a write-off.

15. It is relevant to state that the petitioner had approached its bankers (Authorized Dealer – AD) for claiming a write-off. The AD had, as required, sought information from the Enforcement Directorate and duly informed that the petitioner was being investigated. In this view, the AD had declined to process the petitioner's application for write-off.

16. It is thus seen that the petitioner's efforts to compound violations, under Section 15 of FEMA, has been effectively thwarted on account of investigation or proceedings initiated by the Enforcement Directorate.

17. Mr Mahajan, learned counsel appearing for the Enforcement Directorate submits that the Directorate has merely informed the RBI and the AD that an investigation was pending against the petitioner and it had not issued any communication interdicting the said authorities from processing the petitioner's application for compounding the violations.

18. The Court had pointedly asked the learned counsel for RBI as to whether there was any provision, which precluded RBI from considering and processing the petitioner's application for compounding FEMA violations in question, merely on the ground that an investigation was pending. It is important to note that the learned counsel responded in the

negative. He also clarified that there is no circular or guidelines which precludes RBI from processing an application for compounding of the violation in such cases on the ground that the exporter has not completed the process of self-write-off.

19. This Court also finds it difficult to accept that the application for compounding of violation of this nature – that is, non realisation of export proceeds within a period of one hundred and eighty days – can be rejected on the ground that the amount recoverable has not been written off by the exporter.

20. After some arguments, learned counsel appearing for the RBI states that the matter be remanded back to RBI for consideration afresh. In view of the above, the impugned communication dated 19.06.2018 is aside and RBI is directed to consider the petitioner's request for compounding, afresh. It is also clarified that the petitioner's application would not be rejected by directing the petitioner to approach another department of RBI and RBI would take a comprehensive view in this matter.

21. Since the fee submitted by the petitioner has been returned by RBI, the petitioner shall apply afresh along with the necessary fees.

22. It is stated that in the meantime, till the disposal of the petitioner's application for compounding is considered, the proceedings initiated by the Enforcement Directorate shall remain stayed.

23. The petition is disposed of in the aforesaid terms. The pending application also stands disposed of.

VIBHU BAKHRU, J

JULY 18, 2019/ MK