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

\+ W.P.(C) 10281/2018 and CM Nos. 40093/2018 and 40110/2018

SRI BASAVESHWARA SUGARS LIMITED ..... Petitioner

Through: Mr S.D. Singh, Mr Vijay Kumar, Ms Shweta Sinha, Mr Mustafa A. Khan and Mr Rahul Kumar Singh, Advocates.

versus

MINISTRY OF CONSUMER AFFAIRS & ORS. .....Respondents

Through: Mr Jasmeet Singh, CGSC with Mr Srivats Kaushal, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **15.03.2019**

1. The petitioner has filed the present petition, *inter alia*, praying as under:

> "A) Issue the writ of mandamus or any other writ of similar nature whereby directing the Respondent No.l and 2 to extend the IEM in-favour of the Petitioner for further period of one year for completing the construction of the project in question;
>
> B) Issue of writ of certiorari or any other order/ direction/writ of similar nature whereby quashing the letter dated 17.9.2018 and 24.9.2018 issued by the Respondents in the interest of justice;
>
> C) Issue the writ of mandamus or any other writ of similar nature whereby commanding

> the Respondent No.4 not to encash the Bank Guarantee No. 3/09-10 DATED 21.10.2009 for a sum of Rs.1,00,00,000/- issued by the Respondent No.4 in favour of Respondent no.l;"

2. The petitioner is a company registered under the Companies Act, 1956, *inter alia*, engaged in the generation of sugar. On 30.09.2009, respondent no. 1 issued an Industrial Entrepreneur Memorandum (IEM) on the basis of the proposal submitted by the petitioner to respondent no. 3 (The State of Karnataka) to put-up a Sugar and Co-Generation Plant at Baligeri, Tal-Athani, District Belagavi, Karnataka (hereafter 'the Site'). On 21.10.2009, respondent no. 4 (The Punjab and Sind bank) issued a bank guarantee dated 21.10.2009 for a sum of ₹1,00,00,000/-, in favour of the Chief Director, Ministry of Consumer Affairs, Government of India (hereafter 'the Bank Guarantee').

3. The petitioner entered into an agreement with one M/s Hi-Tech Engineering Corporation of India for supply of machinery and equipment so as to complete the said project. The petitioner paid an amount of ₹4,84,24,362/- to M/s Hi-Tech Engineering Corporation of India in this regard. The petitioner submits that the Karnataka State Pollution Control Board issued a communication dated 06.12.2010, whereby the petitioner was granted permission to expand the project to a capacity of 15 Megawatt. According to the petitioner, approximately 40% of the construction work has been completed at the time of filing of this petition.

4. Since the petitioner has been unable to complete the construction in the time period as stipulated under the Sugarcane (Control) Order,

1996, it sought to extend the IEM on two occasions. The first extension was granted to the petitioner on 11.03.2015 and the second extension was granted on 11.05.2017. On 12.06.2017, respondent no. 3 granted another extension to the petitioner and sent a recommendation to do the same to respondent nos. 1 and 2.

5. However, on 17.09.2018, respondent no. 1 issued instructions to respondent no. 4 for encashment of the Bank Guarantee on the ground that the petitioner had failed to comply with the terms and conditions of the IEM. On 25.09.2018, the petitioner made a representation before the respondents to further extend the time period for completion of the project. By an order dated 26.11.2018, this Court had directed the respondents to consider the representation not only for extension of time, but also for revocation of the IEM.

6. The petitioner seeks that the IEM issued to it on 30.09.2009 for setting up of a sugar and co-generation plant at the Site be extended for a further period of one year to enable the petitioner to complete the construction of the project in question.

7. Further, the petitioner assails the invocation of the Bank Guarantee, essentially, on two fronts. First, that the letters dated 17.09.2018 and 24.09.2018 (hereafter 'the impugned letters') invoking the Bank Guarantee, are not in terms of the bank guarantee furnished by respondent no. 4. Second, the petitioner claims that this is contrary to the provisions of Section 6-D of the Sugarcane (Control) Order, 1996.

8. Insofar as the relief regarding extension of the IEM is concerned, the petitioner's representation in this regard has been disposed of by an order dated 21.01.2019. A copy of the said order has also been handed over to the Court.

9. The learned counsel appearing for the petitioner seeks liberty to challenge the said order. In this view, the said relief is not required to be considered in these proceedings.

10. Insofar as the encashment of bank guarantee is concerned, the contention that the invocation of the bank guarantee was not in terms of the IEM was considered by this Court on 27.09.2018 and the said contention was rejected. The only question that remained to be considered was whether the same was in terms of Section 6-D of the Sugar (Control) Order, 1966. The said Section is set out below:-

> "**6-D. Consequences of non-implementation of the provisions laid down in Clauses 6-B and 6-C.**—If an Industrial Entrepreneur Memorandum remains unimplemented within the time specified in Clause 6-C, the performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard."

11. The learned counsel appearing for the petitioner had contended that the Bank Guarantee had been invoked in contravention of Section 6-D of the Sugar (Control) Order, 1966 inasmuch as the petitioner was not afforded any opportunity of being heard. The said contention is disputed

by the learned counsel appearing for the petitioner and it is stated that the petitioner was afforded a personal hearing on 12.05.2017. It is pointed out that this is also recorded in the order dated 21.01.2019. Notwithstanding the aforesaid controversy, it is seen that the order dated 21.01.2019 also reaffirms the decision to invoke the Bank Guarantee and the said order was passed after hearing the petitioner. Thus, the provisions of Section 6-D of the Sugar (Control) Order, 1966 are complied with.

12. In this view, this Court is unable to accept that any interference with the invocation of the bank guarantee furnished by the petitioner is warranted.

13. In the aforesaid circumstances, the present petition is disposed of with liberty to the petitioner to assail the order dated 21.01.2019 and further agitate its grievance with regard to non-extension of the IEM. The petitioner is also not precluded from seeking relief with regard to any amount that may be forfeited by invocation of the bank guarantee in question.

14. All rights and contentions of the petitioner are reserved.

15. The pending applications are also disposed of.

VIBHU BAKHRU, J

MARCH 15, 2019
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