

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 107 of 2021

**Ankit Metal and Power Limited and another
Vs.
West Bengal Industrial Development Corporation Limited and others**

For the petitioners : Mr. Arik Banerjee,
Mr. Nilay Sengupta

For the West Bengal
Development Corporation : Mr. T.M. Siddiqui

Hearing concluded on : 14.06.2022

Judgment on : 21.06.2022

The Court:

1. The respondent no.1 is a Government Company, acting as a Nodal Agency of the Government of West Bengal for industrial development in the State.
2. Pursuant to setting up of a power generation and manufacturing unit at Jorehira, Bankura, West Bengal in 2007, the petitioner no.1 became eligible for several incentive schemes prescribed by the Government of West Bengal as per the West Bengal Industrial Scheme, 2004 (for short "WBIS 2004").
3. In 2005, the State had also assured the power incentive scheme to manufacturers having an industrial unit where power is one of the major cost components of the same under the West Bengal Industrial Power Incentive Scheme, 2005 (in brief "WBIPS 2005").

4. The petitioner no.1 invested Rs.44 crore in setting up the industrial unit, which was duly registered. Under the scheme of 2004, a unit can avail subsidy under the WBIS 2004, though not more than the actual fixed capital investments made in their unit or the expansion unit.
5. Subsequently, on request from the petitioners, the Chief Engineer, Central Commercial Department, WBSEDCL duly recommended that the petitioner is entitled to an incentive amount under WBIPS, 2005 for the period April, 2010 to October, 2010 during the eligibility period October 15, 2005 to October 14, 2010 for a sum of Rs.4,08,02,666.21p, on November 23, 2012. The respondent requested the petitioner by a letter dated April 30, 2014, to submit the quantum of benefits availed by the petitioner for a period of five years towards waiver of electricity duty under the said Eligibility Certificate along with supporting documents. The petitioner no.1 duly submitted a statement to that effect by a covering letter dated December 3, 2014. Waiver had been availed in respect of electricity duty for having an aggregate sum of Rs.6,20,30,387/-.
6. The respondent-authority admitted the eligibility of the petitioners to have a refund of such electricity duty to the extent of Rs.4,08,02,666.20p, still remaining unpaid. Such liability was displayed on the website of the respondent-authority.
7. Hence, it is evident that the liability to pay of the respondent-authority was, at all relevant points of time, admitted by the respondents. In fact, the debt in respect of the petitioners, having been displayed as indicated above, clearly indicated that the Government of West Bengal

transmitted the amount to the respondents for due disbursement to the petitioners. However, the petitioners alleged that the respondents have not disbursed such amount in favour of the petitioners till date.

8. Subsequently, a demand justice was issued by the petitioner and a notice was issued at the behest of the petitioners under Rule V of the Insolvency and Bankruptcy Code, 2016 upon the respondent-authority, which was duly accepted by the respondent-authority on March 5, 2018. However, even thereafter the respondent-authority has not disbursed the said amount, despite having received the requisite amount for the purpose of disbursal to the petitioner no.1.
9. In reply to the said notice under Rule V, dated January 2, 2018 (actually issued on March 2, 2018), the respondent no.1 responded *vide* their letter dated March 20, 2018, disclosing that they shall not pay the amount of Rs.1,94,30,867/- for the following reasons:
 - (a) The respondent no.1 had adjusted a sum of Rs. 1,94,30,867/- against a Bridge Loan and interest accrued thereon; and
 - (b) A sister concern of the applicant, namely M/s. Rohit Ferotech Limited, enjoyed excess subsidies from the Government of West Bengal.
10. It is pointed out by learned counsel for the petitioners that, on a previous occasion, the respondent-authority had, on the same grounds, refused to honour the claim of the petitioner no.1 on account of the subsidies under WBIS 2000.

11. However, upon the petitioner no.1 moving this Court under Article 226 of the Constitution of India, giving rise to WP 1014(W) of 2020, this Court had, vide order dated February 14, 2020, allowed the said writ petition, directing the respondents to disburse the rest of the due amount under the incentive scheme, being WBIS 2000, in favour of the petitioner within a month thereafter.
12. The said order has been annexed to the writ petition as Annexure P-15.
13. Upon hearing learned counsel for the parties, it appears that the facts of the present case are substantially similar to those of WP 1014(W) of 2020. It is seen from the materials-on-record that the dues of the petitioner no.1-Company under the WBIS, 2004 scheme have been repeatedly admitted by the Authorities.
14. The Chief Engineer, Central Commercial Department, WBSEDCL, vide letter dated November 23, 2012, recommended that the petitioner is entitled to an incentive amount under WBIPS 2005 for the period April 2010 to October 2010 for a sum of Rs.4,08,02,666.21p. Again vide letter No.INC-2004/(114) GENCS/198 dated April 30, 2014, the respondents requested the petitioner to submit the quantum of benefits availed by the petitioner for a period of five years towards waiver of electricity duty under the concerned Eligibility Certificate with supporting documents. Such request was complied with by the petitioner no.1 by duly submitting a statement with a covering letter dated December 3, 2014, disclosing the waiver of electricity having been availed of, having an aggregate sum of Rs.6,20,30,387/-.

15. The liability of the respondent no.1-authority was duly displayed on the website of the said authority under the heading “West Bengal Incentive to Power Intensive Industries Scheme, 2005”, thereby clearly admitting the eligibility of the petitioner to have a refund of electricity duty to the tune of Rs.4,08,02,666.20p.
16. In the present case, akin to W.P.1014(W) of 2020, the respondent no.1 being merely a Nodal Authority of the Government of West Bengal, which has already sent the amount to the respondent no.1 for disbursal to the petitioner no.1, there cannot be any justification or authority whatsoever for the respondent no.2 to withhold such disbursal.
17. Contrary to the argument of learned counsel for the respondents, there is no scope or reason for lifting the “corporate veil” to find nexus between the control and management of M/s. Rohit Ferrotech Limited, which was merely a sister concern of the petitioner, more so, since a co-ordinate Bench has already directed the amount withheld in respect of the said sister concern to be disbursed. Mere pendency of an appeal against such order, as is well-settled, does not operate automatically as stay of the said direction of the coordinate Bench.
18. It is seen from the reply dated March 20, 2018 given by the respondent no.1 that the respondent-authorities apparently withheld the balance of power incentive under the WBIPS 2005 Scheme to the petitioner no.1 to the tune of Rs.1,94,30,867/- on the pretext that adjustment on account of the petitioners’ Bridge Loan outstanding on account of interest and principal and other charges like processing

charges and service tax have been deducted from the power incentive payable to the petitioner no.1.

19. Moreover, the withholding of such amount was also cited to be due to the group-Company of petitioner no.1, the said M/s. Rohit Ferrotech Limited having not provided details of waiver of electricity duty.
20. None of the aforesaid reasons holds water, since the Nodal Authority, that is, the respondent no.1 does not have the authority to withhold such disbursement, being merely a paying agency for the Government of West Bengal, which has already sent the amount for disbursement to the petitioner no.1.
21. In the absence of there being any charge or nexus between the disbursement of the amount under the WBIPS, 2005 Scheme and the alleged amounts adjusted by respondent no.1, there cannot be any justifiable reason for withholding the amount to be disbursed in favour of the petitioner.
22. Hence, **W.P.O. No.107 of 2021 is allowed**, directing the respondents to disburse the balance amount under the WBIPS, 2005 Incentive Scheme, to the tune of Rs.1,94,30,867/-, as admitted by the respondent no.1-authority, to the petitioner within a month from date.
23. There will be no order as to costs.
24. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(**Sabyasachi Bhattacharyya, J.)**