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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 26121 of 2019

Date of Decision:20.03.2023

Kandhari Beverages Pvt. Ltd.

... Petitioner

Versus

State of Haryana & another

... Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANJIV BERRY**

Present:- Mr.Kanwal Chaudhary, Advocate for the petitioner.

Ms. Kushaldeep Kaur, Advocate for
Mr. Ankur Mittal, Advocate for
respondent-HSIIDC.

Mr. Deepak Bhardwaj, DAG, Haryana.

.....

SANJIV BERRY, J.

Present Writ Petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ of mandamus directing the respondents to hand over the possession of additional allotted land measuring 11.40 acres, adjacent to the existing industrial plot of the petitioner at the original allotment price.

2. The case put forth by the petitioner is that the petitioner company had applied for allotment of industrial plot measuring 30 acres in

May-June 2009 for setting up a Bottling Plant at IGC, Saha, District Ambala, Haryana. Vide letter dated 22.07.2009, an industrial plot measuring 20 acres was allotted to the petitioner company out of which 13.40 acres was allotted at tentative rate of ₹1100 per sq. metre being the proposed rate for the year 2009-10 and respondent No.2 further assured that the allotment of remaining land measuring 6.60 acres to the petitioner as and when the same is got available for allotment vide letter Annexure P-2. Thereafter, Regular Letter of Allotment (RLA) Annexure P-3 was issued in this regard on 19.08.2009. The possession of 13.40 acres of land was taken over by petitioner company on 13.04.2010 bearing Plot No. 460 Sector 2 HSIIDC, Saha, District Ambala, vide Possession Certificate Annexure P-4.

3. Since, the petitioner company required a larger plot for commencement of the project, it requested, vide Annexure P-5 dated 10.05.2010, to respondent No.2 to allot the remaining area of 6.60 acres in addition there to another 12.60 acres which was available adjacent to the plot where the petitioner had set up part of his Bottling Plant. Considering the request, respondent No.2 allotted additional land measuring 11.40 acres to the petitioner, adjacent to the aforesaid existing plot on 22.03.2011 vide Annexure P-6, thereby intimating the petitioner that this additional plot has been merged in the existing plot and the total area of the plot is 24.8 acres. This additional land was allotted @ ₹2500/- per sq. metre and the petitioner was advised to furnish the bank draft which was deposited on 08.07.2011 vide Annexure P-7 with the respondent No.2. As per request, Agreement and Acceptance of RLA for additional allotted land of 11.40 acres was submitted

by the petitioner vide letter dated 18.07.2011, Annexure P-8, but despite that respondent No.2 failed to hand over the possession of this additional land to the petitioner till 22.09.2011 when the first installment fell due and petitioner deposited the same on 22.09.2011. Petitioner wrote letter dated 23.02.2012, Annexure P-9 asking respondent No.2 to handover physical possession of additional allotted land.

4. On 05.03.2012 petitioner came to know that major part of the additional land was subject matter of stay order passed by Hon'ble Supreme Court and some part was yet to be acquired so the petitioner wrote letter Annexure P-10 dated 05.03.2012 requesting the HSIIDC to defer the balance installments and also not to charge any interest there on until the possession is handed over. The factum of stay order and that most of the land was under litigation was admitted by respondent No.2 vide letter dated 19.03.2012, Annexure P-11 wherein, it was, however mentioned that some of the land was free and petitioner was asked to submit request for physical possession in the Standard Performa. In view of the response by respondent No.2 the petitioner took impression that his request for deferment of installment has been exceeded too and accordingly he did not deposit the 2nd, 3rd and 4th installment falling due on 22.03.2012, 22.09.2012 and 22.03.2013. However, without offering the possession of the land, which was free from litigation, the HSIIDC vide letter dated 04.06.2013 Annexure P-12 called upon the petitioner to deposit 2nd, 3rd and 4th installment within 15 days. In response thereto the petitioner vide letter Annexure P-13 dated 10.06.2013 intimated the respondents that out of total cost of additional land being

₹11,54,25,000/-, the petitioner had already deposited ₹4,44,77,759/- and despite lapse of more than 2 years from the date of allotment the physical possession has not been handed over and as such the respondents were requested to consider waving of interest till the physical possession is given. However, respondent No.2 did not respond and without handing over the possession to the petitioner the respondent started harassing the petitioner on one count or the other forcing the petitioner to write a letter dated 14.03.2014, Annexure P-14, to respondents on the basis of which the petitioner was called to appear for personal hearing before the Estate Management Committee (EMC) vide letter Annexure P-15 and consequent to the said meeting petitioner vide letter dated 05.09.2014, Annexure P-16, offered to pay outstanding principle amount without interest despite the fact that the respondent No.2 was not in position to give physical possession of additional allotted land. However the respondent No.2 cancelled the allotment of the additional allotted land measuring 11.40 acres vide letter Annexure P-17 dated 12.09.2014 and also sent the cheque amounting to ₹5,65,10,784/- towards refund of the amount deposited along with simple interest @8% per annum vide letter dated 18.12.2014, Annexure P-18.

5. The petitioner preferred appeal Annexure P-19 on 08.06.2015 before respondent No.1. Then case of petitioner was considered in the meeting of Haryana Enterprise Promoters Board on 25.04.2016 under the chairmanship of Principal Secretary to Chief Minister, Haryana, wherein it was ensured that the additional land will be handed over in view of original allotment price of ₹2500/- per sq. metre. and accordingly the petitioner

finalized the investment plan to the tune of ₹200 crores and accordingly vide Annexure P-20 dated 15.07.2016 petitioner returned the refund cheque of ₹5,65,10,784/- to HSIIDC. Then vide letter dated 13.10.2016, Annexure P-21 petitioner again sought possession of additional land measuring 11.40 acres. It is averred that respondent No.2 vide communication dated 02.12.2016, Annexure P-22 intimated the petitioner that the request of the petitioner was placed before the Board of Directors, HSIIDC in the meeting on 07.11.2016 it has been resolved to offer additional land of 11.40 acres to the petitioner, however, at the current rate of allotment for the financial year 2016-2017 being ₹7000/- per sq. metre. As per the petitioner, it was not acceptable since land was allotted in March 2011 @ ₹2500 per sq. metre. and it was the respondents, who could not hand over possession thereof. Therefore, there was no occasion to allot afresh @ ₹7000/- per sq. metre. Vide letter Annexure P-23 dated 13.12.2016 the petitioner asked respondents No.2 about the basis on which the allotment has been charged @ ₹7000/- per sq. metre. Vide letter dated 23.05.2017, Annexure P-24, the respondent No.2 sought the acceptance qua this allotment to petitioner @ ₹7000/- per sq. metre followed by communication dated 06.09.2017, Annexure P-25. Vide letter dated 22.11.2017, Annexure P-26 the petitioner asked the final rate from the respondent at which the additional allotted land could be offered to petitioner and as there was no response, the petitioner wrote another letter dated 08.10.2018, Annexure P-27, to HSIIDC to allot and handover possession of additional land at current market price of ₹5400/- per sq. yard followed by letter dated 25.1.2019 and 20.02.2019, Annexure P-29 and P-30

respectively.

6. In March 2019, petitioner visited the office of HSIIDC to resolve the issue and the officials of HSIIDC advised the petitioner to submit 'Undertaking for Cancellation of Allotment' and only then the HSIIDC shall allot the aforesaid land measuring 11.40 acres at the current rate of ₹5400/- per sq. metre and the petitioner accordingly submitted the undertaking dated 19.03.2019, Annexure P-31, seeking cancellation of allotment and refund of ₹5,65,10,784/. As the respondent No.2 slept over the issue and neither refunded to the petitioner nor made allotment as assured, the petitioner vide letter dated 06.07.2019, Annexure P-32 wrote to withdrew its undertaking and asked the respondent to immediately hand over the possession of additional land. The respondent have failed to respond to said communication and it appears that petitioner has been made to suffer unnecessarily for no fault and on its part. Hence the petition seeking mandamus.

7. On notice, the respondents contested the petition by filing detailed para-wise reply, wherein while denying the allegations, it was submitted that the petition deserves to be dismissed on the simple ground that petitioner has accepted the decision of Board of Directors, HSIIDC, conveyed to petitioner vide letter dated 02.12.2016, to allot the additional land at current market rate which is also evident from the request dated 25.01.2019 Annexure P-29 and dated 20.02.2019 Annexure P-30 and the petitioner has nowhere challenged the said order. The petitioner is estopped from even maintaining the present petition on this score. It was further

submitted that the allotment of additional land measuring 11.40 acres was cancelled on 12.09.2014 and the amount along with interest ₹5,65,10,784/- was refunded. The request of the petitioner for allotment of additional land measuring 11.40 acres at the price of ₹2500/- per sq. metre was placed before meeting of the Board of Directors held on 16.06.2016, which resolved to offer the additional land of 11.40 acres adjoining to existing plot of the petitioner at the applicable rate for year 2016-2017 i.e ₹7000/- per sq. metre and the same was conveyed to petitioner vide letter dated 02.12.2016. The petitioner again wrote a letter asking about the basis on which this rate was fixed, and vide letter dated 23.05.2017, the petitioner was informed that the rate was fixed by the Board and further there is no encumbrance on the land measuring 10.334 acres which been adjacent to the existing plot of the petitioner and he can use the already available facilities with the petitioner. However, the parties were unable to reach the decision on allotment price, and thereafter in 2018-2019 rate was fixed at ₹5400/- per sq. metre and the petitioner again moved request for allotment at the current market rate of ₹5400/- per sq. metre, which was put up before the meeting of Board of Directors to be held on 07.03.2019 and it was deferred to 21.12.2019. It is submitted that on 19.03.2019 petitioner submitted 'Undertaking for cancellation of allotment' and requested for refund of amount and in view of its undertaking, the refund was processed and in the meanwhile, a letter dated 06.07.2019 was received from petitioner withdrawing such undertaking and again requesting for possession of the allotted additional land measuring 11.40 acres to the petitioner at the rate of ₹2500/- per sq.

metre.

8. It has been submitted that there is no *mala fide* on the part of the respondents and in fact the possession of land could not be offered due to pending litigation till the answering respondent got control/possession of the land in question on 12.10.2018. It was submitted that in the Conditions of Allotment, it was clearly mentioned that the allotment was subject to availability after land acquisition proceedings and even the respondent No.2 had specifically intimated petitioner vide letter dated 23.05.2017 that the land measuring 10.34 acres out of the additional land adjacent to the plot of petitioner was free from encumbrance and he can take possession thereof, but the petitioner never answered in affirmative and entangled in a web of unnecessary communication and litigation. Moreover, the petitioner has not challenged the decision of the Board of Directors, hence it was submitted that the petition deserves to be dismissed.

9. Rejoinder to the reply was filed by the petitioner wherein the averments made in the reply were controverted and those of the petition were reiterated.

10. We have heard learned counsel for the parties at length and also perused the record with their assistance.

11. It has been contended by the learned counsel representing the petitioner that although the petitioner had requested for allotment for 30 acres of land for setting up a bottling plant, however, the respondent allotted plot measuring 20 acres vide letter dated 22.07.2009, out of which land measuring 13.40 acres was allotted at the rate of ₹1100/- per sq. metre and it

was assured that the remaining land measuring 6.60 acres would be given as and when available vide Annexure P-2. He submitted that later on the request of the petitioner to allot 6.60 acres and in addition another 12.60 acres of land, the respondents allotted 11.40 acres adjacent to his already existing plot at the rate of ₹2500/- per sq. metre but despite the petitioner depositing the requisite bank draft, the respondents, however did not handover the possession of additionally allotted land of 11.40 acres. As per learned counsel for the petitioner the petitioner came to know about the said land being under litigation and as such moved letter Annexure P-10 dated 05.03.2012 requesting the respondents to defer the balance installments and not to charge any interest thereon till the possession is handed over. However, the respondents asked the petitioner vide Annexure P-12 to deposit the installments due within 15 days to which the petitioner again requested the waiving off the interest. He submitted that the respondents had illegally cancelled the allotment of additional land measuring 11.40 acres vide Annexure P-17 on 12.09.2014 and refunded the amount deposited vide Annexure P-18, which was however returned by the petitioner, and on the appeal Annexure P-19 being preferred the petitioner was given to understand that the additional land will be allotted to him at the rate of ₹2500/- per sq. metre but later the petitioner was informed vide Annexure P-22 that the additional land will be allotted on the prevalent rate of allotment i.e. ₹7000/- per sq. metre. He submitted that on the assurance by officials of respondents the petitioner was asked to submit the 'Undertaking for cancellation of allotment' so that fresh allotment at the rate of ₹5400/- per sq. metre, be

made but despite that no action was taken and ultimately on 06.07.2019 the petitioner withdrew the undertaking. The petitioner has been unnecessarily made to suffer for no fault on its part. He submitted that the respondents be directed to allot additional land of 11.40 acres at the rate of ₹2500/- per sq. metre.

12. The learned counsel for contesting respondents has assailed these arguments to be without any basis and stated that the respondents have throughout, acted in accordance with law and the provisions governing such allotments specially the Estate Management Procedures (EMP). She contended that as the petitioner failed to pay the installments in time and even despite notice to deposit the outstanding installments within 15 days, and as such, the allotment of 11.40 acres of land @₹2500/- per sq. metre was cancelled on 12.09.2014, Annexure P-17, and the amount already received was duly refunded along with interest.

13. She contended that it was on the fresh request of the petitioner that the Board of Directors resolved to allot additional land measuring 11.40 acres at the existing rate for 2016-2017 which was ₹7000/- per sq. metre vide letter dated 02.12.2016, Annexure P-22, but the petitioner objected to know the basis on which the rate of ₹7000/- per sq. metre has been assessed. She argued that the petitioner was even informed that as per the letter of allotment the allotment was subject to availability of land after the land acquisition proceedings and even specifically informed that it can taken possession of 10.34 acres of land, adjacent to its existing plot which was free from encumbrance but the petitioner never took the possession thereof by

making requisite payment.

14. She submitted that the request of petitioner to allot the additional land @₹2500/- per sq. metre could not be acceded to as the said allotment had been cancelled way back on 12.09.2014 and the petitioner had nowhere challenged the decision of respondents in allotting the land afresh on 16.06.2016 @₹7000/- per sq. metre and even the petitioner had submitted undertaking dated 19.03.2019 where by requesting the respondents for refund of the amount of ₹5,65,10,784/- as the petitioner had accepted the cancellation of allotment of additional land measuring 11.40 acres, allotted vide Annexure P-6. She categorically contended that the petitioner itself defaulted in paying the installments in time and the allotment was rightly cancelled as per Chapter 4 of EMP-2011, the possession and installments are not interlinked in any manner. She further pointed out that the petitioner had already filed appeal which was decided vide decision dated 23.12.2015 revoking the cancellation of plot and to allot the same to petitioner @₹7000/- per sq. metre and this decision has never been challenged by the petitioner, meaning thereby that the petitioner has accepted the decision. She submitted that the petitioner itself is changing its stance as it furnished the undertaking dated 19.03.2019 seeking cancellation of allotment and refund of the amount which it later on had withdrawn and sought allotment of the additional land @₹2500/- per sq. metre vide letter dated 06.07.2019. She categorically submitted that the respondents have acted in accordance with law, rule and the procedure and have not committed any illegality and as such there is no merit in the petition.

15. After considering the respective submissions and perusing the record, it transpires that the petitioner having been allotted 20 acres of land by respondent No.2 vide Annexure P-2, was given physical possession of 13.40 acres of land @1100/- per sq. metre. Then petitioner again requested for allotment of 12.60 acres of land including 6.60 acres of land already pending, the Committee allotted additional land measuring 11.40 acres adjoining the existing plot of the petitioner at the existing rate i.e. ₹2500/- per sq. metre, vide Annexure P-6 dated 22.03.2011. The petitioner deposited 25% of the cost along with first installment on 22.09.2011. Thereafter, the petitioner requested vide Annexure P-10 to defer the remaining 7 installments and not to charge interest thereon till the delivery of possession. Since the litigation was pending in the Hon'ble Apex Court, the possession could not be delivered to petitioner and vide letter Annexure P-12, the petitioner was called to deposit the installments due within 15 days and even personal hearing was also given to the petitioner by competent authority and on the failure of the petitioner to deposit the installments along with interest, the allotment of additional land measuring 11.40 acres was cancelled vide Annexure P-17 and the amount of ₹5,65,10,784/- was refunded to the petitioner, however the cheque was not encashed.

16. The petitioner had preferred appeal and the appellate committee in its meeting dated 23.12.2015 agreed to revoke the cancellation of plot and to handover the same to petitioner but the petitioner again filed appeal on 04.03.2016 before respondent No.1 requesting to reconsider the case and allot the land @2500/- per sq. metre and it was decided by the Board of

Directors in its meeting dated 16.06.2016 to allot the land measuring 11.40 acres @ ₹7000/- per sq. metre and consequently the petitioner returned the cheque dated 18.12.2014. Again the petitioner was asked vide Annexure P-22 dated 02.12.2016 to convey its acceptance for allotment but instead he wrote another letter dated 13.12.2016 asking the respondents about the basis on which the rate of ₹7000/- per sq. metre was so fixed. In response vide Annexure P-24 the petitioner was informed that the rate of ₹7000/- per sq. metre was as per the rate fixed for financial year 2016-17 and he was also informed vide Annexure P-24 that the land measuring 10.34 acres was free from encumbrance and adjoining to its existing plot and the petitioner can avail the infrastructural facilities available in Phase-I and as such petitioner was asked to convey its acceptance. Strangely the petitioner again vide Annexure P-26 reiterated its demand for allotment @ ₹2500/- per sq. metre.

17. The matter did not end here as the petitioner again requested for allotment at the prevalent rate for the year 2018-19 i.e. @ Rs.5400/- per sq. metre. This request was also put up before Board of Directors on 07.03.2019 but the same was deferred and in the meanwhile the petitioner voluntarily submitted Undertaking Annexure P-31 seeking cancellation of allotment of additional land measuring 11.40 acres and requested for refund of ₹5,65,10,784/- without claiming interest thereon. However this undertaking was again withdrawn by the petitioner vide Annexure P-32 dated 06.07.2019 and changed stance by again requesting for allotment of additional land @ ₹2500/- per sq. metre.

18. Thus from the above discussed factual position, it is evident that

the petitioner had been changing its stance from one to another on different occasions.

19. As already mentioned supra, the bone of contention in the present case is the allotment of additional land measuring 11.40 acres, adjacent to the existing plot of the petitioner. This land was originally allotted to petitioner @₹2500/- per sq. metre vide Annexure P-6, dated 22.03.2011 and the petitioner paid 25% of the cost along with first installment on 22.09.2011 but thereafter, it did not pay any subsequent installments, instead the petitioner requested for deferment of the payment of remaining installments and also not to charge interest thereon. This plea of petitioner was not accepted by the respondents and a reminder was issued vide Annexure P-12 asking him to pay the installments and interest as per the conditions of Regular Letter of Allotment (RLA) within 15 days and even personal hearing was afforded and ultimately vide Annexure P-17 the allotment was cancelled. It is evident that on appeal being decided on 23.12.2015 the petitioner was re-allotted the land but at the rate prevalent i.e. ₹7000/- per sq. metre. On representation dated 04.03.2016 of the petitioner the Board of Directors allotted the land @₹7000/- per sq. metre and petitioner was asked to convey its acceptance but the petitioner again asked the respondent about the basis on which this rate was fixed. Interestingly, in the meanwhile, the petitioner had submitted undertaking dated 19.03.2019 seeking cancellation of allotment and requesting for refund of the amount of ₹5,65,10,784/-, which again was withdrawn by petitioner on 06.07.2019.

20. Thus it is evident that the petitioner has till date not challenged

the decision dated 23.12.2015 whereby the additional land was allotted to it @₹7000/- per sq. metre. In fact the plea of the petitioner to allot this land @₹2500/- per sq. metre was also discussed and negated by the board of Directors in its meeting dated 16.06.2016 and on 07.11.2016 wherein it was resolved to allot the additional land measuring 11.40 acres @₹7000/- sq. metre. It is evident that despite being specifically requested the petitioner had not given the acceptance but continued dillydallying the matter on one pretext or the other. It is worth mentioning that even the petitioner had submitted undertaking dated 19.03.2019 Annexure P-31, whereby he had chosen the allotment to be cancelled and sought the refund of the amount already deposited with interest, however before any decision thereon could be taken by the respondents, the petitioner again somersaulted its stance by withdrawing the same on 19.03.2019.

21. In the backdrop of such chain of circumstances, the petitioner has sought directions for declaring the letter dated 12.09.2014 (Annexure P-17), the letters dated 02.12.2016 (Annexure P-22), and dated 23.05.2017 (Annexure P-24) to be illegal, unjustified and bad in law and also sought the directions to respondents to handover the possession of additional land measuring 11.40 acres @₹2500/- per sq. metre besides waiving of the interest component on the amount due towards remaining installments.

22. After giving thoughtful considerations, we are of the view that the petitioner is not entitled to any of the relief prayed for because as has been discussed above the petitioner had failed to pay the subsequent installments as per the Letter of Allotment dated 22.03.2011 Annexure P-6,

after paying only the initial 25% of the cost along with first installment. Thus there was breach of the schedule for payment of the installments. This letter formed part of Regular Letter of Allotment (RLA) dated 22.07.2009 and 19.08.2009. In Annexure P-6, the Schedule of Payment of Installments has been specifically mentioned and vide Annexure P-8 the petitioner had specifically accepted the RLA, wherein it was also mentioned that the allotment was subject to availability of land. On the failure of the petitioner to pay the subsequent installments, the respondents specifically informed vide Annexure P-12 dated 04.06.2013 to make payments of the installments due along with interest on account of delayed payment within 15 days but despite that the petitioner failed to pay the installments along with interest and as per the terms and conditions of allotment, the respondents have rightly cancelled the allotment vide Annexure P-17 dated 12.09.2014. and we find no illegality and infirmity in the same.

23. It is also worth mentioning that the question of allotment of additional land measuring 11.40 acres @ ₹2500/- per sq. metre had in fact ended with the cancellation of the allotment vide Annexure P-17, due to non payment of the installments by the petitioner as per the schedule. It was only on appeal that the Board of Directors of the respondents considered the re-allotment of the additional chunk of land measuring 11.40 acres at the price of ₹7000/- per sq. metre as was prevalent in the year 2016-2017 and accordingly vide the letter dated 02.12.2016 Annexure P-22, the respondents informed the petitioner to convey its acceptance. The petitioner was informed vide Annexure P-24 dated 23.05.2017, in response to his letter

dated 13.12.2016 that the rate of ₹7000/- per sq. metre has been fixed for the financial year 2016-17 and was further been informed that land measuring 10.334 acres adjoining the existing plot of petitioner is free from encumbrance and the petitioner can use the infrastructural facilities already available in Phase-I. But again the petitioner instead of accepting the offer, wrote another letter Annexure P-26, claiming the rate prevalent was ₹6000/- per sq. metre. Thereafter, the petitioner again requested for allotment @₹5400/- per sq. metre as prevalent in the year 2018-2019 vide letter dated 19.10.2018 and while this request was pending before the Board of Directors, the petitioner submitted Undertaking seeking cancellation of allotment of additional land measuring 11.40 acres vide Annexure P-31 dated 19.03.2019, which also was later on withdrawn vide Annexure P-32 dated 06.07.2019, again seeking allotment @₹2500/- per sq. metre.

24. Therefore, it is evident from the above discussion that the respondents have throughout acted in accordance with law and have not committed any violation of the Rules. Consequent upon the cancellation of allotment the respondents promptly refunded the amount of ₹5,65,10,784/- to the petitioner as per rules, although the same was later returned by the petitioner. The petitioner has even submitted undertaking seeking cancellation of the plot and refund of the amount on 19.03.2019 which again he had withdrawn on 06.07.2019. The facts and circumstances clearly show that the petitioner itself had been non decisive in accepting the decisions taken by the competent authorities of the respondents qua the allotment of the additional land on one pretext or the other. The Respondents on the other

hand are found to have acted fairly in accordance with law in passing the impugned orders and no illegality and infirmity therein could be found.

25. As a consequent to the above discussions, we find the petition to be devoid of any merit and the same is hereby dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANJIV BERRY)
JUDGE

20.03.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |