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

\+ **W.P.(C) 11713/2019**

Date of Decision: 20.04.2023

IN THE MATTER OF:

VERITAS (INDIA) LTD.
VERITAS HOUSE,
3RD FLOOR, 70,
MINT ROAD, FORT,
MUMBAI-400001 ..... PETITIONER

Through: Mr. Jayant Mehta, Senior Advocate alongwith Mr. Ajay Bhagvan, Mr. Aseem Chaturvedi & Mr. Siddhant Kumar, Advocates

Versus

UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF COMMERCE AND INDUSTRY,
UDYOG BHAWAN,
NEW DELHI-110011 .... RESPONDENT NO. 1

DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE (DPIIT)
THROUGH ITS DIRECTOR,
MINISTRY OF COMMERCE & INDUSTRY
UDYOG BHAWAN,
NEW DELHI-110011 .... RESPONDENT NO. 2

Through: Mr. Dev P. Bhardwaj, Ms. Anubha Bhardwaj, Mr. Sachin Singh & Mr.Sarthak Anand, Advocates for UOI

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India, primarily seeking for a direction to the respondents to grant *ex-post facto* approval to the Foreign Direct Investment (hereinafter referred to as 'FDI') received by the petitioner from two foreign companies, namely, Aventia Global Limited and Onix Assets Limited (hereinafter referred to as 'the foreign companies').

2. The brief facts of the case are that the petitioner is a company engaged in international trade and distribution of chemicals/petrochemicals/polymers etc. On 26.12.2009, the petitioner allotted 4,00,000 warrants to the two foreign companies for a consideration of 50 crores and the said warrants were converted into equity shares on 27.03.2010. The petitioner received disbursals from the foreign companies between 23.12.2009 to March 2010. The petitioner intimated the Reserve Bank of India (hereinafter referred to as the 'RBI') about the receipt of foreign investment and was advised by RBI *vide* its letter dated 11.02.2010 to seek approval from the Foreign Investment Promotion Board (hereinafter referred to as 'FIPB') before the issuance of warrants.

3. Following the same, the petitioner company *vide* its first application dated 08.06.2011, applied with the FIPB seeking *ex-post facto* approval of the aforesaid FDI transactions. The application so submitted, came to be rejected on 27.03.2012 by FIPB on the ground that the request could not be

acceded to for the reason that the exact source of funds of the investors had not been substantiated.

4. The petitioner, thereafter, filed a second application on 09.11.2015 disclosing the source of funds received from the foreign companies. It is to be seen that on 24.02.2016, the second application for *ex-post facto* approval was also rejected by FIPB on the ground that the petitioner has not given any fresh evidence to establish that the investments were made from the known and declared sources of income by the investors.

5. The petitioner, thereafter, was compelled to file a third application on 31.03.2016. By this time, an assessment order dated 10.03.2014, which was passed against the petitioner, came to be partly set aside by the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)'] in terms of order dated 22.02.2016. The third application of the petitioner also came to be rejected on 21.06.2016 on the ground that against the said order passed by the CIT(A), the respondent No.2-Department for Promotion of Industry and Internal Trade (hereinafter referred to as 'DPIIT') has preferred an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the 'ITAT').

6. The petitioner, thereafter, approached the Bombay High Court in W.P (C) 562/2016. The said writ petition was withdrawn with the liberty to approach the appropriate High Court. The petitioner thereafter filed W.P. (C) 1464/2017 before this court, which was disposed of in terms of an order dated 13.10.2017, which reads as under:-

> *"1. Learned counsel appearing for the petitioner submits that the Foreign Investment Promotion Board (hereafter 'the FIPB'), which has been arrayed as respondent no.3, has since ceased to*

exist, he seeks leave to withdraw the present petition with liberty to move an application before the appropriate authority. Learned counsel further requests that the appropriate authority be now directed to examine the petitioner's application uninfluenced by the orders passed by the FIPB. The said request is not objected to by the learned counsel for the respondents.

2. In view of the above, the present petition is dismissed as withdrawn with the liberty to the petitioner to move an appropriate application before the concerned authority. Needless to state that as and when the said applications are moved, the concerned authority shall decide the same uninfluenced by the previous orders passed by the FIPB".

7. It is thus seen that the application of the petitioner was to be decided afresh, uninfluenced by the previous orders passed by FIPB. The previous orders passed by FIPB, which are referable at this stage, are dated 27.03.2012, 24.02.2016 and 21.06.2016.

8. It is seen that on 05.06.2017, the FIPB was abolished and the power to grant approval for foreign investment was conferred upon the respective Ministries with DPIIT being the nodal agency.

9. The petitioner, thereafter, filed a fourth application dated 15.12.2017 received by DPIIT on 19.12.2017 in accordance with the new Standard Operating Procedure (hereinafter referred to as 'SOP') dated 29.06.2017. The fourth application came to be rejected *vide* order dated 22.05.2018 with an observation that after due consideration, the request made by the petitioner is not accepted by the relevant Department/Ministries.

10. Since the order of rejection of the fourth application dated 22.05.2018 did not contain any reason, therefore, the petitioner had to approach this

court in W.P.(C) 9069/2018, which came to be disposed of on 29.08.2018 recording an undertaking of DPIIT that the reasons for rejection will be communicated to the petitioner.

11. In terms of communication dated 17.09.2018, the reasons for the rejection of the fourth application were communicated to the petitioner, which reads as under:-

> *To*
> *M/s. Veritas (India) Limited*
> *(Shri Prasad A Oak, Company Secretary)*
> *Veritas House, 3 Floor,*
> *70 Mint Road, Fort.*
> *Mumbai-400 001.*
>
> *Subject: Writ Petition No.9609/2018 filed by Ms. Veritas (India) Lid Vs. GOI & Others*
>
> *The undersigned is directed to refer to the above WP(C) filed by M/s. Veritas (India) Ltd in the High Court of Delhi, in which the Hon'ble High Court has passed the following order on 29.08.2018:*
>
> > *"2. The petitioner has filed the present petition, inter alia impugning the order dated 22.05.2018 (hereafter the impugned order), which indicates that the FDI proposal submitted by the petitioner has been rejected by the Competent Authority. The principal grievance of the petitioner is that the impugned order does not indicate any reason for doing so. Although, it appears from the averments made in this petition that the reasons for rejection are fairly obvious; nonetheless, it would be apposite if the respondents formally communicate the same to the petitioner.*
> >
> > *3. Mr Jasmeet Singh, the learned counsel appearing for the respondents states on instructions that the reasons for*

> *rejecting the petitioner's proposal would be formally communicated to the petitioner within a period of three weeks from today. In view of the said statement, the earned counsel appearing for the petitioner seeks to withdraw the present petition.*
>
> *4. The petition is dismissed as withdrawn"*
>
> *In compliance of the above, with regard to the FDI Proposal filed vide No.4672 dated 20.12.2017, it is hereby communicated that the proposal was rejected by the Competent Authority considering that there is a sub-judice matter pending with the Income Tax Appellate Tribunal which has direct bearing on the proposal".*

12. A perusal of the communication dated 17.09.2018 would reveal that the proposal of the petitioner has been rejected only on the ground that the matter is *sub-judice* with the ITAT, which according to DPIIT has a direct bearing on the proposal.

13. It be also noted that in terms of the order dated 10.01.2019, the ITAT upheld the order passed by CIT(A) and observed that the petitioner has proved three main ingredients under Section 68 of the Income Tax Act, i.e. (i) identity of investors; (ii) creditworthiness of the investors; and (iii) genuineness of the transactions. The petitioner thereafter, appears to have made various reminders in relation to his prayer and on 29.08.2019, the DPIIT had preferred an appeal before the Bombay High Court challenging the order passed by the ITAT. The petitioner, therefore, filed this petition *inter alia* for setting aside of the order dated 17.09.2018 and other consequential reliefs.

14. Learned senior counsel appearing on behalf of the petitioner submits that a hyper-technical approach is resorted to by DPIIT in rejecting the

proposal of the petitioner. According to him, despite there being repeated directions given by this court, DPIIT has not considered the petitioner's case on merits. He specifically submits that the last reason for rejection is dated 17.09.2018 and even if the fact stated therein is accepted to be correct, the same cannot constitute a sufficient reason for not considering the petitioner's application on merits. Nevertheless, the order passed by CIT(A) has been upheld by ITAT and as of now, only an appeal filed by DPIIT is pending before the Bombay High Court. While placing reliance on a decision of the Hon'ble Supreme Court in the case of ***Collector Of Customs, Bombay v. M/S. Krishna Sales (P) Ltd.*** [1], learned senior counsel for the petitioner submits that it is well settled in law that mere filing of an appeal does not operate as a stay or suspension of the order appealed against. He, therefore, submits that the rights of the petitioner are being greatly prejudiced and the petitioner has been made to suffer irreparable loss on account of the action of the respondent No.2-DPIIT.

15. Learned counsel appearing on behalf of respondent No.1-UOI, while taking this court through the amended counter affidavit, submits that there is no objection with respect to the consideration of the case of the petitioner afresh. However, during the pendency of the instant petition, there has been a change in the mechanism to deal with such a request. While placing reliance on paragraph No. 1 of his preliminary submissions, he submits that if the petitioner applies to National Single Window System (hereinafter referred to as 'NSWS') in terms of the guidelines and requirements under the FDI policy and SOP, the same can be considered in accordance with law. Paragraph

[1] 1994 Supp (3) SCC 73

No.1 of the preliminary submissions of the amended counter affidavit filed by the respondent reads as under:-

> *"1. That it is humbly submitted that the proposals for foreign investment in sectors/ activities requiring Government approval as per the Consolidated Foreign Direct Investment Policy dated 15.10.2020, as amended from time to time (FDI Policy) including cases for post-facto approvals are required to be submitted on the online portal [now National Single Window System (NSWS)] in terms of the guidelines and requirements under the FDI Policy and Standard Operating Procedure for processing FDI proposals, as amended from time to time (SOP). After a proposal is filed online, DPIIT/Answering Respondent identifies the concerned Administrative Ministry/ Department and e-transfers the proposal to the concerned Administrative Ministry/ Department (Competent Authority) for processing and disposal of the case. It is pertinent to mention here that, as per records available in the Department, <u>no proposal/ FDI application whatsoever of the Petitioner is presently pending for disposal with the Respondent or any other administrative Ministry/ Department.</u>*

16. Having heard learned counsel appearing on behalf of the parties, this court finds that the case of the petitioner requires to be considered by the Competent Authority on merits.

17. In view of the aforesaid, this court finds it appropriate to direct the petitioner to file an application in terms of the consolidated FDI policy dated 15.10.2022, as amended from time to time through online portal, NSWS in terms of the guidelines and requirements under the FDI policy and SOP for processing the FDI proposal.

18. Needless to state that if such an application is filed by the petitioner within two weeks from today, the respondent authority is under an obligation

to deal with the same, on its own merit. It is to be reiterated that the decision shall be taken without being influenced by any of the earlier rejection orders, as this court has clearly noted that none of the rejection orders deal with the application of the petitioner on merit. Let the appropriate order in that respect be passed as expeditiously as possible.

19. It is to be noted that the present case depicts a peculiar set of circumstances. The first application was submitted by the petitioner on 08.06.2011 and the petitioner is still awaiting the consideration of its application on merits, even after more than a decade has elapsed. It is for this reason, it is directed that the decision be taken positively within three months, failing which this court would consider to call upon the personal presence of the responsible officer.

20. With the aforesaid observations, the petition stands disposed of. However, the petitioner is at liberty to file an appropriate application for revival of the petition, in case the order is not complied with.

21. *Dasti.*

PURUSHAINDRA KUMAR KAURAV, J

APRIL 20, 2023
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