

AD-9to11
Ct. No.36
27.09.2024
TN

CPAN 831 of 2024
Dalmia Cement (Bharat) Limited (Formerly
OCL India Limited)
VS
Smt. Roshni Sen, Managing Director, West Bengal
Industrial Development Corporation Limited
in
WPA 13775 of 2023
With
RVW 190 of 2024
West Bengal Industrial Development
Corporation Limited
Vs.
Dalmia Cement (Bharat) Limited
(formerly OCL India Limited) and others
CAN 2 of 2024
With
RVW 196 of 2024
The State of West Bengal and others
Vs.
Dalmia Cement (Bharat) Limited
(formerly OCL India Limited) and another
CAN 1 of 2024
CAN 2 of 2024

Mr. Abhratosh Majumdar, Ld. Sr. Adv.,
Mr. Rajarshi Dutta,
Mr. Rahul Dhanuka,
Mr. Niraj Baheti
.... for the Dalmia Cement

Mr. Tanoy Chakraborty,
Mr. Suddhadev Adak
....for the appellant/
alleged contemnors/WBIDCL

Mr. Tanoy Chakraborty
....for the State/appellant/
alleged contemnors

1. The supplementary affidavit filed by the writ petitioners/respondents in the review applications and the opposition filed thereto by the alleged contemnors/review applicants today be kept on record.

- 2.** Learned counsel for the review applicants submits that at the time of passing of the order in the writ petition directing subsidy to be disbursed to the writ petitioner, it was not within the knowledge of the deponent who affirmed the first affidavit and the review applications that the name of OCL India Limited had been altered to Dalmia (Bharat) Group by virtue of an amalgamation/merger of companies.
- 3.** It is submitted that it was erroneously averred that the review applicants were not aware about such change of name from the inception, which error has been sought to be corrected in the averments of the present opposition.
- 4.** On merits of the review applications, it is contended that by a letter dated September 21, 2018, that is, after the amalgamation of OCL India Limited with other companies, giving rise to a third entity namely Dalmia (Bharat) Group, on September 21, 2018, a stand was taken by the writ petitioner that disbursement of the subsidy was sought on behalf of the OCL India Limited.
- 5.** However, even on that date, the name of OCL India Limited had already been altered to Dalmia (Bharat) Group by virtue of the amalgamation. Thus, it is submitted that it was misrepresented before the review applicant WBIDCL that OCL India Limited was the entity which was seeking the disbursement. Further, both the registration certificates (RC-I and RC-II) had

been issued in favour of OCL India Limited. Thus, it is submitted that all along the impression was given that it was OCL India Limited which was registered as an entity entitled to subsidy whereas the Dalmia (Bharat) Group now seeks to assert such rights of disbursal of subsidy without even effecting any alteration of names in the registration certificates.

6. Learned counsel for the petitioner places reliance on an order of the National Company Law Tribunal (NCLT), Chennai dated April 20, 2018 where it was recorded that the Board of Directors of the petitioner company there in their resolution dated November 05, 2016 had approved the scheme of amalgamation, which was given a final seal by the NCLT on April 20, 2018. Hence, on September 21, 2018, when disbursal under the scheme was sought in the name and for OCL India Limited, the amalgamation had already occurred.
7. Learned counsel next places reliance on a provision in Clause 13 of the subsidy scheme to the effect that prior written permission has to be taken by the industry from the State Government or its authorized agent at least 60 days prior to the events as listed thereinbelow during the period of their availing the benefits under the scheme. Clause (a) thereunder mentions any change in the ownership of the fixed assets as one of such events.

- 8.** It is submitted that such clause was squarely violated in the present case.
- 9.** Furthermore, under the conditions of Registration Certificate (Part-I), Clause 4 enumerates that the company must seek necessary amendments of the certificate for any change in the project parameters (name of the company, etc) with necessary supporting documents and fees before the commencement of commercial production, failing which the certificate (RC-I) would stand as revoked. In view of the non-compliance of the same, it is submitted that the present respondent in the review applications/writ petitioner Dalmia (Bharat) Group was no longer entitled to get the benefits of the subsidy.
- 10.** Learned counsel also places reliance on Clauses 5.2 and 5.3 of the scheme which elaborate the scope of grant of RC-I and RC-II. It is seen therefrom that RC-I was to be issued prior to the commencement of commercial production whereas RC-II to be issued thereafter, the date of effect of the admissible benefits under the scheme being related back to the date of commencement of commercial production or the date of issue of last statutory clearance, whichever is later.
- 11.** It is, thus, contended that the writ petitioner deliberately misled the WBIDCL into granting the benefit of the scheme to the petitioner whereas it was not entitled to subsidy under the scheme in view of

the violation of the clauses of the scheme as indicated above.

- 12.** Learned counsel for the review applicants also places reliance on Clause 4.5 of the scheme which enumerates that the units availing the benefits by way of incentive from any other department of the State/Central Government under any other scheme will not be entitled to identical benefits under the present scheme or the identical benefits shall be adjusted while determining the entitlement of such units under the present scheme.
- 13.** Learned senior counsel appearing for the writ petitioner (respondent in the review applications) points out at the outset that Clause 4.5 violation has never been pleaded or alleged at any point of time.
- 14.** Insofar as the amalgamation is concerned, learned senior counsel places reliance on the writ petitioner's supplementary affidavit filed today. From Annexure-A thereto, which is a memo dated February 20, 2020 of the WBIDCL itself, it is clear that the information of merger of OCL India Limited to Dalmia Cement (Bharat) Limited was well within the knowledge of the WBIDCL.
- 15.** Going one step further, from the letter dated December 21, 2020 (Annexure-B to the supplementary affidavit), it is evident that the WBIDCL, which sent the said letter, clearly stated that the Dalmia Cement (Bharat) Limited, which is the writ

petitioner, had applied for the change of name in the 'lease deed' executed on September 16, 2013 in the name of OCL, confirming the terms and conditions stated in the earlier lease deed. The said prayer was been accepted by the WBIDCL and correction of the company's name was stated to apply mutatis mutandis. On the strength of the said document, it is argued that it was well within the knowledge of the WBIDCL that the name of the initial applicant for the subsidy had changed, which had been approved by the WBIDCL.

- 16.** At this juncture, learned counsel for the review applicant interjects and submits that the said document was issued in the context of a lease deed pertaining to the land and the approval therein has nothing to do with the subsidy scheme.
- 17.** Arguing further, learned senior counsel appearing for the writ petitioner points out that the conditions of Registration Certificate-I, as enumerated in Clause 4 thereof, do not apply to the present case since the commercial production was commenced much prior to the amalgamation taking place.
- 18.** As to Clause 13, requiring prior written permission, it is submitted that the change of ownership happened after the commencement of commercial production. In any event, since it was within the knowledge and approval of the WBIDCL that the name had changed,

the said clause is not applicable in the present circumstances.

- 19.** Learned senior counsel also requests the court to take judicial notice of a brochure published by the WBIDC titled 'Industries in Bengal – A Glimpse'. The said document, published in the month of September, 2021, clearly flaunts the Dalmia Cement (Bharat) Limited, the writ petitioner, as a flagship company operating in West Bengal under the aegis of the WBIDCL. On the relevant page of the said brochure (page-41), even a photograph of the main gate of the Dalmia Cement (Bharat) Limited, with its changed name, is appearing.
- 20.** Thus, it was well within the knowledge of the WBIDCL that the name of the writ petitioner had changed and, as such, the review applications ought to be rejected, having been filed on such specious plea.
- 21.** Upon carefully considering the documents on record, it is evident that the WBIDCL was fully aware of the change of the name of the writ petitioner even prior to the filing of the writ petition. However, no objection was raised by it at any point of time regarding the writ petitioner not being entitled to continue getting subsidy under the scheme-in-question. In fact, the objection now sought to be taken is being taken for the first time in the review applications.

- 22.** There are several factors which lead to the unerring conclusion of the court that the WBIDCL had full knowledge of such amalgamation and change.
- 23.** In the communication dated December 21, 2020 annexed to the supplementary affidavit of the writ petitioner, the Executive Director of the WBIDCL, the review applicant, albeit in connection with a lease deed, had accepted the prayer of the WBIDCL for correction of the company's name Dalmia Cement (Bharat) Limited in the lease deed, thereby giving a sanction to the said change of name.
- 24.** Even otherwise, in the brochure handed over in court today, the WBIDCL proudly showcases the petitioner company with its changed name for flaunting its purported achievements. Now, at a belated stage in a review application, the WBIDCL cannot suddenly raise the bogey that they were unaware during the relevant period about such change of name.
- 25.** Even if the approval as indicated in the communication of the Executive Director referred to above was for the purpose of a separate lease deed and not for the purpose of the scheme, lack of such approval was not fatal to the scheme in any case. In such context, we are to look at Clause 13 of the scheme which states that prior written permission has to be taken by the industry from the State Government or its authorized agent at least 60 days prior to the change in the ownership of the fixed asset.

- 26.** It is, however, to be noted that throughout the scheme document, no sanction is provided for non-compliance of Clause 13. The said clause, thus, is only of a directory nature. In the event no prior permission is taken, no fatal consequence on the entitlement of the concerned industry regarding getting benefits of the scheme or continuing to get it would follow. In fact, under the scheme, once RC-I and RC-II are issued, there cannot be any occasion, unless specific reasons and grounds under the scheme for doing so are disclosed, can arise for the WBIDCL to stop disbursing such scheme.
- 27.** With regard to the conditions of Registration Certificate-Part I, Clause 4 only contemplates a situation where a change of name has occurred before commencement of commercial production. In the present case, RC-II was issued prior to the amalgamation of OCL India Limited with the present entity Dalmia and, as such, there arose no question (or consequential fatal consequence) of non-disclosure of such change of name or amendment of the certificate prior to commencement of commercial production. Once the commercial production starts, there is no looking back as regards the entitlement of the eligible unit regarding entitlement to the benefits of the scheme.
- 28.** Clauses 5.2 and 5.3 only cement the notion that the rights of an entity to get benefits of the scheme are

finalized and acquire completion after the RC-II is issued. The said clauses merely fix the commencement date at the commencement of commercial production or date of issue of statutory clearance, whichever is later.

- 29.** Nonetheless, from the said clauses themselves it is clear that once commencement of commercial production starts and RC-II is issued, the entity becomes continually entitled to benefits of the scheme throughout.
- 30.** Insofar as the allegation regarding the units availing benefit of other incentive schemes, the same is neither here nor there, having never been argued/pleaded at any point of time before any of the courts or anywhere else.
- 31.** As such, since it is evident that the WBIDCL was all along aware of the change of name in view of amalgamation of the original subsidy applicant but never objected to the entitlement of the said entity to continue to get subsidy under the scheme, they cannot resile from such position now and deny the entitlement of the writ petitioner to the benefits of the scheme.
- 32.** Thus, the parameters of review under Order XLVII of the Code of Civil Procedure are not met in the present case, there being no subsequent circumstances which were not within the knowledge of the review applicants at the relevant point of time, nor there being any error

in the order, let alone apparent on the face of the record.

- 33.** Hence, RVW 190 of 2024 as well as RVW 196 of 2024 are dismissed on contest, without any order as to costs.
- 34.** Accordingly, CAN 2 of 2024 in connection with RVW 190 of 2024 and CAN 1 of 2024 and CAN 2 of 2024 in connection with RVW 196 of 2024 are also disposed of.
- 35.** The contempt application thus acquires importance in view of the dismissal of the review applications.
- 36.** In order to give a last chance to the alleged contemnor to comply with the directions of the court, the contempt application is postponed till November 08, 2024 when it will appear in the list under the appropriate heading.
- 37.** On the said returnable date, the alleged contemnor shall file a compliance report to the effect that the order of this court passed in the writ petition has been complied with in letter and spirit. An advance copy of such compliance report shall be served on the learned Advocate-on-record for the writ petitioner prior to the next returnable date.
- 38.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)