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

\+ LPA 1175/2024

RAKESH KUMAR SAINI .....Appellant

Through: Ms. Malvika Trivedi, Sr. Adv. with Mr. Mobashshir Sarwar and Mr. Shailendra Slaria, Advs.

versus

THE POWER FINANCE CORPORATION LTD....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **02.12.2024**

CM APPL. 70203/2024 (Ex.)

Allowed, subject to all just exceptions.

The application is disposed of.

LPA 1175/2024

1. This Letters Patent Appeal is directed against the judgement handed down by the learned Single Judge dated 07 November 2024.

2. As is manifest from the recordal of facts the principal relief which was claimed in the writ petition was with respect to a cancellation of the bonds in which the appellant had invested and had been issued by the Power Finance Corporation Ltd. Those bonds were listed investments as contemplated under Section 54EC of the Income Tax Act, 1961 and enabled the holder thereof to claim capital gains tax exemption.

3. Undisputedly, the bonds incorporated a lock-in clause of five years. It is in the aforesaid backdrop that the learned Judge has observed as follows:-

> "14. In the opinion of the Court, having regard to the statutory scheme and the terms and conditions of the subject instrument, the Petitioner's request for cancellation or redemption, cannot be accepted. The funds raised through the 54EC bonds are specifically intended to support Respondent's financial objectives. The 'Object of the Issue' of the PFC Capital Gain Tax Exemption Bonds is - 'to augment resources of PFC for meeting fund requirement'. These funds are in the nature of long term funds borrowing. This intent, combined with the five year lock-in period, imposes a clear embargo on premature redemption, as it ensures that the investments remain committed to Respondent's financial stability and to meet the object of the Issue. This lock-in period is not a mere formality but a substantive requirement, integral to the legislative intent behind Section 54EC. Moreover, the terms and conditions governing the bonds, stipulated by the Respondent clearly restrict any withdrawal, redemption, or transfer of these bonds before the completion of the mandated 5-year period. This restriction applies regardless of whether the Petitioner has claimed the capital gains exemption or not, and regardless of any willingness on the Petitioner's part to forgo interest, as these bonds are essentially bound by legislative and contractual rigidity. Permitting any deviation from the stipulated lock-in period would compromise the object and purpose underlying these bonds, creating an avenue for circumventing statutory obligations under Section 54EC. The statutory framework does not just seek to incentivize tax savings but to ensure that these savings result in actual, long-term capital allocation. Allowing premature redemption through judicial intervention would not only be against the contractual terms, but also contravene the statutory intent of encouraging long-term investment. Thus, it is beyond the scope of this Court, particularly under the writ jurisdiction under Article 226 of the Constitution, to modify or rewrite the conditions stipulated for allocation of bond."

4. Ms. Trivedi, learned counsel appearing in support of the appeal has also and apart from the financial difficulties which are presently being faced by the appellant sought to challenge the observations of the learned Single Judge to the extent that the Court had held that the

specific terms of the financial instrument cannot be altered. Our attention in this respect was drawn to page 174 of our record and the stipulation in the Offer Document which reads as follows:-

> "**AMENDMENT OF THE TERMS OF THE BONDS**
> The rights, privileges, terms and conditions attached to the Bonds may be varied, modified or abrogated with the consent, in writing, of those holders of the Bonds who hold at least three fourth of the outstanding amount of the Bonds or with the sanction accorded pursuant to a resolution passed at a meeting of the Bondholders, provided that nothing in such consent or resolution shall be operative against the Issuer where such consent or resolution modifies or varies the terms and conditions of the Bonds, if the same are not acceptable to the Issuer."

5. As is manifest from the above, the right to amend or alter the terms of the bond is subject to the stipulation of the same being acceded to by three-fourth of the bond holders. Even such a resolution is not binding on the issuer if the suggested amendment be unacceptable.

6. We also bear in consideration the reasoning assigned by the learned Single Judge who has bearing in mind the intent of Section 54EC, and in our opinion correctly, held that it would be impermissible for a court by way of judicial diktat to modify or alter the terms and conditions of the bond.

7. On an overall consideration of the aforesaid, we find no merit in the appeal. It shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 2, 2024
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