In the High Court of Judicature at Madras

Reserved on	Delivered on :
01.7.2025	**07.7.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.4389 of 2023
& WMP.No.4423 of 2023

1.M/s.Wellcome Fisheries Limited,
rep.by its Chairman Mr.K.Aanandh,
Chennai-6.

2.Mr.K.Aanandh, Chairman of
M/s.Wellcome Fisheries Limited

3.Ms.K.Sowdha Lathifa, Director of
M/s.Wellcome Fisheries Limited ...Petitioners

Vs

1.ECGC Limited, rep.by its
Deputy General Manager,
Bank Business Branch
Overseas Towers, III Floor,
No.756-L, Anna Salai,
Chennai-2.

2.M/s.Union Bank of India, rep.
by its Authorized Officer,
Industrial Finance Branch,
I Floor, Union Bank Bhavan,
No.139, Broadway, Chennai-108. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus to direct the first respondent to remove the names of the petitioners from the ECGC Specific Approval List (SAL).

For Petitioner	:	Mr.T.Mohan, SC for Mr.R.Anish Kumar
For R1	:	Mrs.Vandana Raheja for M/s.Surana & Surana
For R2	:	Mr.L.Sriram for M/s.Chennai Law Firm

ORDER

In this writ petition, the petitioners seek for a direction to the first respondent to remove their names from the Export Credit Guarantee Corporation of India Limited (ECGC) Specific Approval List (SAL).

2. Heard the respective learned counsel appearing for the parties.

3. The case of the petitioners is as follows :

(i) The first petitioner company is an exporter of shrimps and is in the business for more than three decades. One Mrs.K. Bhuvaneshwari (a) Bhavani, W/O the second petitioner was the erstwhile director of the first petitioner company.

(ii) In the year 1995, one M/s.Fivestar Food Packer applied to the State Bank of India (SBI) for grant of credit facilities. Pursuant to the grant of credit facilities, the said Mrs.K.Bhuvaneshwari stood as a guarantor to the transaction and it was limited to her half share in a property that was given as a security. The said M/s.Fivestar Food Packer was subsequently converted into a private limited company named and styled as M/s.Fivestar Marine Exports Private Limited and due to the default committed in repayment of the loans, in the year 2017, it was declared as a Non Performing Asset (NPA). At a later point of time, the said Mrs.K.Bhuvaneshwari resigned from the directorship of the petitioner company and the same was updated on the file of the Registrar of Companies, Chennai.

(iii) On account of the default committed, the second respondent bank intimated the status of the said M/s.Fivestar Marine Exports Private Limited to the first respondent. On coming to know of the same, the first respondent included the names of the said M/s.Fivestar Marine Exports Private Limited, its directors and the said Mrs.K.

Bhuvaneshwari, who stood as the guarantor, in the SAL and thereby imposed restrictions for availing the credit facilities of those persons with their bankers, in future.

(iv) The said Mrs.K.Bhuvaneshwari was the director in the petitioner company for the period from 1996 to 2021 and thereafter, she resigned from that position.

(v) In the meanwhile, the first respondent, vide letter dated 22.1.2019, intimated the second respondent that they cancelled the limit notified under the Export Credit Insurance for Banks (ECIB) towards packing credit limit and post shipment limit with immediate effect since the name of the said Mrs.K.Bhuvaneshwari appears in the SAL.

(vi) On receipt of the intimation from the first respondent vide letter date 22.1.2019, the credit facility of term loan-II to the tune of Rs.53.57 Crores for setting up the second unit of the first petitioner, which was sanctioned through the letter dated 28.12.2018, stood cancelled automatically by the second respondent on the ground that the name of the said Mrs.Bhuvaneshwari appears in the SAL of the first respondent. Subsequently, after exchange of various correspondence between the respondents, vide letter dated

17.12.2019 issued by the first respondent, the names of the petitioners were included in the SAL of the first respondent on account of the fact that the name of the said Mrs.K.Bhuvaneshwari appears in the SAL. Pursuant to that, the credit limit of the first petitioner was reduced to Rs.50 Crores from Rs.103 Crores, which ultimately led to putting additional burden on the first petitioner.

(vii) At a later point of time, the said M/s.Fivestar Marine Exports Private Limited settled its dues to the second respondent and obtained a no due certificate on 02.9.2021. Further, the said M/s.Fivestar Marine Exports Private Limited, its directors and the guarantor were discharged from all the liabilities to their bankers.

(viii) In view of the same, the first petitioner has been making representations repeatedly to the first respondent stating that the names of the petitioners could not be included in the SAL just because the name of the said Mrs.K.Bhuvaneshwari - the erstwhile director of the first petitioner company and guarantor for a loan obtained by it, which was later declared as an NPA, appears in the SAL and that their names should be removed. It is under these circumstances, the above writ petition has been filed seeking to direct the first respondent to remove the names of the petitioners from the SAL.

4. The first respondent filed a counter affidavit wherein they took the following stand :

(i) The petitioners have no locus standi to claim any relief against the first respondent since there was no privity of contract between the petitioners and the first respondent and that the contract of insurance was only between the respondents. The first respondent has to constantly assess and reassess the risks that it undertakes and also has to take prompt steps to arrest and contain the losses. The first respondent has to identify the persons/company, who/which committed default and are patently uninsurable and add their names in the SAL.

(ii) The purpose of the SAL is to act as a risk monitoring mechanism. The SAL is an important source of information to banks holding ECIB covers for identifying exporters where the first respondent has had adverse experience and advices banks to exercise caution while dealing with such exporters.

(iii) Mere inclusion of the name of the exporter in the SAL maintained by the first respondent will not disqualify that person from availing loan or credit facility from a bank. It is always open to the bank to extend financial assistance to the exporters despite their names included in the SAL. The only difference is that in such cases, the first respondent will not provide the insurance cover to the bank.

(iv) The credit facilities were extended in favour of the said M/s.Fivestar Marine Exports Private Limited and the said Mrs.K. Bhuvaneshwari stood as a personal guarantor for the said credit facilities. The account of the said M/s.Fivestar Marine Exports Private Limited was covered under insurance covers, for which, there was a privity of contract between the respondents. But, the exporter failed to repay the loan amount and hence, the account was declared as an NPA. This was informed to the first respondent and based on the adverse information and report of default by the banks, the names of the said M/s.Fivestar Marine Exports Private Limited, its directors and the guarantor were placed in the SAL on 28.2.2017.

(v) In so far as the stand taken by the petitioners that the said Mrs.K.Bhuvaneshwari had resigned long back from the directorship of the first petitioner company and therefore, the fact that she stood as a personal guarantor for the credit facilities would not bind the petitioners, is concerned, the respondents replied that at the time when the said Mrs.K.Bhuvaneshwari stood as a guarantor, she was the director in the first petitioner company and she resigned from the directorship only on 30.11.2021. Hence, the first respondent had strictly gone as per the guidelines and included the names of the petitioners in the SAL. Ultimately, the first respondent has sought for dismissal of this writ petition.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

6. The short issue that arises for consideration in this writ petition is as to whether the first respondent was justified in including the names of the petitioners in the ECGC SAL.

7. It is not in dispute that the said Mrs.K.Bhuvaneshwari, who was holding the position of a director in the first petitioner company, continued in that position from 30.12.1996 to 30.11.2021. It is also not in dispute that she stood as a guarantor for the credit facilities availed by the said M/s.Fivestar Marine Exports Private Limited. After availing the credit facilities, the said M/s.Fivestar Marine Exports Private Limited did not repay the loan amount and therefore, the

accounts were declared as NPAs on 31.12.2016 and 10.4.2017 respectively. Based on the adverse information and report of default submitted by the banks, the names of the said M/s.Fivestar Marine Exports Private Limited along with its directors and the guarantor were included in the SAL on 28.2.2017.

8. The only reason as to why the first respondent included the names of the petitioners in the SAL is that the said Mrs.K. Bhuvaneshwari was functioning as a director of the first petitioner company at the relevant point of time and that therefore, the names of the petitioners were also included in the SAL.

9. On going through the materials, it is seen that the second respondent, through the communication dated 01.2.2022, informed the first respondent that the names of the petitioners could be removed from the SAL. The reasons assigned by the second respondent bank, while recommending for the removal of the names of the petitioners can be appreciated from the contents of the letter, which is scanned and are extracted as hereunder :

183

यूनियन बैंक ऑफ इंडिया Union Bank of India

Industrial Finance Branch, Union Bank Bhavan, 1st Floor, #139, Broadway, Chennai 600 108
Phone: 044-23460749 (D), 23460750/752/751 (Fax), Email: ifbchennai@unionbankofindia.com

Ref No: IFB:UBI:150:2021-22

Dtd 01.02.2022

To
The Deputy General Manager
ECGC Limited
Bank Business Branch, Overseas Towers
3rd Floor, No.756-L Anna Salai
Chennai – 600002.

Sub: Removal of M/s Wellcome Fisheries Limited and its directors from SAL List of ECGC.

Sir,

M/s Wellcome Fisheries Limited is banking with our Union Bank of India since 2003 and is enjoying total credit facilities to the tune of Rs.147.85crores with our Industrial Finance Branch, Chennai.

It is recently observed that subject company and the names of its directors Mr K Aanandh and Miss K Sowdha Lathifa are being reflected in the ECGC SAL List. While taken up with ECGC for the reasons of incorporating the name of said company and its directors in the SAL list, ECGC vide mail dtd 22.11.2021 has informed that, *"M/s Wellcome Fisheries Ltd and its management are in SAL due to the guarantee extended by one of the directors in defaulted company M/s Five Star Marine Pvt ltd where ECGC settled a claim to IDBI Bank & erstwhile Andhra Bank".*

In this regard we inform as under.

- Company has stated that, Mrs K Bhuvaneswari is no where involved in the operational/financial matters of the default company M/s Five Star Marine Exports Pvt Ltd except for offering of a collateral and her personal guarantee for the credit facilities availed from other banks.
- M/s Five Star Marine Exports Pvt Ltd has settled all the dues under one time settlement to respective banks and have obtained no due certificates from IDBI Bank and also Andhra Bank (present Union Bank of India) to this effect.
- Mrs K Bhuvaneswari has resigned to the director ship of M/s Wellcome Fisheries Limited w.e.f 30.11.2021 due to her health issues and is now not involved in any matters of said company.
- M/s Wellcome Fisheries Ltd, Mr K Aanand and Miss K Sowdha Lathifa do not have any connection with the default company M/s Five Star Marine Exports Pvt Ltd.
- Operations in the account M/s Wellcome Fisheries Limited are satisfactory and credit limits of company are standard with our bank ab initio.

In view of the above, we recommend for removing the name of Company – M/s Wellcome Fisheries Limited and its directors Mr K Aanandh and Miss K Sowdha Lathifa from Specific Approval List of ECGC.

BRANCH HEAD

CC to Wellcome Fisheries Ltd for information

10. The learned counsel appearing on behalf of the first respondent placed reliance on the judgment of a Division Bench of this Court in ***Export Credit Guarantee Corporation Lrd. Vs. A.Jaya Kumar & Others [reported in 2007 (3) CTC 69]*** and an order passed by me in the case of ***M.Sudhakaran Vs. City Union Bank Limited & others [W.P.(MD) No.20175 of 2021 dated 15.11.2023]*** and submitted that the petitioners did not have any legal right to seek for removal of their names from the SAL since they did not have any privity of contract with the first respondent.

11. In order to appreciate the above submission of the learned counsel appearing on behalf of the first respondent, it will be appropriate to take note of the above cited decisions.

12. The decision of the Division Bench of this Court in ***A.Jaya Kumar,*** was a case wherein the persons, whose names were included in the SAL, were none other the sons of the proprietor of one M/s.Annai Cashew Industries, which had sought for financial assistance from the bank and it was guaranteed by the ECGC. Subsequently, the loan amount was not repaid. The Division Bench of this Court found

that there were three proprietary concerns, which were involved and all of them were sister concerns. This vital fact was taken into consideration and the Division Bench of this Court was not inclined to interfere with the decision taken by the ECGC to include their names in the SAL. While dealing with the facts, the Division Bench took note of the scope of the SAL and rendered a finding that merely including the names of persons in the SAL will not result in blacklisting and that it is only a caution taken by the ECGC to ensure that such defaulters are not covered by the ECGC insurance for any other loans in future. The Division Bench also took note of the fact that there was no privity of contract between the defaulters and the ECGC.

13. The said judgment of the Division Bench of this Court was followed by me in the case of ***M.Sudhakaran*** wherein I rendered a finding that the third respondent therein availed a loan, for which, the writ petitioner stood as a guarantor and thereafter, the borrower committed default, which resulted in the inclusion of the names of the borrower and the guarantor in the ECGC SAL.

14. In the case in hand, the petitioners have nothing to do with the personal guarantee that was given by the said Mrs.K. Bhuvaneshwari for the credit facilities availed by the said M/s.Fivestar Marine Exports Private Limited. Even if the said Mrs.K.Bhuvaneshwari was a director of the first petitioner company for quite some time, that, by itself, will not burden the first petitioner company since it is a separate private entity. The erstwhile director of the first petitioner company standing as a personal guarantor for the loan availed by some other entity, which has subsequently defaulted, cannot be put against the first petitioner company and its others directors. It is too far fetched to punish the first petitioner company and its other directors for the only sin of the erstwhile director standing as a personal guarantor for the loan availed by some other defaulting company. These peculiar facts make a world of difference from the facts of the above two cases, which justified the inclusion of the names in the ECGC SAL considering the relationship between the parties.

15. It is also seen from the records that ultimately the said M/s.Fivestar Marine Exports Private Limited settled their dues and they were discharged from all the liabilities. This was taken into

consideration by the second respondent bank while giving their no objection through the letter dated 01.2.2022. This is an added factor, which has to go in favour of the petitioners. Apart from that, the track record of the first petitioner company is also clean. On going through the materials placed before this Court, it is seen that the first petitioner company remitted the total premium of Rs.936.42 lakhs to the account of the first respondent and during its exports, the first petitioner company did not incur any loss or has made any claim from the first respondent. This is also an added factor, which goes in favour of the petitioners.

16. The first respondent is harping upon the issue that there was no privity of contract between the petitioners and the first respondent.

17. Obviously, there will be no privity of contract between the petitioners and the first respondent since the actual agreement is between respondents 1 and 2. However, the decision taken by the first respondent to include the names of the petitioners in the SAL had its own serious consequences. The second respondent acted upon the same and reduced the working capital credit limit of the first petitioner

company from Rs.103 Crores to Rs.50 Crores. It had a direct bearing on the turnover of the first petitioner company. Apart from that, the credit facility of term loan-II to the tune of Rs.53.57 Crores, which was earlier sanctioned, for setting up the second unit of the first petitioner company stood cancelled by the second respondent bank. Therefore, the first respondent cannot take a stand that there was no privity of contract and that even if the decision to add the names of the petitioners in the ECGC SAL had adverse impact, it could not be put against the first respondent.

18. It is true that the names of the persons/companies are included in the ECGC SAL where an exporter has defaulted in repaying the loans to the banks. The first respondent wants to avoid undertaking further liabilities on account of the default committed by the exporter. While undertaking this exercise, the first respondent can also include the names of the sister concerns of the defaulted exporter as the financial difficulties of the exporter might adversely affect their financial position as well. Similarly, the names of the proprietors, partners, directors and guarantors are also included in the ECGC SAL with a view to prevent them from obtaining finance in future. The

inclusion of the names of the ECGC SAL will not bar the financial institutions from extending other credit facilities and they can continue to extend the credit facilities without being impacted by the decision taken by the first respondent. However, such risks are not taken by the banks particularly when it comes to defaulting exporters since the inclusion of the names in the ECGC SAL is a clear indication for the financial institutions to be very cautious while extending the credit facilities in future.

19. The upshot of the above discussions is that even though the decision to include the names of the persons/companies in the SAL is an individual decision taken by the first respondent, it definitely has a serious impact for the persons, whose names are included, in terms of getting financial assistance from the banks in future. Hence, while including the names of the persons/companies in the SAL, the first respondent must be cautious and should ensure that the names of persons, who are unconnected, are not included in the SAL. In the case in hand, there is some justification in adding the name of the said Mrs.K.Bhuvaneshwari in the SAL. But, that cannot be extended to adding the names of the first petitioner company and its other

directors namely petitioners 2 and 3 in the SAL since the first petitioner company is an independent corporate entity with a separate existence and they cannot be roped into the SAL unceremoniously leading to adverse consequences against them.

20. In the light of the above discussions, the writ petition is allowed and there shall be a direction to the first respondent to remove the names of the petitioners from the SAL within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is closed.

07.7.2025

Index : Yes
Neutral Citation : Yes
To
1.ECGC Limited, rep.by its
Deputy General Manager,
Bank Business Branch
Overseas Towers, III Floor,
No.756-L, Anna Salai,
Chennai-2.

2.M/s.Union Bank of India, rep.
by its Authorized Officer,
Industrial Finance Branch,
I Floor, Union Bank Bhavan,
No.139, Broadway, Chennai-108.

N.ANAND VENKATESH,J

RS

WP.No.4389 of 2023&
WMP.No.4423 of 2023

07.7.2025