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

\+ W.P.(C) 2968/2025

ABB INDIA LTD AND ANR .....Petitioners

Through: Mr. Arvind K. Nigam, Sr. Adv., Mr. Manoj, Ms. Aparna Sinha and Mr. M.T. Reddy, Advs.

versus

DIRECTORATE GENERAL OF FOREIGN TRADE AND ORS .....Respondent

Through: Ms. Nidhi Raman, CGSC, Mr. Arnv Mittal, GP and Mr. Zubin Singh, Ms. Ridhi Kapoor, Advs. for UOI.
Mr. Shankh Sengupta and Mr. Sujoy Sur, Advs. for R-3.
Mr. Shankh Sengupta and Mr. Sujoy Sur, Advs. for R-5.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% 07.03.2025

CM APPL. 14067/2025 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 2968/2025 and CM APPL.14066/2025 (Stay)

3. The present petition has been filed by the petitioner seeking the following prayers –

> *"(a) Issue a Writ of Mandamus or other appropriate writ, order or direction, upon the Respondents to dispose off in accordance with law, the above-noted Application dated 7th August, 2024, by a speaking and reasoned order after affording an opportunity of hearing to the*

authorized representative(s) of the Petitioner No. 1 in a time-bound manner"

4. The petitioner no.1 is a group company of the 'ABB Group' and is engaged in providing technology solutions related to motion, electrification and automation. As part of the global divestment of the ABB Group's power grid business, the petitioner no.1 entered into a 'Scheme of Arrangement' dated 08.03.2019 under Section 230-232 of the Companies Act, 2013 for the demerger and consequent transfer of the demerged undertaking, constituted of the power grid business of the petitioner no.1, to its wholly owned subsidiary in India, that is, ABB Power Products and Systems India Ltd (APPSIL / transferee). Thereafter, APPSIL came to be acquired by Hitachi Energy India Ltd. (HEIL/respondent no.5).

5. *Vide* order dated 27.11.2019 passed by the NCLT, Bengaluru, the aforesaid Scheme of Arrangement was approved. Pursuant to Clause 10.4 of the Scheme of Arrangement, 74 Export Promotion Capital Goods (EPCG) Licenses and Advance Licenses (hereinafter collectively referred as '*the licenses*'), which had earlier been issued by the DGFT in favour of the petitioner no.1, stood transferred to the transferee/APSSIL which later came to be acquired by the respondent no.5 (HEIL). It is pointed out that, thereafter, even though respondent no.5 obtained physical possession of the aforesaid licenses and started operating them on the DGFT Portal, no steps were taken for substituting respondent no.5 as the licensee.

6. Subsequently, export obligations under 45 licenses (out of the 74 licenses) came to be discharged by the respondent no.5 and Export Obligation Discharge Certificate/s (EODC) were obtained from the respondent no.1, pursuant to which, the said 45 licenses stood redeemed.

However, export obligations with respect to 29 licenses were yet to be discharged and the said licenses continued to subsist in the name of the petitioner no.1.

7. It is pointed out that even thereafter, the respondent no.5 failed to take any steps to substitute the petitioner no.1 as the licensee in terms of Clause 10.4 of the Scheme of Arrangement in the remaining licenses. Consequently, the petitioner no.1 filed an application dated 28.07.2022 before the Additional Directorate General of Foreign Trade seeking transfer of the remaining licenses in favour of the respondent no.5 (HEIL) wherein the export obligations are yet to be discharged. However, no response was received thereto.

8. Subsequently, an application / representation dated 07.08.2024 also came to be filed by the petitioner no.1 before the respondent no.1 (DGFT). *Vide* the said application / representation, the petitioner no.1 sought for the 29 licenses, which had earlier been issued by the respondent no.1 in favour of the petitioner no.1, to be transferred in favour of respondent no.5 / HEIL in terms of Clause 10.4 of the Scheme of Arrangement.

9. While no response has been received thereto, 2 show cause notices dated 06.01.2025 and 07.01.2025 came to be issued by the respondent no.1, calling upon the petitioner to discharge its liability against certain licenses which although had been transferred to respondent no.5 pursuant to the Scheme of Arrangement but continued to subsist in the name of the petitioner no.1.

10. Thereafter, on 24.02.2025, a notice under Section 143 of the Customs Act, 1962 came to be issued by the Office of the Commissioner of Customs (Export) [respondent no. 2]. The aforesaid notice was issued for invocation

of a bank guarantee bearing B.G No.0002BGR0077218, furnished by the petitioner no.1 with respect to one of the licenses, which stood transferred to the respondent no.5 in terms of the Scheme of Arrangement, on account of the failure to submit the Export Obligation Discharge Certificate thereof.

11. In the above conspectus, the present petition has been filed.

12. Learned counsel for the petitioner seeks the limited relief that its representation / application dated 07.08.2024 be adjudicated upon by the respondent no.1.

13. Issue notice.

14. Learned counsel, as aforesaid, accept notice on behalf of the respondent nos. 1, 3 and 5.

15. Learned counsel for the respondent no.1 does not oppose the prayer made in the present petition.

16. In the circumstances, with the consent of respective counsel for the parties, it is directed that the respondent no.1 shall decide and pass a reasoned order on the application / representation dated 07.08.2024 filed by the petitioner no.1, within a period of 8 weeks, after giving an adequate opportunity of hearing to the petitioner no.1 as well as the respondent no.5, and also taking into account the terms of the aforementioned Scheme of Arrangement.

17. In the meantime, during the pendency of the aforesaid exercise, no coercive steps shall be taken against the petitioner no.1 with respect to the licenses under which the export obligations are yet to be discharged.

18. Needless to say, this order shall not be construed as an expression of opinion of this Court on the merits of the matter.

19. The present petition is disposed of in the above terms. Pending

applications also stand disposed of.

SACHIN DATTA, J

MARCH 7, 2025/dn