Chapter 3
Industries and Commerce

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Haryana State Industrial and Infrastructure Development Corporation Limited

3.1 Undue reduction in extension fee

The Company, by granting extension beyond permitted time period for construction of building, extended undue favour in excess of ₹ 57.77 crore.

Haryana State Industrial and Infrastructure Development Corporation Limited (Company) allotted (11 June 2010) a commercial plot measuring 12.88 acres (revised to 12.20 acres) in Sector 16, Gurugram to an allottee[1] at ₹ 587.56 crore through auction held (April 2010) against Request for Proposal (RFP) floated by the Company for sale of the plot.

The terms and conditions of the allotment/ RFP required the allottee to complete the construction within five years from the date of allotment. This time period for completion of construction was extendable up to two years on payment of applicable extension fees. In the event of default or breach of any of the terms and conditions of the RFP, the project site was liable for resumption[2]. Clause 18.6 (i) (b) of Estate Management Procedure, 2015 (EMP) of the Company prescribes that sites auctioned on the basis of RFPs shall be governed by the terms and conditions of respective auction and extension period of five years as provided in clause 18.6 (a) of EMP shall not be applicable for such sites.

Board of Directors (BoDs) of the Company granted (October 2020) one year general extension to all allottees, whose stipulated/ extended period for project implementation/ completion had expired after 31 December 2019, without charging any extension fee due to COVID-19 pandemic.

The allottee failed to complete the construction within the stipulated period of five years i.e., up to 10 June 2015 and the Company granted two years extension up to 10 June 2017 on payment of applicable extension fees as per Clause 5.4 of RFP. On non-completion of project by 10 June 2017, the Company issued (January 2018) show cause notice to the allottee. The allottee represented (January 2018) against the notice of resumption of plot stating that their project had now been pre-certified by Green Rating for Integrated Habitat Assessment (GRIHA) and more than 90 *per cent* of the building in the project

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1 M/s Brahma Centre Development Private Limited, Delhi.

2 In case of resumption of plot, the allottee would be entitled for refund of amount deposited subject to forfeiture of amount equivalent to 15 *per cent* of the bid amount.

had been completed. They sought further extension of two years. The Company granted (March 2018) two years extension (up to 10 June 2019) for completion of construction citing adoption of GRIHA norms in the building and payment by the allottee of the applicable extension fees. The grant of extension in time period of completion of project by two years was irregular as (i) this was beyond the provisions of EMP (paragraph 18.6 (i) (b)); and (ii) the certification under GRIHA was optional and involved an additional Floor Area Ratio (FAR) from three *per cent* to 15 *per cent* as per GRIHA rating from one star to five stars. Moreover, verification by the Company of the allottee's claims of completing construction of more than 90 *per cent* of the structures before granting the extension was not on record. The Company derived the applicable extension fees from EMP clause 18.7 at ₹ 60 per square meter for the period 11 June 2017 to 10 June 2018 and ₹ 100 per square meter for the period 11 June 2018 to 10 June 2019.

Upon expiry of the extension period on 10 June 2019, the allottee again requested (June 2019, March 2020 and July 2020) for extension in permitted time period for completion. The BoDs decided (March 2021) to grant extension in completion period up to June 2022 subject to payment of extension fee at the rate of ₹ 100 per sqm (from 10 June 19 to 9 June 20) and thereafter @ five *per cent* of allotment price for each year.

The BoD on appeal of the allottee reconsidered (July 2021) the quantum of extension fee leviable and decided not to charge any extension fee for 10 June 2020 to 09 June 2021 considering it as general extension period granted to all allottees and charged at the ₹ 200 per sqm for the period from 10 June 2021 to 09 June 2022. Thereby the extension charges for the period 10 June 2019 to 09 June 2022 was reduced from envisaged ₹ 58.76 crore to a mere ₹ 0.99 crore. The granting of extensions for completion of project beyond the terms and conditions of RFP, non-levying of material extension fee was and tantamount to granting of undue favour to the allottee in excess of ₹ 57.77 crore.

During Exit Conference (April 2022), the Management stated that the extension of five years beyond the period of seven years as prescribed in the RFP was allowed on the basis of EMP-2015. It was further stated the Managing Director of the Company granted (March 2018) two years extension (up to 10 June 2019) by passing a speaking order on the basis of incorporation of GRIHA in the building by the allottee on applicable extension fees as per EMP-2015. The reply of the management is not tenable as provisions of EMP were not applicable in the instant case as the allotment was made under RFP and terms and conditions of RFP was applicable in this case. Further, the Managing Director was not competent to grant any extension.

The matter was referred (January 2022) to the Government and the Company; their replies were awaited (April 2022).

Recommendation: The Company should fix responsibility of the erring officers for granting undue benefit to the allottee.

3.2 Non-levy of penalty

The Company extended undue favour to the allottee in declaring project complete without levy of fee/ penalty of ₹ 13.27 crore as per provisions of Estate Management Procedure of the Company.

On the approval (December 2010) of the Higher level plot allotment committee[3] the Company allotted (April 2011) a plot (No. 64) measuring 11,250 sqm. to allottee 'A'[4] in Industrial Estate, Kundli at the rate of ₹ 5,500 per sqm. for setting up industrial project with fixed capital investment of ₹ 60.02 crore under prestigious category[5] on nomination basis. The Company allotted (November 2012) another plot (No.51) measuring 11,250 sqm. to another allottee 'B'[6], having same set of promoters, in the same industrial estate at the rate of ₹ 7,000 per sqm. with fixed capital investment of ₹ 44.86 crore on nomination basis. Both the allottees had same set of shareholders and the two plots shared common boundary from their back. As per the terms and conditions of the allotment and Estate Management Procedure (EMP) adopted by the Company, the allottees were required to partially complete the project (i.e., start of commercial production) within initial period of three years from the date of offer of possession. Further, the project was to be considered complete on achieving fixed capital investment of above 75 *per cent* of proposed investment within a period of six years subject to minimum benchmark investment of ₹ 30 crore in each case. EMP 2015 provides for fee/ penalty[7] ranging from 15 to 35 *per cent* of current allotment price for non-achievement of investment criteria.

Allottee 'B' amalgamated with allottee 'A' vide Hon'ble Delhi High Court order dated 07 November 2013. Thereafter, the allottee 'A'[8] requested (May 2014) the Company to order physical amalgamation of both the plots since they now belonged to same entity. The Company granted (September 2014) provisional approval to the allottee 'A' stating that the amalgamated entity would accept all the terms and conditions of the allotment/ agreement and

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3 Constituted under the chairmanship of Financial Commissioner and Principal Secretary Industries, and MD HSIIDC, MD Haryana Financial Corporation and Director Industries Haryana as members. The committee considers allotment of plots under mega projects and under prestigious projects categories.

4 M/s Kay International Limited.

5 Under Prestigious Category, the allottee was required to make fixed capital investment of ₹ 30 crore and above.

6 M/s Bobkay Polymers & Irrigation Private Limited.

7 EMP-2015 provides for fee/ penalty ranging from 15 to 35 *per cent* of current allotment price depending upon the achievement of investment.

8 M/s Kay International Limited.

agreements already executed with the original allottees would be binding upon the proposed transferee. The combined zoning plan was approved by the Company in September 2014. Allottee 'A' partially completed the project on both the plots in February 2015 (on plot number 64) and June 2018 (on plot number 51) respectively.

Later, allottee 'A' requested (August and September 2017) the Company to reduce their project fixed investment cost from ₹ 104.88 crore to ₹ 60.72 crore (for first plot: ₹ 30.08 crore and for second plot: ₹ 30.64 crore) citing that at the time of allotment, they projected a capital cost on the basis of imported machinery but later there was lot of change in the industry which resulted in revision of project cost.

The Company passed (October 2017) order for reducing the investment from ₹ 104.88 crore to ₹ 60.72 crore and further recorded that the Company had also allowed merger of both allottees. Both the plots were clubbed after the approval by the Company on 02 September 2014. Thus, both the plots were combined as one single unit for having the same promoters and have same project. The allottee obtained occupation certificate (September 2014) and commenced production in February 2015.

The Company also issued (April 2019) project completion certificate on the basis of total investment of ₹ 60.69 crore (including ₹ 2.56 crore on account of preliminary and pre-operative expenses) considering both the plots as single unit and did not levy any penalty for non-achievement of projected investment in disregard of its terms of allotment. Therefore, considering the investment of ₹ 58.13 crore made by the allottee which works out to only 55.42 *per cent* of the proposed investment (₹ 104.88 crore), penalty amount works out to ₹ 13.27 crore[9] as per the EMP 2015.

Audit observed that the issue of project completion certificate by the Company without levy of fee/ penalty was not justified as the provisional approval issued by the Company for amalgamation of allottee companies was conditional and as per the terms and conditions of the provisional approval, the proposed transferee was bound by the terms and conditions of the agreement already executed with the two original allottees and no final approval was issued by the Company. Further, the approval (02 September 2014) of combined zoning plan by the Company cannot be construed as approval for treatment of both the plots as single unit for project implementation purpose as zoning plan is issued for very limited purpose i.e., for preparation of building plan.

The Management contended (November 2020) that as a result of approval of combined zoning plan by the Company, two plots become one plot for all

[9] 22,500 sqm area of plots X ₹ 5,900 per sqm. (being 25 *per cent* of allotment price of ₹ 23,600 per sqm. for 2018-19). For investment above 50 *per cent* of proposed investment but up to 75 *per cent* of proposed investment, the fee/penalty equivalent to 25 *per cent* of current allotment price is to be levied.

intent and purpose including implementation of one project on clubbed plots. The reply was not acceptable as amalgamation of allottee companies was conditional and as per the terms and conditions of the provisional approval, the proposed transferee was bound with the terms and conditions of the agreement already executed with the allottee and approval of combined zoning plan cannot be construed as approval for treatment of both the plots as single unit for investment involved. Further, the recent office order of the Company dated 03 February 2021 specified that clubbing of plot would not qualify the allottee to take any benefit over the terms and condition of allotment.

During Exit Conference (April 2022), the Management stated that as per Estate Management Procedure, project was to be considered complete on achieving fixed capital investment of above 75 *per cent* of proposed investment to minimum benchmark investment of ₹ 30 crore. In the instant case, the allottee achieved the minimum criteria of investment of ₹ 60 crore. The reply of the management is not tenable as the allottee made the investment of ₹ 58.13 crore which works out to only 55.42 *per cent* of the proposed investment (₹ 104.88 crore), therefore, penalty should have been levied as per the provision of EMP.

Thus, the Company extended undue favour to the allottee in declaring project complete without levy of fee/ penalty of ₹ 13.27 crore as per provisions of EMP 2015.

The matter was referred (January 2022) to the Government and the Company; their replies were awaited (April 2022).

3.3 Avoidable interest burden due to short deposit of advance income tax

The Company delayed adoption of Income Computation and Disclosure Standards and had to pay penal interest of ₹ 14.99 crore. In the process it had to bear avoidable additional interest cost of ₹ 4.05 crore.

Haryana State Industrial and Infrastructure Development Corporation Limited (Company) allots industrial plots to the allottees for setting up industrial projects, the cost of which is recovered in instalments over the period along with applicable interest. The financial statements of the Company were maintained on accrual basis except for the interest recoverable from allottees, which was accounted for on cash basis.

The Ministry of Finance, Government of India notified (March 2015) the Income Computation and Disclosure Standards (ICDS) by virtue of which revenue including interest income should be computed on accrual basis for income tax purpose. These ICDS, which were initially applicable from Assessment Year (AY) 2016-17, were made (September 2016) effective from AY 2017-18. The Company was, therefore, required to make applicable the

ICDS during the Financial Year (FY) 2016-17 and advance tax for the FY 2016-17 was to be calculated accordingly and deposited with the Income Tax department. The Company, however, did not calculate interest income on accrual basis in the projected profits and deposited advance tax of ₹ 24.47 crore only for FY 2016-17 with total income of ₹ 136.28 crore.

The Company took cognisance of new income tax provisions only in April 2018 and filed (October 2018) its revised Income Tax return assessing its income at ₹ 285.43 crore on the basis of audited accounts by adding interest income of ₹ 204.06 crore on accrual basis. The Company now paid (October 2018) balance tax of ₹ 80.32 crore including penal interest of ₹ 14.99 crore under section 234B and 234C of the Income tax Act.

Hence, due to non-inclusion of interest income receivable from plots allottees on accrual basis in terms of ICDS in the first instance, the Company had to pay penal interest of ₹ 14.99 crore for FY 2016-17. In the process, the Company had to bear avoidable additional interest cost of ₹ 4.05[10] crore as the penal rate of interest imposed by Income Tax Authorities i.e., 12 *per cent* per annum was much higher than the borrowing cost of the company i.e. 8.76 *per cent* per annum during FY 2016-17.

The Management stated (November 2020) that if the Company had paid tax during the year out of its borrowed funds, it would have had to pay interest cost on the borrowed funds. Thus, the increase in tax liability did not have much impact. The reply was not tenable as weighted average borrowings cost of the Company was 8.76 *per cent* per annum during 2016-17 whereas the Company paid penal interest (₹ 14.99 crore) as imposed by Income Tax Authorities at 12 *per cent* per annum, which was much higher than the borrowing cost of the Company. The Company did not offer any reasons for not adopting the ICDS during 2016-17 when it was required to deposit advance tax by considering the interest income on accrual basis.

During exit conference (April 2022), Management stated that there was delay in deposit of Advance tax during financial year 2016-17 as the matter regarding implementation of Integrated Computation and Disclosure Standard (ICDS) was pending before the Delhi High Court and final decision in this regard was delivered in November 2017. The reply of the Management is not tenable as the ICDS framed by the Government of India were applicable on the Company. While taking the financial decision, the Management needed to consider the borrowing cost of the Company which was lower than the interest rate charged by Income Tax Department due to delay in deposit of advance tax.

The matter was referred (December 2021) to the Government and the Company; their replies were awaited (March 2022).

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[10] Difference of ₹ 14.99 crore and ₹ 10.94 crore (₹ 14.99 crore *8.76/12= ₹ 10.94 crore).