$~1

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

\+ LPA 134/2025, CM APPL. 11085/2025, & CM APPL. 11089/2025

M S ASANDAS AND SONS PRIVATE LIMITED ....Appellant

Through: Ms. Sukrit R. Kapoor with Mr. Jaskaran Singh Narula, Mr. N. Kumar, Advocates.

versus

UNION OF INDIA & ANR. ....Respondents

Through: Mr. Varun Mishra with Mr. Ashar Hussain, Ms. Shreeya Sud, Advocates for R-1.

Date of Decision: 19th September, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

CM APPL. 11086-88/2025

1. Exemptions allowed, subject to all just exceptions.

2. The lengthy list of dates is taken on record.

3. The applications stand disposed of.

CM APPL.11089/2025 (delay in filing the appeal)

4. Having perused the contents of the application, the delay of 237 days in filing the appeal is condoned.

5. The application stands disposed of.

LPA 134/2025 & CM APPL. 11085/2025

6. Present Letters Patent appeal has been filed assailing the judgement

dated 27.05.2024 passed by the learned Single Judge in the writ petition bearing W.P.(C) 1173/2022 filed by the appellant as also the order dated 09.01.2025 passed in an application bearing CM APPL.68308/2024 in the underlying writ petition filed by the appellant seeking clarification of the judgement dated 27.05.2024.

7. The appellant had preferred the underlying writ petition aggrieved by the decision of the respondents of capping the benefit under the Production Linked Incentive Scheme (hereinafter referred to as *'PLI Scheme'*) for Food Processing Industry at 15% of the Compounded Annual Growth Rate (CAGR) in sales over the base year. The appellant had also challenged the communication dated 11.01.2022 whereby the appellant was directed to furnish a Bank Guarantee of 3% of the investment of Rs.810 crores as committed by it.

8. By the impugned judgement dated 27.05.2024, the learned Single Judge had dismissed the underlying writ petition holding, *inter alia,* that there is no right accrued in favour of the appellant to claim that it is entitled to a particular amount of incentive and that the respondents had enough powers under various clauses of the PLI Scheme to take the decision to cap the CAGR at 15% for calculating the incentives to be given under the Scheme. However, while disposing of the underlying writ petition, in Para 30 of the impugned judgement, the learned Single Judge has observed that the appellant cannot wriggle out from the commitment of providing Bank Guarantee of 3% of Rs.810 crores i.e., the total committed investment in the said Scheme and thus, directed it to furnish the said Bank Guarantee to the respondents as per the PLI Scheme.

9. Thereafter, the appellant filed an application bearing

CM APPL.68308/2024 seeking clarification of Para 30 of the judgement dated 27.05.2024, which was however dismissed by the learned Single Judge *vide* order dated 09.01.2025. Aggrieved by both, the judgement dated 27.05.2024 as well as the order dated 09.01.2025, the present appeal has been filed.

10. The grievance of the appellant in the present appeal is limited to the direction of the learned Single Judge in Para 30 of the impugned judgement dated 27.05.2024, which reads thus:

> *"30. This Court is also of the opinion that after the Petitioner has accepted the offer given by the Respondents, the Petitioner cannot wriggle out from the commitment of providing Bank Guarantee of 3% of the total committed investment. The demand of the Respondents to provide Bank Guarantee of 3% of the total committed investment cannot be found fault with. The Petitioner is, therefore, directed to give a Bank Guarantee of 3% of Rs.810 crores investment committed by the Petitioner to the Respondents as per the PLI Scheme."*

11. Learned counsel for the appellant states that though the learned Single Judge had passed a direction to the appellant as contained in Para 30 of the impugned judgment, however subsequent thereto, on a re-visit to its application submitted to the respondents under the PLI Scheme, the appellant has now decided not to pursue the said application and withdraw from the said Scheme. He submits that though withdrawal from the PLI Scheme is based entirely on the decision of the appellant however, the direction contained in Para 30 of the impugned judgement dated 27.05.2024 directing the appellant to furnish a Bank Guarantee of 3% of Rs. 810 crores investment committed by the appellant under the said Scheme, would bind the appellant and entail a financial burden which the appellant is not now willing to undergo. He submits that no financial or any other corresponding loss would occur at the end of the respondents and therefore, the appeal to that extent may be allowed quashing

the said direction in Para 30 of the impugned judgement.

12. On the other hand, Mr. Mishra, learned counsel appearing for the respondents submits that whether the appellant decides to proceed with the application or withdraw from the Scheme is entirely the discretion of the appellant, however submits that in such an eventuality, the appellant should be mulcted with exemplary costs for involving the respondents in an unwanted and unwarranted litigation for more than three years. Learned counsel submits that this decision of withdrawing from the PLI Scheme was also suggested to it by the respondent even at the initial stage of the commencement of the underlying writ petition, yet, the appellant was adamant in insisting on the continuance of the proceedings under the underlying writ petition before the learned Single Judge.

13. Having heard the learned counsel for the parties and upon the submission of the appellant that it now seeks to withdraw from the PLI Scheme and restricts its challenge to the direction contained in the Para 30 of the impugned judgment dated 27.05.2024, we are of the considered opinion that the controversy lies in a narrow compass.

14. From a perusal of the records, we find that the respondent no.2/IFCI Ltd., *vide* letter dated 03.12.2021 approved the application of the appellant under the Production Linked Incentive (PLI) Scheme – Category 1 – Fruits & Vegetables for sales based incentive for the period FY 2021-27, subject to certain conditions. Para 4 of the said letter stipulated that a Bank Guarantee of an amount equivalent to 3% of the Committed Investment as reflected in the said letter, in favour of Ministry of Food Processing Industries (MoFPI) within 15 days of the issuance of the said approval. In Para 4.1, it was stipulated that in case of failure to furnish the Bank Guarantee as mandated above within 15 days

of the approval, the said approval under the Scheme would stand cancelled.

15. Without going into the merits of what transpired thereafter having regard to the limited prayer made by the appellant, it would now be relevant to consider the email dated 11.01.2022 issued by respondent no.2/IFCI Ltd. to the appellant, *inter alia*, stating that since the approval letter was issued on 03.12.2021 and the Bank Guarantee as stipulated have not been received by the said respondents, a final opportunity to submit the Bank Guarantee was extended up to 5:00 pm of 17.01.2022 failing which, the said application would be treated as deemed withdrawal from the PLI Scheme.

16. From a reading of the approval letter dated 03.12.2021 as also the email dated 11.01.2022 of the respondent no.2/IFCI Ltd., it is clear that any applicant under the said PLI Scheme was mandated to furnish a Bank Guarantee to the extent of 3% of the Committed Investment within 15 days of the date of the approval. It is also manifest that in case of such failure, though in the present case, the timeline was indeed extended by respondent no.2, yet non submission of such Bank Guarantee within 15 days as stipulated in the letter of approval or within the extended time, would deem to entail withdrawal of the application from the PLI Scheme. Read in conjunction, we have no hesitation to conclude that non-submission of the Bank Guarantee within the stipulated period of time may entail withdrawal of the application of any applicant from the said Scheme. A plain reading of para 4.1 of the letter dated 03.12.2021 brings to fore that it is not in the nature of a penalty nor does it have any penal or financial consequence. In that view of the matter, if the appellant seeks to withdraw from the said PLI Scheme, notwithstanding the deemed nature of withdrawal contained in the email dated 11.01.2022, there can be no levy of any penalty or a fine or any other financial levy upon the appellant.

17. The direction in Para 30 of the impugned judgment seems to be as a natural corollary to the observations contained in the preceding paragraphs of the impugned judgment. We do not find any cogent reasons to interfere with the said findings or directions. However, at the same time, it is quite logical to conclude that the said direction would be applicable only in case the appellant would persist with its application under the PLI Scheme. Upon a query, learned counsel for the respondents fairly admits that the withdrawal of the appellant from the PLI Scheme, if at all, would have no implications whatsoever, whether it is financial or otherwise since the Scheme envisaged payment of incentives based on the intended performance of the appellant. He also candidly states that by the letter dated 11.01.2022, in any case, the application of the appellant was deemed to have been withdrawn due to failure to furnish the requisite Bank Guarantee.

18. Having regard to the aforesaid analysis and the statement of learned counsel for the respondents, we are of the considered opinion that the request made on behalf of the appellant of withdrawing from the PLI Scheme, notwithstanding the email dated 11.01.2022, can be accepted by this Court. It is clear that by allowing such prayer, there is no corresponding financial loss entailing any of the respondents. Equally, the impact of our accepting the aforesaid request of the appellant of withdrawal from the PLI Scheme would render implementation of the direction of learned Single Judge in Para 30 of the impugned judgment by the appellant, otiose. If that be, the direction in the said para appears to have been rendered infructuous. We order so accordingly.

19. We do not find any merits in the submission of learned counsel for the respondent in respect of imposition of exemplary costs upon the appellant for the simple reason that an aggrieved party cannot be deprived of its rights to

challenge or assail any action or inaction or any order of a State or its instrumentalities under Article 226 of the Constitution of India, 1950 and as such, unless we are of the opinion that the litigation was frivolous or mischievous, the need for imposition of any cost does not arise. Thus, we do not find any reason to impose costs.

20. In view of the above, the present appeal stands disposed of to the extent noted above. Pending applications also stand disposed of with no order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

SEPTEMBER 19, 2025/*yrj/rl*