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

% *Date of decision : August 07, 2015*

\+ **LPA 563/2013**

M/S MANAGEMENT OF ASHOK HOTEL ..... Appellant
Represented by: Mr.Ujjwal K.Jha, Adv.

versus

WORKMEN OF ASHOKA HOTEL & ORS ..... Respondent
Represented by: Mr.S.S.Upadhyaya, A.R. for R-1
Ms.Archana Gaur, Adv. for R-4&5.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order of the learned Single Judge dated May 08, 2013 dismissing the writ petition filed by the appellant i.e. Management of M/s. Ashoka Hotel, the appellant prefers the present appeal.

2. A brief background of the case is that the Ashoka Hotel Employees Union, Ashoka Hotel Mazdoor Janta Union and Ashoka Hotel Karamchari Sangh entered into a settlement with the Management of the Ashoka Hotel under Section 18(1) of the Industrial Disputes Act, 1947 (in short the I.D. Act) pursuant to the grievance of the three unions with regard to percentage of bonus that the management had declared for the year 1984-85. Though the turnover of the management for the year 1984-85 was almost similar to the previous years i.e. 1981-82, 1982-83 & 1983-84, however they declared the minimum bonus of 8.3% for the year 1984-85 whereas for the previous

years the declared bonus was 21%.

3. The relevant portion of the settlement dated December 06, 1985 is as under:

> *"The workers of Ashok Hotel through their Unions (1) Ashok Hotel Employees Union (AITUC); (2) Ashok Hotel Karamchari Sanghi (INTUC); and Ashok Hotel Mazdoor Janta Union (HMS) have raised a dispute challenging the validity and propriety of the balance sheet of the Ashok Hotel, New Delhi for the financial year 1984-85 and have claimed that the bonus payable to Ashok Hotel employees has been reduced from 20% to 8.33%.*
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> *2. Whereas the Management of Ashok Hotel is of the view that the balance sheet is an audited documents by the Statutory Auditors appointed by the authority of Government and is based on the age old principles of Accountancy. Accordingly, the management has declared the bonus on the above said balance sheet and profit and loss account and strictly in accordance with the provisions of Bonus Act, 1965. Hence the question of doubting its validity or propriety of balance sheet or the bonus declared by the management does not arise.*
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> *3. The management, however, unrelated to the above two contentions and without creating the precedent for any future year, as a gesture of goodwill and to negate financial hardship, if any, has agreed to advance a total sum of Rs.15.00 lakhs (Rupees Fifteen lakhs only) to the eligible regular workmen of Ashok Hotel to be distributed amongst them in equal sums (proportionately to the employees who have rendered less then one year service as on 31.03.85).*
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> *4. The management has also agreed that the recovery of this sum from the workers, which will be in 20 equal instalments, will not be initiated until such time that the dispute pertaining to bonus for the year 1984-85 is resolved finally following the normal process of law.*

5. The workmen in consideration of the above, agreed that their Unions will pursue constitutional means for redressal of their grievances/settlement of dispute as provided in the Industrial Disputes Act, 1947 and further the workmen will continue to maintain perfect peace, discipline and optimum work efficiency and that Unions will cooperate with the management in these matters?.

4. Pursuant thereto a reference was made to the Industrial Tribunal on the following terms:

"Whether the workmen are entitled to bonus for the year 1984-85 @ 20% of their wages earned during the year and if so, what directions are necessary in this respect?"

5. The stand of the management before the Tribunal was that in the year 1984-85 Ashoka Hotel hosted the Non-aligned Movement (NAM) Summit for which purpose there was large scale renovations carried out in the hotel. Though the turnover was more or less similar as the previous years, however allocable surplus declined drastically. The Tribunal decided the issues in favour of the management that it was justified in deducting the amounts shown in P&L account of the balance sheet for the year 1981-82, 1982-83, 1983-84 and 1984-85 and computation of gross profits has been done in accordance with the statutory revisions. After deciding the issues in favour of the management as regard the issue of declaration of bonus and additional bonus for the year 1985-86 and subsequent thereto, vide the award dated July 23, 1996 the Tribunal held that the amount of ₹15 lakhs advanced to the workmen in terms of the settlement dated December 06, 1985 be not recovered from the workmen.

6. The relevant portion of the award are as under:

"33. It is undisputed that after declaration of bonus at the rate of 8.33% for the year 1984-85 a settlement was made between the management and the unions and as a gesture of goodwill and to negate financial hardship to the workmen management agreed to an advance a total sum or ₹15,00,000/- to the eligible regular workmen of the management to be distributed amongst them equal sums. It was further agreed that the recovery of the sum from the workers will be in 20 equal instalments and recovery proceedings will not be initiated such time that the present reference is decided by the competent Court. It is also undisputed that the said amount of ₹15,00,000/- was in fact distributed amongst eligible employees.

34. Prior to the year 1984-85, management had declared a bonus of 20%. In the year 1985-86, no doubt, management again declared a bonus of 8.33% but management paid ₹20 lakhs for distribution amongst the workmen as interim measure and workmen have filed documents in support of the above contention. Similarly, in the financial year 1986-87 no doubt, bonus declared was 8.33% but management paid bonus at the rate of 17% on the basis of productivity linked bonus secondly. It is undisputed that for the year 1987-88 and 1988-89 20% bonus was paid. Similarly, in the year 1990-91 while bonus declared was 8.33% but management paid additional bonus of 7.6% and same procedure was followed in the year 1991-92. In the year 1993-94 bonus declared was 8.33% but management paid ₹751/- to the employees as additional amount. In the year 1994-95 again bonus of 20% was declared. It is, therefore, clear from the above discussion that management has been paying regularly around 20% bonus either directly or indirectly to its employees. Since management had to incur more expenses in the year 1984-85 because of NAM as discussed above and because management could increase its revenue. For the reasons given above, it will be fair and proper that management does not recover the amount of ₹15,00,000/- advanced to the workmen as a result of settlement in the year 1984-85. If above direction is followed the percentage of bonus *of the employees in the 1984-85 will be around 17% award is passed accordingly."*

7. The learned Single Judge vide the impugned order held that for hosting of the NAM Summit in fact there would have been a higher pressure on the work force of the hotel i.e. the workmen and it would be ironical and highly unfair to the workmen that for the period they had to turn up at their best and render even harder service they should be denied payment of bonus at the rate at which they had been paid in the past as well as in the subsequent years. The amounts have already been paid to the workmen and majority of the workmen have either superannuated, died or left the service. Thus exercising its judicial discretion learned Single Judge found no illegality in the award and held that it was highly inequitable and unfair to the workmen to deprive them of the payment received by them in terms of the settlement dated December 06, 1985.

8. Having heard learned counsel for the parties and perusing the records it is not disputed that despite the hotel rooms being used by the officials for the purpose of renovation etc., the profits to the hotel management were similar to that of the preceding years. In this view of the matter as held by the learned Single Judge it would be unfair and to the prejudice of the workmen who worked harder during this period to deny them the bonus they were entitled to. That apart, concededly most of the workmen have retired, died or left service. It is well-settled that in exercise of its jurisdiction under Article 226 of the Constitution of India, the Court is required to weigh the equities and in the present case equities weigh in favour of the workmen who worked harder and passing directions to recover the money at this stage would be unfair and inequitable.

9. Consequently, the present appeal is dismissed.

CM 11929/2013 (stay) and CM Nos.3870-71/2014

Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 07, 2015
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