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

% Date of Decision: 21.10.2016

\+ **W.P.(C) 9649/2016, CM APPLs. 38581/2016 & 38582/2016**

CENTAUR HOTEL ..... Petitioner

Through: Mr. R.S. Suri, Sr. Adv. with Ms. Suruchi Suri and Mr. Ninad Dogra, Advs.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER ..... Respondent

Through: Mr.Keshav Mohan and Mr. Piyush Choudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (oral)

W.P.(C) 9649/2016, CM APPLs. 38581/2016 & 38582/2016

1. Mr. Keshav Mohan, who appears on service of advance copy states that the matter may be heard and disposed off finally.

2. At joint request, the case is taken up for final hearing.

3. At the outset, the learned counsel for the respondent submits that subsequent to the order dated 10.11.2014, no monies were paid, therefore, the due amount of Rs. 1,87,27,805/- was sought to be recovered through recovery proceedings. Besides the petitioner never filed any documents because it had fore-closed its own case.

4. The petitioner states that the foreclosure of the case was erroneous

whereas in reality no such dues are made out and in any case before monies are to be parted with by the management, the exact amounts to whom the money has to go i.e. the workman, must be examined before the Assistant Provident Fund Commissioner (Respondent no.1) ('APFC'), so as to obviate excess or unnecessary or misdirected payment. Hence, he contends, that the records ought to have been examined. It is contended that the petitioner which is an entity owned by the State, should not be made to part with monies, especially in view of its decade old financial constraints.

5. The petition shows that on 10.11.2014 Mr. S.K. Chopra, Ex-Dy. Manager-Accounts and Mr. Mukesh Bhargava, Ex-Senior Assistant Manager-Accounts appeared before the APFC and stated that they were duly authorised on behalf of the petitioner to state that the petitioner had accepted and was ready to pay the dues, as proposed and had requested to close the case. The request was accepted, case was closed with the direction that the dues determined as Rs.1,87,27,805/- shall be paid, as requested, into the respective EPF accounts maintained in the State Bank of India latest by 27.11.2014, failing which action will be taken under Section 8 of the Act to recover the amount as per law. However, the said dues were not paid. So an amount of Rs.1,17,03,000/- (Rupees one crore seventeen lacs three thousand only) was recovered through recovery proceedings. Thereafter, an amount of Rs.50.00 lakhs is stated to have been paid to the Assistant Provident Fund Commissioner & Recovery Officer by way of a cheque bearing No. 305711 dated 17.10.2016.

6. The recovery proceedings were challenged before the Appellate Tribunal, i.e. The Employees Provident Fund Appellate Tribunal (EPFA Tribunal) in ATA No. 549(4) of 2015 which has dismissed the appeal. The

said dismissal order has been impugned in this petition. The Appellate Tribunal has reasoned:

> "Admittedly Section-14 of the Act empowers the respondent to assess damages in case there is default in payment of contribution by employer. A simple version of appellant establishment that due to financial crisis, statutory dues were not deposited within time, is not sufficient to waive the damages, especially when no authentic documents placed on case file which could reveal that during the assessment period, appellant establishment was actually having financial crisis. Order dated 10.11.2014 also perused carefully. Impugned order duly reveals that during course of inquiry, authorised representative of appellant establishment accepted to pay the proposed dues. Order dated 10.11.2014 passed by respondent u/s 14-B of the Act is self-explanatory regarding assessment of damages u/s 14-B of the Act for the period 04/2008 to 12/2012. No illegality in the impugned order noticed hence present appeal devoids on merit hence dismissed......."

7. Mr. R.S. Suri, the learned Senior Advocate for the respondent refers to the Balance-Sheet for the Financial Year 2014-15 (page 112 of the paper-book) to show the financial status of the petitioner company for a decade prior thereto. The records reflect that the financial position of the petitioner company consistently had been unhealthy which led to erosion of its net worth.

8. Of the amount of Rs. 1,87,27,805/- the petitioner has paid Rs. 50,00,000/-by cheque dated 17.01.2016 and Rs. 1,17,03,000/- has been recovered from it, leaving arrears of Rs. 20,24,805/- of the principal amount. Mr. Suri states upon instructions, that the said remaining amount shall be paid within four weeks from today or as the Court may direct. The interest amount on the delayed payment shall be paid as per the order dated 10.11.2014.

9. Looking at the financial condition of the petitioner, the petitioner, it is directed to pay another Rs.25.00 lakh within 15 days from today and thereafter Rs.25.00 lakhs by the end of October, 2016 (26th October, 2016). The remaining amount as per the order dated 10.11.2014 (including the interest amount) shall be paid by the end of December, 2016. The objective of the section 7A proceedings is to ensure proper assessment and payment of statutory dues to the workmen of the establishment. The amount as assessed (or agreed by the establishment) has now been directed to be deposited. Once the amount is so secured, along with the interest what would be required to ascertain is the identification of the workmen for whose benefits the monies would be deposited. This exercise should be carried out and the petitioner should be permitted to assist in this regard by adducing their documents and records in support of their contentions. These documents would be filed in two weeks. Needless to say, that the Competent Authority shall be free to make such assessment as may be appropriate including imposition of penalty, damages and interest, on the basis of records, submitted by them.

10. There is no reason forthcoming why the undertaking by Mr. S.K. Chopra and Mr. Mukesh Bhargava before the EPFC that said dues shall be

paid on behalf of the petitioner was not redeemed. Hence, for this default and for the proceedings before the EPFA Tribunal itself were in vain. Therefore, the petitioner shall inquire into it and take appropriate remedial measures.

11. Mr. Suri submits that the re-assessment may be made of only such monies which are actually payable and are duly contributed into the PF accounts.

12. However, beecause of the delay and non filing of the requisite documents which led to the litigation before the EPFA Tribunal and before this Court, the petitioner shall pay an amount of Rs.1,50,000/- as costs, out of which Rs.1,25,000/- shall be paid to the Provident Fund Account and Rs.25,000/- shall be paid to the office of the respondent.

13. In view of the above, no precipitate action shall be taken against the officers of the petitioner in the recovery proceedings.

14. The learned counsel for the respondent states that due intimation of the order shall be made to the Department.

15. The Court expresses no views on the merits of the case.

16. The petition is accordingly disposed off in the above terms.

17. Dasti, under the signature of the Court Master.

NAJMI WAZIRI, J

OCTOBER 21, 2016/acm