

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8165 of 2015

1. M/s Patliputra Builders Ltd., a company registered under the Companies Act through its Director Anil Kumar, son of Late Chhathu Choudhary, resident of 601, Maharaja Kameshwar Complex, P.S.- Kotwali, District-Patna.
2. Anil Kumar, son of Late Chhathu Choudhary, Resident of 601, Maharaja Kameshwar Complex, P.S.- Kotwali, District- Patna.

... .. Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Labour, New Delhi.
2. The Regional Commissioner, Employees Provident Fund Organization, Bihar, Bhawishya Nidhi Bhawan, R Block, Road No.6, Patna-1.
3. The Assistant Provident Fund Commissioner (Comp), Employees Provident Fund Organization, Bihar Bhawishya Nidhi Bhawan, R Block, Road No.6, Patna-1.
4. The Recovery Officer, Employees Provident Fund Organization, Office at R Block, Road No.6, Patna-800001.
5. The Branch Manager, Bank of India, Jamal Road, Patna-800001.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Mishra
For the Respondent/s	:	Ms. Kanak Verma, CGC
For E.P.F.O.	:	Mr. Prashant Sinha
		Mr. Baua Jha

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date : 24-07-2017

Heard learned Counsel for the parties concerned.

2. This application has been filed against the decision of respondents 2 and 3, whereby the petitioner has been held to have defaulted in payment of Rs. 3,70,82,213/- for outstanding dues and the amount of damage and interest, under



Sections 14B and 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act').

3. The facts leading to filing of the present case can be briefly narrated as follows:

4. M/s News Papers and Publications Limited (NPP) was an incorporated juristic company, carrying out the publication of locally circulated dailies, namely, Indian Nation and Aryavarta, in English and Hindi respectively. The NPP, had of its own, several employees, from whom money was deducted towards Employees' Provident Fund, over a period of time, which it had failed to deposit. Since the financial condition of NPP deteriorated to an extent that it was failing to pay even the salary of its employees, the Board of Directors of the NPP, passed resolution to the effect that the land in possession of NPP should be put to constructive use to earn revenue and to liquidate its dues to various authorities, from those proceeds.

5. The petitioner no. 1 herein is a registered limited company under the Companies Act, 1956; whereas petitioner no. 2 is the Director of the said company. The petitioner no. 1 and the NPP entered into an agreement with respect to the property, which was subjected to be charged by way of



equitable mortgaged in favour of the Central Government. The agreement contains, *inter alia*, a clause that the dues, under the head of Employees' Provident Fund (PF), to the tune of Rs. 54.66 lakhs, would be paid by the developer (the petitioner).

6. It appears that employees of NPP had approached this Court by filing CWJC No. 6544 of 2004 and MJC No. 816 of 2006, in relation to their provident fund amount. This Court, by an order, dated 11.07.2006, disposed of the writ application with, *inter alia*, the following observations:-

“It is declared that once the workers through their Union represented that the liability of the owner towards them is Rs. 8.50 crores, the sum of Rs. 8.50 crores represents all their claim including claims on account of Gratuity and as such they are not entitle to claim any sum more than Rs. 8.50 crores from the property in question or from the Builder; they are estopped by representation.”

7. An appeal was preferred against the Employees' Provident Fund Organization, under the Letters Patent of this Court, giving rise to LPA No. 696 of 2006. The order, dated 11.07.2006, was stayed by an order, dated 03.09.2007, of the Division Bench, passed in LPA No. 696 of 2006. The said



Letters Patent Appeal came to be disposed of by judgment and order, dated 15.11.2011, passed by a Division Bench of this Court, holding as follows:-

“After having heard both sides, we are satisfied with the contention raised by the learned Sr. Counsel appearing on behalf of the appellant that the ‘amount due’ should be calculated along with ‘admitted dues’ by the appellant Corporation and it is left over upon the authorities to assess the amount as per the records available and if it exceeds the amount of Rs. 8.50 crores then the authorities must resolve the issue with the respondent by recovery of such amount in accordance with law.”

8. It is apparent from the decision of the Division Bench that the Court left it open to the authorities to assess the amount, as per the records available and if the amount exceeded the amount of Rs. 8.50 crores, the authorities were asked to resolve the issue with the respondents therein, by recovery of the said amount in accordance with law.

9. It is the case of the petitioner that the petitioner was required to pay a sum of Rs. 1,95,03,000/- and the said amount, which was found to be due, came to be finally settled by an order of this Court, dated 09.11.2012, passed in CWJC



No. 21633 of 2011.

10. Drawing my attention to the said order, dated 09.11.2012, learned Counsel for the petitioner has attempted to submit that no further amount could be asked to be paid by the petitioner than what has been stipulated in the said order.

11. The submission, which has been advanced on behalf of the petitioner, is apparently misleading. The said order cannot be said to be amounting to finally settling the dispute between the petitioner and respondents 2 and 3. I will deal with this submission, later.

12. Learned Counsel appearing on behalf of the respondents 2 and 3 has submitted that petitioner was liable to be assessed for damages and interest, under Sections 14B and 7Q of the Act and the charge over the property was to remain in force till the damages were assessed and recovery in terms of Section 11(2) of the Act was made. He has submitted that after the Division Bench of this Court granted liberty to the Employees' Provident Fund Organization to assess the amount, as per the available records, the amount has been duly calculated and it has come to the tune of Rs. 3,70,82,213/-.

13. He has relied on a decision of the Supreme Court, in the case of **McLeod Russel India Limited v. Regional**



Provident Fund Commissioner, Jalpaiguri and Others, reported in **(2014) 15 SCC 263**, with special reference to paragraph 14., in support of this contention.

14. There is no gainsaying that the petitioner has stepped into the shoes of NPP. In the case of **McLeod Russel India Limited** (supra), the Supreme Court has, relying on earlier Supreme Court's decision, in the case of **Sayaji Mills Ltd. v. Regional Provident Fund Commissioner**, reported in **1984 Supp. SCC 610**, held, in paragraph 8, as follows:-

“8.It becomes apparent that the *inter se* covenants between the Eveready Industries (India) Ltd. And the erstwhile owners viz. Saroda Tea Company Ltd. would not insulate the former from the rigours of damages imposed by the EPF Act. Damages must be calculated, it is plain, and be recovered by the Authority in the most efficacious and convenient manner.”

15. Section 17B of the Act itself is clear in its language, which reads thus:-

“**17B. Liability in case of transfer of establishment.**— Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and



the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.”

16. Learned Counsel for the Employees’ Provident Fund Organization, in my opinion, is correct in his submission, while referring to the said decision of the Supreme Court, and Sections 14B and 7Q of the Act. Section 14B of the Act confers upon the Central Provident Fund Commissioner or such other officer, as may be authorized by the Central Government, to recover damages when an employer makes default in payment of any contribution to provident fund, pension fund or insurance fund or transfer of accumulations required to be transferred by him, etc. Section 17B of the Act fixes the liability in case of transfer of establishment and it states that where an employer in relation to the establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the



establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme under the Act. The proviso to Section 17B of the Act restricts the said liability of the transfer to the value of the assets obtained by him by such transfer.

17. I must, now, come back to the plea on behalf of the petitioner that in the light of the order of this Court, dated 09.11.2012, the entire liability against provident fund amount came to be settled with the payment of a sum of Rs. 1,95,03,0000/-, and no further amount could have been asked to be paid. I have already indicated above that the said stand is misleading. I am assigning the reason for the same.

18. The petitioner has brought on record the said order, dated 09.11.2012, passed by this Court, by way of Annexure-8 to the writ application. The order refers to an earlier order passed in the same proceeding, dated 14.02.2012. The petitioner appears to have intentionally suppressed the nature of the order passed by this Court on 14.02.2012 in CWJC No. 21633 of 2011. The said order has been brought on record by way of Annexure-E to the counter affidavit filed on behalf of respondent nos. 2, 3 and 4. On perusal of the order, dated



14.02.2012, passed in CWJC No. 21633 of 2011, it can be easily noticed that the petitioners therein had challenged the warrant of arrest issued under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, on account of the fact that they had failed to pay a sum of Rs. 1,95,03,0000/- despite several opportunities given to them to make payment of the said amount. The petitioners undertook to make payment of the said amount. In that order, the Court made an observation, which is very significant for dealing with the plea, which has been taken on behalf of the petitioner, which is as follows:-

“ It is further clarified that the provident fund calculated by the Provident Fund Officer is till the year 2002.”

19. The petitioners, therefore, cannot take this plea that the payment, which they made under the orders of the Court was full and final settlement of the entire provident fund amount. Since the petitioners had agreed to pay the said amount in instalments, the Court held the certificate case against the petitioners in respect of said amount of Rs. 1,95,03,0000/-, to have become infructuous and allowed a complaint case to be withdrawn, which was filed with respect to cheque issued by the petitioners having been dishonoured.

20. The payment of the said amount of Rs.



1,95,03,0000/-, which was calculated by the provident Fund Officer, till the year 2002, cannot absolve them of their liability arising out of Sections 7Q and 14B of the Act, which read thus:-

“7Q. Interest payable by the employer.— The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

14B. Power to recover damages- Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of section 15 or sub-section 5 of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by



notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.”

21. Learned Counsel representing the E.P.F.O. has rightly relied on Supreme Court’s decision, in the case of **Organo Chemical Industries and Another v. Union of India and Others**, reported in **(1979) 4 SCC 573**, wherein the Supreme Court, while upholding the validity of the said provision under Section 14B of the Act, observed that if the



employer neglects to remit or diverts the money for alien purposes, the fund gets dry and the retirees are denied the meagre support when they most need it. The whole project gets stultified if the employers thwart contributory responsibility and this wider fall-out must colour the concept of ‘damages’, the Supreme Court has observed.

22. In my view, since there has been default by the employer in the payment of contribution to the fund, the petitioners are liable for inclusion of interest and recovery of damages, as contemplated under Sections 7Q and 14B of the Act.

23. I do not find any merit in this application. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
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