IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA No. 362 of 2016 (O &M)
Date of Decision: 17.3.2017

Regional Provident Fund Commissioner, Jalandhar ....Appellant

v.

M/s Punjab Fibres Limited and others ....Respondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present:- Mr. Rajesh Hooda, Advocate, for the applicant/appellant

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MAHESH GROVER, J. (Oral) :

CM No. 817 of 2017 :

For the reasons stated in the application, the same is allowed. Documents, annexed with the application, are taken on record.

CM No. 773 of 2016 :

For the reasons stated in the application, the same is allowed. Delay of 131 days in filing the appeal stands condoned.

Main case :

While disposing of the writ proceedings, the learned Single Judge had observed as below :

> "The Appellate Tribunal after noticing the contention and factual aspect found that as per the language enshrined under Section 17B of the Act, transferee would not be aware of the reason of the default and, therefore, even an opportunity of hearing was not given to the respondent No.2. There is no evidence which has been led on behalf of Employees Provident

Fund Commissioner, that, respondent No.1 i.e. M/s Punjab Fibre Ltd. had ceased to exist. Since, it is a matter of record that M/s Punjab Fibre Ltd. has another unit running at U.P. Employees Provident Fund Commissioner is at liberty to initiate the proceedings under Sections 7Q and 14B of the Act. The sale certificate in favour of respondent No.2 was issued on 15.12.2010. Since respondent No.2 had paid the sum of ₹ 2.95 crores towards liability under Section 7A part payment towards 7Q and 14B of the Act, the action of the petitioner against respondent No.2 by raising additional demand under Sections 7B and 14B of the Act particularly when respondent No.1 is in existence, is not only fallacious but misconceived.

There is no evidence of fact or record to establish that respondent No.1 had ever acquired establishment of M/s Punjab Fibre Ltd.-respondent No.1.

The Appellate Tribunal while interpreting the provision of Section 17B of the Act found that it pertains to only transfer of establishment but in the present case, there is no case of transfer. At the best, Regional Provident Fund Commissioner-II, Jalandhar would have a right to recover the outstanding dues out of the sale proceeds from IFCI.

Since the Employees Provident Fund Commissioner has failed to prove on record or lead un-clinching evidence, that there was mens rea on the part of respondent No.2, respondent No.2 cannot be fastened the liability of payment of interest and damages and interest under Sections 7Q and 14B of the Act."

An application has now been moved to indicate that the second unit of Punjab Fibers at Noida stood already sold off in the year 2010 itself. It is contended that this fact was not known to the appellant also but has been discovered now.

In view of the above, we are of the opinion that it would be just and appropriate if such plea is brought to the notice of the learned Single

Judge in the first instance to enable him to take into account the newly discovered fact and its relevance to the controversy.

In case, it is so done, the question of limitation may be construed sympathetically.

The appeal stands disposed of.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

17.3.2017
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No