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

\+ EX.P. 46/2016 and EA No. 773/2016 (under Order XXI Rule 55 CPC)

D T C EMPLOYEES SUPERANNUATION (PENSION) TRUST & ORS .....Decree Holders

Represented by: Ms. Avnish Ahlawat, Adv.

versus

U P CO-OP SPINNING MILLS FEDERATION LTD & ANR .....Judgment Debtors

Represented by: Mr. Rakesh Upadhyay, Mr. Sanjay K. Mishra, Ms.Aarti U. Mishra, Advs. for JD-1

Mr. Anil Mittal, Ms. Komal Aggarwal, Advs. for JD-2/State of UP

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **11.08.2017**

1. Decree Holder filed a Suit being CS(OS) No.234/2005 for recovery of ₹6,79,11,306/- along with *pendente lite* and future interest with effect from 1st September, 2004 till realization of the same. A brief background leading the Decree Holder to file the Suit that Decree Holder is a registered Trust, i.e. DTC Employees Superannuation (Pension) Trust (in short 'the Trust') constituted for the purpose of disbursement of pension to the retirees covered under the DTC Pension Scheme. The Decree Holder/Trust invested in the Respondent No.1 a sum of ₹4 Crores to generate optimum return of the deposit and was allotted redeemable UPSCMFL debenture bonds vide letter dated 25th December, 1998 as under:

"U.P. CO-OPERATIVE SPINNING MILLS FEDERATION LTD.
(Regd. Office: B-2 Sarvodaya Nagar, Kanpur – 208005 : Phone: 219148)

25th Dec. 98

LETTER OF ALLOTMENT

14.90% (Taxable) Secured Redeemable UPSCMFL Debenture Bonds

On the basis of your application for subscription, we are pleased to inform that the UPSCMFL has allotted 14.90% (Taxable) secured Redeemable UPSCMFL Debenture Bonds fully guaranteed by the Government of Uttar Pradesh on private placement basis to the person(s) mentioned as holder(s) herein below, of the face value given hereunder:

Folio No.	:	DEB./98-99/(11)-15
Allotment Letter No.	:	15
Bond Holders Name	:	DTC Employees Superannuation (Pension) Trust, New Delhi – 110002.
Face Value	:	Rs.4,00,00,000/-
Date of Allotment	:	25 December 1998
Redemption	:	At par at end of 4th year, 4&1/2 year, and 5th year @ 33%, 33% & 34% respectively.
Interest Scheme	:	Non-cumulative

For U.P. Co-operative Spinning Mills Federation Ltd.

Sd/-
(O.P. BAJPAI) S.K. SHRIVASTAVA
GENERAL MANAGER (A/F) FINANCE CONTROLLER"

2. On the ₹4 Crores so invested, annual interest @ 14.9% was to be given to the Decree Holder/Trust and the principal amount was to be refunded in instalments at the end of 4th, 4-½ and 5th year. Judgment Debtor No.1 remitted a sum of ₹15,41,436/- on 25th December, 1998 after deducting TDS on the interest earned for the period 30th August, 1998 to 25th December, 1999. Another sum of ₹46,39,504/- was remitted by the Respondent No.1/Judgment Debtor No.1 as interest treating the period of 26th December, 1998 to 25th

December, 1999 as the financial year after deducting TDS of Rs.13,11,200/-. Thereafter, the Judgment Debtor No.1 failed to pay any amount towards the interest. On correspondence made between the Decree Holder and the Judgment Debtor No.1, Judgment Debtor No.1 acknowledged its liability, however, expressed its inability to pay the amount due to economic recession which had affected its business adversely.

3. In Suit filed by the Decree Holder, Judgment Debtor Nos.1 and 2 were proceeded *ex parte* and the Decree Holder led its *ex parte* evidence. Vide the judgment dated 9th March, 2015, the Suit was decreed in favour of the Decree Holder as under:

> "19. In view of the aforesaid, the Court finds that the information memorandum highlighted that defendant No.2 had given an unconditional and irrevocable guarantee for payment of interest @ 14.9% per annum and also the repayment of the principal amounts. The plaintiffs had, indeed, prudently invested the monies only in such a scheme which carried a guarantee of repayment of the principal amount as well as payment of the interest accrued thereon. In light of the judgment of the Supreme Court in Hindustan Unilevers & Ors. as well as subsequent judgments passed by this Court, the defendants are liable to repay the principal amount to the plaintiff along with interest @ 14.9% p.a. for the duration of the scheme and thereafter @ 9.5% p.a. simple interest. These amounts shall be paid by defendants within a period of 12 weeks from today, failing which the defendants shall pay penal simple interest @ 15% per annum for the period of delay. The suit is decreed in the aforesaid terms with costs of Rs.50,000/- to be paid by the defendants to the plaintiffs."

4. Since the decree was not satisfied by the Judgment Debtors, the present Execution Petition was filed wherein the Judgment Debtor No.1 through its Chartered Accountant got calculated the decretal

amount which amounted to ₹11,51,72,740/- and the same was transmitted to the bank account of the Decree Holder by RTGS on 20th August, 2016.

5. The issue thus remains is whether in terms of the decree, the Decree Holder was entitled to a sum of ₹17,20,86,093/- which arose to ₹17.36 Crores due to further interest or ₹11,51,72,740/- as transmitted by the Judgment Debtor No.1.

6. Before Court, learned counsel for Judgment Debtor No.2 entered appearance and stated that the decretal amount of ₹17.36 Crores had been transferred to Judgment Debtor No.1.

7. Learned counsel for the Judgment Debtor No.1 however states that in terms of the letter of allotment dated 25th December, 1998 and the terms of decree, the interest scheme was non-cumulative and on the basis of non-cumulative simple interest, the Judgment Debtor No.1 arrived at a calculation and amount due towards Decree Holder was calculated as ₹11,51,72,740/-.

8. A perusal of the letter of allotment reveals that the interest on the principal sum of ₹4 Crores was to be paid annually as also noted in the judgment and decree passed by this Court on 9th March, 2015. The Judgment Debtor No.1 paid interest only for merely one and a half years after deposit and thereafter failed to pay the interest which it was supposed to pay to the Decree Holder annually. Having not paid the interest annually, as agreed in the letter of allotment, the Judgment Debtor cannot now say that at the end of the annual year, the interest

which was required to be paid to the Decree Holder would not be clubbed with the principal amount by taking recourse to the word interest being ‘non-cumulative’.

9. The calculation of the Judgment Debtor No.1 thus is incorrect and contrary to the terms of the decree. The calculation as arrived by both the Decree Holder and Judgment Debtor No.2 is correct and the Decree Holder is entitled to receive the balance payment of ₹5,84,27,260/- which the Judgment Debtor No.1 deposited with the Registrar General of this Court pursuant to the order dated 24th August, 2016.

10. The present petition is disposed of directing the Registrar General of this Court to release the sum of ₹5,84,27,260/- kept in a fixed deposit to the Decree Holder along with the interest that has accrued thereon and the order dated 9th May, 2016 whereby the immovable assets including furniture and fittings located at U.P. Bhawan, U.P. Sadan and office of the Resident Commissioner situated at 409, Ambadeep, 14 KG Marg, New Delhi – 110001 stood attached is vacated.

11. No costs.

MUKTA GUPTA, J.

AUGUST 11, 2017
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