IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: July 03, 2018

1. R.A.No.259 of 2017 (O&M) in CWP No.7166 of 2013

Regional Provident Fund Commissioner, Jalandhar
...Petitioner
Versus

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

2. R.A.No.260 of 2017 (O&M) in CWP No.7176 of 2013

Regional Provident Fund Commissioner, Jalandhar
...Petitioner
Versus

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

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rajesh Hooda, Advocate,
for the review applicant in both the cases.

Mr.Ashim Aggarwal, Advocate,
for non-applicant/respondent No.2 in both the cases.

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AMIT RAWAL, J.

This order of mine shall dispose of two Review Applications No.259 and 260 of 2017. The same have been filed on behalf of the applicant-petitioner seeking review of the order dated 7.7.2015, whereby Civil Writ Petitions bearing No.7166 and 7176 of 2013 have been dismissed.

The aforementioned order had been assailed by the applicant-petitioner vide Letters Patent Appeal No.362 of 2016 and the LPA Bench, after considering the submissions and as well as the documents annexed with the appeal with regard to the factum that the second unit of Punjab Fibres situated at Noida had already been sold in 2010, disposed of the appeal by giving liberty to the applicant to take appropriate plea in accordance with law. It is in these circumstances, the aforementioned review applications have been filed.

Mr.Rajesh Hooda, learned counsel representing the applicant-petitioner submitted that the petitioner-Regional Provident Fund Commissioner assailed the order dated 11.9.2012 passed by respondent No.4-Employees' Provident Fund Appellate Tribunal, whereby the appeal preferred by respondent No.2 against the orders passed under Section 14-B of the Employees' Provident Funds and Misc.Provisions Act, 1952 (for short "1952 Act") by the Regional Provident Fund Commissioner-II, Jalandhar have been set-aside.

It was submitted that respondent No.2 had taken over all the assets of M/s Punjab Fibres Limited in the public auction. The auction was subject to the terms and conditions laid down in the tender document. One of the conditions, namely, 2.7 envisaged that outstanding liability of the unit would be met by the purchaser. In essence, the purchaser would meet all the liabilities and the IFCI will not be liable for the same. Proceedings initiated against M/s Punjab Fibres Limited and as well as respondent No.2 claiming damages on account of the delay committed in making the payments of the provident fund dues were in accordance with law. He further submitted that this Court, on the basis of the statement made by the counsel for respondent No.2, was made to believe that second unit of M/s Punjab Fibres Limited was in existence and carrying out the activity at

Noida and, therefore, liberty was granted to the Regional Provident Fund Commissioner to seek outstanding dues against the second unit. However, in view of the enquiry and the information received vide letters dated 7.12.2015 and 6.1.2016, Annexures A-2 and A-3, it revealed that the property of M/s Punjab Fibres Limited was purchased by M/s Brahmputra Reality Services Pvt.Ltd. in a public auction held on 9.3.2010, therefore, cause of action accrued for seeking recalling of the order as there is error apparent on record. Even in the proceedings pending before the DRAT, noticed by this Court, a statement was suffered on behalf of respondent No.2 to clear all the outstanding dues on account of the provident fund instead of IFCI, therefore, owing to the non-existence of the second unit of M/s Punjab Fibres Limited, liability is of respondent No.2.

This Court, vide order dated 21.8.2017 issued notice in the review applications. The aforementioned applications were also accompanied by applications under Section 5 of the Limitation Act seeking condonation of delay of 637 days in filing the review applications on the premise that the certified copy of the order dated 7.7.2015 was applied on 8.7.2015, which was received on 10.8.2015. The matter was discussed with the higher authorities and as well as with the panel advocate and as a result thereof, a letter dated 14.10.2015 was issued to the office of Sub Regional Office, Noida for recovery of the amount against the second unit of M/s Punjab Fibres Limited, but on account of the communication as noticed above, it was apprised that the second unit of M/s Punjab Fibres Limited had already been sold way back on 9.3.2010, therefore, on 29.12.2015, the matter was referred to panel advocate seeking legal opinion and vide letter dated 12.11.2015, the department was advised to challenge the said order and, thus, LPA was preferred, which has been disposed of with liberty aforementioned and in such circumstances, the delay has occurred, which is neither intentional nor willful.

Reply on behalf of respondent No.2 has been filed through Mr.Ashim Aggarwal Advocate, wherein it has been stated that the review applications are not maintainable as the same are beyond the liberty granted by the LPA Bench in the order dated 17.3.2017 as closure of the Noida unit is not relevant and cannot be treated to be a fact falling with the expression of "error apparent on record". Respondent No.2 had already made the payment of ₹2.90 crores odd amount and issue of Noida unit had no bearing. Even the Appellate Tribunal has quashed the demand. Several modes of recovery are set out in relevant provisions of 1952 Act. Regional Provident Fund Commissioner is competent to recover the dues as per the order dated 7.7.2015 rendered in the writ petitions and, thus, prayed for dismissal of the review applications on merits and as well as on limitation.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Hooda, for, as per the information received by the applicant-petitioner vide letter dated 7.12.2015 (Annexure A-2), it is evident that the second unit of M/s Punjab Fibres Limited at Noida had already been sold on 9.3.2010. However, this Court, on the basis of the statement made by the learned counsel for respondent No.2, was made to believe that the unit was in existence and, therefore, the interest of the Provident Fund Commissioner was protected.

As regards the merits and de-merits of the matter whether respondent No.2 would be bound by the terms and conditions of the auction and the statement suffered before the DRAT in proceedings under the SARFAESI Act, that matter can only be taken up in case the writ petitions are heard on merits, but for the time being, I am of the view that the statement suffered by the learned counsel for respondent No.2 with regard to the existence of the second unit of M/s Punjab Fibres Limited is factually incorrect. In such circumstances, I deem it appropriate to recall the order dated 7.7.2015. Resultantly, the order is recalled.

For the reasons noticed above, delay in filing the review applications is also condoned. Writ petitions are restored to their original numbers.

List as per the roster.

Review applications stand allowed.

July 03, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**