

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Friday, the Eighth day of March Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE T.S.SIVAGNANAM

and

THE HON`BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMP Nos.5912 & 5915 of 2019

in WA No.1725 of 2014

THE ASSISTANT PROVIDENT FUND [PETITIONER IN BOTH THE
COMMISSIONER (C AND R), PETITIONS]
RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION
NO.37, ROYAPETTAH HIGH ROAD, CHENNAI

Vs

1 THE EMPLOYEES PROVIDENT FUND [RESPONDENTS IN BOTH THE
APPELLATE TRIBUNAL, SCOPE MINAR, PETITIONS]
CORE-II, 4TH FLOOR, LAXMI NAGAR,
DISTRICT CENTRE, LAXMI NAGAR,
NEW DELHI-110092

2 M/S.SOLIDAIRE INDIA LTD.
NEW NO.29, OLD NO.14,
BASEMENT FIRST MAIN ROAD,
GANDHI NAGAR, ADYAR, CHENNAI-600020
REP BY ITS DIRECTOR A.S.RAMANA PRASAD

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

(1)fix an early date of hearing in W.A.No.1725 of 2014(in CMP.5912/2019) and

(2) To grant an interim injunction restraining the Resolution Professional from disturbing the possession of the sealed immovable property of the respondent at Hon`ble NCLT, Chennai (in CMP.5915/2019) respectively pending WA No.1725 of 2014.

Order :These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.V.SUNDARESWARAN, Advocate for the petitioner in both the petitions and of MRS.J.KARTHIGA Advocate for the 2nd respondent in both the petitions the court made the following order:-

(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard Mr.V.Sundareshwaran, learned counsel for the appellant and Mr.R.Dharani Chandra, learned counsel for second respondent, Mr.Ebenezar Inbaraj, learned counsel for Mrs.J.Karthiga, who has been appointed as Interim Resolution Professional by National Company Law Tribunal, Division Bench, Chennai in C.P.No.977 of 2018 is also present.

2. The learned counsel appearing for the appellant submitted that the learned Single Bench was not right in not setting aside order passed by the Tribunal as well as the PF Authorities and reducing the damages as well as the interest to 25%. This according to the learned counsel for the appellant is wholly without jurisdiction. In this regard, it is submitted that every employer is liable to pay interest under the provisions of Section 7 Q of the Employees Provident Fund and Miscellaneous Provisions Act, at 12% per annum for any sum due and payable by him till the date of actual payment and in terms of Section 7 I of the Act, no appeal lies against the same.

3. Therefore, it is a submission that levy of interest under Section 7 Q is an inbuilt mechanism under the said Act and it has to compensate the loss of interest owing to delayed investment of trust monies owing to the default on the part of the employer. Further the learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of Organo Chemical Industries Vs. Union of India [reported in AIR 1979 SC 1803] for the proposition on the damages levied under Section 14B of the Act serves both punitive and for compensatory purposes.

4. The writ appeal has been pending before this Court ever since 2014 and it was on list for hearing only during the year 2018. Even before us, when it came up on the last occasion, the learned counsel for the appellant prayed for interim orders since, Interim Resolution Professional has been appointed by the National Company Law Tribunal in C.P.No.977 of 2018 and proceed before the Tribunal under a time bound proceedings as stipulated under the Insolvency and Bankruptcy Code, 2016. Therefore, it cannot brook any delay. The appellant has also filed a petition in C.M.P.No.5915 of 2019 for grant of order of interim injunction to restrain Resolution Professional from disturbing the possession of sealed immovable property of the respondent till the disposal of this appeal.

5. The learned counsel appearing for the respondent submitted that there are several decisions on the bound which clearly built the stand of the respondent as has been observed by the learned Single Bench in the impugned order. Reliance was also placed on the decision of the Hon'ble Division Bench in the case of KSL Testiles India Pvt. Ltd., Vs. The Presiding Officer Employees Provident Fund Appellate Tribunal and Others in W.A.No.1639 & 1640 of 2011 dated 13.11.2013. The second respondent has filed a counter affidavit in the appeal and seeks to canvas several grounds, apart from resisting the contentions advanced by the appellant and seeking to sustain the order passed by the learned Single Bench.

6. Considering the above submissions and taking note of the fact that the writ appeal has been pending since 2014 and proceedings under the Insolvency and Bankruptcy Code, 2016 has commenced from 26.10.2018, we are of the view that following order will meet the ends of justice and protect the interest of parties. The appellant/organization is permitted to file a claim petition before the Resolution Professional for the entire amount of damages and interest that is including the amount which was waived by the learned Single Bench in W.P.No.16497 of 2011 dated 28.09.2011 which order is impugned before us in this appeal. On such claim petition being filed, the Resolution Professional shall proceed to consider the same for determination of the liability. In doing so, if any payments have been received in the interregnum, the same shall be reckoned.

7. It is made clear that liberty is granted to the appellant without prejudice to the rights of not only to the appellants as well as the respondents to contest the appeal on merits.

8. With the above observations, these petitions stand disposed of permitting the Resolution Professional to proceed further in accordance with law. It is needless to say that the appellant and respondent shall appear before the Resolution Professional and cooperate in the proceedings. The claim petition shall be filed before the Resolution Professional on or before 21.03.2019.

9. List the Writ Appeal on 06.06.2019.

-sd/-

08/03/2019

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

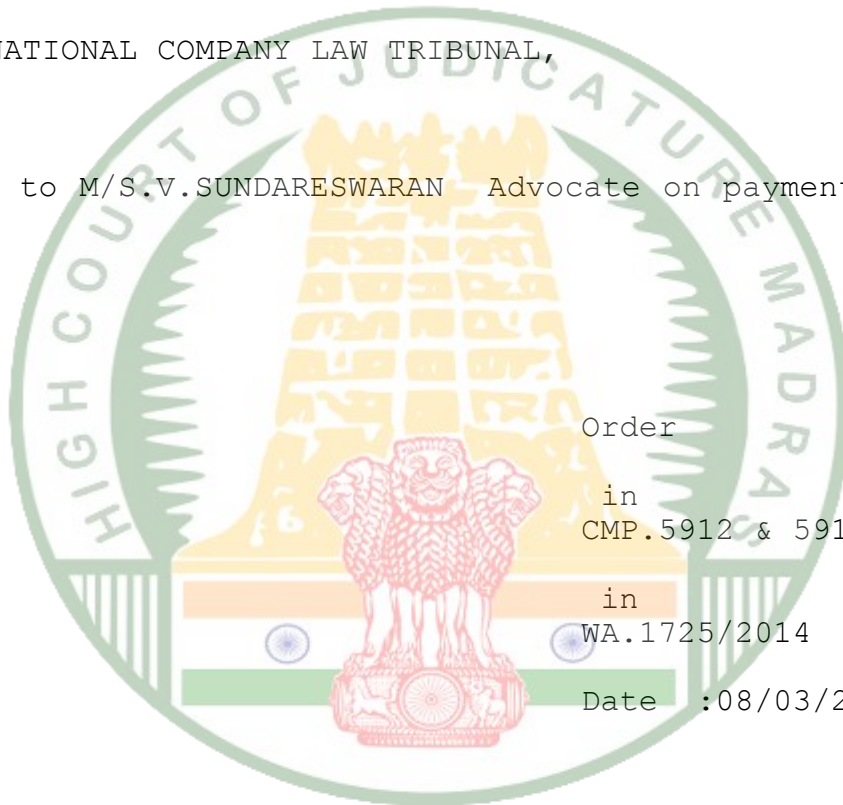
TO

1 THE EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, SCOPE MINAR, CORE-II,
4TH FLOOR, LAXMI NAGAR, DISTRICT CENTRE,
LAXMI NAGAR, NEW DELHI-110092.

2 THE ASSISTANT PROVIDENT FUND
COMMISSIONER (C & R), RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION, NO.37,
ROYAPETTAH HIGH ROAD, CHENNAI.

3 THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI.

C.C. to M/S.V.SUNDARESWARAN Advocate on payment of necessary
charges



Order

in

CMP.5912 & 5915/2019

in

WA.1725/2014

Date : 08/03/2019

From 26.2.2001 the Registry is issuing certified
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VS 12.03.2019 (I.T)

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