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

Date of decision: 16th December, 2020

\+ **W.P.(C) 10465/2020 & CM APPLs. 33112/2020, 33113/2020**

RAJ KUMAR CHANDAK & ORS. ..... Petitioner

Through: Mr. A.S. Anand and Mr. Shubham Bhushan, Advocates. (M: 9810058671)

versus

MUKESH KUMAR AGGARWAL & ANR. ..... Respondents

Through: Mr. S. K. Gupta, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present petition has been filed by the Petitioners challenging the impugned order dated 3rd / 4th October, 2019 passed by the Deputy Labour Commissioner/Authority under the Delhi Shops and Establishment Act, 1954 (hereinafter '*DS&E Act*'). By the impugned order, a lump sum compensation under Section 21(3) of the DS&E Act, has been awarded in favour of the Claimant/Respondent No.1 herein in the following terms:

> *"24. As per compliance of Hon'ble Delhi High Court order upon the judgment in the matter WPC 4748 dated 4/8/20014 para no.21 this Authority consider it a fit case for imposing penalty/compensation under section 21(3) of the Act upon the Respondent to pay additional lump-sum compensation of Rs.21,00,000/- over and above claim amount for defaulting/delaying in making payment.*
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> *25. In view of the above findings, and in exercise*

> *of the power conferred upon this Authority under sub section (3) of section 21 of the Act, all the respondents are jointly and severely directed to deposit in this Court, ordered amount as per above mentioned table at column No-7 in the name of claimant Sh. Mukesh Kumar Agarwal within 30 days of this order, in case of failure to comply with this order, the ordered amount shall be recovered as per provisions of section 21(5) of the Act."*

3. The Petitioners are challenging the said order on the ground that Respondent No.1 was an employee of M/s Skoda (India) Pvt. Ltd. and not of M/s Jain Group of Industries, which the Petitioners are associated with. According to Mr. Anand, ld. counsel for the Petitioners, M/s Jain Group of Industries was a joint venture partner with M/s Skoda India Pvt. Ltd sometime in the past. However, that by itself cannot result in M/s Jain Group of Industries being saddled with the claim by Respondent No.1.

4. Mr. Gupta, ld. counsel appearing for Respondent No.1 however submits that M/s Jain Group of Industries and M/s Skoda (I) Pvt. Ltd. were part of the same Group and in any event, even Mr. Chadha was the Chairman and Managing Director of both companies. Moreover, he submits that provident fund and other statutory dues were also not paid to the Respondent, in respect of which various disputes are pending before Authorities.

5. A perusal of the impugned order shows that despite being given several opportunities, the Petitioners did not produce any witness nor filed any documents in evidence to counter the claim of the employee. The Petitioners herein and M/s Skoda (I) Pvt. Ltd. were represented by the same attorney/authorised representative. However, for reasons best known to them, they chose not to lead any evidence. It is seen that in the absence of any

averments or evidence being led by the Petitioners or by M/s Skoda (I) Pvt. Ltd., the impugned order has been passed under the DS&E Act.

6. The legal issue which is being raised in this petition is that under Section 21(3) of the DS&E Act, no amount beyond Rs.100 can be imposed as compensation. However, considering the fact that there were no averments made on behalf of both organisations which were arrayed as respondents before the Authority, as they chose not to appear, the fresh averments being made in the writ petition could not have been considered by the Authority.

7. In the overall scheme of things, the present matter is one which deserves to be remanded back to the Authority under the DS&E Act, subject to certain conditions being imposed upon the Petitioners. Accordingly, subject to deposit of Rs.7.5 lakhs before the Deputy Labour Commissioner, the Petitioners are permitted to file their defence and lead their evidence in the matter. The amount deposited by the Petitioners shall be kept in a fixed deposit in an interest bearing account. Apart from the said amount, a sum of Rs.50,000/- shall be paid as litigation expenses to Respondent No.1.

8. As part of the said proceedings, the Petitioners would be entitled to raise the issue that they are not related to M/s Skoda India Pvt. Ltd. in any manner whatsoever, and the said issue would also be adjudicated by the Deputy Labour Commissioner, in accordance with law.

9. The Deputy Labour Commissioner shall ensure that the matter is heard expeditiously and is concluded on or before 31st March, 2021.

10. With these observations, the impugned order is set aside for fresh consideration by the Deputy Labour Commissioner. The present petition is allowed in the above terms. All pending applications are disposed of.

11. Copy of this order be communicated to the Authority under the Delhi Shops and Establishment Act, 1954 i.e. the Deputy Labour Commissioner, Employment Exchange Building, Pusa Campus, New Delhi-110012.

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2020
Rahul/A