IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:
The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA NO.17653 of 2019

CAN No.1 of 2020 (Old CAN No.1421 of 2020)

Premier Digital Solutions Pvt. Ltd.

-vs-

Union of India & Ors.

With

WPA NO.517 of 2020

Howrah Mills Co. Ltd.

-vs-

Union of India & Ors.

For the petitioner	:	Mr. Utpal Majumdar, Mr. Pushan Kar, Mr. Souvik Majumdar, Mr. Dwaipayan Ghosh, Ms. Dikshita Chomal
For the P.F. Authorities	:	Mr. S.C. Prasad,
Heard on	:	02.02.2021, 05.02.2021
Judgment on	:	17.03.2021

Ravi Krishan Kapur, J.:

1. Both these petitions raise connected questions of law and fact and were heard together. The grievance of both the petitioners is directed against the recovery proceedings which have been initiated by the respondent Provident Fund authorities.

2. M/s. Howrah Mills Co. Ltd., the petitioner company in WPA No. 517 of 2020, is the owner of a jute mill situated at 135 Foreshore Road Howrah-711102. By an internal arrangement between the petitioners companies i.e. M/s Howrah Mills Company Limited and M/s Premier Digital Solutions Private Ltd. (being the petitioner in WPA No. 17653 of 2019) both the petitioner companies had entered into a private arrangement whereby M/s. Premier Digital Solutions Private Ltd. became responsible for the payment of salary, wages, provident fund dues and other emoluments to all the workers, managers, supervisors, labourers and employees of the jute mill. Such internal arrangement also provides that M/s Premier Digital Solutions Private Ltd. would carry out the entire conversion and manufacturing process of the jute goods in the jute mill.

3. The petitioners assail a notice dated 8 August, 2019 issued under Section 8B of the Act by the respondent Provident Fund authorities. The petitioners also assail the initiation of connected attachment proceedings and criminal proceedings.

4. Significantly, the proceedings initiated by the respondent authorities under Sections 7A, 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") have been concluded and the order of demand under the Act has attained finality. The respondent authorities now invoke inter alia their powers under Section 8B of the Act for recovery of their dues. In response to a demand for payment of their outstanding dues, M/s.

Premier Digital Solutions Private Limited had made a prayer to make such payment in 72 instalments. This prayer for instalments has been rejected by the respondent authorities by the impugned communication dated 8 August, 2019.

5. On behalf of the petitioners it is submitted that in view of the internal arrangement by and between M/s Howrah Mills Company Limited and M/s Premier Digital Solutions Private Ltd., M/s. Premier Digital Solutions Private Ltd. is liable to make the aforesaid payment to the respondent authorities. It is further alleged on behalf of the petitioners that there are approximately 2500 employees whose livelihood depend on the running of the jute mill and on that ground the respondent authorities ought to be directed to take a liberal view of the matter. It is also suggested by both the petitioners that efforts should be made to sell an immovable properties belonging to the petitioner companies in order to liquidate the dues of the respondent authorities. In this connection, the petitioner companies also offer an apartment located at premises No.493/C/B, G.T. Road, District-Howrah-711102 for sale to liquidate the dues of the respondent authorities.

6. On behalf of the respondent authorities, it is submitted that both these petitions are ill-motivated and have been filed only to procrastinate the recovery process initiated by the respondent Provident Fund authorities. The aggregate dues presently payable towards the outstanding provident fund dues are in excess of Rs.6 crores. It is further submitted by the respondent authorities that the

immovable property offered by the companies is not worth selling and is in any event encumbered. It is further submitted on behalf of the petitioner companies that both the petitions are lacking in bonafides and the petitioners have no intention to make payment of their dues.

7. Significantly, there is also an application being CAN No.1 of 2020 (Old CAN No.1421 of 2020) in WPA No.17653 of 2019 filed by Vivekananda Construction Private Limited for impleadment to the writ petitions. It is alleged in this application that M/s. Howrah Mills Company Ltd. has no right, title and interest in the immovable property which they offer to sell and their proposal to sell is only to defeat the lawful rights of the applicant.

8. I have considered the submissions made on behalf of the parties. At the outset, it is important to set out Section 8B of the Act which inter alia provides as follows:

> **8B. Issue of certificate to the Recovery Officer**.—
> (1) Where any amount is in arrear under section 8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:
> (a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;
> (b) arrest of the employer and his detention in prison;
> (c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:
> Provided that the attachment and sale of any

> property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.
> (2) The authorised officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

9. Indisputably, the dues of both the petitioner companies towards the respondent Provident Fund authorities are in excess of Rs.6 crores. The adjudication of such proceedings have attained finality under the Act. The respondent authorities seek to recover such money from both the petitioner companies and hence have issued the impugned notice and have also taken steps for recovery of their dues. It is evident from a plain reading of Section 8B of the Act that the respondent authorities have ample and wide powers to recover their dues. The offer made to Court that this Court should assist in selling the property of the petitioner companies to liquidate their dues towards the respondent authorities is misconceived and absurd. It is no role of the Writ Court to circumvent the statutory mechanism contemplated under the Act. Such an exercise is beyond the scope and ambit of the Writ Court. I am also of the view that both the petitions are lacking in bonafides. I find no reason to interfere with any of the actions initiated by the respondent authorities against the petitioner companies. I am of the view that the petitioner companies have undertaken a kite flying exercise simply to procrastinate the recovery proceedings initiated by

the respondent authorities on false and frivolous pretexts. There is not an iota of a legal right which the petitioners have been able to demonstrate warranting any favourable exercise of discretion in their favour. I also find that there are no grounds whatsoever justifying any interference with the impugned actions initiated by the respondent Provident Fund authorities for recovery of their dues. The petitions are unmeritorious and have been filed with the sole intent of delaying payment of the dues of the respondent authorities.

10. For the foregoing reasons, both the writ petitions are dismissed with costs assessed of Rs.5 lacs each payable by the respective petitioner companies to the respondent Provident Fund authorities within a month from date. CAN No.1 of 2020 (Old CAN No.1421 of 2020) in WPA No.17653 of 2019 also stands dismissed as infructuous. Interim orders, if any, stand vacated. The respondent authorities are directed to act in accordance with law and forthwith take all necessary steps for recovery of their dues.

11. Urgent certified photostat copies of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)