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24.04.2023
Ct. No. 32
rrc

MAT 649 of 2023
with
IA No. CAN 1 of 2023

(Gajmukh Vinimay Pvt. Ltd. & Anr. Vs. Employees' State Insurance Corporation & Ors.)

Mr. Jaydip Kar, Ld. Sr. Adv.
Mr. D. N. Sharma
Mr. Anumoy Basu
..... For the appellants

Mr. Tilak Mitra
...... For the ESIC

Mr. Nilay Sen Gupta
Mr. Sujit Banerjee
Mr. Abhishek Jain
...... For the respondent no. 10

Mr. Ranjit Singh
Ms. Mounita Chandra
Ms. Tutul Das
...... For the respondent no. 12

The present appeal has been preferred challenging an order dated 13th March, 2023 passed in a writ petition being WPA 5802 of 2023.

Mr. Kar, learned senior advocate appearing for the appellants submits that even after arriving at a *prima facie* finding that a cash credit account cannot be attached for realization of statutory dues, the learned Judge directed the appellants to deposit a sum of Rs.2 crores with the learned Registrar General of this Court for interim stay over the order of attachment dated 7th February, 2023.

Drawing our attention to the provisions of Section 93A of the Employees' State Insurance Act, 1948, Mr. Kar submits that the liability of a transferee shall be limited to the value of the assets obtained by him by such transfer. The appellant no. 1 is a mere licensee and no assets have been obtained by the appellants and as such, they cannot be made liable for payment of previous dues. In support of the arguments reliance has been placed upon a judgment delivered in the case of *Vitthal Sahakari Sakhar Karkhana, Aurangabad and another Vs. Assistant Provident Fund Commissioner, Aurangabad and others* reported in *2007 SCC Online Bom 1105*.

Mr. Mitra, learned advocate appearing for the ESI Corporation submits that the license agreement, as referred to, was not annexed to the writ petition. A letter dated 16th April, 2021 issued by the authorized signatory of the appellant no. 1 was also not disclosed. In the said letter, it was categorically stated that M/s. Jai Jute & Industries Ltd. (formerly known as M/s. Nuddea Mills Company Ltd.) has been taken over by the appellant no. 1 in the month of August, 2020 and a MOU was signed between the companies to the effect that all the statutory liabilities of the employees of the former company will be maintained by the present appellants. Let the said letter, as produced, be kept on record.

He further submits that the respondent no.10 has not yet made payment of an amount of Rs. 12.14 crores in 28 monthly instalments in terms of the direction passed by BIFR.

Mr. Sen Gupta, learned advocate appearing for the respondent no. 10 reiterates the arguments as advanced on behalf of the said respondent before the learned Judge.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that by the order impugned the learned Judge directed the appellants to deposit an amount of Rs.2 crores with the learned Registrar General observing, *inter alia,* that the appellants are, in fact, managing and running the mill and that as such they should be directed to secure at least a portion of the dues.

The order, in our opinion, does not suffer from any infirmity. The appellants have been asked to secure a portion of the dues since they are managing and running the mill. Affidavits have been called for and liberty has been granted to mention the matter for final hearing after expiry of the period for exchange of affidavits. The discretion exercised by the learned Judge stands supported with reasons and as such no interference is called for in the present appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**