*Form No. J (2)*

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

**The Hon'ble Justice Debangsu Basak**
And
**The Hon'ble Justice Md. Shabbar Rashidi**

**RVW/250/2024**
**With**
**IA NO: CAN/1/2024**
**BRIDGE & ROOF COMPANY (INDIA) LTD. AND ANR**
**VS**
**MUKUL KUMAR SENGUPTA AND ANR.**
**In**
**FMA/664/2024**
**MUKUL KUMAR SENGUPTA**
**VS**
**UNION OF INDIA AND ORS.**
**With**
**MAT/1858/2024**
**WITH**
**IA NO: CAN/1/2024, CAN/2/2024**
**BRIDGE AND ROOF COMPANY (INDIA) LTD. AND ANR**
**VS**
**MUKUL KUMAR SENGUPTA AND ANR.**

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| For the BRIDGE AND ROOF COMPANY INDIA LTD. | : | Mr. Pratik Dhar, sr. adv.<br>Mr. Shiv Shankar Banerjee,<br>Ms. Anupa Banerjee,<br>Ms. Arijita Ghosh,<br>Mr. Nilarnab Paul, Advocates |
| For the Respondents | : | Mr. Susanta Pal,<br>Mr. Ananda Dulal Sarkar, Advocates |

Heard & Judgment on : February 14, 2025

**DEBANGSU BASAK, J.**

**1.** Respondent no. 2, (Bridge & Roof Company (India) Limited) in the appeal seeks review of the judgment and order dated July 29, 2024 passed in FMA 664 of 2024.

**2.** There is an appeal being MAT 1858 of 2024 filed at the behest of the Bridge & Roof Company (India) Limited (hereinafter referred to as B & R for the sake of convenience). CAN 1 of 2024 in MAT 1858 of 2024 is an application seeking condonation of delay in making and filing the appeal. For the ends of justice, causes shown in the application for condonation of delay are accepted as sufficient. CAN 1 of 2024 in MAT 1858 of 2024 is allowed.

**3.** By consent of the parties both the appeal and the memorandum of review are taken up for final hearing.

**4.** Learned senior advocate appearing for the B & R submits that, the judgment and order dated July 29, 2024 passed in FMA 664 of 2024 is required to be reviewed. He submits that, there was a pay revision for the employees of B & R. There was also an enhancement of the quantum of gratuity to the employees. He refers to an office memorandum dated July 10, 2018 in this regard. He submits that payment of gratuity was subject to the affordability of the B & R.

**5.** Learned senior advocate appearing for the B & R submits that, the enhancement of gratuity is subject to affordability for employees superannuated prior to March, 2019. He submits that although, the writ petitioner falls within the category of employees entitled to claim enhanced gratuity in terms of the clarification dated July 10, 2018, none the less, the writ petitioner is not entitled thereto since B & R cannot afforded the same. In support of such contention, he submits that, B & R is undertaking a disinvestment process where, B & R did not add the enhanced quantum of gratuity in terms of the clarification dated July 10, 2018 as a liability of B & R. Again, in support of such contention he draws the attention of the Court to a minutes of Board meeting of B & R.

**6.** Learned senior advocate appearing for the B & R submits that the appeal is against the order dated April 3, 2024 passed in WP 15056(W) of 2019. He submits that, the learned single Judge held that B & R was in a position to afford the enhanced payment of gratuity. Such finding is premised upon payment of the revised pay. He submits that the same is not a criterion to assess whether or not, B & R was in a position to afford payment of the enhanced gratuity.

**7.** Learned senior advocate appearing for the B & R submits that, by the judgment and order dated July 29, 2024 passed in appeal, interest was awarded from a date when, the liability to pay the enhanced rate did not arise. Liability arose subsequently. That apart, he submits that, no interest should be awarded at all since there was no delay on the part of the B & R in paying the retiral benefits including the gratuity that the writ petitioner was entitled to.

**8.** Writ petitioner is represented.

**9.** Writ petitioner approached the writ Court for payment of his retiral benefits by way of WP 15056(W) of 2019. Writ petitioner superannuated on January 31, 2017.

**10.** Pay revision of employees of B & R took place subsequent to superannuation of the writ petitioner. Enhancement of payment of gratuity took place subsequent to his superannuation.

**11.** It is an admitted position that, writ petitioner received all retiral benefits save and expect the enhanced portion of the gratuity.

**12.** Enhanced portion of the gratuity, if at all, received by the writ petitioner is governed by the office memorandum dated July 10, 2018.

**13.** Office memorandum dated July 10, 2108 classified employees of B & R into two categories for the purpose of receipt of enhanced gratuity. So far as employees superannuating prior to March 2019, enhanced gratuity would be paid subject to affordability of B & R. Employees superannuating subsequent to March 20, 2019 is mandatorily payable.

**14.** Learned single Judge construed the office Memorandum and the issue of affordability of B & R and arrived at a finding that, since, B & R was in a position to pay its employees in terms of pay revision, B & R could also afford to pay enhanced gratuity in terms of office memorandum dated July 10, 2018.

**15.** We inquired of B & R as to the financial outlay should the enhanced gratuity is required to be paid. The response is that, there are about 55 employees of the category who are entitled to receive the enhanced gratuity.

**16.** The gratuity enhanced is a sum of Rs.10 lakhs for each of such 55 employees. Therefore, taking 55 employees, the financial outlay would be Rs.5.50 crores for B & R.

**17.** B & R is undergoing disinvestment process without a investor being identified as on date, as informed to the Court.

**18.** In the disinvestment process apparently the Board of Director did not factor in the financial outlay of Rs.5.50 crores on account of payment of enhanced gratuity.

**19.** In a disinvestment process, an investor no doubt would undertake a due diligence. Should the Court direct payment of the enhanced gratuity in terms of this memorandum dated July 10, 2018, no doubt, Board of Director of B & R will inform the prospective investor of such liability.

**20.** Issue is whether or not, B & R is in a position to afford the enhanced gratuity.

**21.** As noted above, the office memorandum dated July 10, 2018 seeks to classify payment of gratuity to its employees in two separate categories. Employees superannuating prior to March, 2018 will be paid enhanced gratuity if it is afforded. Employees superannuated subsequent to March, 2018 will be paid mandatorily.

**22.** For employees superannuating subsequent to March 2018, B & R is in a position to afford to enhanced gratuity. It is specious plea that B & R is not in a position to pay enhanced gratuity to its employees who superannuated prior to March, 2018. As noted above, the number of employees is 55. Therefore, we find no infirmity in the judgment of learned single Judge holding that B & R is in a position to afford payment of gratuity in terms of the office memorandum dated July 10, 2018.

**23.** Consequently, we find no merit in the appeal being MAT/1858/2024 and the same is **dismissed** along with application for stay.

**24.** So far as review is concerned, interest component awarded is 10% effective from the date following the date of the superannuation of the writ petitioner.

**25.** Office memorandum dated July 10, 2018 increases the gratuity with effect of such date.

**26.** Therefore, the date of commencement of interest in the judgement and order dated July 29, 2024 is modified to direct payment of interest at the rate of 10% from July 10, 2018 till payment.

**27.** One of the contentions of B & R is the imposition of interest in the first place. We are unable to accept such contention on the part B & R since the relationship between B & R and the writ petitioner was one of employer and employee. Payment of Gratuity Act contemplates payment of interests for delayed payment of gratuity. Rate of interest imposed is after taking into consideration the commercial rate of interest of nationalised bank as also rate of interest paid by nationalised Bank with regard to the fixed deposit.

**28.** In such circumstances, we are not in a position to waive payment of interest at all. We, however, modify the date of commencement of payment of interest to July 10, 2018.

**29.** RVW/250/2024 in FMA/664/2024 along with connected application are **disposed of** accordingly.

**(Debangsu Basak, J.)**

**30.** I agree.

**(Md. Shabbar Rashidi, J.)**

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