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

% ***Date of Decision: 23.05.2025***

\+ **W.P.(C) 429/2023 and CM APPL.1706/2023**

SAHIL ARORA .....Petitioner

Through: Mr. Ashim Vachher, Sr. Advocate along with Mr. Surya Kiran Singh and Mr. Kunal Lakra, Advocates.

versus

COMMISSIONER OF EXCISE, ENTT. AND LUXURY GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI AND ORS. .....Respondents

Through: Ms. Avni Singh, Panel Counsel for GNCTD along with Mr. Gourav Mundra, Advocate along with Mr. Rohan Kumar, Senior Asst., Excise Department.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. By way of the present petition, the petitioner seeks the following reliefs:

> *a) Issue of a writ of Certiorari or any other appropriate writ, or writs in the nature of order or directions seeking quashing of Recovery Certificate Dated 04.10.2022, F .No.Zone-30/1-7Z/EX./IMFL/2021-22/3443-44/4117, as issued by the respondent authority against the Petitioner seeking recovery of an amount amounting to Rs. 9,82, 88,771 /- (Rupees Nine Crore Eighty Two Lakh Eighty Eight Thousand Seven hundred and seventy one only) and all other consequential proceedings including but not restricted to Writ of Demand dated 09.12.2022 and 02.01.2023 by the office of Tehsildar, Wazirabad, Gurugram in terms of the above mentioned recovery certificate. And,*
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> *b) Quash the erroneous Writ of Demand dated 09.12.2022 and*

02.01.2023 issued by Respondent No.3 u/s 67 of Punjab Land Revenue Act 1887 whereby the Petitioner herein has been made personally liable for the liabilities of the LLP. Act. And,

c) Quash the notice dated 15.12.2022 issued by the Respondent No.2 whereby the petitioner was directed to personally appear on 22.12.2022 before the authority and pay the alleged liability arising out of the LLP. And, Issue appropriate directions granting protection to the Petitioner against any further coercive action by the Respondent authorities against his personal assets. And,

d) Direct writ of mandamus directing the respondent No.3 to not affect any recovery from petitioner until stock seized by them on 16.07.2022 have been auctioned and the auction proceeds be adjusted towards the outstanding license fee.

e) Pass such order or orders as may be deemed fit and proper in the facts and circumstances of the present case."

2. The primary grievance of the petitioner in the present petition emanates from a Recovery Certificate dated 04.10.2022 bearing no. F.No.Zone-30/l-7Z/EX./IMFL/2021-22/3443-44/4117 issued by the respondent no.1/ the Commissioner of Excise Entt. & Luxury, Tax Department, Government of NCT of Delhi and consequential proceedings thereof. In terms of the Recovery Certificate, the petitioner was directed to pay an amount of Rs.9,82,88,771/- on account of outstanding license fee for the period of July 2022.

3. The petitioner is a designated partner/authorised signatory of a Limited Liability Partnership name and styled as M/s Popular Spirits LLP (hereinafter referred as '*The LLP*'). The LLP was constituted by way of an agreement dated 08.12.2017 entered and executed 'by and between' M/s Buddy (Punjab) Bottlers Private Limited and M/s Aralias Distribution Private Limited. Thereinafter, the partnership of the LLP was restructured by way of the following supplementary agreements:

i. First Supplementary Agreement dated 30.06.2018
ii. Second Supplementary Agreement dated 19.07.2021
iii. Third Supplementary Agreement dated 20.07.2021
iv. Fourth Supplementary Agreement dated 20.07.2021
v. Fifth Supplementary Agreement dated 23.11.2021

Presently, LLP consists of three partners and the petitioner and the respondent no.4 (who joined as a partner *vide* fifth supplementary agreement and is the majority shareholder with 45% shareholding) are the "designated partners".

4. The present petition has been filed in backdrop of a Letter of Acceptance dated 09.08.2021, in terms of which, the LLP was granted 'L-7Z zonal retail license for zone-30', (as demarcated and categorized under the erstwhile Delhi Excise Policy 2021-2022) by the respondent no.1 for operating 22 liquor vends in Delhi. The said license was issued in favour of the LLP on 18.08.2021 with a validity upto 31.03.2021.

5. However, subsequently, on account of internal dispute/s amongst the partners of the LLP, the petitioner in his capacity of "designated partner" of the LLP, addressed a letter dated 12.07.2022 to the respondent no.1 seeking immediate surrender of L-7Z license for zone 30. The petitioner further requested for closure of the online sale purchase portal in light of such surrender.

6. It is averred in the present petition that acting expediently upon the receipt of the aforementioned letter, the respondent no.1 without issuing any further directions for any outstanding payment in the nature of penalty, due license fees, etc. proceeded with effectuating such surrender process and as

requested, locked/blocked the online sale portal on 15.07.2022. The respondent no.1 also sealed all the liquor vends containing liquor stock of the LLP on 16.07.2022.

7. Subsequently, a notification dated 10.08.2022 came to be issued by the respondent no.1, whereby, surrendered licensees were granted an opportunity to transfer their left-over/unsold stock lying in the sealed premises to an active licensee. Accordingly, an application was preferred before the respondent no.1 for transferring the unsold/left over stock owned by the LLP to an active licensee i.e., M/s Ace Finance Co. of Zone 22.

8. *Vide* email dated 14.08.2022, respondent no.1 directed the petitioner to obtain a No Objection Certificate (NOC) from the active licensee i.e. M/s Ace Finance Co. of Zone 22 and also imposed a pre-condition as regards deposit of pending license fee for the remaining period of the month of July 2022.

9. It is submitted that the aforesaid pre-condition was imposed upon the LLP with any prior intimation. It is stated that the respondent no.1 was well aware that the petitioner on behalf of the LLP had already surrendered the license, in furtherance of which the premises were sealed.

10. It is further submitted that subsequently, several representations and communications were made to the respondent no.1, however, instead of resolving the said issue, respondent no.1 *vide* an email dated 19.08.2022 informed the petitioner that the outstanding license fee for the month of July, 2022 is to the tune of Rs. 9,82,22,771/- after adjustment of the monthly license fee and deduction of already deposited security amount.

11. It is the case of the petitioner that since the concerned liquor vends and sale portal were sealed and closed on 15.07.2022 and 16.07.2022 on

account of the petitioner surrendering the liquor license, it is evident that the petitioner was not operating any liquor vend for the pending/remaining duration of July 2022. Consequently, the license fee for the month of July 2022 should have been collected on pro-rata basis. In this regard reliance is placed on the order dated 04.10.2021 in W.P. (C) No. 11319/2021.

12. Apart from the aforesaid, the primary contention of the petitioner is that under the framework of Limited Liability Partnership Act, 2008 (hereinafter referred as '*the LLP Act*') it is not permissible to recover any amounts from the partners of the LLP. It is submitted that the same flows from Section 27(3) & (4) and Section 28 of the LLP Act, which contemplates that a partner shall not be personally liable for an obligation assumed by the LLP.

13. Learned counsel for the petitioner contends that pursuant to the Recovery Certificate dated 04.10.2022, recourse was sought to be taken against the personal properties for recovery of the amounts allegedly due by the concerned LLP to the concerned respondent.

14. *Vide* an affidavit dated 23.01.2023, it has been brought out that the petitioner herein, is also not the owner/title holder of property bearing no. D-240, Third Floor, Defence Colony, New Delhi – 110024. In the said affidavit it has been stated that one Mr. Amit Arora is the owner/title holder of *D-240, Third Floor, Defence Colony, New Delhi-110024* since 21.08.2014 and one M/s Diviniti Hospitality Pvt. Ltd is the owner/title owner of and *S-22/5, 2nd Floor, DLF Phase-3, Gurgaon, Haryana-122001.*

15. In fact, W.P.(C) 3482/2023 was filed by Mr. Amit Arora, whereby, *vide* judgment dated 06.08.2024, it has been held as under:

> *"6. On the basis of the submissions advanced, it emerges that as on the*

date of issuance of the warrant of attachment, there was no material on record to indicate that the Subject Property belonged to Popular Spirits LLP or to any of its partners. This discrepancy raises substantial questions about the due diligence conducted prior to initiating enforcement actions. Moreover, on the basis of the documents shown, the Petitioner is evidently the owner of the Subject Property. Mr. Vaccher has stated that the original title documents of the Subject Property are mortgaged with Standard Chartered Bank, DLF Cyber City Branch, Gurgaon.

7. Despite the compelling evidence favouring the Petitioner, the Respondents argue that the attachment order is legally tenable, heavily citing the Petitioner's alleged role as a de facto owner of Popular Spirits LLP and the use of the Subject Property as its correspondence address. However, this assertion is unsustainable for several reasons. Firstly, the mere fact that the Subject Property was listed as a correspondence address does not, in itself, confer ownership of the property on Popular Sp irits LLP or justify its attachment under the LLP's liabilities. The Petitioner has been conclusively proven to not be a partner of the LLP, nor is there any credible evidence suggesting otherwise. This distinction is critical as Section 27 of the Limited Liability Partnership Act clearly stipulates that liabilities of an LLP are solely that of the partnership and do not extend to third parties who are not legally bound as partners. Furthermore, the assertion that the Petitioner acted as a de facto owner lacks substantiation and is not supported by any concrete legal or documentary evidence. Such a claim requires a thorough and independent assessment which has not been conducted. The Respondents' reliance on an unsubstantiated claim to justify the drastic measure of attaching and sealing private property is not only legally untenable but also constitutes a serious procedural lapse. The impugned actions cannot be justified based on the Petitioner's alleged indirect association with the LLP.

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9. In light of the foregoing discussion and analysis, the Court finds that the impugned action of attachment taken against the Subject Property owned by the Petitioner, who is not a partner of Popular Spirits LLP, cannot be sustained in law. Accordingly, the following directions are issued:

9.1. The warrant of attachment dated 25th January, 2023 stands quashed.

9.2. As observed above, it is clarified that the Court has not *directing quashing of any other action taken against the Subject Property by any other authority or institution."*

16. In the present proceedings, learned counsel for the petitioner confines himself to contending that attachment of personal properties / assets of a partner of an LLP is not permissible under the framework of LLP Act.

17. This Court finds merit in the aforesaid contention of learned counsel for the petitioner. The same is borne out from a conjoint reading of Section 27 and 28 of the LLP Act. The said provisions read as under: -

> *"27. Extent of liability of limited liability partnership.............................*
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> *(3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.*
>
> *(4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.*
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> *28. Extent of liability of partner.—*
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> *(1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of Section 27 solely by reason of being a partner of the limited liability partnership.*
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> *(2) The provisions of sub-section (3) of Section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership."*

18. It is noticed that the said issue has been considered by a Division Bench this Court in LPA No. 92/2023, in the context of the petitioner's challenge to an order dated 13.01.2023, passed in the present proceedings, to the extent that it directed the petitioner to deposit Rs. 1 crore in his personal capacity. The order dated 13.01.2023, *inter alia*, directs as under:

> *"9. The above interim order is granted, subject to deposit of Rs.1 crore with the Excise Department by the Petitioner, within four weeks. The said amount shall be deposited either by the Petitioner, in his personal*

capacity, or from the account of M/s. Popular Spirits LLP, which shall be accepted by the Excise Department, without prejudice.”

19. A Division Bench of this Court *vide* order/judgment dated 14.02.2023, set aside the aforesaid directions. The relevant portion of the order passed by the Division Bench in LPA No. 92/2023 reads as under:-

> *“8. Section 29 of the Delhi Excise Act gives a lien to the Excise Department for the recovery of duty and other levies from the defaulter. It reads as under:-*
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> *"29. Recovery of duty and other levies and lien on the property of defaulter:*
>
> *(1) All excise revenue, payable to the Government under this Act, may be recovered from the person liable to pay the same or his legal successors or from his surety or his agent as if they were the arrears of land revenue.*
>
> *(2) In the event of default in payment of excise revenue or otherwise, by any person licensed under this Act, his manufactory, warehouse, shop or premises and all fittings, apparatus, stocks of liquor or material for the manufacture of the same, held therein shall be liable to be attached towards any claim for excise revenue or in respect of any loss incurred by the Government through such default and be sold to satisfy such claim which shall be the first charge upon the proceeds of such sale.*
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> *(3) Where duty due is not levied or not paid or short-levied or short-paid for erroneously refunded,-*
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> > *(a) the Assistant Commissioner may, within four years from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*
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> *Explanation 1: Where the service of the notice is stayed by an order of the court, the period of such stay shall be excluded in computing the aforesaid period of four years.*
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> *Explanation II: For the purposes of this clause "relevant date" means-*
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> *(i) in the case of intoxicants on which duty has not been levied or paid or has been short-levied short-paid, the date on which the duty is to be paid*

under this Act or the rules made thereunder,

(ii) in a case where duty is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof.

(iii) in the case of intoxicants on which duty has been erroneously refunded, the date of such refund;

> *(b) the Assistant Commissioner shall, after considering the representation, if any, made by the person on whom notice is served under clause (a), determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined."*

9. When there is a statutory protection apropos to the personal assets of a partner in a limited liability, surely the Excise Department cannot go beyond the assets of the defaulter i.e. the LLP. In this case, the defaulter's assets have been limited by the partnership's assets. Therefore, for a partner of the LLP to be directed to deposit an amount of Rs.1 crore from his personal assets would not be warranted.

10. At this stage, the learned counsel for the respondent submits that the appellant has already deposed by way of an affidavit dated 23.01.2023 that neither he nor the defaulting licencee are the owners of the aforesaid Gurgaon property. Indeed, the premises is leased out to the LLP. (PDF 360 para 7).

11. Be that as it may, insofar as the liability of the limited liability partnership would not extend to the personal assets of its partners, the directions to one of the partners to deposit Rs. 1 crore from his personal assets is unwarranted and accordingly the said portion of the impugned order is hereby set-aside. It will be open to the LLP to file its list of assets with the Excise Department for the latter to take action as per law. The impugned order is modified to this extent."

20. In terms of the above exposition of the Division Bench, it is not permissible for the concerned authorities to take recourse to recovery proceedings against any property owned by the petitioner in his personal capacity, which has nothing to do with the LLP, and dehors Section 27 and 28 of the LLP Act, 2008.

21. As such, the recovery proceedings against the petitioner *qua* liability of the concerned LLP in which the petitioner was a designated partner, is untenable and unsustainable.

22. Consequently, the recovery certificate dated 04.10.2022 to the extent it seeks to recover the amounts from the petitioner personally and/or by taking recourse to the petitioner's personal property, is set aside.

23. It is, however, made clear that the concerned authorities are at liberty to take appropriate action against the LLP in terms of the extant provisions and also take recourse to any asset owned by the LLP.

24. The authorities shall also be entitled to take appropriate measures against the partners of the said LLP, within the bounds of LLP Act, and other applicable laws.

25. The present petition is disposed of in the above terms. The pending application also stands disposed of.

SACHIN DATTA, J

MAY 23, 2025/*at/sl*