IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 7751 of 2026

M/s. Gajmukh Vinimay Pvt. Ltd.
Vs
Regional Provident Fund Commissioner & Ors.

For the Petitioner	:	Mr. Soumya Majumder, Ld. Sr. Advocate, Mr. S. K. Singh, Mr. Sujit Sharma, Mr. Ravi Kr. Dubey, Mr. Saket R. Singh.
For the P. F. Authority	:	Ms. Aparna Banerjee.
Judgment reserved on	:	02.09.2026
Judgment delivered on	:	05.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for setting aside of an order dated 19th March, 2026, the show-cause noticed dated 20th March, 2026 and the communication dated 23rd March, 2026, issued by the respondent nos. 1 and 2 herein.

2. The petitioner's case is that the respondent no. 3 is a company who has permitted the petitioner to operate one of its jute mill namely Nuddea Jute Mill at Barackpore, initially under Leave and License

Agreement dated 13th November, 2020, and subsequently under a registered Deed of Lease executed on 1st April, 2023.

3. **The petitioner company does not have any functional integrality with the respondent no. 3.** The operational activities at the factory resumed with effect from February 2021. All dues under the said Act, 1952 payable by the petitioner in relation to the operational period at the factory have been duly paid since then. **There is no allegation or proceeding against the petitioner company by the authorities under the said Act of 1952 since after the petitioner entering into existence.**

4. On 01.03.2023 the petitioner company received a recovery notice dated 20th February, 2023 purporting to be a show cause notice for issuance of warrant of arrest to one of the named directors of the company for allegedly defaulting payment of an amount of Rs.60,25,96,347/- (Rupees Sixty Crores Twenty-Five Lacs Ninety-Six Thousand Three Hundred and Forty-Seven only) under Sections 7A, 7Q and 14B of the said Act of 1952. Subsequently on or about 24th April, 2023. A Police Officer from the Naihati Police Station informed the petitioner about the warrant of arrest having been issued against one of the directors of the petitioner company.

5. The petitioner and one of its directors then filed a writ petition before the High Court being WPA 10788 of 2023.

6. The writ petition was taken up for consideration and the said show-cause notice was not interfered with by the judgment and order dated

23rd August, 2023, **since the said show-cause notice was found to have not caused any actual sufferance to the Noticee**.

7. On hearing the learned counsels for the parties and on perusal of the materials on record, **it appears that the respondent authorities are proceeding against the petitioner for the outstanding dues for which, admittedly it is the respondent no. 3 who is liable and the actual claim is also against the said respondent no. 3.**

8. Mr. Banerjee, learned counsel for the respondent/PF Authority submits that the petitioners are now running the mill on behalf of the respondent no. 3 and as such, are liable for the outstanding dues. The notice to show-cause has been issued for the said reason.

9. Mr. Majumder, learned senior counsel appearing for the petitioner, on the other hand, on placing the show-cause notice dated 19.03.2026, submits that the respondent no. 2 has held as follows:-

> *"Whereas,* ***M/s. Jai Jute & Industries Ltd. defaulted in payment of PF and allied dues amounting to Rs.60,25,96,347*** *(as detailed in Annexure A) for which proceedings was initiated against show cause notice as to why a warrant of arrest should not be issued for arrest and detention in prison."*
>
> *And Whereas, as per point no.(h) of the* ***agreement*** *deed executed on 13-11-2020 in between M/s Jai Jute & Industries Ltd. and Gajmukh Vinimay Pvt. Ltd., it is seen that* ***no transfer of property*** *has taken place and Gajmukh Vinimay Pvt. Ltd. has been* ***allowed to run the Jute Mill.*** *It is mentioned in the agreement that "****the license*** *is only for the purpose*

> *of enabling the uses of plant, machineries, utilities, facilities, electrical installation, storage godowns, warehouse, offices, staff and labours quarters and other assets and infrastructure and establishments pertaining to production of jute goods and products at the jute mill area (defined in enclosure B1 of MOU).* ***This agreement should not be construed to provide to the licensees any tenancy rights, lease, ownership rights or any such claim over the assets and properties of the licensor****.*
>
> *In view of the above, it is seen that M/s Gajmukh Vinimay Pvt. Ltd. is* ***an agent*** *of M/s Jai Jute & Industries Ltd. it appears that the whole arrangement has been made just to avoid payment of statutory dues."*

10. The said authority then proceeded to rely upon the definition of the word 'employer' under Section 2(e) of the EPF and MP Act of 1952 and held that as such, being "an agent", comes within the definition 'employer' being the respondent no. 3 herein and thus directed the petitioner to pay the outstanding dues.

11. Ms. Banerjee, learned counsel appearing for the respondents/RPF has also argued on the same lines.

12. It appears that the show-cause notice as to why warrant of arrest should not be issued is dated 20.03.2026 and the said show-cause notice has been issued against the Director of the petitioner company. But **no person has been named in the said notice,** which again is prima facie erroneous, considering that there may be more than one directors.

13. Mr. Majumder further submits that as warrant of arrest cannot be executed against a company, the person in respect of whom the warrant of arrest is to be issued, has to be specifically named. It is thus stated that as such the said notice is also bad in law.

14. Admittedly, the respondent no. 3 is the defaulter in payment of the outstanding dues and not the petitioner herein.

15. The outstanding dues are since 1988. The license in respect of the mill was executed in favour of the petitioner in the year 2020-23.

16. It thus prima facie appears, that **the respondent authorities without exhausting their remedy against the respondent no. 3 by way of attachment or otherwise, have proceeded against the petitioner herein, in spite of the respondent authorities themselves admitting that the petitioner/ establishment is not the defaulter in payment of the Provident Fund dues in this case.**

17. Section 8B of the EPF Act lays down 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."*

18. Mr. Majumder, has also relied upon Sections 182,188,218 and 230 of the Indian Contract Act and submits that the respondent authorities cannot proceed against an agent because there is a significant distinction between a principal and an agent in respect of liability.

19. **In this case**, it is the contention of the petitioner that the outstanding dues are of the respondent no. 3 and the authorities **without pursuing/exhausting their remedy against the respondent no. 3 are illegally proceeding against the petitioner herein.**

20. Admittedly, as per the show-cause notice issued by the respondent no. 2, it appears that the respondent authority has stated that **no assets have been transferred in favour of the petitioner herein**, and the principle of law being that a person is responsible/liable only to the extent of the assets, which comes into the hands of such person, the respondent authority cannot proceed against the petitioner beyond that and also not before exhausting it's remedy against the actual defaulter.

21. **In the present case,** it is submitted that the petitioner admittedly as licensee/agent is running the mill which belongs to the respondent no. 3 and, as such, if any amount is due from the respondent no. 3, the petitioner is prima facie liable **only to the extent which is due from**

the petitioner to the respondent no. 3 and the P.F. Authorities can claim only to that extent and as such prima facie cannot take any other coercive action against the petitioner herein.

22. Parties herein have filed their respective written notes and the Provident Fund Authority has filed report in the form of an affidavit. It appears from the said report that the respondent/P. F. Authority's case is that the Jute Mill, namely Nuddea Jute Mill presently run by the petitioner was earlier run by M/s. Nuddea Mills Co. Ltd. since 01st November, 1952 (effective date of grant of exemption). Later on M/s. Jai Jute Industries, the respondent no. 3 took over the Jute Mill in the year 2005 from M/s. Nuddea Mills Co. Ltd. The said Jute Mill was covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Provident Fund Code No. allotted to it was WB/36 & 47. The said Jute Mill had been granted exemption under Section 17(1)(a) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 by the Appropriate Government (Government of India) vide Notification No. E-102(19) E/A. dated October, 1957. However, the respondent no. 3, Jai Jute Industries could not run the Jute Mill profitably and also failed to comply with the conditions of grant of exemption. Consequently, the exemption of the establishment/Jute Mill was cancelled by the Appropriate Government (Government of India) vide Notification no. C-Ex/E-III/16(7)/2000/WB/CE/EZ dated 16th August, 2010 under Section 17(4) of the Employees Provident Funds and Miscellaneous Provisions

Act, 1952. The Jute Mill under the management of the respondent no. 3, Jai Jute Industries closed down since 2017.

23. It is the case of the P. F. Authority that the respondent no. 3 had failed to transfer the past accumulation to the statutory fund of the respondents/provident fund authorities after cancellation of exemption in the year 2010. The respondent no. 3 had even failed to deposit the outstanding and current provident fund and allied dues of its employees in the statutory fund of the respondents, provident fund authorities after cancellation of exemption. As such ten (10) numbers of FIRs under Section 406/409 of IPC had been filed against the management of the respondent no. 3 from time to time by the respondents, provident fund authorities.

24. It is further stated that ten (10) numbers of Bank Accounts of the respondent no. 3 had been attached under Section 8F of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 by the respondents, provident fund authorities to recover the outstanding provident fund and allied dues of the respondent no. 3.

25. The outstanding provident fund and allied dues of the respondent no. 3 including damages under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 Was Rs. 60,25,96,397.45/-.

26. It is stated that the respondent/P. F. Authority thereafter came to know that the petitioner, M/s. Gajmukh Vinimay Vt. took over the premises of the Jute Mill of the respondent no. 3 on rental basis and paying monthly rent of Rs. 4,50,000/- to the respondent no. 3, Jai Jute

Industries and an Agreement dated 13th November, 2020 was executed between the petitioner and respondent no. 3 to the said effect. The petitioner is running the Jute Mill of the respondent no. 3 on the basis of the Agreement executed between the petitioner and the respondent no. 3 dated 13th November, 2020. The petitioner has made 1st compliance since 1st April, 2021.There is no transfer of property from the respondent no. 3 to the petitioner.

27. To know the status of the respondent no. 3, a squad of **Enforcement Officers** of the respondents, provident fund authorities visited the Jute Mill of the respondent no. 3 and **submitted a report on 1 February, 2021 in** the office of the respondents, provident fund authorities wherein they have **mentioned that ownership/share transfer has not been affected as yet and** there is no process of production activity with effect from 13th June, 2017 and the work of maintenance has only started from January 2021 by M/s. Gajmukh Vinimay Pvt. Ltd., the petitioner herein by virtue of Agreement dated 04th August, 2020 in between Jai Jute & Industries Ltd., the respondent no. 3 and M/s. Gajmukh Vinimay Pvt. Ltd., the petitioner.

28. That neither the respondent no. 3 nor the petitioner deposited the outstanding provident fund and allied dues of the establishment/Jute Mill amounting to Rs. Rs. 60,25,96,397.45/-. As such EPF CP-25 (a formal notice to show cause why a warrant of arrest should not be issued) has been issued on 20th February, 2023 to the Director of the petitioner.

29. The petitioner did not deposit the outstanding provident funds and allied dues even after receiving the EPF CP-25, **as such EPF CP-26 was also issued to the Director of the respondent no. 3, M/s. Jai Jute Industries Ltd., which was withdrawn vide this office letter dated 08th May, 2023 as a writ petition being, WPA No. 10788 of 2023 has been filed by the petitioner before this Hon'ble High Court, Calcutta challenging the EPF CP-25 notice dated 20th February, 2023.** The said writ petition was dismissed by this Hon'ble High Court, Calcutta on 23rd August, 2023.

30. The petitioner after receiving the said order to pay the dues in respect of a Defaulter as Sundry Debtor dated 14th January, 2025 from the Regional Provident Fund Commissioner 1, Regional Office Barrackpore, started paying the rent of Rs.4,50,000/- per month (Demand draft of 5,00,000 out of which 50,000 is TDS and 4,50,000 is received by this office) payable to the respondent no. 3. The petitioner has paid by way of Demand Draft Rs. 2,78,733/ on 10th February, 2025, Rs.2,88,159/ on 19th March, 2025, Rs.4,50,000/- on 21st April, 2025, Rs.4,50,000/- on 25th June, 2025, Rs.4,50,000/- on 14th August, 2025, Rs. 1,13,144/0 on 28th August, 2025, Rs. 4,50,000/- on 18th September, 2025, Rs.4,50,000/-on 17th October, 2025, Rs.4,50,000/- on 19th December, 2025 and Rs.4,50,000/- on 21st January, 2026.

31. It is further stated that in point no. 8(h) of the agreement executed on 13th November, 2020 between M/s Jai Jute &Industries Ltd., the respondent no. 3 and Gajmukh Vinimay Pvt. Ltd., the petitioner, it is seen that **no transfer of property** has taken place and Gajmukh

inimay Pvt. Ltd., the petitioner has been allowed to run the Jute Mill. is mentioned in the agreement that -

> *"the license is only for the purpose of enabling the uses of plant, machineries, utilities, facilities, electrical installation, storage godowns, warehouse, offices, staff and labours quarters and other assets and infrastructure and establishments pertaining to production of jute goods and products at the jute mill area (defined in enclosure B1 of MOU).* ***This agreement should not be construed to provide to the licensees any tenancy rights, lease, ownership rights or any such claim over the assets and properties of the licensor."***

32. Therefore, upon consideration of the aforesaid facts and materials on record, the respondents, provident fund authorities were satisfied that M/s Gajmukh Vinimay Pvt. Ltd, the petitioner. has acted as an agent of M/s Jai Jute & Industries Ltd., the respondent no. 3 and that the arrangement between the parties is a colourable device adopted evade statutory obligations. Consequently, management of M/s Gajmukh Vinimay Pvt. Ltd., the petitioner is liable to be treated as an agent of M/s Jai Jute & Industries Ltd., the respondent no. 3 and shall be deemed to fall within the definition of "employer under Section 2(e) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for all purposes connected with the determination and recovery of provident fund dues.

33. In view of the aforesaid finding, the respondents, provident fund authorities, by notice dated 19th March, 2026 bearing Ref. No. R-Recovery/WB/36/RO/BKP/Z-512/2434, proceeded to treat the petitioner as an "agent" and consequently an "employer" within the

meaning of Section 2(e) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and called upon the Director of the petitioner company to deposit the outstanding dues of Rs. 59,74,16,361/- within a period of three days.

34. The petitioner has relied upon the following judgments:-

(i) (2014) 9 SCC 657 – Paras 34 and 35 – Bangalore Turf Club Limited – Vs. Regional Director, Employees State Insurance Corporation.

(ii) 2006 (4) CHN 658 – Para 11 – K. V. Kamath – Vs. Labour Enforcement Officer (Central, Kolkata and Anr.

35. The respondent nos. 1 and 2 have filed their argument reiterating the case, as made out in the report in the form of an affidavit.

36. Thus from the materials on record, it appears that:-

i. The petitioner had been granted **leave and licence** to run **one of the jute mills** of the respondent no. 3 namely Nuddea Jute Mill, Barrackpore, since November, 2020.

ii. Subsequently by a registered **deed of lease** executed on 1st April, 2023, the petitioner was permitted to run the mill, but there was **no transfer of title.**

iii. Admittedly the outstanding dues are since, 1988 till 2015 as is seen from the statement annexed to the impugned notices which relate to Nuddea Mills Company Ltd.

37. Clause XIV to the lease agreement relates to all outstanding liabilities and is as follows:-

> *"XIV. The payment of all taxes, rents, cess and other levy including penalties in any charge thereof in respect of the subject premises which is due to the state government or other local authority shall be on the account of the lessor. The lessee shall be at liberty to pay the above rent, tax, sale, cess or other levy including penalties and interest if any charge thereon in case of any default or delay by the lessor and adjust the amount so paid together with interest and other incidental expenses from out of rent in respect of the said premises becoming due immediately after the said payment or demand reimbursement of all such amount, cost expenses etc. with interest at the rate 12% per annum from the date of such payments until realization by the lessee."*

38. Clause XV is being complied with duly by the petitioner herein which relates to:-

> *"XV. Any license and fee payable to the government department like factory license, fees for PF, labour department which are necessary for running of the units during the lease period shall be payable by the lessee only. Property tax payable during and for the period of lease shall be paid by the lessee."*

39. Clause XXI relates to limitation on liability:-

> ***"LIMITATION OF THE LIABILITY:-***
> ***That the LESSEE is not liable for any of the debts or liabilities or obligations etc. incurred before the date of lease by the LESSOR and the same shall be borne by the LESSOR only. Similarly LESSOR is not liable for all or any of the liabilities, debts or obligations incurred under any head during the period of the lease by the Lessee and LESSEE is solely responsible for all such outstanding liabilities."***

40. Thus in view of above terms and conditions of the lease agreement and also the fact that the dues of the mill leased to the petitioner herein, are for a period prior to the taking over by the petitioner, the respondent no. 3 is liable for the same.

41. The lease is of the mill against which the respondent authorities have claimed the outstanding dues, but considering that the mill has been leased out by the respondent no. 3, against whom the outstanding dues stand, the respondent authority has to first proceed against the respondent no. 3 for the dues assessed.

42. The lease deed in the present case dated 1st April, 2023, is for a period of three years, and the said term ended on 1st April, 2026.

43. During the said period of three years, the petitioner duly complied with all terms and conditions as laid down in the lease deed, more so clause XV.

44. Thus the authorities should have proceeded against the assets of the respondent no. 3 and not against the Directors of the petitioner company.

45. The lease deed now stands terminated and thus the authorities are at liberty to proceed against the respondent no. 3, including the assets of Nuddea Jute Mills, which belong to the respondent no. 3 (as there was never any transfer of title) and also as the dues assessed are in respect of the said mill.

46. Thus the impugned order dated 19th March, 2026, the show-cause noticed dated 20th March, 2026 and the communication dated 23rd March, 2026, issued by the respondent nos. 1 and 2 herein, directed against the petitioner herein being not in accordance with law **are quashed and set aside.**

47. WPA 7751 of 2026 is allowed.

48. Applications, if any, connected thereto stand disposed of consequently.

49. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)