

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8872 OF 2010

National Textile Corporation (MN) Ltd.

Appellant(s)

Versus

Regional Provident Fund Commissioner
and Others

Respondent(s)

WITH

CIVIL APPEAL NO.8873 OF 2010

O R D E R

Regard being had to the commonality of the issue that has arisen in both the appeals, they are heard together and disposed of by a common order.

The nature of the order we are going to pass regard being had to the facts and circumstances that have emerged in course of various hearings before this Court, we need not state the facts in detail or address the question of law raised in these cases. Suffice it to state th

at the Regional Provident Fund Commissioner, the respondent No.1 in both the appeals, raised a claim as regards the employers' contribution covering the period from 1965 to 1972 and/or

any pre-take over period covered in these two appeals.

The National Textile Corporation (for short, 'the

Corporation') is a statutory Corporation which came into existence in the year 1968. In the year 1974, a legislation, namely, the Sick Textile Undertaking

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(Nationalisation) Act, 1974 (for short, 'the 1974 Act') came into existence to take over certain textile mills. Thereafter, in the year 1995, the Textiles Undertaking (Nationalisation) Act, 1995 (for short, 'the 1995 Act') came into being in respect of certain other textile mills.

Be it noted, there were two different legislations pertaining to take-over in the year 1972 and 1983.

ry In view of the fact that there is a statutory Corporation and a statutory authority, both of them thought it appropriate to negotiate and that consumed eight years.

No.1 As nothing fruitful did happen, the respondent initiated a proceeding under Section 7A of the Employees Provident Fund and Miscellaneous Provision Act 1952 (for short, 'the 1952 Act') for recovery of certain sum along with the interest and penalty from the Corporation in respect of the employers' liability for the pre-take over period from 1965 to 1972. The said claim was resisted on

the ground that the Corporation was not liable to make good the same on the foundation that the provisions of the 1974 Act, as well as the 1995 Act, completely exonerate

the Corporation. Despite the resistance, the respondent No.1 CA 8872/10

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adjudicated the claim.

Being grieved by the said order, the Corporation preferred a writ petition which was dismissed on the ground of delay and laches. On an intra-Court appeal being preferred, the appellate Bench dismissed the appeal on the ground that prior permission had not been obtained from the Committee on Disputes. Be it noted, the judgment in the intra-Court appeal was delivered at the time when obtaining

of prior permission from the Settlement Committee, was imperative. The said position in law has changed.

When the matter travelled to this Court, a suggestion was given on 12th July, 2010. The said order passed by this Court reads as under:

"Learned counsel appearing for the petitioners submits that she is still awaiting instructions with regard to the settlement between the two contesting parties. In view of the submission, we direct that a meeting shall be convened between the Chairman/Managing Director of the petitioner company and the Central Provident Commissioner within three weeks and a serious attempt shall be made to see that the issues raised in the present petitions are amicable resolved, particularly, when both the parties happen to be the agencies of the Central Government. Final outcome of the meeting shall be intimated to this Court on the next date.

List after four weeks."

In pursuance of the aforesaid order, both the authorities met and the Minutes of the Meeting were drawn

up. It is appropriate to reproduce the Minutes, which read
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as under:

"Minutes of the Joint Meeting of Central Provident Fund Commissioner with Chairman and Managing Director, NTC Mills Ltd. in compliance of the directions of the Hon'ble Supreme Court of India in the matter of National Textile Corporation Ltd. Vs RPF, Bandra & Others in SLP No.7568/07 and 7936/07 held on 20.09.2010, at 11 AM, at EPFO Head Office Bhavishya Nidhi Bhawan, 14 Bhikaji Cama Place, New Delhi-110066.

AGENDA

To explore the feasibility that the issue raised are resolved by the parties in the matter of the pending Special Leave Petition before the Hon'ble Supreme Court of India in National Textile Corporation Ltd. Vs RPF, Bandra & Others in SLP No.7568/07 and 7936/07 arising from Judgment and Final Order dated 17.11.2006 passed by the Hon'ble High Court of Judicature at Mumbai in Appeal No.720 of 2006 in Writ Petition No.1362/2006 and in Appeal No.721/2006 in Writ Petition No.1350/2006, wherein the Writ Petition had prayed for quashing and setting aside of:-

1) The order u/s 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (herein after called the "Act") and

certificates issued in respect of six mills, in question,

- 2) all the Prohibitory orders issued u/s 8F of the Act to Canara Bank, Parel East Branch, Mumbai, Union Bank of India, Cotton Green Branch, Prabha Devi Branch, Bank of India, Dadar & Naigaon, State Bank of Hyderabad, Nariman Point,
- 3) notice of demand u/s 7Q of the Act.
- 4) declare the amount recoverable as not due from the petitioners in respect of pre nationalization period,
- 5) restrain the respondent from taking any

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coercive action or resorting to modes of recovery u/s 8B of the Act pending disposal of the matter. (subject matter of the present lis)

The CPFC clarified the organization's stand that since Hon'ble Suprem Court of India in the matter of Civil Appeal No.6894/2009 (SLP)(C) No.20736/2007 in respect of Maharashtra State Co-operative Bank Ltd. Vs. EPFO held that -

The expression "any amount due from an employer" appearing in sub section 2 of sub section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub section (1) of section 11 and section 7A, 7Q, 14B and 15(2) which provides for determination of dues payable by the employer, liability of the employer to pay interest in case the payment of amount due is delayed and also pay damages, if any amount payable by the employer becomes due and same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of section 7Q. Likewise default on the employers part to pay an contribution to the fund can visit him with the consequence of levy of damages...."

It was imperative that the amount due be paid forthwith.

The CPFC further added that their organization is bound by the provisions of section 17B of the Act which runs as under:

"[17B. Liability in case of transfer of establishment-

Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any

provision of this Act or the Scheme or {the

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(Pension) Scheme or the Insurance Scheme} as the case may be in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]"

On the other hand, the Chairman and Managing Director, NTC Mills Ltd. while agreeing on the principal amount due, kept the payment of interest and damages on the said amount due, to be decided by the Hon'ble Court.

The CPFC contended that, since there is no provision of waiver of interest to be levied u/s 7Q of the Act, the establishment i.e. NTC Mills is liable to pay this amount including the principal dues. Nevertheless, the damages part can be considered for waiver, subject to following conditions as per provisions of para 32B of the EPF Scheme:

"32B. Terms and conditions for reduction or waiver of damages.- The Central Board may reduce or waive the damages levied under Section 14B of the Act in relation to an establishment specified in the second proviso to section 14B, subject to the following terms and conditions, namely:-

- (a) In case of a change of management including transfer of the undertaking to workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;
- (b) In cases where the Board for Industrial and Financial Reconstruction for reasons to be recorded in its scheme, in this behalf, recommends, waiver of damages upto 100 percent may be allowed;

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- (c) In other cases, depending on merits, reduction of damages upto 50 percent may be allowed.]"

It was agreed by CPFC that in appropriate cases, on fulfilling the aforesaid required conditions for waiver of damages, proper procedure would be followed. It was suggested by CPFC that the establishment should pay the principal amount at the earliest as the interest would keep on accruing on the principal amount till it was remitted, and the damages would also survive.

It was agreed that the issue relating to interest on the amount due, and damages, be adjudicated upon by the Hon'ble Court."

I.A. It is appropriate to state here that at one stage, the Corporation had recorded a protest by filing Nos.4-5 of 2010. The said applications were rejected by this Court vide order dated 4th July, 2011. Thus, the Minutes of the Meeting has been accepted by this Court.

the Thereafter, leave was granted to deal with the concept of interest and damages. It is submitted by Mr. Rana Mukherjee, learned senior counsel, along with Mrs. B. Sunita Rao, learned counsel appearing for the appellant-Corporation that the Corporation is not liable to pay under the 1952 Act.

the Mr. Sanchar Anand, learned counsel appearing for the Regional Provident Fund Commissioner, would submit that as far as the provident fund dues are concerned, Corporation is entitled to pay under the 1995 Act. Certai

n authorities were cited before us and we have analysed the CA 8872/10

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Act, but we refrain from entering into the same, inasmuch as the Minutes of the Meeting have been drawn and money has been deposited. Therefore, the singular cavil exists and pertains to damages and grant of interest.

Regard being had to the various factors, including the financial health of the Corporation, which is imminently projected by Mr. Rana Mukherjee, learned senior counsel, we think it appropriate that the claim in this case should be restricted to the principal sum and the respondent No.1 is directed to disburse the said amount to the employees, who are entitled to get it. Needless to say, we have not delved

(Chetan Kumar)

Court Master

(Signed order is placed on the file)

(H.S. Parasher)

Court Master