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

+ **W.P.(C) 12989/2021 & CM APPLs. 40929/2021, 40930/2021**

NIYAZ MOHHAMAD @ MOHD. NIYAZ Petitioner
Through: Mr. Ram Kanwar Nain & Ms. Jagrati
Garbyal, Advocates (M: 9312070470)
versus

LABOUR COMMISSIONER & ORS. Respondents
Through: Mr. Naushad Ahmad Khan, ASC,
GNCTD

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **17.11.2021**

1. This hearing has been done through hybrid mode.

CM APPL. 40929/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

WP(C) 12989/2021 & CM APPL 40930/2021

3. The Petitioner/Workman has been compelled to file the present writ petition seeking implementation of the Award dated 23rd November, 2017 passed by the Commissioner, under the Employees' Compensation Act, 1923 (*hereinafter "EC Act"*) in *CEC/SD/I/69/2017* titled *Niyaz Mohhamad v. M/s. Aveena Milk Products Pvt. Ltd. & Ors.* By the said Award, the sum of Rs.10,62,576/- along with interest at 12% per annum was awarded as compensation for the injury suffered by the Petitioner/Workman while driving a vehicle. Further, an amount of Rs.2,80,901/- was awarded towards the medical treatment of the Petitioner/Workman.

4. The said Award dated 23rd November, 2017 was sought to be

enforced repeatedly through the Recovery Officer. However, till date no money has been paid to the Petitioner. Hence, the prayer in this writ petition is for directing the Respondent No.2/District Magistrate (South), GNCTD, as also the Recovery Officer to take steps for recovering the awarded amounts.

5. Mr. Nain, Ld. Counsel for the Petitioner, submits that under Section 31 of the EC Act, 1923, any amount payable by any person under the said Act may be recovered as arrears of land-revenue. However, in the present case, the recovery certificate has been issued by the Commissioner, and has been forwarded to the District Magistrate (South) on 12th July, 2021, but no steps have been taken. He relies upon the judgment of this Court in ***Santosh Kumar Jha vs. Deputy Labour Commissioner [W.P.(C) 8092/2016 decided on 24th June, 2021]*** wherein detailed guidelines have been laid down for the manner in which the recovery is to be effected. The guidelines as laid down by the said judgment are extracted below:

“12. On a careful consideration of the suggestions given by the learned amici curiae, the directions issued by this Court on 27th March, 2017 and 13th December, 2019 are hereby modified, and substituted with the following directions. The SDM/Recovery Officer/Appropriate Authority shall follow the following procedure for execution of the Recovery Certificates:-

I. The execution of Recovery Certificate deserves special attention considering that any delay in execution proceedings would frustrate the winning party from reaping the benefits of the award/order in their favor on account of inordinate delay.

II. Upon receipt of the Recovery Certificate, the SDM/Recovery Officer/Appropriate Authority shall list the matter in open Court within one week of the receipt of the Recovery Certificate.

III. On the first date of hearing, the SDM/Recovery Officer/Appropriate Authority shall issue notice to the

respondent and direct the respondent to deposit the due amount within thirty days of the receipt of the notice with a further direction that if the amount is not deposited, the respondent shall file an affidavit of his assets on the date of cause of action, date of the award as well as on the date of the swearing of the affidavit in Form 16A of Appendix E of the Code of Civil Procedure within 30 days of the receipt of the notice.

IV. The SDM/ Recovery Officer/Appropriate Authority shall also direct the respondent that if the amount is not deposited within 30 days, the respondent shall file additional affidavit in terms of the formats of Annexure A1 / Annexure B1 attached to the judgment of Bhandari Engineers–II (supra) within thirty days of the receipt of notice.

V. If the respondent is an individual, the additional affidavit of his assets and income shall be in the format of Annexure A1 attached to the judgment of Bhandari Engineers–II (supra).

VI. If the respondent is a proprietor of a proprietorship firm/partner of a partnership firm/member of an HUF/Director/Promoter of a company/Managing Trustee of a Trust, the additional affidavit in respect of the assets and income of the firm/HUF /Company/Trust, as the case may be, shall be in the format of Annexure B1 attached to the judgment of Bhandari Engineers – II (supra).

VII. If the respondent is Central Government/State Government/ Municipal Corporation/PSU/State/Central Government Entity such as DJB/DDA etc., the direction to file the affidavit/ additional affidavit is not necessary in the first instance. In such cases, the SDM/ Recovery Officer/Appropriate Authority shall direct the respondent to disclose the particulars of its bank account(s) in which there is sufficient amount to satisfy the amount under the Recovery Certificate. Upon disclosure of the bank account(s), the SDM/Recovery Officer/ Appropriate Authority shall attach the bank account to recover the due amount. However, if the amount in the bank account(s) is not sufficient to satisfy the award, the SDM/ Recovery Officer/ Appropriate Authority shall direct the respondent to file the affidavit of assets in

Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure. The additional affidavit in formats of Annexure A-1/B-1 is not necessary in such cases.

VIII. The SDM/Recovery Officer/Appropriate Authority shall issue the notice to the respondent in Format – I. Where the respondent is Central Government/State Government/Municipal Corporation/PSU or State/Central Government Entity such as DJB/DDA etc., the notice shall be issued in Format – II.

FORMAT – I

“NOTICE

(Title)

Take Notice that a Recovery Certificate dated has been received from office under which you are liable to pay Rs. to

You are hereby directed to deposit Rs.....with this office within 30 days of receipt of this notice.

IN the event of failure to deposit Rs....., you are directed to file an affidavit of your assets on the date of cause of action, date of the award as well as on the date of the swearing of the affidavit in Form 16A of Appendix E of the Code of Civil Procedure within thirty days of the receipt of the notice.

IN the event of failure to deposit Rs....., you are further directed to file an additional affidavit in terms of the formats attached to the judgment of **M/s Bhandari Engineers & Builders Pvt. Ltd. v. M/s Maharia Raj Joint Venture**, dated 05th August, 2020, 270 (2020) DLT 582, namely (i) Annexure A1 – if you are an individual and; (ii) Annexure B1 – if you are proprietorship firm/partnership firm/HUF/company/trust, within thirty days of the receipt of the notice.

These affidavits are **mandatory** as per the directions issued by the High Court of Delhi in W.P.(C) 8092 of 2016.

You are directed to appear in person before the undersigned on(date).

GIVEN under my hand and the seal of theon

the..... day of

FORMAT - II

**“NOTICE IN CASE THE RESPONDENT IS
CENTRAL GOVT./STATE GOVT./PSU/CENTRAL
/STATE GOVT. ENTITY**

(Title)

*Take Notice that a Recovery Certificate dated
..... has been received
from office under which
you are liable to pay Rs. to*

*You are hereby directed to deposit Rs.....with this
office within 30 days of receipt of this notice.*

*IN the event of failure to deposit Rs..... , you are
directed to file the particulars of your bank account(s) in
which there is sufficient amount to satisfy the Recovery
Certificate, on affidavit before the undersigned within 30
days of receipt of this notice.*

*This affidavit is mandatory as per the directions issued by
the High Court of Delhi in W.P.(C) 8092 of 2016.*

*The Competent Officer of the respondent shall appear
before the undersigned on(date).*

*GIVEN under my hand and the seal of theon
the..... day of* ”

*IX. In pending execution cases, if the respondent has not
already filed the affidavit of assets and income, the
SDM/Recovery Officer/ Appropriate Authority shall direct
the respondent to file the affidavits of his assets and income
in terms of this judgment within 30 days of the receipt of the
notice. In case the respondent is Central Government/State
Government/Municipal Corporation/PSU or State/Central
Government Entity such as DJB/DDA etc., the concerned
respondent entity be directed to disclose the particulars of
its bank account(s) in which there is sufficient amount to
satisfy the Recovery Certificate. These directions be issued
to the respondent in all pending cases within four weeks.*

X. *In the event of failure of the respondent to deposit the amount due under the Recovery Certificate, the SDM/Recovery Officer/ Appropriate Authority shall recover the amount by attachment of the assets of the respondent.*

XI. *Sections 51(b), 60 to 64 and Order XXI Rules 41 to 57 of the Code of Civil Procedure contain the provisions for attachment of properties in execution. Before attaching a property, the SDM/Recovery Officer/ Appropriate Authority shall ensure that the property does not fall in the list of properties which are exempted from attachment/sale under the proviso to Section 60(1) of the Code of Civil Procedure. The SDM/Recovery Officer/Appropriate Authority shall ensure the compliance of Sections 60 to 64 and Order XXI Rules 41 to 57 of the Code of Civil Procedure with respect to the attachment of properties.*

XII. *Upon the aforesaid affidavit being filed, the SDM/Recovery Officer/Appropriate Authority may examine the respondent and/or conduct an inquiry to examine whether the respondent has truly disclosed his assets and income in the affidavit.*

XIII. *With respect to the power to detain the respondent, the SDM/Recovery Officer/Appropriate Authority shall follow the principles of natural justice by affording a reasonable opportunity to the respondent before passing the detention order.*

XIV. *All proceedings before the SDM/Recovery Officer/Appropriate Authority shall be held in open Court.*

XV. *The daily cause list of the cases shall be displayed outside the Court Room as well as on the website.*

XVI. *The orders passed by the SDM/Recovery Officer/Appropriate Authority shall be released on the website of the respective SDM/E-Courts portal within one week.*

XVII. *The SDM/Recovery Officer/Appropriate Authority shall follow this procedure in respect of the proceedings under Industrial Disputes Act, Employee's Compensation Act, Motor Vehicles Act as well as other statutes which empower the SDM/Recovery Officer/Appropriate Authority*

to execute the Recover Certificate.

XVIII. These guidelines shall apply to all pending cases as well as new cases.”

6. Mr. Naushad Ahmad Khan, Id. ASC (Civil) for GNCTD, submits that as per ***Santosh Kumar Jha (supra)***, an Implementation Committee was also to be set up to supervise the functioning of the recovery authorities.

7. A perusal of the judgment in ***Santosh Kumar Jha (supra)***, clearly shows that the same does not contain any ambiguity. The recovery officers have to act diligently and ensure recovery of the awarded amounts. The manner in which the recovery proceedings are to be carried out has also been laid down in the guidelines extracted above. It appears that this procedure is not being followed by the recovery officers.

8. Under these circumstances, the following directions are issued:

i) Respondent/GNCTD to place on record a status report as to the establishment and the functioning of the Implementation Committee in terms of paragraph 14 of the judgment in ***Santosh Kumar Jha (supra)***.

ii) The District Magistrate/SDM (South), M.B. Road, Saket, New Delhi as also the Commissioner, Employees' Compensation, Labour Department, GNCTD, shall join the proceedings through video conference, on the next date.

iii) Let Principal Secretary (Law, Justice and Legislative Affairs), GNCTD also join the proceedings through video conference on the next date to apprise the Court as to the functioning of the Implementation Committee.

9. In order to no impede the regular functioning of these officials, they

may join the proceedings at 2.30 p.m on the next date.

10. List on 9th December, 2021 at 2.30 p.m.

11. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH, J

NOVEMBER 17, 2021

mw/AD