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

Date of decision: 2nd February, 2022

\+ **W.P.(C) 2034/2022**

M/S WEARWELL (INDIA) PRIVATE LIMITED ..... Petitioner

Through: Mr. Alok Bhasin & Mr. Kamal Kant Tyagi, Advocates

versus

MOHD. NIZAM ..... Respondent

Through: None

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.

CM APPL. 5850/2022 (for exemption)

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

WP(C) 2034/2022 & CM APPL. 5849/2022 (for stay)

3. The present writ petition challenges the impugned order dated 7th August, 2020 in ***RCA No. 53/2019*** titled ***Wearwell (India) Pvt. Ltd. v. Mohd. Nizam*** passed by the D&SJ, South-East, Saket Courts, New Delhi *(hereinafter "Appellate Court")*. Vide the impugned order the appeal against the order dated 29th November, 2018 in ***PWA No. 73/2018*** titled ***Mohd. Nizam v. M/s Wear Well India Pvt. Ltd.*** passed by Addl. D&SJ, POLC-V, Dwarka Courts, Delhi *(hereinafter "Authority")* under the section 15(2), Payment of Wages Act, 1936 *(hereinafter "Act")* has been partially set aside.

4. The background of this petition is that the Respondent/Workman *(hereinafter "Workman")* was working as a Tailor with the Petitioner/Management *(hereinafter "Management")* and the last drawn

salary was Rs.11,830/-. The Management claims that it had placed the Workman under suspension on 16th December, 2017 and a charge sheet was issued. However, the claim of the Workman was that he was terminated by the Management on 18th December 2017.

5. The Workman then approached the Conciliation Officer under the Industrial Disputes Act, 1947 wherein he along with 21 other workmen, entered into a settlement dated 03rd May 2018 with the Management. Terms of the said settlement read as under:

> *"1. The management will reinstate all the complainant workmen expect Sh. Kalim, Sh. Hussain and Sh. Firoz, with the continuity of service w.e.f. 04/05/2018.*
>
> *2. The workmen have agreed that they will work with honesty and will maintain peace in the factory and will help to increase the production.*
>
> *3. It has also been agreed between both the parties that the interest of peace and harmony of the factory, all the disputes/claims/complaints of bonus and contract Labour raised/filed by them shall be deemed to have been withdrawn after this settlement. The management has also agreed to withdraw all the cases i.e. charge sheet, suspension order/police complaints against the workmen."*

6. However, disputes thereafter arose in respect of the amount payable as per the terms of the said settlement entered into before the Conciliation officer. This led to the Workman approaching the authority under section 15(2) of the Act. The said dispute was adjudicated by the Authority on 29th November, 2018 by holding that a sum of Rs.3,01,466/- would be payable to

the Workman. The order reads as under:

> *"30. In view of the outcome of issue No.2, the claimant is held entitled to an amount of Rs.3,01,466/- (27,406 + 2,74,060 amount of wages deducted + 10 times penalty).*
> *31. Accordingly, in these circumstances, in terms of provisions of section 15 (5) (b) of Payment of Wages Act, 1936, the court hereby issue a direction to the ld. CMM, Dwarka Court to recover the said amount of Rs. 3,01,466/- as if it were a fine imposed by a Magistrate in terms of provisions of Section 421 (1) (a) of the Cr.P.C.*
> *32. Petition accordingly stands Allowed."*

7. The said order of the Authority was challenged before the ld. Single Judge of this Court in ***WP(C) 2349/2019*** titled ***Wearwell (India) Pvt. Ltd. v. Mohd. Nizam***. The said writ petition was disposed of vide order dated 13th March 2019 while granting liberty to the Petitioner to approach the Appellate Court under the Act after depositing the amount of Rs.27,406/-. The order reads as under:

> *"2. This Court is satisfied that this case is similar to W.P.(C) 1698/2019 and the petitioner's prayer for similar order is justified. In that view of the matter, the petitioner is granted liberty to approach the Appellate Authority under the Act by depositing only the actual wages found due to the respondent under the impugned order. Upon depositing of the actual wages found due to the respondent, the Appellate Authority shall consider the petitioner's appeal on merits without insisting on pre-deposit of the penalty amount."*

8. In view of the order of the High Court, the Petitioner approached the Appellate Court by way of an appeal under Section 17 of the Act. During the

pendency of the said appeal, the parties entered into a settlement dated 3rd May, 2019 as per which the Respondent/Workman agreed to accept a lumpsum amount to settle the said dispute. The terms of the said settlement are as under:

> *"**Terms of Settlement**:*
> *1. Mohd Nizam s/o Mohd Mustafa by virtue of this settlement do hereby tender his resignation from service and relinquish his employment voluntarily and, as such, he shall have no dispute, demand or claim of any kind left against the Management of Wear Well India Private Limited.*
> *2. In view of this amicable settlement reached by and between the parties, all the claims of Mohd Nizam s/o Mohd Mustafa including before the Payment of Wages Authority shall also be deemed to have been finally and fully settled. This settlement will supersede the order dated **29-11-2018** passed by the Payment of Wages Act Authority against which appeal is pending before the District Court.*
> *3. In view of this amicable settlement, Mohd Nizam s/o Mohd Mustafa shall not be entitled to the amount awarded by the Payment of Wages Authority vide order dated **29-11-2018** and, as such, they shall not be entitled to receive the amount of Rs. **27,406**/- deposited by means of a Pay Order before the Appellate Authority and, as such, Mohd Nizam s/o Mohd Mustafa authorizes the Management to withdraw the same.*
> *4. It is further expressly agreed that this settlement is being signed by Mohd Nizam s/o Mohd Mustafa voluntarily without any use of coercion and, as such, no union, person or agent shall have the authority to challenge the same before any authority or court of law."*

9. In lieu of the said settlement, the Management's case is that a sum of

Rs.80,720/- was paid to the Workman vide cheque no. 004370 dated 30th May 2019. Copy of the cheque is placed on record by the Management along with a bank statement reflecting the encashment of the said cheque.

10. Once the settlement was entered into, the Management approached the Appellate Court for disposal of the appeal and for refund of the pre-deposit amount of Rs.27,406/-. However, vide the impugned order, the Appellate Court has merely set aside the penalty which was imposed and has held that the pre-deposit amount cannot be refunded on the ground that the settlement has not been acknowledged and accepted by the Workman. Mr. Bhasin, appearing for the Petitioner, submits that the Appellate Court has erred in holding that since the Workman did not appear and confirm the settlement, the amount of pre-deposit would not be liable to be refunded.

11. Heard the ld. Counsel for the Management. A perusal of the record and the Appellate Court's order shows that the Workman stopped appearing before the Appellate Court despite having notice of the appeal. It must be noted that the Management had placed the settlement dated 03rd May 2019 on record of the Appellate Court. However, the Appellate Court has observed as under:

> *"37. Considering the conduct of the Management and the workman and **also the settlement**, it is not a case for imposition of any penalty and imposition of 10 times penalty on due wages in the sum of Rs. 27,406/-, amounting to Rs. 2,74,060/- is without any basis and is hereby set aside.*
> *38. It is submitted on behalf of the appellant that since the matter has already been amicably settled with the workman vide Settlement Deed dated 03.07.2019 and a sum of Rs. 27,406/- have already been paid to him by way of cheque towards full*

> *and final settlement of his all the claims, the sum of Rs. 27,406/- which has been deposited in this Court as pre-condition for hearing of the appeal may be refunded to the appellant. Copy of the Settlement Deed dated 03.07.2019 has already been filed on record, but the respondent has not appeared in the Court despite service and there is no affirmation of this settlement by the respondent. The Court should have taken note of the settlement only if it had been acknowledged and accepted by the respondent before the Court. In the circumstances, the appellant cannot be allowed to refund a sum of Rs. 27,406/- by the order of the Court in this appeal, but the appellant is at liberty to get No Objection Certificate from the workman and seek refund as per law.*
>
> *39. In view of the above discussion, it is held that the appellant/Management is liable to pay a sum of Rs. 27,406/- as arrears of salary during the period of suspension from 16.12.2017 to 31.04.2018. However, the compensation/penalty amount in the sum of Rs.2,74,060/-is hereby set aside. In view of the above, the appeal is partly allowed."*

12. The reasoning of the Appellate Court is basically that since the Workman did not confirm the settlement agreement, the settlement cannot be recorded by the Court while at the same time the Appellate Court set aside the penalty of Rs.2,74,060/- imposed by the Authority, on the basis of the very same settlement.

13. A perusal of Section 18(1) of the Industrial Disputes Act, 1947 *(hereinafter "ID Act")* shows that a settlement can be arrived at between the parties otherwise than in the course of conciliation proceedings i.e., Section 18(1) ID Act clearly recognises out-of-Court settlement. Section 18(1) reads as under:

> *"**18. Persons on whom settlements and awards are binding-** (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."*

14. The Supreme Court in ***The State of Bihar v D.N.Ganguly (1958) AIR 1958 SC 1018*** held that Courts should take note of the amicable settlement in case between the parties in industrial disputes which generally leads to industrial peace and harmony. The observations of the Court are as under:

> *"13. It is, however, urged that if a dispute referred to the industrial tribunal under section 10(1) is settled between the parties, the only remedy for giving effect to such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the industrial tribunal. This argument is based on the assumption that the industrial tribunal would have to ignore the settlement by the parties of their dispute pending before it and would have to make an award on the merits in spite of the said settlement. We are not satisfied that this argument is well-founded. It is true that the Act does not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of Order XXIII, r. 3, of the Code of Civil Procedure. But it would be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and harmony are the primary object of this Act. Settlements reached before the conciliation officers or boards*

> *are specifically dealt with by sections 12(2) and 13(3) and the same are made binding under section 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. It was stated before us at the bar that innumerable awards had been made by industrial tribunals in terms of the settlements between the parties. In this connexion we may incidentally refer to the provisions of section 7(2)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), which expressly refer to an award or decision of an industrial tribunal made with the consent of the parties. It is true that this Act is no longer in force; but when it was in force, in providing for appeals to the Appellate Tribunal set up under the said Act, the legislature had recognised the making of awards by the industrial tribunals with the consent of the parties. Therefore, we cannot accept the argument that cancellation of reference would be necessary in order to give effect to the amicable settlement of the dispute reached by the parties pending proceedings before the industrial tribunal."*

15. The decision in ***D.N. Ganguly (supra)*** has been affirmed by the Supreme Court in ***National Engineering Industries Ltd. v State of Rajasthan, AIR 2000 SC 469.*** The Court has held that:

> *25. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal,*

which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the

> *establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which has objected to the same. Recognised union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an Individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of P. Virudhachalam v. Management of Lotus Mills MANU/SC/0890/1998: (1998) ILL J389SC. In all these negotiations based on collective bargaining individual workman necessarily recedes to the background. Settle merits will encompass all the disputes existing at the time of the settlement except those specifically left out."*

16. A perusal of the above two decisions shows that settlements entered into in Industrial Disputes are valid and legal, even though provisions

similar to Order XXIII Rule 3 CPC do not exist in the ID Act. Settlements can be entered into between Management and Workman even outside the court/conciliation proceedings as is clear from Section 18(1) ID Act. Such settlements would be valid and legal. Upon a settlement being entered into, parties may place the same before the forum concerned and the same can be recorded, upon the Court being satisfied that the terms are legal, just and fair. A settlement under Section 18(1) would be binding on the parties. The usual procedure for recording a settlement would be that parties would file an application and appear before the court and confirm the settlement. However, in a case where one party chooses not to appear and not to confirm the settlement, the Court would have to consider as to whether settlement has in fact been arrived at or not and if the Court is satisfied that the settlement has been arrived at, there is no reason as to why the Court should not accept the settlement and despite the settlement, again go into the merits of the matter. Purpose of providing such provisions of settlement is that there is finality to the settlement and parties should not be relegated to continue to avail of their legal remedies leading to delays involving expending of precious judicial time.

17. In the present petition, it is noticed that a sum of Rs.27,406/- was merely a pre-condition for hearing of the appeal by way of a pre-deposit. The bank of the Management viz., HDFC bank, has certified that the amount of Rs.80,720/- has been encashed by the Workman. To this Court, there is no doubt that the settlement has been signed by the Workman as there is no allegation of forgery or fabrication. The present case would be a settlement in terms of Section 18(1), ID Act and as per the above decision, would be binding on the parties.

18. Advance copy of this petition is sent to the Workman by Speed Post. The receipt has been placed on record. However, there is no appearance on behalf of the Workman. The Workman did not appear even before the Appellate Court to confirm the settlement. Since the Workman has affixed his signature to the settlement agreement and has also encashed the cheque issued by the Management, this Court finds no reason as to why the settlement should not be taken note of and recorded.

19. Moreover, in the opinion of this Court, no useful purpose would be served in again issuing notice to the Workman inasmuch as it appears to this Court that the Workman is satisfied with the settlement and does not wish to incur further costs.

20. Accordingly, the impugned order is set aside. The amount of Rs.27,406/- deposited with the Appellate Court is directed to be refunded to the Petitioner/Management in view of the settlement.

21. If the workman has any dispute in respect of the settlement, liberty is granted to the workman to approach the Appellate Court.

22. The petition is disposed of in above terms. The pending application is also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 2, 2022
mw/SK