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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th July 2011

No. 6276–li/1(BH)-61/1996(Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th November 2010 in I. D. Case No. 26 of 1997 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1) Orissa Synthetics (A division of J.K. Corporation) Laxminagar, Baulpur, Dhenkanal, (2) M/s. Reliance Industries Ltd., Dhenkanal and its Workmen represented through Orissa Synthetics Ltd. Employees Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 26 OF 1997

The 27th November 2010

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of –

(1) Orissa Synthetics (A division of J.K. Corporation)
Laxminagar, Baulpur, Dhenkanal.

(2) M/s. Reliance Industries Ltd., Dhenkanal ... First Party–Management

And

Its Workmen, Represented through
Orissa Synthetics Ltd. Employees' Union,
Laxminagar, Baulpur, Dhenkanal.

.. Second Party–Workmen

Appearances :

Shri M. Barik, Authorised Representative	.. For the First Party–Management
Shri R.N. Nanda, General Secretary of the Union	.. For the Second Party–Workmen.

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, the 'I. D. Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 9452– li/1(BH)-61/96-LE., Dated the 31st July 1997 to this Tribunal for adjudication. The Schedule of reference runs as follows:

“ Whether the workmen of M/s. Orissa Synthetic Ltd., Dhenkanal are entitled for bonus at the rate more than 8.33% for the accounting year 1995-96; and if so, at what rate ?”

2. The facts not in dispute may be narrated at the out-set. The First Party Factory is a subsidiary unit of M/s. Reliance Industrial Ltd. Previously it was a division of M/s. J. K. Corporation Ltd. The Factory went into commercial production in 1987. The Factory is a Polyester Industry consisting of two units, namely 'PSF' & 'PFY'. The Second Party/Union had raised a demand vide letter dated 31-8-1996 before the First Party for payment of 20% bonus plus Rs. 3,000 as *ex-gratia* to each of the workman of the Factory for the accounting year 1995-96. There was bi-partie discussion but the same having failed the matter was admitted into conciliation. When the conciliations failed, the dispute has been referred to this Tribunal.

3. According to the Second Party/Union, in the year 1996 the Factory could achieve record production due to the endless efforts of the workmen. The production of the finished products was 26540 M.T. against the actual capacity of 21000 M.T. of both 'PSP' & 'PFY' units. The sale price of the finished products was much more than the cost of production. Yet, the Management had shown loss in their Statements of Accounts and contended that there was no available surplus to meet the demand of the Union for payment of bonus at a higher percentage than the minimum prescribed under the Payment of Bonus Act, 1965 (for short, the 'Act')

According to the Union, the correctness of the Balance Sheet as well as the Statement of Accounts for the year 1995-96 is clouded with doubts and the Management is liable to pay higher percentage of bonus for the said according year.

4. In the written Statement the First Party has taken the plea that though the Factory went into commercial production in 1987, due of various problems including regular labour unrest and recession in the Polyester market the First Party became a sick unit. It was refer to the Board of Industrial & Financial Reconstruction (B.I.F.R.). pursuant to the order dated 24-1-1994 of the B.I.F.R. the Unit got merged with M/s. Straw Products Ltd. with effect from 17-6-1994. Despite of sincere efforts the condition of the Factory did not improve much. Even at such condition the

Second Party/Union constantly created labour problems. The Union demanded imaginary quantum of bonus for the year 1993-94. When they failed to get the demand fulfilled they resorted to strike which commenced from 6-1-1995 and lasted till May 1995. As in the accounting year 1995-96 the financial position of the Unit was very precarious, there was no allocable surplus to entail the workmen to get bonus at a higher rate than the minimum prescribed under the Act.

According to the First Party, the actual capacity of the 'PSP' Unit of the factory is 23360 M.T. and that of the 'PSY' Unit is 8700 M.T.

5. The following issue has been settled for determination:—

ISSUE

- (1) “ Whether the workmen of M/s. Orissa Synthetics Ltd., Dhenkanal are entitled for bonus at the rate more than 8.33% for the according year 1995-96 and if so, at what rate ?”

6. On behalf of the Second Party the General Secretary of the Union is examined as W.W. No. 1. Through him several documents have been exhibited. Similarly, the First Party has examined its Manager (Personnel) as M.W.No.1 and some documents have been exhibited.

FINDINGS

Issue No. 1:— 7. Under the Act there are two provisions under which bonus higher than the minimum prescribed u/s. 10 of the Act can be claimed. One is available u/s. 11 and the other u/s. 31-A of the said Act. The nature of the pleadings of the parties does not bring the present reference under the purview of Section 31-A of the Act. Since the parties in their pleadings have referred to 'allocable surplus' the demand under consideration has to be brought u/s. 11 of the Act. Section 11 of the Act runs as follows:—

- “ 11. Payment of maximum bonus :— (1) Where in respect of any accounting year referred to the Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned to the employee during the accounting year subject to a maximum of twenty per cent of.
- (2) In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section.”

To decide the dispute it is essential to find out what amount of allocable surplus was available in the relevant accounting year. For that the Balance Sheet and Profit and Loss account of the First

Party are required to be referred to. Section 23 of the Act creates a presumption on the accuracy of balance sheet and profit and loss account of Corporations and companies duly audited by the Comptroller and Auditor-General of India or by Auditors duly qualified to act as Auditors of the Companies. Under the provisions of Section 23 of the Act this Tribunal may presume the statements and particulars contained in the balance sheets and profit and loss account to be accurate. However, if the Tribunal is satisfied that the statement and particulars contained therein are not accurate, it may take such steps as it thinks necessary to find-out the accuracy of such statements and particulars. Therefore, in the present case the balance sheets and the profit and loss account of the First Party for the accounting year 1995-96 are very much essential to be referred to. Those are not available on record. The Second Party Union made several prayer before this Tribunal to direct the First Party to cause production of those documents. On 12-12-2006 the First Party was directed by this Tribunal to produce the detailed balance sheets and profit and loss Account for the relevant year. Ultimately on 10-1-2008, the Management filed xerox copy of two sheets of documents claiming the same to be the copy of the balance sheet and profit and loss account for the year 1995-96. In course of making of the Award those documents are marked 'X' & 'Y' for identification. The Second Party contends that marked X & Y are not the whole of the balance sheet as well as the profit and loss account. The Management, on the both hand, files a memo on 12-3-2008 taking the stand that it has filed the complete balance sheet and profit and loss account for the year 1995-96. On a bar perusal of the two sheets of papers marked X & Y one can say that those might be the abstract of the balance sheet and profit and loss account but those are not the complete balance sheet and profit and loss account of the company. On a reference to mark X & Y no one can find-out whether the statements and particulars contained in the balance sheet and profit and loss account for the relevant year are accurate or not.

8. The First Party is presumed to be the custodian of balance sheet as well as profit and loss account of the relevant year. Despite of direction of this Tribunal the Management has not produced the same. The fate of the demand for bonus at a higher rate depends on these documents. Since the Management has tried to suppress the same by not filling the complete balance sheet as well as profit and loss account of the relevant year, this Tribunal raises and adverse inference against the First Party to the effect that had the documents been placed before this Tribunal the same would have gone against the First Party or that it would have supported the claims of the Second Party. Consequently, it is to be presumed that the allocable surplus of the relevant year exceeded the amount of minimum bonus payable to the employees under the Act with further presumption that the employees are entitled to bonus at the maximum of 20% of their salary/wages earned by them during the accounting year 1995-96.

9. Accordingly, it is held that the employees of the First Party are entitled to get bonus at the maximum rate of 20% of their salary/wages earned during the accounting year 1995-96.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

27-11-2010

Presiding Officer

Industrial Tribunal

Bhubaneswar

RAGHUBIR DASH

27-11-2010

Presiding Officer

Industrial Tribunal

Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government