

A M/S WRITERS AND PUBLISHERS PVT. LTD.

v.

DR. AK MISHRA, OFFICIAL LIQUIDATOR

(Conmt. Pet. (C) Nos. 1665-1666 of 2017)

B MARCH 05, 2020

**[DR. DHANANJAYA Y. CHANDRACHUD
AND AJAY RASTOGI, JJ.]**

Multi-State Co-operative Societies Act, 2002:

- C ss. 89 and 90 – Winding up of Super Bazar – Notice by Official Liquidator u/s. 25F of Industrial Disputes Act, 1947 terminating services of regular employees – SLP before Supreme Court challenging winding up order – Scheme for revival of Super Bazaar – The petitioner in its bid for revival envisaged investment of Rs. 504 crores – Petitioner's bid accepted – SLP disposed of in above terms keeping the order of winding up suspended – During period under petitioner's management summons issued u/s. 7A of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 – Application before Supreme Court seeking withdrawal of summons – Constitution of Committee to look into certain issues regarding implementation of revival scheme – Committee in its report indicated serious impasse arising out of the non-implementation of the revival plan – Court directed refund of entire investment made by the petitioner subject to deduction of profits made during the period of arrangement – Direction to Comptroller and Auditor General of India to determine exact amount to be refunded – Official Liquidator was directed to bring to sale all the properties of Super Bazar – Properties were handed over by the petitioner to Official Liquidator – Contempt Petition by the petitioner seeking disbursement of certain amount received from the sale of property of Super Bazar – The net outstanding amount worked out by Comptroller and Auditor General (CAG), as against the claim of petitioner amounting to Rs. 126 crores, was Rs. 3.39 crores – Held: The conduct of the petitioner shows lack of bonafide in revival of Super Bazar – Having failed in reviving Super bazar, its claim for refund of entire amount it had invested, is contrary to the principles which govern winding up as well a statutory scheme embodied in ss. 89 and 90 of Multi-State
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Co-operative Societies Act; rr. 28 and 29 of Multi-State Co-operative Societies Rules and s. 11 of Employees Provident Fund Act – Verification made by CAG is final and binding – Official Liquidator to deal with petitioner's claim to the extent set out by CAG in accordance with statutory order of priorities – Multi-State Co-operative Societies Rules, 2002 – rr. 28 and 29 – Employees' Provident Fund and Miscellaneous Provisions Act, 1952 – s. 11. A
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Dismissing the Contempt Petitions, the Court

HELD: 1. The purpose of the direction of this Court dated 29.03.2016 in nominating an auditor was to ensure a proper verification of the income and expenditure incurred by the petitioner and the profits earned from the Super Bazar establishment. Underlying the above direction of this Court was the necessity that the auditor conduct a due verification of the actual and genuine income as well as the expenditure which was incurred by the petitioner. That was premised on the assumption that in pursuance of the revival plan, a genuine effort had been made by the petitioner to revive Super Bazar. The circumstances which have come on the record as a result of the verification which has been carried out by the CAG upon the report of the auditor indicate several significant facets. The findings which have emerged in the course of the verification by the CAG leave no manner of doubt that the petitioner did not intend at any material time to embark upon the revival of Super Bazar. The business and affairs of Super Bazar were conducted in a manner that was sham and bogus. It dealt with related entities as explained in the report. The Transactions and the modalities followed are indicative of a lack of *bona fides* on the part of the petitioner in its operations. [Paras 26 and 27][102-B-D; 103-C] C
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2. No part of the order dated 29.03.2016 of this Court contains a direction to the effect that the petitioner would not be held to account, upon a verification by the CAG, for the nature of its dealings during the period when it was in management. To accept the submission of the petitioner that no deduction could be made from the investment which it had brought in save and except for profits actually earned would be a simplistic reading of the order of this Court. The entire process of verification of the G

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- A income and expenditure was designed not only for the purpose of deducing the profits which was earned by the petitioner. The Court was also conscious of the fact that in devising the terms for exit of the petitioner, it was not appraised at that stage of the nature and extent of the dealings of the petitioner in its management of Super Bazar. The order of this Court therefore can only be read to mean that the petitioner would be held to account for the period when it was in management based on the result of the verification initially by the auditor and thereupon by the CAG. [Para 30][105-D-F]
- C 3. The interpretation of the order dated 29 March 2016 must also be juxtaposed in light of the statutory provisions which govern an order of winding up under Section 89 and other cognate provisions of the Multi-State Co-operative Societies Act 2002. The statute lays down the manner in which the liquidator has to function upon taking charge. The Multi-State Co-operative Societies Rules 2002, in particular, indicate the procedure to be adopted by the liquidator and the manner in which the assets are to be applied. The order of priority is spelt out. A *pro-rata* refund of share capital appears third in the order of priority. The last in the order of priorities is a *pro-rata* payment of dividend on share capital at a rate not exceeding 6.25 per cent for the period of liquidation. To allow the claim of the petitioner to be refunded its entire investment amount, the major part of which took place through the subscription of share capital, would essentially place it outside the purview of the winding up proceedings. Accepting the claim would enable it to take away moneys overriding the order of priorities laid down by the Multi-State Co-operative Societies Rules 2002. The petitioner was one of the three bidders invited to bid for the opportunity to take over the management of Super Bazar and revive its operations. The petitioner was under no legal obligation to submit a bid. It engaged in a free-standing market process, albeit one supervised by this Court, through which the petitioner sought to turnaround the business of Super Bazar and subsequently receive profits from the business. This is supported by the conduct of the petitioner in squeezing out existing members and securing for itself 98.89 per cent of the share capital of Super Bazar. Having failed in its market endeavour to revive Super Bazar, it now seeks to exit its investment with a

full refund and without having to account for the business which was carried on during the period when Super Bazar was under the management of the petitioner. Such a course of action would be contrary both to the first principles which govern winding up as well as the statutory scheme which is embodied in Sections 89 and 90 of the Multi-State Co-operative Societies Act 2002 and Rules 28 and 29 of the Multi-State Co-operative Societies Rules 2002. [Para 31][105-G-H; 106-A-E]

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4. Section 11 of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) provides that where an order of winding up is made, dues owed towards employees' provident fund (or any other liability mentioned therein) shall be paid in priority to all other debts in the distribution of the property or the assets of the entity which is being wound up. [Para 33] [107-A-B]

Maharashtra State Co-operative Bank v. Assistant Provident Fund Commissioner (2009) 10 SCC 123 : [2009] 15 SCR 1 – relied on.

5. The plea of the petitioner to receive payments at the present stage would confer on it a preference and priority which would be in the teeth of the statutory provisions contained in the Multi-State Co-operative Societies Act 2002 and the EPF Act. There is no substance in the challenge that has been preferred on behalf of the petitioner to the determination which has been made in the audit report following which a verification has been carried out by the CAG. The claim of the petitioner to the extent set out in the verification report by the CAG will necessarily have to be dealt with by the liquidator upon the realization of the assets of Super Bazar in accordance with the statutory order of priorities contained in the Multi-State Co-operative Societies Rules 2002. The verification made by the CAG is final and binding and shall not be called into question before the OL or in any proceeding. [Para 34][108-C-E]

6. The liquidator shall evaluate the claim as determined by the verification report by the CAG in terms of the priorities for the payment of claims as envisaged in the Multi-State Co-operative Societies Act 2002 and the associated rules. The

- A liquidator is also directed to treat the amount outstanding to the EPFO in terms of the first priority which is created by the provisions of Section 11(2) of the EPF Act. The liquidator shall also consider the claim of the Union Government. The liquidator is directed to consider the auditor and the CAG's observations with respect to the 14,149 new members inducted during WPL's management not being genuine. The liquidator shall, in the process of winding up, be at liberty to consider all other claims received and to make a determination in accordance with law. In the event any further judicial determinations are required to be made, parties shall be at liberty to approach the High Court. [Para 35][109-A-C]

Case Law Reference

	(2009) 10 SCR 123	relied on	Para 33
D	INHERENT JURISDICTION: Contempt Petition (C) Nos. 1665-1666 of 2017 in I.A. NOS. 102-103 of 2017 in SLP(C) NOS. 8398-8399/2005.	Petition filed for disobedience of the Order dated 27.04.2017 passed by this Hon'ble Court.	
E	WITH	MA Nos. 1394-1395/2017 in IA Nos. 102-103 of 2017 in SLP(C) No. 8398-8399/2005	
F	MA Nos. 677-678/2018 in SLP(C) Nos. 8398-8399/2005 CONMT.PET.(C) No. 866-867/2018 in SLP(C) Nos. 8398-8399/2005	MA Nos. 1862-1863/2018 in SLP(C) Nos. 8398-8399/2005	
G	Misc Appl Diary No. 25930/2019 in SLP(C) Nos. 8398-8399/2005.	Ms. Madhavi Divan, Vikramjit Banerjee, ASGS, C.A. Sundaram, N.K. Mody, Harin P. Raval, Sr. Advs., Ankur Mody, Ms. Fareha Ahmad Khan, Sachin Gupta, Pranay Mohan Govil, Ms. Rohini Musa, Zafar	
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Inayat, Abhishek Gupta, Praveen Swarup, R.K. Kapoor, Ms. Shweta Kapoor, Rajat Kapoor, Anis Ahmed Khan, S. Wasim Quadri, Lakshmi Raman Singh, Nipun Saxena, Ms. Sukanya Singh, Kartikey Kanojiya, Ms. Upasna Shukla, Vijay K. Jain, Sumit Goel, Ms. Malvika Bhanot, Raghab Bansal, Paritosh Arora, M/s. Parekh & Co., Mohit Chaudhary, Ms. Puja Sharma, Kunal Sachdeva, Zulfikar Ali Chowdhary, Balabir Singh Suri, Imran Ali, Parveen Kumar, Ms. Garima Sharma, Ms. Sristi Gupta, Ashok K. Srivastava, R. Balasubramanian, Ms. Swati Ghildiyal, Ms. Aakanksha Kaul, Ms. Nidhi Khanna, Manek Singh, Mrs. Anil Katiyar, S. Wasim Qadri, Lakshmi Raman Singh, Nipun Saxena, Ms. Sukanya Singh, Kartikey Kanojiya, Zaid Ali Subzposh, Tamim Qadri, Saeed Qadri, Nachiketa Joshi, Ms. Rekha Pandey, Siddhartha Sinha, Anshul Gupta, Prashant Rawat, Om Prakash Shukla, Raj Bahadur Yadav, Siddharth, Amit Kumar Agrawal, Vijay K. Jain, Vishnu B. Saharya, Viresh B. Saharya, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

The Winding Up of Super Bazar

1. Super Bazar, which was envisaged to be a model of co-operation in the consumer movement fell on bad days. On 15 March 2002, an inquiry was conducted into the working and financial conditions of Super Bazar under Section 78 of the Multi-State Co-operative Societies Act 2002. The inquiry identified poor management and a rise in the wage bill of Super Bazar as the primary causes for the losses.

2. On 5 July 2002, the Central Registrar of Co-operative Societies¹ passed an order for the winding up of Super Bazar. The order of winding up was upheld by the Appellate Authority on 5 November 2002. Finding that as a multi-state cooperative society, the institution had not sub-served the interest of the general public, the Appellate Authority held that the Central government was under no obligation to continue infusing funds to keep Super Bazar afloat without the prospect of any returns. The total loss of Super Bazar as on 31 March 2002 was ₹ 60.28 crore. The order of winding up was challenged before the High Court of Delhi in writ petitions instituted by the employees' unions of Super Bazar.

¹ "Central Registrar"

- A 3. On 15 January 2003, the Official Liquidator² issued a notice under Section 25F of the Industrial Disputes Act 1947³ terminating the services of the regular employees with effect from 15 February 2003 on the ground that Super Bazar did not possess the necessary financial resources to meet its salary obligations. In a reply filed to one of the writ petitions before the High Court, the Central government expressed its inability to infuse funds for the rehabilitation of the enterprise. In a reply filed on 3 March 2003, the OL stated that upon the winding up of the enterprise, the services of the employees had come to an end by the operation of law. The writ petitions before the High Court were dismissed on 19 December 2003 as a consequence of which the order of liquidation was upheld. In a writ petition titled **RS Mudgal v Official Liquidator**⁴, notices issued by the OL on 15 January 2003 and 30 April 2003 under Section 25F and Section 25N of the Industrial Disputes Act were assailed. The High Court of Delhi by its order dated 17 May 2004 dismissed the petition, holding:
- D “Legal position, not disputed by any of the counsel appearing for the parties that with the winding up of Super Bazar, by operation of law, Super Bazar closed down. Employer-employee relationship between the employees of Super Bazar snapped, the winding up order being deemed to be a notice of discharge of the officers and employees of Super Bazar.”
- E 4. The judgment of the High Court of Delhi dated 19 December 2003 dismissing the petitions challenging the order of winding up was challenged before this Court in proceedings under Article 136 of the Constitution titled **Super Bazar Karamchari Dalit Sangh v Union of India**⁵. Between August and December 2004, this Court granted opportunities to the workers to bring forth an entity with whose assistance Super Bazar could be revived.

Bids for Revival

- G 5. On 4 February 2005, the Indian Labour Co-Operative Society and the Indian Potash Limited made a proposal for taking over the assets and liabilities of Super Bazar, and in pursuance of a direction of this

² “OL”

³ “Industrial Disputes Act”

⁴ 2004 (74) DRJ 694

H ⁵ SLP (C) Nos 8398-99 of 2005 and SLP (C) No 12145 of 2005

Court, an amount of ₹ 50 lakh was deposited. Subsequently, the amount came to be refunded. By an order dated 28 February 2006, this Court was of the view that the entrustment of Super Bazar to a professionally managed entity was essential. Based on this view, an Evaluation Committee⁶ was constituted to prepare a comprehensive scheme for the revival of Super Bazar. This Court by its order dated 12 February 2008 noted that as a result of the co-operative society having become defunct, the livelihood of about 1,030 workers had been affected. The court further noted that three bids had been received for the revival of Super Bazar from (i) Indian Potash Limited; (ii) Writers and Publishers Limited⁷; and (iii) National Consumer Cooperative Federation, together with Pantaloons Retail India Limited. The court observed that, before the bids could be considered, it would be appropriate to examine the demand of the workers with regard to wages, including dearness allowance and any other allowances which were expected to be paid by the future management for at least three years after taking over Super Bazar. The court expressed the hope that once the demand was worked out category-wise, it would facilitate the acceptance of bids as well as the working of the committee which was to evaluate them. The Workers' Union filed an affidavit dated 14 March 2008 quantifying their demands at ₹ 54.31 crore as on 31 December 2007, noting that the Central government had waived an amount of ₹ 114 crore. This Court subsequently required the EC to complete the process of evaluating the three bids based on the net-worth of the bidders as on 31 March 2007 and their net-profits as on 31 March 2005, 31 March 2006 and 31 March 2007. In the course of its order dated 7 May 2008, this Court observed:

“...Under the recommendations dated 3rd August, 2007 made by the Evaluation Committee, the successful bidder is required to get the by-laws of Super Bazar amended. That amendment can be made only by the Official Liquidator. However, it appears that as a result of the said amendment, the share capital of Super Bazar might have to be enhanced. Therefore, the highest bidder should undertake that in such eventuality, it will stand by the enhancement of the share capital and reconstitution of the new Board of Super Bazar to be done in accordance with the provisions of Multi-State Cooperative Societies Act, 2002.”

⁶ “EC”

⁷ “WPL”

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A The court issued directions for the evaluation of the three bids by the EC. The court stated that its order was in exercise of the power conferred by Article 142 of the Constitution of India, with the object of ensuring the revival of Super Bazar.

B 6. On 6 August 2008, WPL submitted a revised bid together with a business plan in terms of the recommendations of the EC. The bid submitted by WPL envisaged an investment by it of ₹ 504 crore to be made in the following manner:

	10. Amount to be deposited by the bidder in Super Bazar	
C	a) Before withdrawal of liquidation order to make the net worth of the society positive (see conditions)	Rs. 102 Crores (Rupees One Hundred and Two Crores) towards issued and subscribed paid up capital.
D	b) Towards working capital of Super Bazar after the withdrawal of liquidation order.	Rs. 276 Crores (Rupees Two Hundred and Seventy-Six Crores) or more, as and when required.
E	c) Amount to be invested for revival & revamping of the business of Super Bazar Rs. 102 Crores (Rupees One Hundred and Two Crores) towards issued and subscribed paid up capital.	Rs. 126 Crores (Rupees One Hundred and Twenty-Six Crores) or more as per the revival business plan and as and when required.

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“The above extract indicates that WPL was to infuse an amount of ₹ 504 crore divided into:

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- (i) An amount of ₹ 102 crore towards issued and subscribed paid up share capital (before withdrawal of the liquidation order to make the net-worth positive);
 - (ii) An amount of ₹ 276 crore towards working capital (as and when required after the withdrawal of the liquidation order); and
 - (iii) An amount of ₹ 126 crore for the revival and revamping of the business of Super Bazar (as and when required).
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7. On 26 February 2009, this Court accepted the recommendation of the EC dated 5 November 2008 by which it had recommended the acceptance of WPL's bid. The three trade unions which were represented before this Court stated that they had no objection to the recommendations of the EC. Hence, by the order of the court the OL and the Central Registrar were directed to take steps to revive SuperBazar in terms of the orders passed from time to time. The court ordered that, pending the revival of Super Bazar, the order of winding up was to remain suspended. Moreover, as and when the scheme of revival came into force, it would substitute the order of winding up. The special leave petitions were disposed of in the above terms.

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Period under WPL Management

8. On 8 October 2009, Super Bazar, now under the management of WPL, issued a notice for the re-employment of 1,030 workers with effect from 5 October 2009. In **Super Bazar Karamchari Hiteshi Sangthan v Ramesh Chander Agarwal**⁸, a contempt petition was filed seeking the disbursement of the sum of ₹ 54.31 crore to the employees immediately. A direction was also sought for the deposit of the employees' share of provident fund contributions by WPL. By an order dated 13 August 2010, this Court directed that out of the amount of ₹ 55 crore which had been deposited by the highest bidder (WPL), an amount of ₹ 20 crore be disbursed to employees by the OL and a nominee of the Central Registrar, in the presence of a representative of each of the unions within four weeks. Insofar as the balance was concerned, the order directed WPL to file an undertaking that within a period of eight weeks from the date of the constitution of a new Board of Directors, the remaining amount would be disbursed to the workers. The general body was to elect the new Board of Directors within ninety days. This Court also directed that the premises of Super Bazar, which had been valued at ₹ 117.52 crore, shall not be encumbered and no third-party rights should be created till further orders.

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9. By a subsequent order dated 14 March 2011, this Court directed WPL to deposit an amount of ₹ 14.84 crore with the Registry of this Court, clarifying that this was a part of the total amount of ₹ 54.31 crore owed to employees of Super Bazar. WPL was ordered to comply with such directions as may be issued from time to time by the Central

⁸ Contempt Petitions Nos (C) 353-355 of 2009 in SLP (C) Nos 8398-8399 of 2005 and SLP (C) No 12145 of 2005

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A Registrar, including with regard to the inspection of Super Bazar's accounts.

10. WPL claims that in compliance of the orders passed by this Court, it effected the following payments:

- B • Amount paid to workers: Rs. 30.16 crores
- Amount deposited in Supreme Court Registry: Rs. 14.84 crores
- Amount paid towards PF: Rs. 8.07
- Deductions towards shortage: Rs. 0.57 crores
- C • Unclaimed amount: Rs. 0.68

According to WPL, further demands were raised by the workmen from WPL under the recommendations of the Fifth Pay Commission. WPL filed IAs⁹ seeking a clarification that its liability had been pegged at ₹ 54.31 crore. On 5 October 2012, a notice was issued to the workmen,

D stating that the obligation to engage them for three years had been complied with and directing them to cease from reporting to work.

11. On 22 March 2013, the Employees' Provident Fund Organization¹⁰ issued a summons to Super Bazar under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act 1952¹¹.

E WPL disputed this by instituting IAs¹² seeking a direction to the EPFO to withdraw the summons.

12. On 16 October 2014, this Court constituted a committee, being of the opinion that certain issues in regard to the implementation of the revival scheme were required to be addressed. The committee was to

F comprise of:

- (i) Shri L Nageswara Rao, Additional Solicitor General of India (as he then was);
- (ii) Mr P Sampath, Director, Department of Agriculture & Co-operation, Ministry of Agriculture, Government of India;

⁹ IA Nos 28-30 of 2011

¹⁰ "EPFO"

¹¹ "EPF Act"

¹² IA Nos 87-88 of 2013

- (iii) Mr Kesav Dasiraju, Secretary to Government of India, A
Department of Consumer Affairs;
- (iv) Mr Harin P Raval, Senior Advocate (representing the OL);
- (v) Mr CA Sundaram, Senior Advocate (representing WPL).

The committee submitted its report on 22 June 2015. The committee noted that out of the proposed infusion of ₹ 504 crore under the revival plan, WPL had brought in an amount of ₹ 102 crore towards share capital but the status of the infusion under the other two heads (working capital and revival funds) was unknown. As regards the disbursement of ₹ 54.31 crore to the workers, the report of the committee reflected the following position:

- Amount disbursed by Official Liquidator: Rs. 19.79 crores
- Amount paid by M/s Writers and Publishers Ltd : Rs. 7.93 Crores
- Amount deposited by M/s Writers and Publishers Ltd. in D
Provident Fund Office: Rs. 8.07 Crores.

On the time frame for the implementation of the revival scheme, the committee recorded the submissions of WPL which were as follows:

“M/s Writers and Publishers Ltd has also stated that they are ready to bring in further investment provided the liquidation proceedings are withdrawn and there is no deviation from the original bid conditions. However, they have stated that bidder cannot provide a definite time period for the investment keeping in view the series of unnecessary litigations/hurdles since last so many years. The requisite investments will be made by the bidder in the society as per the business plan provided free hand is given to the bidder without any inference from OL and from the registrar in the day to day affairs.”

Adverting to a difference of opinion between the OL and WPL in regard to the preservation of the properties of Super Bazar, the report indicated that:

“There is a cleavage of opinion between M/s Writers and Publishers Ltd. and the Official Liquidator on this point. While the Official Liquidator demands that no property of Super Bazar should be H

- A allowed to be sold/disposed off or leased out to any third party in future, in the interest of revival of Super Bazar, M/s Writers and Publishers Ltd. have stated clearly that in case of any such restrictions being placed on the sale of properties, the bidder shall seek an option to withdraw its bid along with interest and damages.
- B In addition, M/s Writers and Publishers Ltd. has also stated that it should have total control of the society and its assets. In view of the above, the Committee is of the view that this issue would have to be resolved by this Hon'ble Court.”
- Besides the above aspect on which the committee observed that
- C a decision of this Court was necessary, it also noted that another area of a similar nature was the means required to ensure that the management of the Super Bazar project functioned within the framework of the Multi-State Co-operative Societies Act 2002.
13. The report of the committee appointed by this Court indicated
- D that there was a serious impasse arising out of the non-implementation of the revival plan. In March 2016, the Union of India filed an affidavit stating that despite the lapse of seven years, Super Bazar had not been revived. The Central government drew attention to the fact that in the intervening years WPL had not submitted a revival plan before the Central Registrar of Co-operative Societies, despite reminders. It was alleged
- E that instead of reviving Super Bazar, WPL had outsourced the shops and properties of Super Bazar to third parties on a rental basis, earning huge rental incomes in the process. The Central government submitted that the infusion of funds by WPL was for the revival of Super Bazar and even if it were to withdraw from the revival process, there could be no stipulation for a refund. The Central government submitted that if WPL were to withdraw from the revival process, Super Bazar ought to be placed under liquidation and all claims would be duly investigated by the Central Registrar.
14. Eventually, by an order dated 29 March 2016, this Court
- G observed that:
- “Admittedly, the infusion of funds by the bidder was for the revival of the Super Bazar, and there was no stipulation for refund, in case of withdrawal of the bidder from the revival process...”
- The court noted the submission that WPL had failed to submit a
- H revival plan before the Central Registrar in spite of several directions, as

a result of which Super Bazar had not been revived seven years after WPL took over management of the concern. The court took note of the submission that under Section 90 of the Multi-State Co-operative Societies Act 2002, all claims would have to be investigated by the OL and to be settled in accordance with the statutory order of priorities for the settlement of liabilities. The Central government, as a creditor of Super Bazar, had an outstanding loan amount of ₹ 68.51 crore. The court noted that on the issue as to how and under what terms WPL could be released from the arrangement, a joint statement of the Central government and WPL dated 3 March 2016 had been submitted. Yet, upon reconsideration, “there was a change of heart” on the part of the Central government which then submitted a revised statement dated 5 March 2016. On 29 March 2016 the following directions were then issued by this Court:

“Learned counsel for the rival parties have assisted this Court, on the manner in which M/s Writers and Publishers Ltd., should be released from the obligation of the instant arrangement. Having heard learned counsel, we are satisfied in recording, that M/s Writers and Publishers Ltd. should be refunded the entire investment made by them, along with interest at the rate of 6% per annum (though it was suggested, that the rate of interest could be at 9% per annum), subject to deduction of profits made during the period when the arrangement subsisted.”

The above directions envisaged that WPL should be refunded the entire investment made by them together with interest at 6 per cent per annum, subject to the deduction of profits made during the period that the arrangement subsisted. In order to determine the exact amount to be refunded, the Court directed the Comptroller and Auditor General of India¹³ to nominate an auditor who would verify the income and expenditure incurred by WPL as well as the profits earned from the Super Bazar establishment during the period under consideration. The CAG was to verify the determination made by the auditor and the result would be binding on all the parties including WPL. This part of the Court’s direction reads as follows:

“In order to effectuate the refund referred to hereinabove (to M/s Writers and Publishers Ltd.), we consider it just and appropriate

¹³ “CAG”

- A to direct the Comptroller and Auditor General of India, to nominate an Auditor, to verify the income and expenditure incurred by M/s Writers and Publishers Ltd., and also, the profits earned by it from the Super Bazar establishment, during the period under consideration. The determination so made by the Auditor, will be verified by the office of the Comptroller and Auditor General of India, whereupon, the same shall be binding on all the parties including M/s Writers and Publishers Ltd. Needless to mention, that all interested parties shall have the liberty to appear before the nominated Auditor, and canvass their respective claims.
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- C We hereby also direct, that M/s Writers and Publishers Ltd., will forthwith handover (within two weeks) against inventory and receipt, all concerned documents and actual physical possession of all movable and immovable properties of the Super Bazar, to the Official Liquidator.”
- D 15. The OL was directed to bring to sale all the properties of Super Bazar and to deposit the proceeds in an escrow account. Apart from the direction, the court directed that on the filing of an application, WPL would be entitled to withdraw:
 - (i) An amount of ₹ 14.84 crore together with accrued interest which was deposited in the Registry of this Court; and
 - (ii) An amount of ₹ 8.07 crore together with accrued interest which was deposited with the Regional Commissioner, EPFO, Delhi.
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- F These amounts were to be deducted from the payments to be made to WPL. In pursuance of the order of this Court dated 29 March 2016, WPL claims to have handed over the documents pertaining to Super Bazar, together with actual physical possession of Super Bazar properties, to the OL.
- G 16. The workmen instituted a review petition against the order dated 29 March 2016 which was dismissed on 28 September 2016. A curative petition filed by the workmen was dismissed on 15 December 2016. The OL instituted IAs¹⁴ in March 2017 seeking an extension of time for the completion of the audit and for permission to conduct the

¹⁴ IA Nos 102-103 of 2017 in SLP (C) Nos 8398-8399 of 2005

sale of properties in order to effect payment to WPL. On 30 June 2017, A
WPL moved contempt proceedings¹⁵ seeking the disbursement of the
consideration amounting to ₹ 28.80 crore received from the sale of
immovable properties of Super Bazar.

The CAG Report

17. The OL filed the report of the CAG on an affidavit on B
4 September 2017. Some of the salient features which emerged from
the CAG report are identified below:

A. The share capital of ₹ 102 crore:

- (i) During the financial year 2009-10, WPL introduced only an amount of ₹ 35 crore as against the committed amount of ₹ 102 crore. Out of the ₹ 35 crore which was introduced towards share capital, ₹ 28 crore was invested in fixed deposits with banks. Further infusions of money in the form of share capital were to be invested for enhancing the business activity of Super Bazar, which was not done. As against seventy-three stores which were planned to be re-opened in terms of the revival, only one was made operational in January 2010; C
- (ii) During the financial year 2009-10, WPL revised the minimum extent of share capital to be subscribed and paid by the members of the cooperative society from five shares per member to fifty shares per member by amending the byelaws. The management assumed the power to forfeit the membership of existing members if they failed to subscribe to the additional shares required to be subscribed to as per the amended byelaws. Through this process, the share capital of Super Bazar which was subscribed to by 39,760 members was forfeited and 14,149 new members were introduced into the society. This *modus operandi* enabled WPL to take absolute control over the co-operative society; and (iii) The new members inducted under WPL's management were not genuine; proper modalities were not followed; and membership money was accepted in cash. There is an absence of details, including addresses, and letters addressed by the auditors to the ostensible new members were either returned undelivered or with members stating that they had not entered into any such transaction. D

¹⁵ Contempt Petition Nos. 1665-1666 of 2017 in IA Nos. 102-103 of 2017 in SLP (C)
Nos 8398-8399 of 2005

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B. Doubtful dealings:

- (i) An advance of ₹ 20 crore was given to a vendor (Premier Industries India Limited) in January 2011 without interest. On 30 March 2011, a purchase of ₹ 23.93 lakh was made and simultaneously the same goods were sold back to the same party on that very date for ₹ 24.18 lakh. In the context of a trade of ₹ 24 lakh, the advance of ₹ 20 crore is not supported by any business rationale. The advance resulted in an interest loss of ₹ 36.73 lakh;
- (ii) During the financial year 2011-12, more than 67 per cent of Super Bazar's turnover was recorded in book entries only. The total turnover was ₹ 30.29 crore whereas the turnover recorded in the Bhopal branch was ₹ 21.37 crore. Goods were purchased and sold to the same party, namely Premier Nutrition. Premier Nutrition is a proprietorship concern of Premium Industries India Limited, to whom an advance of ₹ 20 crore was outstanding. These transactions are not genuine as the bills specifically mentioned that there was no movement of goods and there was no flow of funds at the time of sale or purchase. The transactions were set up to show the revival of Super Bazar; and
- (iii) During the financial year 2012-13, over fifty per cent of the turnover was recorded only by book entries without the actual movement of goods. There are instances where goods were sold at an earlier date and purchased at a later date. The transactions entered into pertained to two enterprises: goods were ostensibly sold by Manthan Milk Products Private Limited and Premier Industries (India) Limited and purchased by Premier Nutrition and Premier Proteins Limited.

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C. MoUs with third parties:

- (i) On 18 April 2011, a MoU was entered into between RD Retail Marketing Private Limited and Super Bazar, by which the right to manage and operate stores was given to the former. At the time of the submission of the revival bid, WPL had stated that it possesses the experience and specialized manpower for managing multi product-multi location activities. The MoU was contrary to the scheme of revival

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which postulated that WPL had the necessary expertise to revive Super Bazar and expressly restrained WPL from creating third party interests in Super Bazar and its properties. Despite this, WPL entered into an agreement with RD Retail Marketing Private Limited to manage and operate all the stores that were run by Super Bazar;

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(ii) An MoU was entered into between Super Bazar and Sahara QShop Unique Product Range Limited. On 8 June 2013, the right to manage and operate the stores was handed over to the latter. As in the case of the earlier MoU, this was in breach of the revival plan under which WPL was restrained from creating third party rights. Though under the MoU Super Bazar was entitled to a margin of 5.5 per cent on a monthly sales of up to ₹ 2 crore, Sahara QShop debited only one per cent and the balance remains to be recovered; and

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(iii) On 2 July 2015, Super Bazar entered into an MoU with Sun Agri Fresh Industries Private Limited. Despite the revival scheme stipulating that no third-party rights could be created in the properties of Super Bazar, the MoU granted Sun Agri Fresh Industries Private Limited the right to manage and operate all the stores of Super Bazar. Under the terms of the MoU, an amount of ₹ 1,00,00,000 was to be deposited with Super Bazar as security against the rights granted. The amount was paid to Super Bazar but was immediately refunded and thus never constituted a security deposit.

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D. Stripping of assets:

While using the Connaught Place building for conducting the business of Super Bazar, WPL caused extensive damage to the building. All the lifts, shutters, furniture and fixtures were removed and sold and even the partition walls were removed. As chartered accountants, the auditors were not in a position to quantify the actual loss caused to the building and structure;

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E. Decreasing trend of gross profits:

Between 2009-10 and 2015-16, there was a decreasing trend in the gross profits of Super Bazar on a year to year basis. Even though the stores which were managed by third parties

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- A recorded gross profit, those managed by WPL incurred losses. This was indicative of mismanagement or pilferage of stock records, which were not available for review.
18. The summary of the audit report, as verified by the CAG, is divided into four parts:
- B (i) Part-I shows the amount recoverable from WPL on account of various amounts received by it during its operation of Super Bazar after deducting the balance payable on account of the working capital infused by WPL into Super Bazar: ₹ 29.66 crore;
- C (ii) Part-II shows the amount payable to WPL on account of share capital invested by it after the adjustment of losses incurred during the period when management control of Super Bazar was with WPL: ₹ 57.54 crore;
- (iii) Part-III shows the amount recoverable from WPL in respect of third parties which were introduced and dealt with by WPL when Super Bazar was under its management: ₹ 24.49 crore; and (iv) The EC had been constituted by this Court for evaluating bids which had been received from three bidders for the revival of Super Bazar. The EC recommended the bid of WPL on the basis that it was to infuse funds to the extent of ₹ 504 crore, comprising of ₹ 102 crore towards share capital, ₹ 276 crore towards working capital and ₹ 126 crore towards revival and revamping the operations of Super Bazar. As against the above commitments, while WPL introduced ₹ 102 crore towards share capital, the maximum working capital infused by WPL over a period of six years was ₹ 28.79 crore as on 31 December 2015 which was subsequently withdrawn and reduced to ₹ 9.34 crore as on 31 March 2016. This resulted in a shortfall of ₹ 247.21 crore towards working capital. The amount of ₹ 126 crore towards revival and revamping of operations was never brought in by WPL. As a result of this, the total investment which was to be made under the revival plan was deficient to the extent of ₹ 373.21 crore. If this amount had been infused as committed there would have been an interest cost computed at nine per cent per annum over a period of six years from August 2009 to March 2016.

WPL's Claim

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19. Pursuant to the order dated 29 March 2016 which directed WPL be refunded its entire investment, the total claim for refund brought by WPL as of 31 March 2019 amounts to ₹ 142,51,65,978. The breakup of this amount is reflected in the following tabulation chart:

I.	Share capital infused by WPL	₹ 102,00,00,000/-
II.	Working capital infused by WPL	₹ 9,34,09,794/-
III.	Interest on share capital at 6% (between 2.8.2007 and 31.3.2016)	₹ 41,69,13,540/-
IV.	Interest on share capital at 6% (between 1.4.2016 and 31.3.2019)	₹ 15,57,42,644/-
V.	Total amount	₹ 168,60,65,978/-
VI.	(Less) Amount refunded by EPFO	₹ 11,25,00,000/-
VII.	(Less) Amount refunded by Supreme Court Registry	₹ 14,84,00,000/-
Net Amount claimed		₹ 142,51,65,978/-

At the time of the submission of the verification report by the CAG dated 1 September 2017, interest up to 31 March 2016 was claimed, therefore for the purposes of the verification report by the CAG, the net amount claimed was ₹ 126.92 crore. Subsequently, WPL has claimed interest from 1 April 2016 to 31 March 2019.

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The Computation by the CAG

20. Contrary to the above amount claimed by WPL, according to the CAG's computation, the final amount payable to WPL is ₹ 3.39 crore. This is indicated in the following table:

Part I: Amount to be recovered from WPL – Determined by (i) adding the various amounts received by WPL during the period it was in management of Super Bazar, and by (ii) deducting the working capital brought in by WPL	₹ 29,65,58,133/-
Part II: Amount to be paid to WPL – Determined by adding the share capital invested and adjusting this against the losses incurred to	₹ 57,53,67,149/-

A	Super Bazar during the period it was under the management of WPL.	
	Part III: Amount to be recovered from WPL – These are amounts that WPL ought to have recovered from third parties that it introduced and dealt with during the period it managed Super Bazar.	₹ 24,49,19,323/-
B	Net amount payable to WPL = (Part II) – (Part I+III)	₹ 3,38,89,693/-

At this stage it may also be noted that the CAG has included a redrafted profit and loss statement indicating that the total loss incurred for the entire period was ₹ 44.96 crore. The CAG calculated WPL's share of the loss proportional to its shareholding in Super Bazar (98.89 per cent) at ₹ 44.46 crore.

21. The net outstanding amount worked out by the CAG as payable to WPL is computed in the following manner:

- (i) The investment made by WPL in the share capital of Super Bazar: ₹ 102,00,00,000 (Rupees 102 crore);
- (ii) **Less** net amount recoverable from WPL on account of payments received by it during the operation of Super Bazar after deducting the working capital brought in by WPL: ₹ 29,65,58,133 (Rupees 29.66 crore);
- (iii) **Less** net amount recoverable from WPL on account of third party claims: ₹ 24,49,19,323 (Rupees 24.49 crore); and
- (iv) **Less** the loss incurred by WPL since it had taken over the business of Super Bazar: ₹ 44,46,32,851 (Rupees 44.46 crore).

After deducting the above amounts from the share capital brought in by WPL, the amount to be refunded works out to ₹ 3,38,89,693 (Rupees 3.39 crore).

22. The amount of ₹ 29,65,58,133 which is referred to in (ii) above has been computed in the following manner:

a) Balance of working capital	₹ 9,34,09,794/-
b) Interest on share capital at 6% (disallowed)	₹ 41,69,13,540/-
H <u>Note:</u> According to CAG, no interest is	

	payable to WPL on the amount brought in towards share capital since dividends can only be paid on share capital where the entity has made a profit.	A
c)	EPF payment refunded	₹ 11,25,51,046/-
d)	Amount refunded by the Supreme Court Registry	₹ 14,84,65,856/-
e)	Amount withdrawn up to 12 April 2016	₹ 9,00,000/-
f)	Amount recoverable on account of discrepancies e.g. income not booked and expenses not supported with documents	
g)	Interest on security deposit of Sun Agri Fresh	₹ 6,73,770/-
	Total Amount recoverable	₹ 29,65,58,133/-

The amount of ₹ 12,73,77,255 referred to in the above table (amounts recoverable on account of discrepancies) has been computed under the following heads:

Expenses not supported by documents	₹ 2,71,76,178/-	E
Expenses not related to Super Bazar Bills	₹ 64,28,961/-	
Bills which don't seem to be genuine	₹ 4,22,86,552/-	
Income not booked/escaped (unconnected receipts)	₹ 2,15,58,130/-	
Amount paid to Director of Estate and Legal Professionals for INA Shop	₹ 3,65,88,140/-	F
Cash payments made against market survey	₹ 13,71,800/-	
Fire fighting expenditure without any related documentary evidence	₹ 1,53,000/-	G
Rent of Connaught Place building not included in 2015-16 accounts	(-) ₹ 75,93,756/-	
Rent of INA Shops not included in 2015-16 accounts	(-) ₹ 5,91,750/-	H
Total Amount	₹ 12,73,77,255/-	

- A The amount of ₹ 24,49,19,323 which is reflected in (iii) above which has been deducted from the investment of ₹ 102 crore in share capital is computed as follows:

	Amounts recoverable from Sahara Q Shop	₹ 5,44,40,075/-
B	Amount recoverable from Premier Industries,	₹ 9,07,05,206/-
	Manthan Milk, Premier Nutrition and Premier Proteins	
	Amount recoverable from RD Retail Marketing	₹ 9,97,74,042/-
C	Total amount recoverable	₹ 24,49,19,323/-

Submissions

23. During the course of the present proceedings, Ms Madhavi Divan, learned Additional Solicitor General of India, has greatly assisted this Court by providing a detailed explanation of the report of the auditor D and the verification conducted by the CAG. It is the position of the Central government that the findings of the CAG are correct and binding on all parties including WPL.

24. Mr Harin Raval, learned Senior Counsel appearing on behalf of the OL, has supported the submissions of the Union government and E further argued that the amount to be refunded to WPL must be in accordance with the CAG's report and the statutory order of priorities for the settlement of liabilities provided in the Multi-State Co-operative Societies Act 2002.

25. Critiquing the CAG report and opposing the above submissions, F Mr CA Sundaram, learned Senior Counsel appearing on behalf of WPL submitted that:

- G (i) By the order of this Court dated 29 March 2016, WPL was entitled to a refund of the entire investment together with interest at the rate of 6 per cent per annum, subject to the deduction of the profits made during the period when the arrangement subsisted;
- H (ii) Between 2009-2016, WPL brought in ₹ 102 crore towards share capital and ₹ 9.34 crore towards working capital. Thus, the total moneys which were received by Super Bazar from WPL over this period stood at ₹ 111.34 crore.

As against the aforesaid amount, the undisputed expenditure on Super Bazar between 2009-2016 was ₹ 54.31 crore towards the arrears of wages paid to workmen and a further sum of ₹ 31 crore paid to the workmen over three years between 2009-2012 besides ₹ 15 crore paid towards statutory dues including arrears of property tax and freehold charges. The undisputed expenditure of WPL on the Super Bazar concern would thus stand at ₹ 100.31 crore;

- (iii) The order dated 29 March 2016 makes it abundantly clear that WPL was entitled to the refund of the entire investment with interest at 6 per cent per annum and the only deduction that was permissible was on account of the profits which it had received. The order did not contemplate any deduction of losses;
- (iv) The CAG has proceeded on a misconceived assumption that
(a) WPL was not entitled to interest on share capital since, as shareholders WPL would only be entitled to dividends and net interest; and (b) Dividends are only payable if a company has earned profits.

Assessing WPL's Revival of Super Bazar

26. In assessing the above submissions, it is at the outset necessary to emphasise the remit given to the CAG in terms of the order of 29 March 2016. By its order, this Court directed the CAG to:

“nominate an Auditor, to verify the income and expenditure incurred by M/s Writers and Publishers Ltd., and also, the profits earned by it from the Super Bazar establishment, during the period under consideration. The determination so made by the auditor, will be verified by the office of the Comptroller and Auditor General of India, whereupon the same shall be binding on all the parties including M/s Writers and Publishers Ltd.”

(Emphasis supplied)

In this backdrop, the order recorded as follows:

“...we are satisfied in recording, that M/s Writers and Publishers Ltd. should be refunded the refunded the entire investment made by them, along with interest at the rate of 6% per annum (though it was suggested, that the rate of

A interest could be at 9% per annum), subject to deduction of profits made during the period when the arrangement subsisted”.

- The purpose of the above direction of this Court in nominating an auditor was to ensure a proper verification of the income and expenditure incurred by WPL and the profits earned from the Super Bazar establishment. Underlying the above direction of this Court was the necessity that the auditor conduct a due verification of the actual and genuine income as well as the expenditure which was incurred by WPL. That was premised on the assumption that in pursuance of the revival plan, a genuine effort had been made by WPL to revive Super Bazar. This was however yet to be verified. The facts which emerged in the course of the CAG report were subsequent to the order dated 29 March 2016. These facts were neither in the knowledge of the court nor could they have been factual considerations that were borne in mind when the order was passed. The circumstances which have come on the record as a result of the verification which has been carried out by the CAG upon the report of the auditor indicate several significant facets. Firstly, though in terms of the revival plan, a solemn commitment was made by WPL to bring in an investment of ₹ 504 crore comprising of ₹ 102 crore towards share capital, ₹ 276 crore towards working capital and ₹ 126 crore towards revival and revamping the operations of Super Bazar, WPL fell woefully short of this commitment. An amount of ₹ 102 crore was brought in towards share capital and ₹ 9.34 crore towards working capital. The commitment to bring in working capital of ₹ 276 crore and investment for reviving and revamping of ₹ 126 crore was plainly breached. Secondly, while bringing in the amount of ₹ 102 crore towards share capital, WPL by the *modus operandi* which it followed, ensured that it took over 98.89 per cent of the shareholding, ensuring it controlled the management and operations of Super Bazar. This, as the CAG report indicates, was achieved by requiring existing members of the cooperative society to subscribe to additional capital on the pain of forfeiture of their existing shareholdings. Additional members who were inducted by WPL were found by the CAG to be bogus. Thirdly, WPL while submitting its bid for the opportunity to revive Super Bazar had made a solemn representation that it possessed the necessary expertise to manage the Super Bazar stores. Instead, it entered into various MoUs with third parties for running and conducting the stores in breach of the restraining covenants contained in the revival plan. Fourthly,

large and unexplained advances were made by WPL during the period when it was in control of Super Bazar. Advances as high as ₹ 20 crore were not backed by any business rationale. It dealt with third parties on the basis of book entries without any real movement of goods or funds. Fifthly, during the period when it was in management and control of Super Bazar, the physical assets of the concern were stripped and the building at Connaught Place was deprived of all its essential fixtures.

27. The findings which have emerged in the course of the verification by the CAG leave no manner of doubt that WPL did not intend at any material time to embark upon the revival of Super Bazar. The business and affairs of Super Bazar were conducted in a manner that was sham and bogus. It dealt with related entities as explained in the report. The transactions and the modalities followed are indicative of a lack of *bona fides* on the part of the WPL in its operations.

Statutory Scheme applicable to Super Bazar

28. Chapter X of the Multi-State Co-operative Societies Act 2002 deals with the winding up of multi-state co-operative societies. Under sub-section (1) of Section 86, the Central Registrar is empowered to direct the winding up of a multi-state co-operative society after an audit, special audit or an inquiry or, as the case may be, or an inspection under Sections 70, 77, 78 and 79 respectively. Sub-section 2(b) empowers the Central Registrar of his own motion to direct the winding up of a multi-state co-operative society which has ceased to function in accordance with co-operative principles. Section 89 provides for the appointment of a liquidator while Section 90 provides for the powers of the liquidator. Under Section 90(1), all the assets of a multi-state co-operative society in respect of which an order of winding up has been passed, vest in the liquidator from the date on which the order takes effect. The liquidator is entrusted with the power to realise monies from the assets. Under clause (b) of sub-section 2 of Section 90, the liquidator is empowered to determine the contribution to be made or remaining to be made by the members or past members or by officers or former officers to the assets of the society. Under clause (c) of sub-Section (2) of Section 90, the liquidator is empowered to investigate all claims against the society and subject to the other provisions of the statute, to decide questions of priority between claimants. Under clause (d), the liquidator is empowered to pay claims against the society, including interest up to the date of

- A winding up according to their respective priorities in full or rateably, as the assets of the society may permit. The surplus, if any that remains, has to be applied in the payment of interest from the date of the order of winding up.

29. Rule 28 of the Multi-State Co-operative Societies Rules 2002
 B lays down the procedure to be adopted by the liquidator. Rule 29 provides for the order of priority in accordance with which the assets of a multi-state co-operative society shall be applied in the payment of liabilities. Rule 29 provides as follows:

- C “**29. Application of assets of the multi-State co-operative society-** The assets of the multi-State co-operative society shall be applied in order of priority as given below for payment of the liabilities:(1) *Pro-rata* payment of all outside liabilities.
 (2) *Pro-rata* repayment of loans and deposits of members. (3) *Pro-rata* refund of share capital.
 D (4) *Pro-rata* payment of dividend on the share at the rate not exceeding 6.25 per cent. per annum for the period of liquidation.”

Analysis of WPL's Claim for Refund

- E 30. An order of winding up had been passed on 5 July 2002. By the order of this Court dated 26 February 2009, it was directed that the OL and the Central Registrar take steps for the revival of the Super Bazar following the acceptance of the bid submitted by WPL. Pending the revival of Super Bazar, the order of winding up was to remain suspended. By the order dated 29 March 2016, the court recorded that in spite of the earnest efforts made by the court since the acceptance of F WPL's bid and the series of hearings since 2009, it was not possible to give effect to the terms of revival. The order indicates that suggestions were invited from the rival parties in regard to the manner in which the arrangement with WPL could be terminated. Initially a joint statement was submitted by the Government of India and WPL on 3 March 2016,
 G but it would appear that upon re-consideration the Government of India submitted a revised statement dated 5 March 2016. It was in this backdrop that the court by its order dated 29 March 2016 noted that it was “satisfied in recording” that WPL should be refunded the entire investment together with interest at 6 per cent per annum, subject to the deduction of the profits made during the period when the arrangements subsisted. At that H stage, the court envisaged the appointment of an auditor by the CAG for

the purpose of verifying the income received and expenditure incurred by WPL and the profits earned by it from the Super Bazar establishment. Upon the auditor making a determination, the amounts were to be verified by the CAG whose determination was to be binding on all the parties including WPL. At the stage when the above order was passed by this Court, the Court did not have the benefit of the auditor's investigation. Nor were the facts which emerged subsequently in the report of the CAG within the knowledge of the court. The order of the court envisaged a due and proper verification at two levels; first by the auditor and thereupon by the CAG. This verification was to underlie the ultimate computation of the profits earned by WPL. It is impossible to read the order of this Court as containing an implication that WPL was only liable to account for the actual profits earned by it during the period when it operated Super Bazar or that it was relieved of the responsibility of accounting for its dealings during the period when it was in management of the establishment. No part of the order of this Court contains a direction to the effect that WPL would not be held to account, upon a verification by the CAG, for the nature of its dealings during the period when it was in management. To accept the submission of WPL that no deduction could be made from the investment which it had brought in save and except for profits actually earned would be a simplistic reading of the order of this Court. The entire process of verification of the income and expenditure was designed not only for the purpose of deducing the profits which was earned by WPL. The Court was also conscious of the fact that in devising the terms for exit of WPL, it was not appraised at that stage of the nature and extent of the dealings of WPL in its management of Super Bazar. The order of this Court therefore can only be read to mean that WPL would be held to account for the period when it was in management based on the result of the verification initially by the auditor and thereupon by the CAG.

31. The above view which we have taken of the interpretation of the order dated 29 March 2016 must also be juxtaposed in light of the statutory provisions which govern an order of winding up under Section 89 and other cognate provisions of the Multi-State Co-operative Societies Act 2002. The statute lays down the manner in which the liquidator has to function upon taking charge. The Multi-State Co-operative Societies Rules 2002, in particular, indicate the procedure to be adopted by the liquidator and the manner in which the assets are to be applied. The order of priority is spelt out. A *pro-rata* refund of share capital appears

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- A third in the order of priority. The last in the order of priorities is a *pro-rata* payment of dividend on share capital at a rate not exceeding 6.25 per cent for the period of liquidation. To allow the claim of WPL to be refunded its entire investment amount, the major part of which took place through the subscription of share capital, would essentially place it outside the purview of the winding up proceedings. Accepting the claim would enable it to take away moneys overriding the order of priorities laid down by the Multi-State Co-operative Societies Rules 2002. WPL was one of the three bidders invited to bid for the opportunity to take over the management of Super Bazar and revive its operations. WPL was under no legal obligation to submit a bid. It engaged in a free-standing market process, albeit one supervised by this Court, through which WPL sought to turnaround the business of Super Bazar and subsequently receive profits from the business. This is supported by the conduct of WPL in squeezing out existing members and securing for itself 98.89 per cent of the share capital of Super Bazar.
- B Having failed in its market endeavour to revive Super Bazar, it now seeks to exit its investment with a full refund and without having to account for the business which was carried on during the period when Super Bazar was under the management of WPL. Such a course of action would be contrary both to the first principles which govern winding up as well as the statutory scheme which is embodied in Sections 89 and 90 of the Multi-State Co-operative Societies Act 2002 and Rules 28 and 29 of the Multi-State Co-operative Societies Rules 2002.

Dues owed to the EPFO

- F 32. During the course of the hearing, the EPFO has appeared before this Court. Mr Siddharth, learned Counsel appearing on behalf of the EPFO has placed on record:
 - (i) An order dated 13 July 2015 passed by the Regional Provident Fund Commissioner – II, Delhi (North), holding WPL liable for the payment of provident fund contributions in respect of all the employees to whom arrears of wages have been disbursed for the period from May 2003 to December 2007; and
 - (ii) An order dated 25 July 2016 determining the dues payable to the EPFO at ₹ 8.43 crore for the period from May 2003 to December 2007.

33. In adjudicating the present matter, this Court must bear in mind the provisions of the EPF Act. Section 11 provides that where an order of winding up is made, due sowed towards employees' provident fund (or any other liability mentioned therein) shall be paid in priority to all other debts in the distribution of the property or the assets of the entity which is being wound up¹⁶. Interpreting the provisions of Section 11(2), a three judge Bench of this Court in **Maharashtra State Cooperative Bank v Assistant Provident Fund Commissioner**¹⁷ has held:

“31...The priority given to the dues of provident fund, etc. in Section 11 is not hedged with any limitation or condition. Rather, **a bare reading of the section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression “all other debts” in both the sub-sections.** This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why **the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable**

¹⁶ **11. Priority of payment of contributions over other debts.-** [(1)] [Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due-

(a) From the employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies in respect of any contribution payable to the Fund [or, as the case may be, the Insurance Fund] damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the [Scheme or the insurance Scheme]; or

(b) From the employer in relation to an exempted [establishment] in respect of any contribution to [the provident fund or any insurance fund] (in so far as it relates to exempted employees), under the rules of [the provident fund or any insurance fund], [any contribution payable by him towards the [Pension] Fund under sub—section (6) of section 17.] damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17, Shall where the liability thereof has accrued before the order of adjudication or winding up is made, be deemed to be included]

- A **under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force.** It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by sub-section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts.”
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(Emphasis supplied)

34. In view of the above discussion, we have come to the
- C conclusion that the plea of WPL to receive payments at the present stage would confer on it a preference and priority which would be in the teeth of the statutory provisions contained in the Multi-State Co-operative Societies Act 2002 and the EPF Act. We have found no substance in the challenge that has been preferred on behalf of the WPL to the determination which has been made in the audit report following which
 - D a verification has been carried out by the CAG. The claim of WPL to the extent set out in the verification report by the CAG will necessarily have to be dealt with by the liquidator upon the realization of the assets of Super Bazar in accordance with the statutory order of priorities contained in the Multi-State Co-operative Societies Rules 2002. The
 - E verification made by the CAG is final and binding and shall not be called into question before the OL or in any proceeding.

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- F among the debts which under section 49 of the Presidency Towns Insolvency Act, 1909 (3 of 1909) or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920) or under [section 530 of the Companies Act, 1956 (1 of 1956)], are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

- [Explanation.-** In this sub-section, and in section 17, “ insurance fund” means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.]
- G [(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer [,whether in respect of the employees’(deducted from the wages of the employees) or the employer’s contribution], the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.]
 - H ¹⁷ (2009) 10 SCC 123

35. The liquidator shall evaluate the claim as determined by the verification report by the CAG in terms of the priorities for the payment of claims as envisaged in the Multi-State Co-operative Societies Act 2002 and the associated rules. The liquidator is also directed to treat the amount outstanding to the EPFO in terms of the first priority which is created by the provisions of Section 11(2) of the EPF Act. The liquidator shall also consider the claim of the Union government. The liquidator is directed to consider the auditor and the CAG's observations with respect to the 14,149 new members inducted during WPL's management not being genuine. The liquidator shall, in the process of winding up, be at liberty to consider all other claims received and to make a determination in accordance with law. In the event any further judicial determinations are required to be made, parties shall be at liberty to approach the High Court of Delhi and we request the Chief Justice of the High Court to constitute an appropriate bench to hear any matters arising out of the liquidation of Super Bazar.

36. The contempt petitions shall stand dismissed. All miscellaneous applications are accordingly disposed of in the above terms.

Kalpana K. Tripathy

Contempt Petitions dismissed.