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

Date of Decision: September 07, 2015

+ W.P.(C) 8576/2015 & C.M.No. 18547-48/2015

M/S BEDI & BEDI ASSOCIATES (REGD.) Petitioner

Through: Mr. S.P. Arora & Mr. Rajiv Arora,
Advocate

Versus

CENTRAL BOARD OF TRUSTEES Respondent

Through: Mr. R. R. Rajesh, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

The Employees Provident Funds Appellate Tribunal, vide impugned order of 18th August, 2015 directs petitioner to deposit 50% of the damages levied in proceedings under Section 14 B of *The Employees Provident Funds and Miscellaneous Provisions Act, 1952* as a precondition for entertaining petitioner's appeal against order (*Annexure P-2*) under Section 14-B of the aforesaid Act.

Notice.

Mr. R.R.Rajesh, Advocate, accepts notice of this petition.

With the consent of learned counsel for the parties, this petition is taken up for final hearing and disposal.

The submission of learned counsel for petitioner is that the Employees Provident Funds Appellate Tribunal has no inherent powers to direct pre-deposit of any amount in proceedings under Section 14-B of the aforesaid Act. To submit that the impugned order is illegal and invalid, reliance is placed upon decisions in *Old Village Industries Vs. APFC, EPFO & anr.* 2004 SCCOnline Del 1054; *RPFC Vs. RPFAT & ors.* (2013) 169 PLR 290; *Ayureved Rugnalaya Vs. APFC* 2014 SCCOnline Del 7086 and decisions of Coordinate Bench of this Court of 15th May, 2013 in W.P.(C) No. 3176/2013 *Saraya Sugar Mills Vs. RPFC*; of 4th February, 2015 in W.P.(C) No. 1085/2015 *V.B. Secrity Services Vs. Assistant Provident Fund*; 31st July, 2013 in W.P.(C) No. 4439/2012 *Employees P.F. Organization Vs. Etoile Creations & anr* and of 28th August, 2015 in W.P. (C) No. 8248/2015 *M/S Evershine Housekeeping Services Vs. Central Board of Trustees Through Assistant Provident Fund Commissioner*.

Learned counsel for respondent supports the impugned order and submits that the learned Tribunal has rightly relied upon decision of High Court of Karnataka in *Talaguppa Plywood Products (P) Ltd. Vs. The Employees' Provident Fund Appellate Tribunal & anr.* ILR 2006 KAR 1179. It is submitted by learned counsel for respondent that the decisions relied upon by petitioner do not take into consideration the inherent powers of the learned Tribunal. Attention of this Court is drawn to Rule 21 of *The Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997* to highlight the inherent powers of the Appellate Tribunal.

Upon considering the submissions advanced by both the sides and

on perusal of the impugned order, the relevant provisions of the Act and applicable Rules as well as decisions cited, I find that the decision of High Court of Karnataka in *Talaguppa (Supra)* does not take into consideration the distinction between the 'levy of damages' as provided under Section 14-B of the aforesaid Act and 'the amount due', as determined in Section 7A of the aforesaid enactment and so, the aforesaid decision has no persuasive value. There are string of decisions by this Court declaring that the pre-requisite of deposit of 75% of the amount determined is applicable to the orders passed under Section 7A and to no other provisions of the aforesaid enactment. The view taken by this Court in *Old Village Industries & Saraya Sugar Mills (supra)* holds good even today.

Thus, it is no longer *res integra* that the requirement of pre-deposit under Section 7- O of this enactment is confined to the determination of dues under Section 7A of this Act and does not apply to the damages levied under Section 14 B of this Act. So far as question of exercising discretionary powers by the learned Tribunal is concerned, this Court finds that the inherent powers conferred upon the learned Tribunal by Rule 21 of *The Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997*, is confined to give effect to its orders and it does not confer any discretionary powers upon the Tribunal to insist for pre-deposit in appeals pertaining to determination of the damages leviable under Section 14 B of this Act. It needs to be remembered that the discretion cannot be exercised to supplant the substantive law.

With aforesaid clarifications, this petition and applications are allowed, thereby setting aside the impugned order and the Appellate

Tribunal is directed to hear petitioner's appeal without any pre-condition.

Dasti.

(SUNIL GAUR)
JUDGE

September 07, 2015

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