

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

Date of Decision: 21.12.2015

+ **W.P.(C) 9754/2015 & CM 23437/2015 (stay)**

M/S SHIVALIK HOUSE KEEPING SERVICES

..... Petitioner

Through: Mr Harvinder Singh and Mr S.K. Gupta,
Adv.

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr R.C. Chawla, Standing Counsel with Ms
Inderjit Sidhu and Mr Madhur Sachdeva,
Advs.

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks directions to respondent to grant interim relief against the impugned order dated 01.09.2015 passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, Delhi vide which the Tribunal has dismissed the appeal filed by the petitioner.

2. The factual matrix of the case leading to filing of the instant petition are that the Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Delhi (the respondent) passed an order dated 30.12.2013 against the petitioner's establishment under Section 7A of the Employees' Provident Fund and Misc. Provisions Act, 1952 (hereinafter referred to as 'the Act, 1952' for the period from 03/2005 to 02/2013. Subsequently, a complaint was lodged by six (6) excluded employees before the respondent for non-payment of the PF contribution on the basis of which the respondent issued a summon under Section 7-C of the Act, 1952 to the petitioner. The respondent passed an order under Section 7-C of the Act, 1952 on 30.06.2015, however, copy of the

order along with covering letter was not sent to the petitioner. At the request of the petitioner, the certified copy of the order was supplied on 23.07.2015. Being aggrieved by the order, the petitioner preferred an appeal under Section 7-I of the Act, 1952 before the Employees' Provident Fund Appellate Tribunal which was registered as ATA 907(04)2015. The petitioner moved an application under Section 7-O stating therein that the condition of pre-deposit is not applicable if the order is passed under Section 7-C of the Act, 1952. Ignoring the same, the Tribunal passed an order on 17.08.2015 directing the petitioner to deposit 50% of the assessed amount. The petitioner filed a writ petition bearing W.P.(C) No. 8328 of 2015 before this Court. The matter was listed for hearing on 07.09.2015. In between, the respondent issued an attachment order under Section 8 of the Act, 1952 to the petitioner's bankers i.e. Punjab & Sind Bank and Canara Bank as such the application under Rule 21 the Act, 1952 was filed by the petitioner which was listed before the Tribunal for hearing on 01.09.2015. The Tribunal without waiting for the expiry of period of 15 days, dismissed the appeal itself on the presumption that the petitioner is not interested in depositing 50% of the assessed amount as directed by the Tribunal.

3. The basic submissions of learned counsel for the petitioner is that since it was an order passed under Section 7-C of the Act, 1952, as such no order for pre-deposit of the assessed amount could have been passed by the Tribunal. In fact, an application under Section 7-O of the Act, 1952 was also filed seeking exemption from pre-deposit on this very ground. However, ignoring this fact direction was given to deposit 50% of the assessed amount. Reliance was placed on an order passed by the Tribunal in ***M/s Etoile Creations v. RPFC, Delhi*** where also similar submissions were made relying upon the judgment rendered by the High Court of Bombay in ***M/s Writer Safeguard Private Limited v. Regional Provident Fund Commissioner – II & Assessing Officer & Ors*** reported as (2011) LLR 1193 where it was held that in proceedings under Section 7-C of the Act, 1952 pertaining to determination of escaped amount, there is no requirement of pre-deposit of the assessed amount. Counsel submits that feeling aggrieved by this order, the department preferred a writ petition bearing W.P.(C) No. 4439 of 2012, However, the said writ petition was dismissed and the LPA No.695/2013 preferred by the department

met with same fate.

4. Learned counsel for the petitioner further referred to the latest order passed by the Division Bench of this Court on 16.12.2015 in LPA Nos. 880/2015, 762/2015, 848/2015 and 868/2015 where it was clarified that Section 7-O of the Act, 1952 would apply only to order passed under Section 7-A of the Act, 1952 and not to the orders passed under Sections 7-B, 7-C, 7-Q and Section 14-B of the Act, 1952. Counsel further submits that normally while passing an order for pre-deposit amount, time is granted for 30/60 days. However, in the instant case, time was granted only of 15 days and even before expiry of this period of 15 days, the appeal itself was dismissed. He also referred to various attachment orders passed by the Competent Authority which are alleged to be in violation of provisions of law. Under the circumstances, the counsel for the petitioner submits that the impugned order dated 01.09.2015 be set aside and the Appellate Authority be directed to hear the appeal of the petitioner on merits.

5. Learned counsel for the respondent, on the other hand, submits that the impugned order does not suffer from any infirmity because the order dated 30.06.2015 passed by the respondent is not under Section 7-C simplicitor but is passed under Section 7-A read with Section 7-C of the Act of 1952 and, therefore, the issue of applicability of pre-deposit in passing any order under Section 7-C does not arise in the given set of facts in the instant writ petition. Even otherwise, the challenge raised by the petitioner that pre-deposit is not required for the order passed under Section 7-C the Act of 1952 is not correct as from the bare reading of Section 7-A read with Section 7-O of the Act of 1952 it is clearly established that the amount due by the establishment could be determined including Section 7-C of the Act of 1952. The counsel for the respondent further submits that the order passed by the Division Bench of this Court is distinguishable from the facts of the case as such the writ petition, being devoid of any merit, is liable to be dismissed.

6. Rebutting the submissions of learned counsel for the respondent, the counsel for the petitioner submits that the mere fact that on the heading of the order it is mentioned that this is an order under Section 7-C read with Section 7-A of the Act of 1952 does not mean that the order is under Section 7-A of the Act of 1952 as well. Reference was made

to the forwarding letter dated 23.07.2015 wherein subject was clearly mentioned as *“forwarding of copy of the order passed under Section 7-C of the Employees’ Provident Fund and Misc. Provisions Act, 1952”*. Counsel further submits that the order under Section 7-A of the Employees’ Provident Fund and Misc. Provisions Act, 1952 was passed much earlier as is reflected from the forwarding letter dated 10.12.2013. It was only for the escaped amount that the proceedings under Section 7-C were initiated. Reference was also made to the order passed in ***M/s Etoile Creations v. RPFC, Delhi*** wherein also heading of the order was under Section 7-A read with Section 7-C of the Act of 1952, but in sum and substance the order was under Section 7-C of the Act of 1952 and, therefore, the aforesaid orders were passed clarifying that there was no requirement for pre-deposit under Section 7-C of the Act of 1952.

7. A perusal of the order dated 06.06.2012 passed by the Tribunal in ***M/s Etoile Creations v. RPFC, Delhi*** goes to show that the appellant therein had relied upon the order passed by the Bombay High Court in ***Writer Safeguard Private Limited*** (supra) wherein it was held as under:

“when there is no legal requirement under the provisions of Employees Provident Funds & Miscellaneous Provisions Act as a pre-condition to deposit the assessed amount and/or part thereof in the proceedings under Section 7-C of the Act pertaining to determination of escaped amount for preferring an appeal against the order passed by the EPF Authority under Section 7-C the order of the Appellate Authority for Pre-deposit of 30% of the assessed amount is illegal and liable to be set aside.”

8. As stated above, writ petition filed by the department was dismissed. The LPA No.695/2013 preferred by the respondent–department was also dismissed. Moreover, the entire controversy is now set at rest by order dated 16.12.2015 passed by a Division Bench of this Court in LPA Nos. 880/2015, 762/2015, 848/2015 and 868/2015. In that case it was contended by learned counsel for Employees Provident Fund Commissioner that under Section 7-A(1)(b) of the Act the order contemplated is one which determine the amount due from an employer and thus every order passed would be in exercise of the power under Section 7-A of the Act. However, the contention was rejected by

observing that Section 7-I itself treats orders passed under Section 7-A, Section 7-B, Section 7-C and Section 14-B of the Act as separate and independent orders. It was further observed that there is a legislative omission in not amending Section 7-I when on July 01, 1997 Section 7-Q was inserted in the Act. By referring to Section 7-I pertaining to appeal to Tribunal, Rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 relating to fee, time for filing appeal, deposit of amount due on filing appeal, it was observed that appeal has to be entertained without insisting on any pre-deposit concerning the orders passed under Section 7-Q and Section 14-B of the Act of 1952. In view of the same, the Tribunal could not have insisted upon depositing 50% of the assessed amount. That being so, the order dated 30.06.2015 is unsustainable in law. The appeal preferred by the petitioner was dismissed on 01.09.2015 primarily on the ground that the petitioner has failed to deposit 50% of the assessed amount pursuant to the orders passed on 17.08.2013 and the appeal was dismissed on 01.09.2015 on account of non-compliance of the order dated 17.08.2015.

9. While passing over, it will not be out of place to mention that vide order dated 17.08.2015, the petitioner was directed to deposit 50% of the assessed amount within 15 days. The petitioner is right in submitting that if 15 days is to be counted from the date the date of the order, then 15 days expired on 03.09.2015. The copy of the order was provided on 19.08.2015. If the period is counted from the date of supplying the order then 15 days got expired on 05.09.2105, however, the appeal was dismissed on 01.09.2015 even before expiry of this stipulated period.

10. Under the circumstances, the impugned order dated 01.09.2105 is set aside and the EPF Appellate Tribunal is directed to restore the appeal of the petitioner and decide the same on merits.

11. During the course of arguments, learned counsel for the petitioner fairly conceded that the restoration of the appeal would not prohibit the Competent Authority to effect the recovery of the assessed amount. In case any application for stay of the impugned order is moved by the petitioner then it will be open to the Competent Authority / Appellate Tribunal to dispose of the same in accordance with law.

12. With aforesaid observations, the writ petition stands disposed of.

Pending CM also stands disposed of.

The parties are directed to appear before the EPF Appellate Tribunal, Delhi on 04.01.2016.

(SUNITA GUPTA)
JUDGE

DECEMBER 21 2015/rd