IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.635 OF 2016

Shree Kranti Sugar and Power Ltd.,
(Unit Parner Sugar)
At Devibhoire, Tq.Parner,
Dist.Ahmednagar, PETITIONER
Through its Managing Director

VERSUS

1. Regional Provident Fund Commissioner-II,
E.P.F. Organisation, 11, Bhavishya Nidhi
Bhawan, MIDC Area, Satpur,
Nashik - 422 007.

2. The Union of India,
Through Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhavan, Rafi Marg,
New Delhi RESPONDENTS

Mr.V.P.Golewar and Mr.A.R.Joshi, Advocates for the petitioner.
Mr.K.B.Chaudhary, Standing Counsel for respondent No.1.
Mr.S.B.Deshpande, Assistant Solicitor General of India for Respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/01/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the visit note dated 16/12/2015 issued by respondent No.1/R.P.F. Commissioner, by which the

petitioner is instructed to deposit an amount of Rs.5,41,84,209/- as the provident fund dues u/s 14-B and Section 7-Q. Grievance is that the petitioner is an auction purchaser. The sale certificate under Rule 7(2) of the Security Interest (Enforcement) Rules, 2002 was issued by the competent authority on 21/10/2015. The certificate of sale under Rule 9(6) was also issued on 21/10/2015, thereby putting the petitioner into possession of the erstwhile Parner Taluka Sahakari Sakhar Karkhana Ltd., situated at Devibhoire, Tal. Parner, Dist.Ahmednagar.

3. The petitioner further submits that after the visit note impugned in this petition, it gathered information that the PF authorities had caused an enquiry for the period September 2000 to October 2005 and by its order dated 16/12/2013, an assessment was made u/s 14-B and 7-Q for an amount of Rs.5,39,57,713/-. This was not brought to the notice of the petitioner at the time of the auction purchase.

4. Mr.Golewar strenuously submits that in the above stated peculiar facts, the petitioner cannot prefer an appeal u/s 7-I before the National Provident Fund Appellate Tribunal at New Delhi since the limitation prescribed is 60 days and the authority to condone any

delay, by the Tribunal is restricted to a further period of 60 days, in all 120 days. He, therefore, submits that the petitioner has no option but to approach this Court.

5. Mr.Chaudhary, learned Advocate appearing on behalf of the respondents submits that the sale certificate dated 21/10/2015 in paragraph No.3 of its first page clearly indicates that "*the purchaser has accepted all the encumbrances presently thereon on the property and which may arise in future and agreed to pay the same and as per the tender conditions accepted by the purchaser*", the property was handed over to the petitioner. Mr.Chaudhary, therefore submits that the petitioner cannot feign ignorance.

6. Mr.Chaudhary further relies upon Section 17-B of the E.P.F. and M.P.Act, 1942 to contend that the petitioner cannot be absolved of its obligation to pay the outstanding PF dues.

7. I have considered the submissions of the learned Advocates for the petitioner and the respondents.

8. The sale certificate indeed indicates that the petitioner /

purchaser has accepted all the encumbrances presently existing and which may crop up in future. So also, Section 17-B of the EPF and MP Act, 1952 reads as under :-

> "*17-B. Liability in case of transfer of establishment : Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or [the [Pension] Scheme or the Insurance Scheme], as the case may be, in respect of the period up to the date of such transfer:*
>
> *Provided that the liability of the transferree shall be limited to the value of the assets obtained by him by such transfer.]*

9. Without dealing with the abovesaid controversy, since the proceedings u/s 7-Q and 14-B have already culminated into an order dated 16/12/2013, unless the said order is set aside, the petitioner cannot take its case any further. It is quite possible that the petitioner may have become aware of the said order due to the visit note dated 16/12/2015. This aspect will have to be established by following the due procedure in law in resorting to a statutory remedy u/s 7-I.

10. As such, since the petitioner contends that the order dated 16/12/2013 has come to its notice for the first time after the visit note dated 16/12/2015, it would be in the interest of justice to permit the petitioner to approach the National Tribunal by resorting to a statutory remedy available. In the event, such an appeal is filed and an application for condonation of delay is tendered, the Tribunal can decide the same on its own merits after hearing all the litigating sides on the date on which the cause of action can be said to have arisen.

11. As such, this petition stands disposed of with liberty to the petitioner to prefer an appeal u/s 7-I before the Appellate P.F. Tribunal. In the event, such an appeal is filed within 6 (six) weeks from today, and if an application for condonation of delay is filed considering that the petitioner desires to challenge the order dated 16/12/2013, the Tribunal may consider the said application on its own merits and in tune with the scheme prescribed under the EPF and MP Act.

12. It is made clear that this Court has not dealt with the merits of the case put forth by the petitioner, in as much as, this Court has not drawn any conclusion that the limitation begins from the date of the visit note. The Appellate Tribunal shall note that it will have

liberty to decide the application for condonation of delay after considering all the factors involved, on its merits.

13. Rule is discharged.

(RAVINDRA V. GHUGE, J.)