IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12186/2015

Piyush Sugar and Power Pvt.Ltd., through Chairman Pralhad Hariram Panhale.
...Petitioner..

Versus

The Regional Provident Fund Commissioner II & another.
...Respondents...

.....

Shri N.B. Khandare, Advocate h/f Shri Mahesh Deshmukh, Advocate for petitioner.
Shri K.B. Choudhary, Advocate for respondent no.1.
Shri A.D. Shinde, Advocate for respondent no.2.

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CORAM: S.V. GANGAPURWALA & K.L. WADANE, JJ.

DATE: 15.12.2016

ORDER :

1] Present petition is filed against the order dated 9.11.2015 rejecting the application for condonation of delay in preferring appeal before the Tribunal. Mr.N.B. Khandare, learned counsel submits that the petitioner is a purchaser of part of the assets of the erstwhile Karkhna i.e. Ahmednagar Taluka Cooperative Sugar Factory.

The sale certificate was issued. The proceedings were *ex-parte* proceedings as far as determination of the amount u/s 14B and 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is concerned. The petitioner was not aware of any order dated 4.6.2014 passed by the authority. It was only after the sale certificate was issued, the petitioner got the knowledge. From the date of knowledge, the appeal is presented within limitation. The petitioner be allowed to contest the appeal on merits.

2] Mr.K.B. Choudhary, learned counsel submits that as per the rules, the amount of Rs.51,87,300/- is due and payable by the petitioner towards the provident fund u/s 14B and 7Q of the Act. According to the learned counsel, the petitioner has accepted the liability. The appeal itself is not maintainable before the Tribunal at the behest of the subsequent purchaser. The subsequent purchaser is liable to pay the said amount.

3] We have considered the submissions canvassed by the learned counsel appearing for the parties.

4] No doubt, the Tribunal does not have power to condone the delay. In the present case, the petitioner is an auction purchaser. The principal amount of liability under the Provident Fund Act has been met with. The present amount is a liability determined u/s 14B and 7Q of the Provident Fund Act i.e. Damages and interest for delayed payment of the provident fund.

5] It appears, from the date of knowledge, the proceedings are filed within limitation. Whether the appeal itself is maintainable or not is a different issue altogether, which the Tribunal would consider at the time of hearing the appeal. The liability of the petitioner even as per the sale certificate is 70% of Rs.51,87,300/-.

6] Considering the aforesaid conspectus of the matter, we pass the following order.

ORDER

i] The impugned order is quashed and set aside on condition that the petitioner deposits an amount of Rs.35,00,000/- (rupees thirty five lakhs) with the respondent no.1 within a period of two weeks from today.

ii] On deposit of the said amount, the delay shall stand condoned and the Tribunal shall decide the appeal on its own merits after hearing the parties concerned in that regard.

iii]All contentions of the petitioner and respondents are kept open.

iv] Writ petition is accordingly allowed. No costs.

(K.L. WADANE, J.) **(S.V. GANGAPURWALA, J.)**