IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12257 OF 2015

M/s Evergreen Engineering Company Pvt.Ltd.,
D-73-76, MIDC, Ahmednagar-414001.

...PETITIONER

-VERSUS-

Employees Provident Fund Organization,
The Assistant Provident Fund Commissioner,
S.R.O. Plot No.11, Bhavishyanidhi Bhavan,
MIDC Area, Satpur, Nashik-422007.

...RESPONDENT

...

Advocate for Petitioner : Shri Upadhye Vinayak Narayan.

Advocate for Respondent : Shri Chaudhari K.B..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th August, 2016

Oral Judgment :

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

2 Shri Upadhye, learned Advocate for the Petitioner Company, submits that two orders, namely, the order dated 01.10.2015, Reference No.2654 under Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short “the Act”) and the order

dated 01.10.2015, Reference No.2653 under Section 14-B of the Act, were subjected to Appeal No.1195(9) of 2015 and Appeal No.1264(9) of 2015 before the Employees Provident Fund Appellate Tribunal, New Delhi. Appeal No.1195(9) of 2015 has been dismissed by the Appellate Tribunal vide order dated 14.10.2015 since the order passed under Section 7Q is not appealable. The other appeal is pending adjudication.

3 Shri Upadhye submits, on instructions, that this petition can be disposed of by transmitting the amount of Rs.12 lac deposited by the Petitioner in this Court on 16.01.2016, to the Provident Fund Authorities at Nashik and the order under Reference No.2654 dated 01.10.2015 under Section 7Q, which is a necessary outcome of the order dated 01.10.2015 passed under Reference No.2653 under Section 14B, can be considered by the Appellate Tribunal. Reliance is placed upon a similar order passed by this Court dated 30.09.2015 in **Writ Petition No.9859/2015** in the matter of *Agasti Sahakari Sakhar Karkhana Ltd. vs. Union of India*.

4 The learned Advocate for the Respondent has no objection since the entire amount under order dated 01.10.2015 under Section 7Q is being deposited with the Provident Fund Authorities at Nashik.

5 The contention of the Petitioner needs to be considered since the order dated 01.10.2015 under Section 7Q is a necessary outcome of the order dated 01.10.2015 under Section 14B. If the pending Appeal No.1264(9) of 2015 before the Appellate Tribunal is allowed, the order under Section 7Q would be directly affected. If the appeal under Section 14B is allowed in totality, the order under Section 7Q will also have to be set aside. With the amount of Rs.12 lac deposited in this Court, upon being transferred to the Employees Provident Fund Authority at Nashik, the said amount is secured.

6 In the light of the above, considering the statement of the learned Advocates as recorded above, this Writ Petition is partly allowed with the following directions:-

(a) The amount of Rs.12 lac along with accrued interest lying in this Court shall be transmitted to the Respondent/ Employees Provident Fund Organization, the Assistant Provident Fund Commissioner, S.R.O. Plot No.11, Bhavishyanidhi Bhavan, MIDC Area, Satpur, Nashik-422007, forthwith.

(b) The Appellate Tribunal shall consider the application of the Petitioner for seeking restoration of Appeal No.1195(9) of 2015 challenging the order dated 01.10.2015 under Section 7Q, so as to hear the said appeal along with Appeal

No.1264(9) of 2015 which is pending before it.

(c) Needless to state, both the appeals are to be decided by the Appellate Tribunal on their own merits.

7 Rule is made partly absolute in the above terms.

kps (**RAVINDRA V. GHUGE, J.**)