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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LETTERS PATENT APPEAL NO. 35/2016**

Date of decision: 23rd August, 2016

CENTRAL BOARD OF TRUSTEES EPF Appellant

Through Mr. R.C. Chawla, Advocate.

versus

ST. MICHAELS SCHOOL DURGAPUR Respondent

Through Mr. S.K. Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

CM No. 1650/2016

Exemption application is allowed, subject to all just exceptions.

CM No. 1651/2016

This is an application for condonation of delay of 12 days in filing of the Letters Patent Appeal. No reply has been filed. The delay in filing the appeal, it is stated, was on account of administrative reasons. In view the period of delay and the reasons given, we are inclined to condone the delay. The application is accordingly allowed.

LETTERS PATENT APPEAL No. 35/2016

With the consent of the learned counsel for the parties, we take up the appeal for hearing and disposal.

2. The respondent-school has filed an appeal under Section 7-I of the

Employees' Provident Fund and the Miscellaneous Provisions Act, 1952 (Act, for short) impugning the order dated 15th September, 2015 under sections 14B and 7Q passed by the Assistant Provident Fund Commissioner for the period February 1998 to November 2009. The appeal is pending.

3. The respondent had also filed an application for stay of recovery of demand. By order dated 29th September, 2015 the Employees' Provident Fund Appellate Tribunal restrained the Provident Fund authorities from recovery of more than 50% of the assessed amount till further orders.

4. The respondent perceived that they were entitled to absolute stay, and being aggrieved by the order granting partial stay, had filed Writ Petition (C) No. 10580/2015. The impugned order dated 16th November, 2015, passed by the single Judge holds that as the appeal filed against the order under Section 14-B and 7 Q could be entertained without pre-deposit, the direction to deposit 50% of the assessed amount indirectly imposes a condition not postulated under the statute. The reasoning given in the impugned order reads:-

“Upon hearing and on perusal of the impugned order, material on record and the orders cited, I find that this Court has already taken a view in M/S Bedi & Bedi (supra) that an appeal against an order passed under Section 14 B of the EPF Act needs to be entertained without any pre-deposit. During the course of hearing, learned counsel for respondents had submitted that impugned order does not require any pre-deposit and it only restrains respondents from recovering more than 50% of the assessed amount. When there is no

requirement of any pre-deposit, then where is the question of passing impugned interim order? Such statutory appeals are matter of right, which ought to be decided with promptitude and such appeals cannot be rendered infructuous by executing the orders appealed against. The orders in *Jai Balaji Security Services and M/S Shri Krupa Services Pvt. Ltd. (supra)* relied upon are of no avail in view of decision of 20th September, 2013 of a Division Bench of this Court in LPA 695/2013 *Employees P.F. Organisation through. Assistant P.F. Commissioner (Legal) Vs. M/S Etoile Creations & anr.*, which reiterates that pre-deposit of 75% of the amount assessed is applicable to an order passed under Section 7-A of the EPF Act. Instead of asking for pre-deposit of 50% of the assessed amount, indirectly a condition has been put in the impugned order permitting recovery of the assessed amount up to 50%. What cannot be done directly, cannot be permitted to be done indirectly.

During the course of hearing, it was brought to the notice of this Court that decision of this Court in *M/S Bedi & Bedi (supra)* is sub-judice before a Division Bench of this Court. However, it was not brought to the notice of this Court that the operation of the decision in *M/S Bedi & Bedi (supra)* has been stayed by the Division Bench of this Court.

In view of the above, impugned order is modified to the extent that recovery proceedings pursuant to the order under challenge in appeal be not initiated till petitioner's appeal is decided by the Tribunal. Petitioner be granted three effective opportunities of hearing and an endeavour be made to decide petitioner's appeal within a period of six months from today."

5. The reasoning given in the impugned judgment conflicts and is contrary to the ratio expressed in the decision dated 16th December, 2015 in LPA No. 880/2015 titled ***Jai Balaji Security Services (Regd.) versus A.P.F.C. Delhi (North)*** and other connected matters. This decision holds

that pre-deposit stipulated under Section 7-O of the Act would be restricted to the amount due and demanded under Section 7-A and does not embrace the demands under Section 14-B and 7-Q of the Act. However, an aggrieved person, who has challenged an order under Section 14-B and 7Q of the Act, can move an application before the Appellate Tribunal seeking stay of the demand raised under the said sections. Thus, the pre-deposit under Section 7-O or its waiver, and an application for stay of recovery of demand under Section 14-B and 7Q of the Act, are two separate and independent aspects and issues.

6. Thus, it has been wrongly observed and held in the impugned order that when an application for stay under Section 14-B and 7-Q is filed, the Appellate Tribunal cannot pass a conditional order and direct stay of recovery of a part demand under Section 14-B and/or 7-Q of the Act. There is a clear distinction between orders passed under Section 7-O of the Act relating to the question of pre-deposit of the demand under Section 7A and an order passed on an application seeking interim stay of demand raised under Sections 14-B and 7-Q of the Act. This is apparent from the following observations in paragraphs 11 and 15 of the judgment in ***Jai Balaji Security Services (Regd.)*** (supra), which read:-

“11. A perusal of Section 7-O reveals that the embargo on the entertainment of an appeal by the Appellate Tribunal concerning pre-deposit of 75% of the amount due as determined by an officer referred to in Section 7-A is restricted to said Section and does not embrace Section 7-Q or Section 14-B of the Act.

12. XXXXX

13. XXXXX

14. XXXXX

15. But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay. Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, but the pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders.”

7. In view of the aforesaid ratio, the impugned order cannot be sustained and is liable to be set aside. However, learned counsel for the respondent-school submits that the respondent-school had raised other grounds and reasons in the Writ Petition as to why there should be absolute stay, and the direction that there would be part stay of the impugned demand under Sections 14-B and 7-Q cannot be sustained. In these circumstances, we pass an order of remand to the Single Judge, who shall decide the writ petition on merits, without being influenced by the reasons

given in the order dated 16th November, 2015, which have been set aside.

8. To cut short delay, parties are directed to appear before the single Judge on 5th September, 2016, when a date of hearing will be fixed.

9. It is stated by the counsel for the parties that the next date of hearing before the Appellate Tribunal is 13th October, 2016. We would request the Appellate Tribunal to dispose of the appeal expeditiously and preferably within 2 months from the next date of hearing.

10. The appeal is accordingly disposed of. There will be no order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

AUGUST 23, 2016
VKR/NA