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

\+ W.P.(C) 9474/2015, CM APPL. 22244/2015

STEEL AUTHORITY OF INDIA ..... Petitioner

Through: Mr. K.K. Rai, Sr. Advocate with Mr. H.L. Sharma, Mr. Kartickay Mathew and Mr. Arshul Rai, Advs. with Mr. Ashwani Bhalla, AGM for the petitioner

versus

REGIONAL PROVIDENT FUND COMMISSIONER..... Respondent

Through: Mr. R.C. Chawla, Standing Counsel for RPFC/R-1

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **05.09.2016**

An affidavit has been filed by the petitioner in terms of this Court's order dated 11th August, 2016.

Mr. Chawla, learned Standing Counsel for the respondent submits that the appeal of the petitioner is pending before the EPF Appellate Tribunal which is seized of the merits of this case.

The petitioner has challenged the conditional order dated 08.09.2015 of the EPF Appellate Tribunal directing the deposit of 40% of the assessed amount within 30 days thereof, under Sections 14-B & 7-Q of the Employees' Provident Fund & Miscellaneous Provision Act, 1952 on the ground that the said pre-deposit of 40% of the assessed amount could not be insisted upon.

Mr. Chawla relies upon an order of Division Bench of this Court in

LPA No. 35 of 2016, dated 23rd August, 2016 which observed thus:

> “1. xxxxx
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> 2. xxxxx
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> 3 xxxxx
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> 4. xxxxx
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> 5. xxxxx
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> 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:-
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> > “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
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> > 13. XXXXX
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> > 14. XXXXX
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> > 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.

Mr. K.K. Rai, learned Senior Advocate for the petitioner submits that since the petitioner has already paid more than the amount directed to be deposited, therefore the conditional order dated 08.09.2016 is erroneous. He states upon instructions from Mr. Ashwani Bhalla, AGM of the petitioner who is present in the Court, that payment if any, can be secured by way of a Bank Guarantee.

The issue of the EPF Appellate Tribunal's power to pass conditional order apropos stay of recoveries or pre-deposit having been settled in the affirmative by this Court's decision in ***Jai Balaji (Supra)***, it would be appropriate that the manner of securing the directed amounts and further orders be passed by the EPF Appellate Tribunal before which the petitioner's appeal is pending. It is said to be listed before the Appellate Tribunal on 14^{th} September 2016 for final hearing. It is for the Tribunal to adjudicate on the contentions raised by the petitioner regarding the monies already paid and or securing the recovery, if any, by way of a Bank Guarantee.

The interim protection under Court's order dated 15.10.2015 shall stand extended till the next date of hearing before the Tribunal, i.e. till 14^{th} September 2016.

The petition is disposed off in the above terms.

The Court expresses no view on the merits of the case.

Dasti under the signatures of the Court Master.

NAJMI WAZIRI, J.

SEPTEMBER 05, 2016/acm