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

Date of Decision: May 04, 2017

\+   **W.P.(C) 11144/2016 & C.M.43567/2016**

MANPOWER BUREAU ..... Petitioner
Through: Mr. Somesh Kumar Dubey, Advocate

versus

ASSISTANT PROVIDENT FUND COMMISSIONER, DELHI (SOUTH) ..... Respondent
Through: Mr. R.C. Chawla, Standing Counsel with Mr. Pradeep C. Sati and Mr. Inderjeet Sidhu, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

%   **ORAL**

Vide impugned order of 21st September, 2016, Employees' Provident Funds Appellate Tribunal, New Delhi *(hereinafter referred to as the Tribunal)* directs that 50% of the assessed damages with interest under Section 7Q of *the Employees' Provident Funds & Miscellaneous Provisions Act, 1952* be deposited by petitioner.

At the outset, learned counsel for petitioner submits that the substratum of the order is not being assailed, but the finding on question of waiver of entire damages is being challenged. Learned counsel for petitioner submits that the Tribunal has arbitrarily directed that 50% of the assessed damages be deposited by petitioner and this direction is without any basis.

Upon hearing and on perusal of impugned order, I find that the Tribunal in impugned order has reached to a conclusion that respondent is duty bound to apply the applicable rates i.e. 5%, 10%, 15% and 25% respectively in a graded manner. The precise submission of petitioner's counsel is that these are the maximum rates and the fact of petitioner being defrauded by its employee has not been considered in its right perspective, to reduce the rates for the period of delay and in view of mitigating circumstances, there should have been waiver of damages and interest prior to 26th September, 2008 in view of decision in *Roma Henry Security Services Pvt. Ltd. V. Central Board of Trustees,* 193 (2012) DLT 486.

During the course of the hearing, it was pointed out by petitioner's counsel that it is also noted in impugned order that *Mr. Gurinder Singh Bajaj*, employee of petitioner, had admitted before the police that he had misappropriated provident fund contributions pertaining to petitioner's establishment, but still this aspect has not been fully appreciated by the Tribunal. During the course of hearing, it was also brought to the notice of this Court that proceedings under Section 138 of *the Negotiable Instruments Act, 1881* are pending against the said employee of petitioner regarding dishonouring of cheque issued by the said employee in respect of misappropriated amount.

I find substance in the aforesaid stand taken by petitioner as in the appeal *(Annexure P-10)* filed by petitioner, it has been specifically averred that due to fraud committed by petitioner's employee, provident fund contributions were misappropriated and forged challans were submitted on behalf of petitioner.

Thus, this Court is of the considered view that proper assessment ought to have been undertaken by the Tribunal instead of directing that 50% of the assessed damages are payable by petitioner. The Tribunal is also required to justify as to why maximum rates are being applied in petitioner's case particularly when due notice of defrauding of petitioner has been taken by the Tribunal.

In view of aforesaid, impugned order of 21^{st} September, 2016 is set aside with direction to the Tribunal to hear the parties afresh and pass a speaking order in light of decision in *Roma Henry (supra)*.

The parties are directed to appear before the Tribunal on 18^{th} May, 2017. Records be remitted back forthwith through special messenger.

With aforesaid directions, the petition and application are disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

MAY 04, 2017
s