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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8725 OF 2015

Central Board of Trustees, EPF ...Petitioner
vs
M/s. Fancy Corporation Ltd. ...Respondent

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Mr. V.K. Wasnik, for the Petitioner.

Mr. P.M. Palshikar, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: JULY 31, 2018

<u>P.C.</u> :

. Heard learned Counsel for the parties.

2. This petition, filed by Central Board of Trustees of Employees Provident Fund, challenges an appellate order passed by the Employees' Provident Fund Appellate Tribunal. By the impugned order, the Tribunal set aside the order of recovery of damages passed by the Assistant Provident Fund Commissioner under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act ("Act").

3. It is not a matter of dispute that the establishment concerned, who is the Respondent to the petition, was a sick industrial

company. In a scheme sanctioned by BIFR under the Sick Industrial Companies Act, P.F., ESI and income tax authorities were to make a concession by accepting payment of arrears of P.F. and ESI dues along with normal interest and not to impose penalty or liquidated damages for default in payment of PF, ESI and income tax dues, as the case may be. It was submitted by the establishment before the Assistant Provident Fund Commissioner in the proceedings under Section 14-B that the entire capital and net worth of the Respondent Company had been wiped out due to prolonging textile strike and closure of unit coupled with the restrictions under the Industrial Disputes Act for reduction in work force. The establishment also brought the sanctioned scheme to the notice of the Assistant Provident Fund Commissioner. In spite of this material, the Commissioner mechanically proceeded to pass an order for levy of damages simply on the ground that there was a delay. As far as the BIFR scheme is concerned, the Commissioner relied on the power of the Central Board to reduce or waive damages under the second proviso to Section 14-B of the Act. The Commissioner, in the premises, ordered recovery of damages stating that "the provision of Section 14-B is automatically applicable as soon as the default is committed by the establishment". The Appellate Tribunal was right in observing that Section 14-B is an enabling provision and does not envisage mandatory levy of damages. The Tribunal relied on the observations of the Supreme Court in the case of **Assistant Commercial Taxes Officer vs. Bajaj Electricals Ltd.**[1] concerning the requirement of *mens rea* as well as the case of **Employees' State Insurance Corporation vs. HMT Ltd.**[2] under Section 85-B of that Act, where the Court held that the provision was

1 (2009) 17 KTR 120(SC)
2 (2008) 3 SCC 35

merely an enabling provision and did not envisage mandatory levy of damages. The Tribunal held that there was no *actus reus* on the part of the establishment in the present case for contravening a statutory provision.

4. No fault can be found with the impugned order of the Appellate Tribunal. The Supreme Court in the case of **Mcleod Russel India Ltd. vs. Regional Provident Fund Commissioner, Jalpaiguri**[3], relying on the case of **HMT Ltd.** (supra) held that as in that case, which concerned the provisions of Employees State Insurance Act, even for imposing damages under Section 14-B of the Act, the presence or absence of *mens rea* and/or *actus reus* would be a determinative factor both for the factum of damages as well as the quantum. In the present case, dire financial circumstances of the company are not in dispute. The company was infact declared as a sick industrial company and ameliorating measures were sanctioned for its rehabilitation. One of the measures included non-charging of damages or penal levies under the Provident Fund Act. In the premises, the Appellate Tribunal was well within its power to set aside the damages ordered by the Commissioner, since there was no willful default on the part of the establishment in the present case.

5. When the authorities have duly exercised their discretion under the statute, this Court exercising its writ jurisdiction, is not expected to interfere with the impugned order unless a manifest error is pointed out in the process of decision making or perversity is shown in

3 (2014) 15 Supreme Court Cases 263

the decision itself. That is clearly not the case here.

6. Accordingly, the impugned order of the Tribunal does not merit any interference. The writ petition is dismissed.

(S.C. GUPTE, J.)