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

% *Judgment Reserved on: 23.02.2018*
*Date of Judgment: 27.02.2018*

\+ **W.P. (C) 9178/2015**

SAM (INDIA) BUILTWELL (P) LTD. ..... Petitioner
Through: Mr.S.K. Gupta, Advocate.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER
..... Respondent
Through: Mr.Arvind Kumar Verma, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE VINOD GOEL**

**VINOD GOEL, J.**

1. Challenge in this writ petition under Article 226 & 227 of the Constitution of India is the order dated 13.08.2015 of the Employees' Provident Fund Appellate Tribunal, New Delhi (in short 'Tribunal') in Appeal No. ATA-887(04)2015 vide which the Tribunal has stayed the order dated 13.07.2015 impugned before it passed by the respondent subject to deposit of 50% of the assessed amount within 30 days failing which the stay shall be vacated automatically.

2. The facts giving rise to the writ petition, bereft of unnecessary details, are that the petitioner company had failed to remit the Provident Fund and allied dues for the period from September, 2005 to November, 2013 within the stipulated time frame i.e.

within 15 days from the close of every month as required under Para 38 of the Employees' Provident Fund Scheme, 1952 (in brief 'EPF scheme'). After issuing show cause notices under Section 14-B and 7-Q of the of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'EPF Act'), by order dated 13.07.2015, the Assistant Provident Fund Commissioner, Delhi (North) in exercise of his powers conferred under Section 14-B and 7-Q of the EPF Act assessed the damages for the relevant period to the tune of Rs.13,52,769/- and interest at a sum of Rs.8,66,701/-. By this order, the petitioner was directed to deposit the said amount within 15 days failing which action shall be taken under Section 8 of the EPF Act to recover the amount.

3. The petitioner establishment preferred an appeal under Section 7-I of the EPF Act against the aforesaid order dated 13.07.2015 before the Tribunal. At the time of admission of the appeal and considering the interim stay during the pendency of the appeal, the Tribunal by impugned order dated 13.08.2015 came to the conclusion that Section 7-O of the EPF Act was not attracted as the order impugned before it was not under Section 7-A but under Section 7-Q and 14-B of the EPF Act and the petitioner was not required to make pre-deposit of 75% of the assessed amount. However, the Tribunal granted stay against the impugned order dated 13.07.2015 till further orders subject to

the petitioner depositing 50% of the assessed amount within 30 days failing which the stay shall be vacated automatically.

4. Mr.S.K. Gupta, learned counsel for the petitioner, argued that the order of the Tribunal is bad in law inasmuch as the direction to deposit the amount as assessed is just like a pre-deposit condition mentioned in Section 7-O of the EPF Act. He submits that under Section 7-O of the EPF Act, it is provided that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined under Section 7-A of the EPF Act. He submits that the proviso of Section 7-O of the EPF Act provides that the Tribunal for the reasons to be recorded in writing may waive or reduce the amount to be deposited under this section. He argued that the Tribunal has waived off this pre-deposit condition in many appeals and has thus discriminated the petitioner company by the impugned order.

5. Per contra, it is argued by the learned counsel for the respondent that the amount directed to be deposited by the petitioner company was not a pre-deposit amount for filing the appeal rather it is a conditional order to deposit the amount for the purpose of granting interim relief during the subsistence of the appeal before the Tribunal.

6. To deal with the rival contentions of the parties, it is relevant to refer to Section 7-O of the EPF Act, which provides as under: -

> "**7–O. Deposit of amount due, on filing appeal.** – No appeal by the employer shall be entertained by a

> Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in section 7A:
>
> Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

7. It is as clear as crystal from a bare reading of section 7-O of the EPF Act that whenever an order has been passed under Section 7-A of the EPF Act, the appeal filed by an employer shall not be entertained by the Tribunal unless the employer deposits with it 75% of the assessed amount under Section 7-A of the EPF Act. However, the Tribunal may for the reasons to be recorded in writing may waive or reduce the amount to be deposited under this section. Admittedly, the order impugned before the Tribunal was not under Section 7-A of the EPF Act but a composite order under Section 14-B and 7-Q of the EPF Act, therefore, the petitioner was not liable to make pre-deposit of any amount.

8. In fact, this question has been considered by the **Hon'ble Supreme Court** in the case of **Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and Others,** ***(2013) 16 SCC 1,*** wherein it was held that when a composite order under Section 14-B and 7-Q is passed together, such an order shall be appealable under Section 7-I of the EPF Act. It was further observed by the Apex Court that if for some reason the

authority chooses to pass an independent order under Section 7-Q, the same is not appealable.

9. The impugned order dated 13.07.2015 before the Tribunal was a composite order passed under Section 14-B and 7-Q of the EPF Act and therefore in view of the judgment of the Apex Court in the aforementioned case of **Arcot Textile Mills Limited *(supra)***, such an order impugned before the Tribunal was appealable.

10. Regarding the power of Tribunal to grant interim relief during subsistence of appeal subject to certain conditions, it would be relevant to refer to Para No. 15 & 19 of a judgment of the Division Bench of this court in **Jai Balaji Security Services (Regd.) Vs. A.P.F.C. Delhi (North)** in ***LPA No. 880/2015 decided on 16.12.2015,*** which read as under: -

> **"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."**
>
> "19. We reiterate once again. Section 7-O of the Act would apply only to orders passed under Section 7-A of the Act and condition of pre-deposit of 75% of the amount assessed would be a condition for entertaining the appeal by the Appellate Tribunal subject to the Tribunal passing an order under the Proviso to the said Section. **The said order is distinct from an order passed by the Appellate Tribunal in an application seeking interim directions where demands raised under Section 7-Q and Section 14-B of the Act are challenged. Said orders are not passed in exercise of the power under the Proviso to Section 7-O of the Act."**

11. It is conveyed from the above said judgment of the Division Bench of this court that the Tribunal would be empowered to pass a conditional order of stay during the pendency of appeal where the demand raised under Section 14-B and 7-Q of the EPF Act has been challenged. Mere pendency of appeal would not prohibit the EPF Authority to effect recovery unless Tribunal stays the recovery by interim order during subsistence of appeal subject to certain conditions.

12. While considering the facts of the present case in the light of the aforesaid legal position, it is found that by impugned order the Tribunal has directed the petitioner to deposit 50% of the amount assessed with the concerned authorities within 30 days and on such deposit no coercive steps shall be taken against the petitioner till the disposal of the appeal, failing which the stay shall be vacated automatically.

13. In view of the judgment of the Division Bench of this Court in **Jai Balaji Security Services (Regd.)** ***(supra),*** during the pendency of the appeal the competent authority would not be prohibited to effect the recovery of the assessed damages and interest unless the Tribunal passes an interim order concerning the demand subject to certain condition including deposit of assessed amount or part thereof. The damages assessed by the impugned order before the Tribunal under Section 14-B of the EPF Act is Rs.13,52,769/- and interest assessed under Section 7-Q of the EPF Act is Rs.8,66,701/-.

14. By impugned order, the Tribunal has granted interim relief to the petitioner during the pendency of the appeal subject to the petitioner depositing 50% of the amount assessed with the respondent within 30 days and subject to this deposit no coercive steps shall be taken, failing which the stay shall be vacated automatically.

15. The order impugned before the Tribunal was not under Section 7-A of the EPF Act but under Section 14-B and 7-Q of the EPF Act and therefore the question of pre-deposit as mentioned in section 7-O of the EPF Act does not arise. It is Section 7-O of the EPF Act which puts an embargo on the entertainment of the appeal by the Tribunal by requiring 75% of the amount due as determined under Section 7-A of the EPF Act to be deposited with a power vested in the Tribunal to waive or to reduce such amount to be deposited. This embargo to entertain the appeal is

not attracted in the present case as the order impugned before the Tribunal was under Section 14-B and 7-Q of the EPF Act. The petitioner company having felt aggrieved by the composite order passed under Section 7-Q and 14-B of the EPF Act prayed for an interim relief during the pendency of the appeal before the Tribunal which was empowered to pass a conditional order of stay. The impugned order is not passed under Section 7-O of the EPF Act by the Tribunal. It is a conditional order of stay of the impugned order before the Tribunal which the Tribunal was empowered to pass. Therefore, I do not find any merit in the writ petition. The same is hereby dismissed with no order as to costs.

16. It is directed that the petitioner shall comply with the directions of the Tribunal dated 13.08.2015 within four weeks from today and subject to such compliance no coercive steps shall be taken against the petitioner by the respondent, during the pendency of the appeal before the Tribunal.

**(VINOD GOEL)**
**JUDGE**

**FEBRUARY 27th, 2018**
*"shailendra"*