

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.13959 of 2019

M/s.Devarshola Tea Estate,
Rep by its Manager - Finance,
Mr.A.Soosai Arulappan,
Devarshola Post,
The Nilgiris - 643 207. ...Petitioner

Vs.

Asst. Provident Fund Commissioner,
Employees Provident Fund Organization,
Post Box No.3875, Dr.Balasundaram Road,
Coimbatore - 641 018. ...Respondent

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus, calling for the records relating to the impugned order bearing Ref. No.CB/CBE/PDC-II/CC-18/631/INTEREST/2018 dated 28.03.2018 to quash the same and direct the respondent to accept the remaining outstanding determined amount in 24 equal installments.

For Petitioner : Mr.P.Thangaraj

For Respondent : Mr.R.Thirunavukarasu

ORDER

When the matter is taken up for hearing, the learned counsel appearing for the petitioner would submit that the petitioner Company is going through severe financial crisis and they are unable to pay the entire demand of the respondent Organization towards interest under Section 7Q of the Employees Provident Fund & Miscellaneous Provisions Act, 1952. In view of the financial difficulty faced by the Company, the petitioner is willing to pay the demand in 24 equated monthly installments, as given in the memo dated 05.07.2019, which is filed before this Court. The memo reads as under:

The above named petitioner has humbly submits that follows:-

1.It is submitted that the above said petitioner has filed this writ petition to avail the

installment facility to pay the interest amount of Rs.61,72,065/- (Rupees Sixty One Lakhs Seventy Two Thousand and Sixty Five only) which has been assessed under Section 7Q of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 by the respondent via the order Ref. No. CB/CBE/PDC-II/CC-18/631/INTEREST/2018 dated 28.03.2018.

2.It is submitted that the petitioner ready to pay that amount in 24(Twenty Four) equal monthly installments as follows;

S.No.	Month/Year	Amount
1	August, 2019	2,57,000/-
2	September, 2019	2,57,000/-
3	October, 2019	2,57,000/-
4	November, 2019	2,57,000/-
5	December, 2019	2,57,000/-
6	January, 2020	2,57,000/-
7	February, 2020	2,57,000/-
8	March, 2020	2,57,000/-
9	April, 2020	2,57,000/-
10	May, 2020	2,57,000/-
11	June, 2020	2,57,000/-
12	July, 2020	2,57,000/-
13	August, 2020	2,57,000/-
14	September, 2020	2,57,000/-
15	October, 2020	2,57,000/-
16	November, 2020	2,57,000/-
17	December, 2020	2,57,000/-
18	January, 2021	2,57,000/-
19	February, 2021	2,57,000/-
20	March, 2021	2,57,000/-
21	April, 2021	2,57,000/-
22	May, 2021	2,57,000/-
23	June, 2021	2,57,000/-
24	July, 2021	2,61,065/-
	TOTAL	61,72,065/-

3.It is further submitted that the petitioner will pay the amount on or before 25th day of every month as shown in the schedule.

4.Therefore, it is humbly prayed that this Hon'ble Court may be pleased to allow the writ petition as per the terms mentioned herein above and thus render justice.

2.At this, the learned counsel appearing for the respondent organization would file a memo providing for certain conditions to be complied with by the petitioner. The memo filed on behalf of the respondent reads as under:

"The respondent respectfully submits as follows:-

It is respectfully submitted that the following guidelines have been issued by the Head Office of EPFO in granting installment facility to the establishments:-

1.Current contributions and Employer's share shall be paid regularly by the 15th of each month.

2.Each installment shall be paid along with interest under Section 7Q of the Act along with current contributions.

3.A revolving bank guarantee for an amount equal to one installment shall be furnished along with the application for installment facility.

4.Post dated cheques from the defaulting establishments for the number of installments shall be obtained for ensuring compliance of terms and conditions of installment facility.

5.Contribution in respect of outgoing/deceased member shall be paid in one lump sum in the following month itself in addition to the amount dues and monthly installment.

6.The employer shall undertake to pay such damages as may be levied by the RPFCs concerned and that grant of installment facility is not absolving him from the payment of statutory dues under Section 14B and 7Q.

It is therefore humbly prayed that the Hon'ble Court may take note of the above guidelines and pass suitable orders in the above writ petition and render justice."

3.According to the learned counsel for the petitioner, the contribution has already been made, but only in respect of the interest portion alone, which is the subject matter of the writ petition, the petitioner seeks to pay in equated monthly

installments, as stated in the memo, which is extracted above.

4.Considering the facts and circumstances of the case and also accepting the plea of financial difficulty faced by the petitioner company, this Court treats the present case as one of the exceptions and allows the petitioner to pay the demand towards interest in 24 equated monthly installments, as mentioned in their memo.

5.On such payment being made on or before 25th of every month, commencing from 25.07.2019, as shown in the memo, the respondent Organization may accept the same. In case, there is any default in complying with the undertaking given by the petitioner, it is open to the respondent Organization to initiate any action as it deems fit, as per their regulations and this order passed in exceptional circumstances of the case will not bind the respondent Organization any further.

6.In the above said circumstances, the writ petition is allowed and the impugned order bearing Ref. No.CB/CBE/PDC-II/CC-18/631/INTEREST/2018 dated 28.03.2018 passed by the respondent is hereby set aside. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mrm/msk

To

Asst. Provident Fund Commissioner,
Employees Provident Fund Organization,
Post Box No.3875, Dr.Balasundaram Road,
Coimbatore - 641 018.

+1cc to Mr.R.Thirunavukarasu, Advocate SR.No.60086

W.P.No.13959 of 2019

KK(CO)
GMY(14/08/2019)