

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 28451 of 2018 (O&M)

Date of Decision: 15.03.2019

Dhoot Developers Private Limited (JV) Bengal Silver Spring Project Limited.

...Petitioner

Vs.

Employees Provident Fund Organization

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ritesh Singh, Advocate with
Mr. Tarun Singh, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. Against the order under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, an appeal was filed before the Employees' Provident Fund Appellate Tribunal, Delhi which appellate powers have now been vested in the Central Government Industrial Tribunal-cum Labour Court, Chandigarh (for Short 'CGIT' I & II). Consequently, the transferred appeal is pending before the CGIT-I. The petitioning establishment has preferred an application under Section 7-O of the Act for waiver/reduction of the amount assessed under Section 7-A which is pending disposal. Meanwhile, notice to show-cause why warrant of arrest should not be issued to the Senior Vice President of the petitioner-Company has been issued on 24.09.2018 by the EPF organization. However, no further action has been taken on the show-cause notice so far.

2. The petitioner has approached this court under Articles 226/227 of the Constitution of India praying for a direction to the respondents to transmit all the records before it in relation to the instant case for the purpose of judicial scrutiny of the Court and for an order restraining the authorities not to take any action on the basis of the impugned order passed by the Assistant Provident Fund Commissioner on 13.07.2017 till disposal of the case pending before the CGIT-I, Chandigarh. A further direction has been sought to the respondent-authorities to de-freeze the bank accounts of the petitioner so that they can continue running their normal business operations and for a command to the respondent-Organization to cancel, rescind or withdraw the impugned show-cause notice dated 24.09.2018.

3. Learned counsel for the petitioner relies on a decision of the Calcutta High Court in Hindustan Casting and Engineering Co. and another Vs. Union of India and others, MANU/WB/0565/2005 on the issue of waiver or reduction of the amount assessed towards liability under the Act towards pre-deposit for entertainment of the appeal. Undoubtedly, the Tribunal has been vested with the power to waive or reduce the deposit in appeal under the Proviso to Section 7-O of the Act. If an application for waiver or reduction of deposit has been filed during the pendency of an appeal, the High Court has in *Hindustan Casting* case held that it was not proper on the part of the authorities to demand the payment of dues when the application was pending. The

Court further held that any steps taken by the authority for the recovery of assessed amount during the pendency of the application for waiver or reduction of deposit is contrary to the Proviso to Section 7-O of the Act in these circumstances will be an exercise in futility.

4. Accordingly, in the facts and circumstances of the case and in the face of pending appeal, there can be no expression of opinion on the merits of the case and the only question which arises at this preliminary stage is to ask the Tribunal to consider and decide the application under Section 7-O within a reasonable time and till such time as the application is decided independently or together with the main appeal it would be deemed fair and proper for the authorities not to take any coercive action against the petitioner and to await the orders as may be passed under Section 7-O of the Act after hearing parties.

5. It is ordered accordingly.

6. The petition stands disposed of in terms of this order.

7. Parties are directed to appear before the CGIT-I, Chandigarh on 02.04.2019 for hearing on the application and for considering de-freezing the Bank accounts of the appellant-petitioner.

(RAJIV NARAIN RAINA)
JUDGE

15.03.2019

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*