$~15

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

\+ **W.P.(C) 6063/2020 & CM APPL. 21796/2020**

GAMMON INDIA LTD. ..... Petitioner
Through: Mr. S. K. Gupta, Advocate. (M:9891170907)

versus

REGIONAL PROVIDENT FUND COMMISSIONER..... Respondent
Through: Mr. Judy James, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **07.09.2020**

1. This hearing has been done by video conferencing.

2. The present petition has been filed challenging the impugned order dated 20th November, 2019 by the Appellate Tribunal under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (*hereinafter referred as "the Act")* vide which a pre-deposit of 30% under Section 7-O of the Act, has been directed as a pre-condition for entertaining the appeal.

3. Mr. Gupta, ld. Counsel appearing on behalf of the Petitioner submits that no evidence, in terms of the data of the employees, was collected by the Regional Provident Fund Commissioner (*hereinafter referred as "RPFC"*). No employees were examined and the assessment of PF liability was made only on the basis of the total value of the projects, which the Petitioner was executing.

4. On the other hand, Mr. James, ld. Counsel appearing for the Respondent submits that the Petitioner did not cooperate and handover any records to the squad, which conducted the raid. He further submits that the

Petitioner has completely violated the Act by not depositing any money in respect of their employees. No documents of the contractors showing deposit were provided to the RPFC squad. Accordingly, the squad had no option but to seize the entire record and then make an assessment based on the other returns filed by the Petitioner, which showed that more than 3000 workers were employed by the Petitioner and PF was deposited for only 300 workers.

5. In the present petition, the Court is not examining the matter on merits and the only question is as to whether the appeal should be heard and what should be the conditions for hearing the appeal.

6. A perusal of the order dated 20th November, 2009 shows that 8 weeks' time was given by the Appellate Tribunal for deposit of 30% of the assessed amount. However, the present petition has been listed today for the first time. It is the submission of Mr. Gupta, ld. Counsel that the petition challenging the order was filed on 5th March, 2020 but was returned on 13th March, 2020 with objections from the Registry. Owing to the lockdown, he could not refile the same. Presuming this to be correct, even then, the delay in filing this petition is completely inexplicable. The consequence of not making the pre-deposit is that the appeal would be dismissed. However, Mr. Gupta, ld. Counsel submits that the appeal has been adjourned and has not been dismissed.

7. The pre-deposit of 30% would be more than Rs. 9 crores. It is stated that the Petitioner is in financial distress and proceedings are pending before the Bombay High Court. The question as to whether the evidence was recorded or not and whether the Petitioner is guilty of non-compliance of the statutory requirements is to be considered in the appeal. The sum is

substantial. Considering the overall facts and circumstances as also the fact that the Petitioner is stated to be in financial distress, the condition of pre-deposit is reduced to 10% of the assessed amount. Subject to the 10% of the assessed amount being deposited within 8 weeks, the appeal shall be heard on merits by the Tribunal.

8. With these observations, the petition is disposed of. Needless to add, the merits of rival contentions of the parties have not been considered by this Court. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 7, 2020/*dk/Ak/A*