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

Date of Decision: 6th August, 2021

\+ **W.P.(C) 7963/2021 & CM APPL. 24753/2021**

ASCOT HOTELS AND RESORTS PVT. LTD. ..... Petitioner

Through: Mr. S.K. Gupta, Advocate.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER ..... Respondent

Through: Dr. Subhash C. Gupta, Advocate. (M:9810689321)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through video conferencing.

2. The present appeal has been filed challenging the impugned orders dated 18th September, 2019 and 6th November, 2019 passed by the Central Government Industrial Tribunal/Employees' Provident Fund Appellate Tribunal (*hereinafter "Tribunal"*) by which the appeal filed by the Petitioner has been dismissed.

3. The brief facts are that a show cause notice was issued on 9th May, 2014 under Section 14-B and 7-Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (*hereinafter "the Act")* for the period November, 2008 to April, 2014. The Respondent-Authority passed an order on 30th July, 2014 assessing the Petitioner for payment of interest and also imposition of damages to the following effect:-

> *"NOW THEREFORE, I, **<u>SATISH KUMAR GUPTA</u>** Assistant Provident Fund Commissioner, Delhi (North), in exercise of the powers conferred*

on me by section 14-B the Act and on application of my mind to the facts and circumstances of the case and on perusal of the relevant records, consider it to be a fit case for levy of damages as per the rates prescribed under Para 32-A of the EPF Scheme, 1952, Para 5(1) of the Employees' Pension Scheme, 1995 and Para 8-A of the EDLI Scheme, 1976 notified vide notification dated 14.08.91 and 26.09.2008 issued by the Government of India and accordingly order that the damages for the delayed payment for the period from 11/2008 to 04/2014 totalling Rs. 52,22,078/- be recovered as per the account wise schedule indicated below from the employer in relation to M/S ASCOT HOTELS and RESORT PVT LTD. Bearing code No. DL/35589:-

Nature of Interest	***Amount***	***Account No.***
P.F Contribution	*Rs.4774393/-*	*1*
Administrative charges	*Rs.228259/-*	*2*
FPF/EPS contributions	*Rs.205788/-*	*10*
EDLI contributions	*Rs.13370/-*	*21*
EDLI administrative charges	*Rs.268/-*	*22*
Total	*Rs.52,22,078/-*	

(Rs. Fifty Two Lac, Twenty Two Thousand & Seventy Eight Only)

AND WHEREAS an order under section 14B of the

EPF & MP Act, 1952 has been issued after affording opportunity to the establishment levying damages for the delayed payments of contribution and administrative charges for the period 11/2008 to 04/2014 totaling Rs.52,22,0781-, it is ordered that the establishment is liable to pay the following amount of interest under section 7Q of the EPF & MP Act, 1952 on account of belated remittances of contributions and administrative charges for the period 11/2008 to 04/2014 as per the account wise schedule indicated below:-

Nature of Interest	***Amount***	***Account No.***
P.F Contribution	*Rs.2374036/-*	*1*
Administrative charges	*Rs.113526/-*	*2*
FPF/EPS contributions	*Rs.102902/-*	*10*
EDU contributions	*Rs.6664/-*	*21*
EDLI administrative charges	*Rs.132/-*	*22*
Total	*Rs.25,97,260/-*	

(Rs. Twenty Five Lac, Ninety Seven Thousand Two Hundred and Sixty Only)

4. Damages have been imposed upon the Petitioner to the tune of Rs.52,22,078/- and interest amount has been computed at Rs.25,97,260/-. Challenging these impositions, the Petitioner filed an appeal before the Tribunal under Section 7-I of the Act. The case of the Petitioner is that the entire interest amount has already been deposited and the challenge was only

to the component awarding damages. Vide interim order dated 9th October, 2014 passed by the Tribunal, the operation of the impugned order was stayed, subject to the deposit of interest assessed under Section 7-Q of the Act, and an additional amount of Rs. 20,00,000/- with the Respondent Authority, within four weeks. The operative portion of the said order reads as under:-

> *"The present appeal has been filed by the appellant under Section 7 I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in sort 'the Act') challenging the orders dated 30.07.2014, 28.08.2014 & 02.09.2014 passed by the APFC, Delhi under Section 14B of the Act.*
> *2 Heard the advocate for the parties and gone through the record on file. The appeal is admitted for consideration. The operation of impugned orders are stayed subject to deposit of 7Q amount along with an additional amount of Rs. 20 Lakhs with the respondent within four weeks. The respondent authority is directed not to take any coercive measure till the disposal of present appeal subject to said deposit. The respondent may file reply within 30 days from today as required under rule 12 of the EPFAT (procedure) Rules. Notice is accepted by Sh. Amit Tyagi Advocate, for the respondent for 04.03.2015. List the case for reply and further order before Court for 04th March, 2015."*

5. The said order was also challenged before the High Court by ***WP(C) No.5290/2015***. In the said writ petition, vide judgment dated 27th February, 2018, the ld. Single Judge held that the Petitioner would comply with the direction issued by the Tribunal vide order dated 9th October, 2020 within four weeks from the date of the said judgment, 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.

6. Thus, the Petitioner, in compliance with the condition of stay, ought to have deposited a sum of Rs.20,00,000/-. However, on 6th April, 2018, on the ground that the Rs. 20,00,000/ was not deposited and the same constituted a breach of trust, the appeal was dismissed by the Tribunal. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Organo Chemical Industries & Anr. v. Union of India & Ors. [1979 (4) SCC 573]*** and ***Chamunda Standard Mills v. RPFC [2018 LLR 181]***. The operative portion of the said order dated 6th April, 2018 reads as under:-

> *"3. Since appellant has not complied with the direction of Tribunal dated 09.10.2014 as such appellant has committed breach of trust with the court. Resultantly, appellant is not entitled for any indulgence as such case is dismissed on account of non-deposition of 7 -Q amount along with an additional amount of Rs.20 Lakhs with the respondent. Copy of the order be sent to the parties as per law. File after completion of necessary formalities be consigned to the record room."*

7. An application was then moved by the Petitioner under Rule 15 of the Tribunal (Procedure) Rules, 1997 under the Act, seeking recall of the said order of dismissal and a restoration of the appeal. In the application, it is stated that the interest amount has already been deposited and in addition, the Petitioner has deposited a sum of Rs.3,00,000/-.

8. Mr. S.K Gupta, ld. Counsel for the Petitioner submits that the application under Rule 15 ought to have been considered on merits. However, by the impugned orders, the Tribunal has dismissed the appeal

due to non-deposit of the amount of Rs.20,00,000/-.

9. The legal question raised by Mr. Gupta, ld. counsel for the Petitioner is that, as per the order dated 9th October, 2014, the deposit of Rs. 20,00,000/- was only a condition for stay and not for the hearing of the appeal on merits. Moreover, he submits that the entire interest amount has already been deposited. Mr. S.K. Gupta, ld. Counsel submits that now the Petitioner has also deposited Rs.20,00,000/- as well. Dr. Subhash Gupta, ld. counsel for the Respondent, submits that the Petitioner was in complete non-compliance of the Tribunal's direction and hence, the appeal has been rightly dismissed by the Tribunal.

10. In ***WP(C) No.5290/2015,*** vide order dated 27th February, 2018, the ld. Single Judge of this Court has already held that there is no embargo to entertain the appeal and pre-deposit cannot be ordered just for the purpose of entertaining the appeal. The relevant extract reads as under:-

> *"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 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."*

11. The same view was also taken by the Division Bench of this High Court in ***Jai Balaji Security Services (Regd.) v. A.P.F.C., Delhi (North) [L.P.A. No. 880/2015] decided on 16th December, 2015***. The relevant portion of the said judgment has been set out hereunder:

> *"11. A perusal of Section 7-O reveals that the embargo on the entertainment of an appeal by the Appellate Tribunal concerning pre-deposit of 75% of the amount due as determined by an officer referred to in Section 7-A is restricted to said Section and does not embrace Section 7-Q or Section 14-B of the Act."*

12. In view of the observations of this Court, in the Petitioner's case itself, that only the stay could have been vacated by the Tribunal but the appeal could not have been dismissed. In any event, the submissions of Mr. S.K. Gupta, ld. counsel is that both the interest amount and the amount of Rs.20,00,000/- have now been deposited.

13. In view of the above said legal position and considering the fact that the amount of damages is quite substantial i.e. Rs.52,22,078/- along with interest at 12% under Section 7-Q, it is deemed appropriate to restore the appeal of the Petitioner subject to the following conditions:-

(i) The Petitioner shall satisfy the Tribunal that the entire interest amount of Rs. 25,97,260/- stands deposited.

(ii) Subject to the above deposit having been made and satisfaction of the Tribunal being recorded to this effect, the appeal of the Petitioner shall be heard on merits, and shall be disposed of within a period of four months from the date of first hearing before the Tribunal.

14. Parties to appear before the CGIT on 18th August, 2021.

15. With these observations, the present petition, with all pending applications, is disposed of.

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

AUGUST 6, 2021
MR/AD
(corrected & released on 09th August, 2021)