

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1734 OF 2019

Bakelite Hylam Ltd.

Vs.

The Recovery Officer, Employees Provident Funds Commissioner, Nagpur and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.S. Bhattad, Advocate for petitioner.

Mr. H.N. Verma, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 27.06.2022.

By this writ petition, the petitioner has challenged order dated 02.01.2019 passed by the Central Government Industrial Tribunal-cum-Appellate Tribunal at Nagpur under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. By the said order, appeal filed by the petitioner was dismissed as being not maintainable, apart from being barred by limitation.

3. Learned counsel appearing for petitioner submitted that the Tribunal committed an error in holding that the appeal was barred by limitation because the appeal was filed only when the petitioner gained knowledge about the orders passed against the petitioner

and liability was foisted under the provisions of the said Act. It is specifically submitted that although the liability was foisted on an entity called M/s. Ballarshah Plywood, when the show cause notices were issued to the petitioner, the knowledge was gained and then the appeal was filed immediately. Apart from this, submissions were made on merits of the matter, contending that in the backdrop of proceedings initiated and orders passed therein by the Board for Industrial and Financial Reconstruction i.e. BIFR, the liability on the petitioner could be foisted at the most till the time of the demerger and in the appeal memo itself, the petitioner had specifically prayed for a direction to the respondent-authorities to calculate the liability till the point of the demerger, which could be satisfied by the petitioner. Liability beyond the point of the demerger could not be placed on the petitioner at all.

4. On the other hand, the learned counsel appearing for respondent-authorities submitted that the contentions raised on merits ought not to be considered by this Court at all, for the reason that the appeal filed before the Tribunal itself was only against the show cause notices pursuant in execution proceedings initiated after the main order dated 30.10.2017, was passed against M/s. Ballarshah Plywood.

5. It was submitted that in the absence of challenge to the aforesaid order, by filing of appeal against show cause notices/letters issued by respondent-

authorities could not lead to an opportunity for the petitioner to make submissions on the merits of the matter. By inviting attention to the impugned order, the learned counsel appearing for the respondent-authorities submitted that the aforesaid aspect was specifically noticed in paragraph 5 and therefore, the impugned order correctly held the appeal to be not maintainable.

6. This Court has perused the material on record. It appears that even according to the petitioner, it was not aware about the order dated 30.10.2017 passed against M/s. Ballarshah plywood for liability under the provisions of the said Act and that only when the show cause notice dated 16.02.2018 was received that the petitioner became aware. But, a perusal of the memo of appeal filed on behalf of the petitioner before the Tribunal would show that relief was sought only as against the aforesaid show cause notice dated 16.02.2018 purportedly received on 26.02.2018 and subsequent four demand letters issued by the respondent-authorities. There is no reference to or any challenge raised in the appeal as against the order dated 30.10.2017.

7. This Court is of the opinion that in absence of any challenge to the aforesaid order dated 30.10.2017, the appeal filed by the petitioner merely challenging show cause notice dated 16.02.2018 and certain demand letters would not suffice. This is exactly what was recorded in paragraph 5 of the impugned order passed

by the Tribunal and it is for this reason that eventually the Tribunal held that the appeal was not maintainable.

8. This Court is in agreement with the finding rendered by the Tribunal that in the absence of challenge to the order dated 30.10.2017, the petitioner could not have successfully challenged the show cause notice issued in the context thereof.

9. On this short ground, the writ petition is found to be without any merit and accordingly, it is dismissed.

JUDGE