IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2022

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2414 of 2013

M/s.Lakshmi Machine Works Limited,
A company registered under Companies
Act, 1956, having its registered Office at
Perianaickenpalayam,
Coimbatore-641 020. ... Appellant

-vs-

1. The Union of India
rep. by its Central Provident Fund Commissioner,
HUDCO, Vishala, 14, Bhikaji Cama Place,
New Delhi0-110 066.

2. The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4^{th} Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi-110 092.

3. Assistant Provident Fund Commissioner,
O/o.Employees Provident Fund Organization,
Bhavishyanidhi Bhawan,
Post Box No.3875,
Dr.Balasundaram Road,
Coimbatore-641 018. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.09.2011 passed in W.P.No.25901 of 2010 by a learned Single Judge.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.V.Vibhishanan for R1

Mrs.R.Meenakshi for R2 & 3

JUDGMENT

(Judgment of the Court was pronounced by **T.RAJA, J.)**

This Writ Appeal has been directed against the order dated 08.09.2011 passed in W.P.No.25901 of 2010 by a learned Single Judge of this Court holding that there was no case made out by the writ petitioner for waiving of the damages liable to be paid for the period commencing from March, 2000 ending March, 2002 during which period, the erstwhile Textool Company Limited (hereinafter referred to as, 'TCL') was in acute financial crisis and the machinery division of the said company was also closed from March 2002 on account of its entire net work getting eroded and the matter was referred to the Board for Industrial and Financial Reconstruction in August, 2002 (hereinafter referred to as, 'the BIFR').

2. Learned Counsel appearing for the appellant would submit that the erstwhile Textool Company Limited (TCL) was engaged in the manufacture of textile machineries and had its Textile Machinery Division at Ganapathy and Singanallur in Coimbatore District. The said TCL had two Spinning Units to manufacture cotton yarn in Sundarapuri and Kariyampalayam in Coimbatore District. While so, due to the recession in textile industry resulting in reduced or nil off take of machinery from TCL, their operations were affected since 1997-98 and in 2001, the operations of the textile machinery division came to a grinding halt for the following reasons, namely,

(1) no orders at all from Textile Industry from July 2001;

(2) crunch in the working capital requirement; and

(3) High cost of inputs.

Moreover, the reasons for inability to function are (1) there was a total lack of orders right from July, 2001; (2) huge accumulated loses and (3) there was a crisis in textile industry which is a main customer for the Machinery Division. Therefore, from 1993 onwards, totally, 576 mills were closed. Though there was a remote possibility to run the unit due to accumulated losses and the company became sick, however, efforts were made to revive, but ultimately during 2003, the company was declared sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and it was referred to Board for Industrial and Financial Reconstruction as required by law.

3. Learned Counsel for the appellant would further submit that it was only under these circumstances, the TCL filed an application seeking permission for the closure before the Government of Tamil Nadu and the Government on 28.12.2001 received the said application. While so, the Secretary, Labour and Employment, Government of Tamilnadu held two hearings on 18.01.2002 and on 06.02.2002. Since no orders were passed within a period of 60 days from the date of receipt of the application, the prayer sought for in the application, i.e. Permission to close must be deemed to have been granted on the expiry of the period of 60 days under Section 25(O)(3) of the Industrial Disputes Act, 1947. Accordingly, the machinery division of the company was closed since March, 2002 on the entire net worth getting eroded. TCL was referred to the BIFR in August, 2002. Finally, in the hearing held on 27.06.2003, the Board declared that TCL is a sick industrial company under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 and appointed ICICI Bank as an operating agency under Section 17(3) of the Act. The rehabilitation proposal submitted by TCL envisaged the merger of TCL with M/s.Lakshmi Machine Works Limited (LMW), Coimbatore.

4. Learned Counsel for the appellant would also submit that the BIFR vide its order dated 22.10.2003 also approved the merger proposal of TCL with M/s.Lakshmi Machine Works Limited (hereinafter referred to as, 'LMW'), Coimbatore w.e.f. 01.04.2003 based on the report of the ICICI Bank Limited after considering various factors and to revive and rehabilitate the ailing sick unit TCL. But the damages were imposed against the erstwhile TCL, presently merged with LMW from 01.04.2003 for the period from March 2001 to May 2002 during which period TCL was in acute financial crisis. There was no hope for reviving the unit, but for the proposal of merging TCL with LMW, the BIFR has passed an order holding that in spite of the financial crisis faced by TCL, it still managed to remit all the statutory dues though belatedly. Therefore, the appellant sent a request to waive the damages amounting to Rs.41,78,164/- levied on TCL, a Sick Company for delayed remittances varying from 9 days to 900 days under Clause (a) of Para 32-B of the Employees Provident Fund Scheme, 1952 as it is a case of amalgamation/merger of Textile Company Limited, a Sick Industrial Company with Lakshmi Machine Works Limited under BIFR dated 22.10.2003.

5. Learned Counsel for the appellant referring to Para 32-B of the Employees' Provident Funds Scheme, 1952 would submit that the Central Government may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B, subject to the terms and conditions, namely, (a) in case of a change of management including transfer of the undertaking to workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed. In the present case, admittedly, the machinery division of the erstwhile TCL company was closed from March, 2002 on account of getting the entire net worth eroded and the same was referred to BIFR in August, 2002, which declared the TCL as a Sick Industrial Company under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 and finally appointed ICICI Bank as the operating agency under Section 17(3) of the Act. Therefore, the merger proposal was also approved by BIFR on 22.10.2003, because of the appellant squarely falling within para 32-B (a) of the Employees' Provident Funds Scheme 1952. But this aspect has been completely overlooked by the learned Single Judge. Moreover drawing our attention to the earlier order passed by this Court dated 15.07.2019 stating that this Court also having fully agreed with the contentions placed before them by the

learned Counsel for the appellant that the appellant company is entitled to get full waiver as per para 32-B (a) of the Employees' Provident Funds Scheme, 1952, directed the respondent department to produce the original records of the Central Board and other relevant records justifying the rejection of the application for waiver of damages under Section 14-B of the Act.

6. Pursuant thereto, Ms.R.Meenakshi, learned Counsel for the respondents 2 and 3 produced the original file before this Court.

7. A perusal of the said records also clearly shows that the Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Sub-Regional Office, Coimbatore, has sent a letter in TN/CBE/77&77A/P.D.C./2004 dated 30.11.2004 to the Central Provident Fund Commissioner, New Delhi, with regard to the waiver of damages in respect of M/s.Textool Company Limited, Coimbatore. The relevant paragraph is extracted here under:

> ''The establishment is levied Penal Damages Rs.41,78,164/- for the period March, 2000 to March, 2002. In view of its merger with other industrial company, it is eligible for the consideration of waiver of damages by the Central Board.''

A cursory reading of the same shows that the establishment was levied penal damages of Rs.41,78,164/- for the period from 3/2000 to 3/2002 and in view of its merger with other industrial company, the Regional Provident Fund Commissioner in its letter dated 30.11.2004 has come to the conclusion that the appellant is eligible for consideration of waiver of damages by the Central Board.

8. On behalf of the Central Board, the Assistant Provident Fund Commissioner also in his letter dated 29.12.2004 came to the conclusion that the damages can be waived or reduced only for the period from the date of declaration as sick industrial unit, till the cut off date given in the sanctioned merger scheme, namely, March, 2000 to March, 2002. The Assistant Provident Fund Commissioner in his letter dated 29.12.2004 has also held that the establishment was declared sick on 27.06.2003 and merger was effective from 1.4.2003, whereas damages have been levied for the period from 3/2000 to 3/2002. Therefore, the Assistant Provident Fund Commissioner has reached his conclusion that the establishment's request for waiver prior to the same being declared as a sick company is not correct.

9. When it is an admitted case of the parties that the erstwhile company, namely, TCL was closed since March, 2002 on account of its entire net worth getting eroded, the same was referred to the Board for Industrial and Financial Reconstruction (BIFR) in August, 2002. Finally, in the hearing held on 27.06.2003, the BIFR declared that TCL is a sick industrial company under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 and appointed ICICI Bank as an operating agency under Section 17(3) of the Act. The BIFR vide its order dated 22.10.2003 also approved the merger proposal of TCL with M/s.Lakshmi Machine Works Limited, Coimbatore w.e.f. 01.04.2003 based on the report of ICICI Bank Limited after considering various factors and to revive and rehabilitate the ailing sick unit TCL. Therefore, a proposal has been sent by the Regional Provident Fund Commissioner in its letter dated 30.11.2004 to the Central Provident Fund Commissioner, New Delhi that penal damages of Rs.41,78,164/- levied on the establishment M/s.Textool Company Limited for the period March, 2000 to March, 2002 has to be waived. In view of the proposal sent by the Regional Provident Fund Commissioner, Sub-Regional Office, Coimbatore to the Central Provident Fund Commissioner, New Delhi recommending the waiver of the penal damages, we have no hesitation to allow the present Writ Appeal.

10. At this stage, learned Counsel appearing for the appellant would submit that in paragraph 15 of the grounds filed in support of the writ appeal, it is stated that even before the certified copy of the order passed in Writ Petition in W.P.No.25901/2010 was made ready, the 3rd respondent has attached the bank account of the appellant and without prejudice and under protest, the appellant has paid the entire amount demanded by way of damages. Therefore, a direction may be issued to refund the same.

11. Needless to mention that the entire amount towards damages paid by the appellant shall be adjusted in respect of the Employees' Provident Fund contribution to be paid by the appellant and if there is any excess amount, the same shall be adjusted towards future contribution by the 3rd respondent within a period of four weeks from the date of receipt of a copy of this Order.

12. In the result, the order of the learned Single Judge dated 08.09.2011 passed in W.P.No.25901 of 2010 is hereby set aside and the Writ Appeal stands allowed with the above observation. No costs.

(T.R.J.,) (K.B.J.,)

22.08.2022

To

1. The Central Provident Fund Commissioner,
   Union of India,
   HUDCO, Vishala, 14, Bhikaji Cama Place,
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T.RAJA,J.
AND
K.KUMARESH BABU, J.
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