



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

Date of decision: 17th AUGUST, 2022

IN THE MATTER OF:

+ **LPA 438/2021 & CM APPL. 41024/2021**

GAMMON INDIA LTD Appellant

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

versus

REGIONAL PROVIDENT FUND COMMISSIONER,

..... Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant appeal is arising out of the Order dated 07.09.2020 passed by the Ld. Single Judge in W.P.(C) 6063/2020.
2. The facts of the case reveal that the Appellant before this Court was subjected to proceedings under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (*hereinafter referred to as the '1952 Act'*), and finally an Order dated 20.05.2019 was passed by the Regional Provident Fund Commissioner under Section 7-A of the 1952 Act. The Appellant before this Court preferred an appeal before the Tribunal (Central Government Industrial Tribunal), i.e. the Appellate Authority, and also preferred an application under Section 7-O of the 1952 Act for waiver of



pre-deposit. Thereafter, the Appellate Authority passed a detailed and exhaustive Order dated 20.11.2019 reducing the pre-deposit from 75% to 30%.

3. Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reads as under:

“7-O. Deposit of amount due, on filing appeal.—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”

The aforesaid Statutory Provisions empowers that the Tribunal may, for the reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O of the 1952 Act.

4. The Tribunal *vide* Order dated 20.11.2019 has taken into account the financial condition of the company and has also held that the Appellant before this Court has not deposited provident fund dues in respect of employees/workers from February, 2002 to August, 2009. It was only after taking into account various Judgments relied upon by the learned counsel for the Appellant/Establishment, and also keeping in view the financial status of the company, the pre-deposit was reduced from 75% to 30%.

5. The Appellant, being aggrieved by the reduction in the pre-deposit from 75% to 30%, came up before this Court by filing W.P.(C) 6063/2020 and the Ld. Single Judge *vide* Order dated 20.11.2019 further reduced the pre-deposit from 30% to 10%. It is submitted that the Appellant is still



aggrieved in the matter.

6. Learned counsel appearing for the Appellant has argued before this Court that the Appellant/company is facing financial crisis, and the order passed under Section 7-A is bad in law, as reasons have not been assigned for not reducing/waiving the pre-deposit. He has placed reliance upon the Judgment passed by the Hon'ble Supreme Court in Mehsana Dist. Co-Op. Milk P. U. vs. Union of India, **2003 (154) ELT 347 SC** wherein it had been held as under:

“The appellate authority has not at all considered the prima facie merits and has concentrated upon the prima facie balance of convenience in the case. The Appellant Authority should have addressed its mind to the prima facie merits of the appellant's case and upon being satisfied of the same determined the quantum of deposit taking into consideration the financial hardship and other such relevant factors.”

7. The Hon'ble Supreme Court in the aforesaid case held that the Appellate Authority should have applied its mind to the *prima facie* merits of the case, financial hardship and the other relevant factors.

8. In the present case, the Appellate Authority has applied its mind to the merits of the case as well as other factors, and it was under those circumstances the pre-deposit had been reduced from 75% to 30%. The decision in Mehsana Dist. Co-Op. Milk P. U. vs. Union of India (supra) will not apply to the facts of the present case.

9. Reliance has also been placed by the Appellant on the Judgment passed by this Court in Regional Provident Fund Commissioner vs. Ahluwalia Contracts (India) Ltd., **2019 LLR 1133** wherein a complete waiver was granted on pre-deposit.



10. Reliance has also been placed by the Appellant on the Judgment passed by this Court in W.P. (C) 1882/2021 titled as M/s Riding Consulting Engineers India Limited vs. Assistant P. F. Commissioner Delhi (North) wherein the pre-deposit was reduced to 1%.

11. The Order dated 20.11.2019 passed by the Appellant Authority is reproduced as under:

“This order proposes to dispose the application filed u/s 70 of the EPF and MP Act praying Waiver of the pre-deposit for admission of the appeal. Copy of the appeal and the application was served on the respondent who filed written objection to the same and participated in the hearing.

As seen from the appeal memo and the application filed u/s 70 the RPFC inquiry u/s 7A was initiated on the basis of the report submitted by the enforcement officer and the commissioner assessed an amount of Rs. 37,33,96,429/- towards EPF contribution not remitted by the appellant for its employees for the period February 2002 to August 2009. On receipt of the notice the representative of the establishment appeared before the commissioner and raised several objections including non identification of the beneficiaries. The establishment had also demanded a copy of the EO's report forming 'basis of the calculation. But the commissioner never took those factors into consideration and also did not give opportunity to the establishment for cross examination of the department witness who had testified during the inquiry. During the proceeding the commissioner was in a hurry to dispose of the matter and passed the impugned order on 29.05.2019 assessing 37,33,96,429/- u/s 7A, of the Act. Being aggrieved the appellant establishment had filed a petition for review u/s 7B of the Act. That too was disposed of by the commissioner in a hurried manner without proper application of mind hence, the appeal.

In his reply the Ld. Counsel for the respondent while



supporting the impugned order has stated that the provision of law laid u/s 70 of the Act is mandatory in nature and except for good and convincing grounds to be recorded the tribunal cannot waive or reduce the deposit of 75% of the assessed amount as a pre condition. He also submitted that the establishment is a big and reputed business house involved in various projects of National importance. Instead of being a model employer the establishment defaulted in deposit of the PF dues for prolonged period ranging from February 2002 to August 2009. In his written reply he has given a calculation with regard to the No. of the workmen employed by the appellant establishment in different years and the PF deposit made with regard to the Number of workers for the said year. By making a rough calculation he submitted that the appellant establishment having 9 projects in progress as per its own affidavit and during the inspection by the squad no convincing documents were produced for inspection. Thus, the squad on the basis of the documents available calculated the amount taking into consideration 25% of the project cost as salary/wage of the workers. On the basis of the same calculation was made which is correct and not to be inferred with.

*The Ld. Counsel for the Appellant advanced strenuous argument relying upon the case of **RPFC vs. Assam Bidi Factory Pvt. Ltd. and another reported in 2007 LLR 331** decided by the Hon'ble High Court of Calcutta and also in the case of **Himachal Pradesh State Forest Corporation vs. RPFC reported in 2008 5 SCC 756**, that the materials verified by the squad and relied by the commissioner clearly shows that the appellant establishment was executing the work of different projects through contractors. Being a quasi judicial authority discharging the function the RPFC should have taken steps for summoning those contractors and ascertaining if those contractors are having independent Code No. and complying EPF Subscription for the workers employed by them in the projects of the appellant. That having not been done the appellant has a strong prima facie case to argue in*



the appeal. The beneficiaries since have not been identified there is a fair chance of his success in the appeal and setting aside of the impugned order. Unless the condition of pre-deposit is waived at the time of admission undue hardship will be caused to appellant and relief sought in the appeal would become illusory.

On behalf of the appellant attention of the tribunal was drawn to the impugned order wherein the calculation based upon the report of the EO who made the calculation on the basis of the project cost of 9 projects and taking 25% of the same as the wage. The impugned order nowhere reveals that the contractors engaging their own employees in the project where ever summoned during the inquiry nor any steps were taken for identification of the workman. All these are of course the factors to be considered during the final hearing of the appeal. But at the same time it is held that the said points make out a strong prima facie case in favour of the appellant for argument during hearing of the present petition. The amount assessed being huge, it is held that insistence for deposit of 75% of the same will definitely cause undue hardship to the appellant and the relief sought in the appeal would become illusory. It is also held that the circumstances shown by the appellant do not make out a case for total waiver of deposit u/s 70 of the Act.

*In the case of **Moriroku Ut India Pvt. Ltd. vs. Union of India reported in 2005 SCC** the Hon'ble High Court of Allahabad have held that the appellate authority is required to read the ratio in a harmonious manner keeping in mind the object of the legislature while providing for waiving of the condition of pre deposit. While discussing the judgments of the Hon'ble High Court of Delhi in the case of **Shri Krishna vs. Union of India reported in 1998 (104) ELT 325** the Hon'ble High Court of Allahabad observed that the tribunal is obliged to adhere to the question of Undue hardship. The order of the tribunal should show if the pleas raised before it have any merit prima facie or not; If the appellant has a prima*



facie strong case as is most likely to exonerate him from payment and still the tribunal insists on the deposit of the amount it would amount to undue hardship.

Considering all these aspects it is directed that the appellant shall make deposit of 30% of the assessed amount by way of bank draft in this tribunal as a pre-condition for admission of the appeal. The appellant is also directed to comply with the direction within 8 weeks from the date of this order. The interim stay shall continue for a period of 8 weeks from today. If the appellant would comply with the direction the appeal shall be admitted and there would be stay operation of the impugned order and the matter shall, be listed for reply of the respondent. It is made clear that if the appellant would fail to comply the direction the appeal shall stand dismissed without further reference.”

12. This Court has carefully gone through all the Judgments relied upon by the Appellant as well as the Order dated 20.11.2019 passed by the Appellate Authority. This Court is of the firm opinion that the Appellant Authority did apply its mind while reducing the pre-deposit from 75% to 30%, and the Ld. Single Judge *vide* impugned Order dated 07.09.2020 further showed indulgence by reducing the pre-deposit to 10%.

13. The Appellate Authority has taken into account all the arguments canvassed by the learned counsel for the Appellant/Establishment and was justified in reducing the pre-deposit from 75% to 30%. The Ld. Single Judge has also once again taken into account the arguments canvassed on behalf of the Appellant/Establishment and has further reduced the pre-deposit to 10%. At this juncture, considering the facts and circumstances of the case, this Court does not find any reason to reduce the amount any further.

14. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficiary legislation and the said Act was enacted to ensure that the



workers/employees under the various Establishments are entitled to their legitimate right of provident fund and pension, and receive the same. The present case is the case where *prima facie* the Order passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reflects that the provident fund dues in respect of employees/workers have not been deposited with the Provident Fund Commissioner from February, 2002 to August, 2009 and, therefore, this Court does not find any reason to interfere with the Order dated 07.09.2020 passed by the Ld. Single Judge in W.P.(C) 6063/2020.

15. In view of the above, the appeal is dismissed, along with pending application(s), if any.

16. However, it is made clear that any observations made by this Court in the present Order will not come in the way of the Appellate Authority in deciding the matter on merits.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

AUGUST 17, 2022

S. Zakir