01.02.2023
Item No.9
Court No.550
Saswata

W.P.A. 487 of 2023

M/s. Kelvin Jute Co. Ltd. & Anr.
-vs-
Central Board of Trustees for the Employees Provident Fund Organization & Ors.

Mr. Soumya Majumder
...For the petitioners

Mr. S.C.Prasad
...For the PF authorities

Affidavit of service filed in Court today is kept with the record.

The present writ application has filed, inter alia, challenging the recovery notices and the show cause notice issued for warrant of arrest dated 2nd November 2022.

The petitioner no. 1 is an existing company within the meaning of Companies Act, 2013. By an order passed by the Board for Industrial and Financial Reconstruction (BIFR), the petitioner no. 1/ company was declared to be sick within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985. Although the BIFR has recommended winding up of the petitioner no.1, which was affirmed by an order passed by the AAIFR, subsequently, however, at the intervention of this Court in Writ petition no. 10551(W) of 1997, the orders passed by BIFR and AAIFR, were set aside and BIFR reconsidered the whole matter and ultimately was pleased to sanction the scheme for revival of the petitioner no.1 on 28th September 2011 (hereinafter referred to as the said Scheme).

Mr. Majumder, learned advocate appearing for the petitioners, by drawing attention of this Court to page 85 of the writ application submits that in terms of the paragraph 15.3 of the Scheme, provision had been made with regard to the dues payable to the Employees Provident Fund Organization and it was, inter alia, provided therein:

> *"15.3 <u>Employees Provident Fund Organization (EPFO):</u> To Consider:*
>
> *i. To accept principal dues of Rs.348.66 lakhs as per audited Balance sheet in 84 Equated Monthly Installments carrying no interest commencing from 1st April, 2011 [presently the company is paying old arrear amount at an instalment of Rs. 2 lakh per month in terms of Calcutta High Court order under writ petition W.P.No. 20247 (W) of 2003 dated 24.12.2003 (Dues claimed by EPF Deptt: Rs. 375.33 lakh).*
>
> *ii. To waive entire past interest, future interest on repayment of arrear dues of Rs. 348.66 lakh penalty, liquidated damages etc. [The trustee board of the companies P.F. trust has already expressed to BIFR that they are ready to accept the principal dues without interest. In the interest of continued employment of the 3000 workers.]"*

Mr. Majumder submits that the petitioner no. 1 had complied with the aforesaid direction and had made payment of the provident fund dues in terms of the said Scheme. Subsequently, however, fresh proceedings were initiated for determination of dues under Sections 7Q and 14B of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act") for the period from November 2013 to December 2014. By two separate orders, dated 5th July 2021 the provident fund authorities have not only determined an amount of Rs.16.09 lakhs on account of interest as payable by the petitioner no.1 in terms of the provision of Section 7Q of the said Act but have also determined a sum of

Rs.8.56 lakhs, to be payable by the petitioner no. 1 on account of damages under Section 14B of the said Act.

Mr. Majumder further submits that the petitioner no.1 has already preferred an appeal insofar as the determination made under Section 14B of the said Act before the Tribunal, constituted under the said Act. Such appeal is pending consideration. He submits that there is no requirement for pre-deposit for maintaining an appeal under Section 7I of the said Act.

By drawing attention of this Court to an application dated 7th September 2021, it is submitted that the petitioner no. 1 had also applied before the Central Board of Trustees, for waiver of interest determined under Section 7Q of the said Act. During pendency of the aforesaid application, the Regional Provident Fund Commissioner II, by a communication in writing dated 29th July 2022, has purported to convey that since there is no provision under the said Act, for waiver of interest determined under Section 7Q of the said Act, the petitioners require to comply with the order dated 5th July 2021. Subsequently, a notice dated 2nd November, 2022, to show cause why warrant of arrest should not be issued has also been served on the petitioners. By referring to the aforesaid notice dated 2nd November 2022, which is at page 214 of the instant writ application, he submits that such notice has been issued not only in respect of determination made under Section 7Q of the said Act but also in respect of determination made under Section 14B of the said Act, in respect whereof, an appeal is pending. He says that an application praying for stay of operation of the order dated 5th July, 2021 passed under Section 14B of the said Act is pending adjudication before the Tribunal. He says that till such time a decision is taken by the Central Board of Trustees, and the aforesaid application for stay is disposed of, the respondents ought not to have issued the aforesaid notice. The same is illegal and should be stayed pending hearing of this writ application.

Per contra, Mr. Prasad, learned advocate appearing for the PF authorities by referring to the provisions of Sections 7Q and 14B of the said Act submits that although the Statute authorizes the Central Board of Trustees to waive damages under Section 14B of the said Act, no such authorization has been given to the Central Board of Trustees for determination made under Section 7Q of the said Act. The Regional Provident Commission II has rightly passed the direction dated 29th July 2022. He submits that the petitioners ought to comply with the order dated 5th July 2021. The steps taken by the respondent no. 2 to direct the petitioner to comply with the order dated 5th July 2021 cannot be said to be illegal or irregular.

I have considered the submissions made by the learned advocates appearing for the respective parties and have considered the materials on record. I find that although an application has been made by the petitioner before the Central Board of Trustees praying for waiver, there is no provision under the said Act permitting the Central Board of Trustees to waive interest under Section 7Q of the said Act. At the same time, it would be relevant to indicate that the BIFR, while sanctioning the scheme by an order dated 28th September 2011 had proceeded to direct waiver of entire past and future interest on payment of arrear dues of Rs.348.66 lakh.

I am of the view that peculiar facts require peculiar orders to be passed and the aforesaid order was passed in the best interest of the revival of the petitioner no. 1. The aforesaid application dated 7th September 2021 is yet to be disposed of by the Central Board of Trustees and as such, it shall not be prudent for this Court to make any observations with regard to the decision to be taken by the respondent no. 1. I, however, find that notwithstanding the petitioner preferring an appeal under Section 7I of the said Act from the order dated 5th July 2021 passed under Section 14B of the said Act and notwithstanding such appeal having not been disposed of, the respondent no. 4 has purportedly issued the notice dated 2nd November 2022. This aforesaid notice reveals that the same has been issued for ensuring compliance of the orders dated 5th July 2021, passed under Sections 14B as also under Section 7Q of the said Act.

I am of the view since an appeal is already pending from the aforesaid order, the respondent no. 4 ought not to have proceeded in such hot haste to enforce the order passed under Section 14B of the said Act. Since, a combined notice has been issued for enforcing compliance of orders passed not only under Sections 7Q but also for compliance of order passed under Section 14B of the said Act, in respect whereof an appeal is pending, I propose to and do hereby stay the operation of the notice dated 2nd November 2022 for a period of two month from date.

The petitioner shall, however, be at liberty to proceed before the Tribunal and pray for expeditious disposal of the appeal and for extension of the stay by filing appropriate application. I have also been informed by the parties that an application for stay of operation of the determination made under Section 14B of the said Act is pending adjudication before the Tribunal. Having regard to the aforesaid if any such application has already been filed or in the alternative if such an application is filed the same shall be considered by the Tribunal in accordance with law.

Since nothing survives in the instant writ application, the writ petition being no. WPA 487 of 2023 is accordingly ***disposed of***.

Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for be given to the parties on priority basis upon completion of requisite formalities.

(*Raja Basu Chowdhury, J.*)