Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 23174 of 2022

The Empire Jute Company Limited
Vs.
The Regional Provident Fund Commissioner-I & Anr.

For the petitioner	:	Mr. Mainak Bose Mr. S. M. Akhter
For the Provident Fund Authority.	:	Mr. Shiv Chandra Prasad
Heard on	:	27.03.2023
Judgment on	:	27.03.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, praying for grant of installments to pay off the admitted provident fund dues for the period from January, 2019 till December, 2019 and January, 2021 till July, 2021, as determined by the respondents in proceedings under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act").

2. Mr. Bose, learned advocate representing the petitioner by placing reliance on the circular dated 11th February, 2014, issued by the Additional Central Provident Fund Commissioner (Compliance), has submitted that the respondents had adopted a policy for granting installments. He says, unfortunately, in the petitioner's case the same had not been adhered to. He submitted that the respondents were bound to comply with their instructions as reflected in the circular dated 11th February, 2014. In the factual backdrop, as aforesaid, the petitioner may be permitted to pay off its dues by way of 48 monthly installments.

3. Considering the submissions made by the petitioner this Court had directed the learned advocate representing the Provident Fund Authorities to take appropriate instruction in the matter and further directed the petitioner to make payment of Rs.50,00,000/- (Rupees fifty lakhs) only to the respondent no.1, within 28th November, 2022.

4. The petitioner has since complied with the aforesaid direction.

5. Mr. Prasad, learned advocate representing the Provident Fund Authorities has since, submitted that on the basis of the determination made by them, in respect of the proceedings under Section 7A of the said Act, a sum of Rs.3,00,17,481/- is due as per the following particulars.

Jan 2019 to Dec 2019	78,79,133/-
Jan 2020 to Dec 2020	85,95,424/-
Jan 2021 to Jul 2021	52,11,498/-
Aug 2021 to Dec 2021	46,95,757/-
Jan 2022 to April 2022	36,35,669/-
Total	3,00,17,481/-

6. He says since the petitioner has come forward to make payment of the outstanding dues by way of installments, the petitioner should make payment of the entirety of the outstanding, *inter alia*, including, the amount determined by them up to April, 2022 under section 7A of the said Act. He also insists that apart from the aforesaid, the petitioner is also liable to make payment of interest under Section 7Q of the said Act and damages in terms of Section 14B of the said Act. In support of his aforesaid contention, he relies on a chart, wherefrom it appears that apart from determination made under Section 7A of the said Act an aggregate sum of Rs. 9984022 has been determined towards interest under section 7Q of the said Act.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioner has already complied with the initial direction for payment of Rs.50,00,00/- (Rupees Fifty Lakhs) only. It also appears that the Provident Fund Authorities by its circular dated 11th February, 2014 had notified all the Additional Central Provident Fund Commissioner (Zones) and all Regional Provident Fund Commissioners, with regard to its decision of allowing the establishments, desirous of availing installment facilities to liquidate their dues in installments.

8. Considering the fact that a decision has already been taken by the respondents, themselves, to permit the establishment to liquidate their dues by way of installments and taking into consideration the financial stress suffered by the petitioner owing to the pandemic, I am of the view that the petitioner should be permitted to liquidate the balance provident fund dues, in installments insofar as the same concerns determination made under Section 7A and 7Q of the said Act as per the particulars given below:-

Determination under Section 7A **Period**	**Rupees**
Jan 2019 to April 2022	3,00,17,481/-

Determination under Section 7Q Period	**Rupees**
01.01.2019 to 31.12.2019	31,88,565/-
01.01.2020 to 31.12.2020	26,11,455/-
01.01.2021 to 31.12.2021	18,63,834/-
01.06.2022 to 30.04.2022	3,98,570/-
01.06.2015 to 16.02.2023	19,21,598/-
Total	99,84,022/-

9. Insofar as the determination made under Section 14B is concerned, since the parties claim that the petitioner has already challenged the same by filing a separate writ application, such determination is not being taken into consideration for the present.

10. From the aforesaid, it would appear that an aggregate sum of Rs.3,50,01,503/- (Rupees Three Crores Fifty Lakhs One Thousand Five Hundred and Three) only is due and payable after

giving credit to sum of Rs.50,00,000/- (Rupees Fifty Lakhs) only, already paid by the petitioner pursuant to the direction passed by this Court. Having regard to the aforesaid I am of the view that the petitioner, at the first instance, should make payment of 50,00,000/- (Rupees Fifty Lakhs) only, directly to the respondent no.1 within a period of two week from date. The balance amount be liquidated by the petitioner in 48 equal monthly installments. The first of such installment be paid by the petitioner on/or before 31st May, 2023 and the balance 47 installments be paid on/or before the 28th of each succeeding month till the entire dues are cleared.

11. The petitioner is also directed to submit a revolving bank guarantee from any schedule bank, equivalent to six months installments with the respondent no.1, on or before 31st May, 2023 for availing the installment facilities.

12. The petitioner is also directed to make payment of the employer's contribution regularly by 15th of each month. It is made clear that the payment of installments will not absolve the petitioner to make payment of interest, in terms of Section 7Q of the said Act. Insofar as the claim for damages are concerned, the same would abide by the result of the pending writ application and be subject to any challenge being made by the petitioner.

13. I further direct that the petitioner shall not deal with and dispose of its assets and properties, except in course of its business, dealings and transactions.

14. The respondents are also restrained from taking any steps for initiation of recovery proceedings or any coercive steps against the petitioner, until expiry of the tenure for payment of instalments in respect of the dues which have been permitted to be liquidated and dealt by this order. In default of payment, as directed above, the respondents shall be entitled to enforce their claim, if any, against the petitioner subject to any right that the petitioner may have.

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

16. With the above observations, the writ application, being WPA 23174 of 2022 is disposed of.

17. There shall be no order as to costs.

18. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

sb