**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

904 **WRIT PETITION NO.2100 OF 2023**

ABHISHEK ENTERPRISES THROUGH ITS AUTHORIZED SIGNATORY
VERSUS
EMPLOYEES PROVIDENT FUND ORGANIZATION
THROUGH ITS REG. PROVIDENT COMMISSIONER II
...
Advocate for Petitioner : Mr. B.R. Kawre
Advocate for the Respondent : Mr. N.K. Choudhari
...

**CORAM : SHARMILA U. DESHMUKH, J.**

**DATE : 24-02-2023**

**PER COURT :**

. The petition has been preferred challenging the order dated 31.10.2022 passed by the Regional P.F. Commissioner-II under Section 7A of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (hereinafter 'Act of 1952') assessing dues of Rs.17,26,951/-.

2. As against this order, an appeal has been preferred before the Tribunal constituted under the provisions of 7 (1) of the Act. Appeal No.CIT/NGP/EPFA/47/2022-23/353 dated 05.01.2023 has been filed by the petitioner along with an application for waiver of the deposit amount under Section 7 (0) of the Act of 1952.

3. It is not disputed that the Presiding officer, Central

Government in School Tribunal, Nagpur which would have the jurisdiction to adjudicate the appeal is not available and as such by invoking the doctrine of necessity, the present petition has been filed.

4. The learned counsel appearing for the petitioners seeks waiver of the mandatory deposit of 75% and submits that the impugned order assessing the dues is based on erroneous findings inasmuch as the dues are assessed on the security charges, material handling charges, hamali and other charges. He further submits that pursuant to the order being passed under Section 7A, the bank accounts of the petitioner have been frozen and as such the complete business of the petitioner has come to a standstill.

5. Per contra, the learned counsel for the respondent submits that there is a mandatory requirement of 75% deposit which has not been complied and without compliance of the said amount, no stay can be granted. He further submits that the certificate for attachment was issued as the petitioner failed to comply with the order passed under Section 7A of the Act of 1952.

6. After arguing for some time, the learned counsel for the petitioner submits that he is ready and wiling to deposit 50% of the

amount due i.e. 50% of Rs.17,26,951/- within a period of four weeks from today.

7. Perused the order passed under Section 7A of the Act of 1952. The order assesses the dues by taking into consideration that the establishment could neither explain ledger book entries under the Misc. / other expenses nor could explain the presence of the employees in excess to that in wages / attendance register on the date of visit of Area Enforcement Officer. However, it needs to be considered that the benefits are intended for beneficiaries, who are required to be identified. *Prima facie* it appears that the dues have been assessed due to inability of the establishment, to produce the necessary records and considering the amount shown in the ledger books as security charges, material handling charges, Hamali and other charges as salaries paid to the employees dues had come to the assessed by the respondent – Commissioner.

8. In light of the above and considering that the petitioner is ready and willing to deposit 50% of the amount, in my opinion, there is a case made out for reduction in the mandatory deposit of 75%.

9. Petitioner to deposit 50% of the amount of

Rs.17,26,951/- within a period of four weeks with the Regional Provident Fund Commissioner.

10. The proceedings to be adjudicated by the Tribunal without being influenced by the observations made herein which are *prima facie* observations for the purpose of considering application seeking reduction in the amount of the mandatory deposit.

11. Upon deposit of the 50% of the amount as stated above, the impugned order dated 31.10.2022 is stayed.

12. The learned counsel for the respondent submits that on 07.02.2023 the various bank accounts of the petitioner have been attached pursuant to the invocation of section 8F of the Act of 1952.

13. As the petitioner is ready and willing to deposit 50% of the amount, the order dated 07.02.2023 attaching the various bank accounts of the petitioner is quashed and set aside.

**( SHARMILA U. DESHMUKH, J. )**

GGP