IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 361 of 2023

M/s. K.C. Dairy Products (P) Ltd.,
Oddanchatram Main road,
Vedasandur Tk.,
Dindugal District – 624 710.
rep. by its Authorised Signatory. ..Appellant

Vs.

1. Regional Provident Fund Commissioner II,
Employees Provident Fund Organisation,
Ministry of Labour and Employment,
Govt. Of India, Regional Office,
No.1, Lady Doak College Road,
Chokkikulam, Madurai – 625 002.

2. The Recovery Officer,
Employees Provident Fund Organisation
District Office,
No.16, ARS Salai, Bhava Lodge Building,
Nagal Nagar, Dindigul – 624 003. ..Respondents

Prayer: Writ Appeal as against the order dated 13.12.2022 passed in W.P. No. 33490 of 2022.

For Appellant :: Mr.Haroon for M/s.T.S. Gopalan & Co.

For Respondents :: Mr.P.K. Panneerselvam

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present appeal has been preferred against the order dated 13.12.2022 in W.P. No. 33940 of 2022.

2. The facts that led to the filing of this writ appeal:

The appellant herein/writ petitioner was engaged in the manufacture of dairy products and two of its units had been transferred by way of a business transfer agreement to one M/s. Dodla Dairy Products Limited with effect frm 4th March, 2019. While running the business, the appellant used to recurit trainess and in terms of certified standing orders, the appellant was permitted to engage apprentices/trainees. By summons dated 18.11.2018, the 1st respondent demanded contribution in respect of trainees for the period January, 2015 to May, 2018. Though the appellant took part in the enquiry and opposed the demand on the ground that apprentices would not come under the purview of definition of employee in terms of para 2(F) of the Employees Provident Fund Scheme and that the said persons had been disengaged long ago, by order dated 21.04.2022, the 1st respondent determined the contribution and directed the appellant to pay the contribution, which led to the filing of an appeal under Section 7-I of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 [“EPF” Act in short] before the Central Government Industrial Tribunal, Chennai in EPFA No.83/2022. The appellant filed a petition under Section 7-O of the aforesaid Act to waive the entire pre-deposit, which is a condition precedent for filing an appeal stating that the demand had been made in respect of non-existent trainees, that the company had been transferred as early as in 2019 and there were financial difficultues. The Tribunal, by order dated 13.09.2022, partially allowed the waiver petition by which the writ petitioner/appellant herein was directed to deposit of 45%

of the entires dues determined by the 1st respondent instead of 75%. Seeking modification of the said order, the appellant took out an application on 14.11.2022 and by order dated 05.12.2022, the Tribunal merely extended the time limit to make the pre-deposit. In the meanwhile, recovery proceedings were initiated by the respondents. Therefore, the appellant filed the writ petition before this Court challenging the order of the Tribunal dated 13.09.2022 in the waiver application. Learned Single Judge, while observing that the reasons given by the Tribunal pertains to the merits of the matter and do not deal with the difficulties expressed by the appellant for seeking waiver of pre-deposit, quashed the said order and reduced the pre-deposit to be made from 45% to 40% of the determined amount. Aggrieved by the same, the present writ appeal has been filed.

3. Reiterating the contentions raised before the Tribunal that the company had been transferred as early as in 2019 and that the demand had been made in respect of non-existence trainees, the learned counsel for the appellant would submit that when the Tribunal has got powers to waive the entire pre-deposit amount in terms of Section 7-O of the EPF Act mentioned

supra, more so, when the appellant has made out a case for maximum waiver in view of the precarious situation in which the appellant company was placed, the Tribunal erred in granting partial waiver. According to the appellant, the Tribunal ought to have exercised its discretion and allowed the waiver application thereby entertaining the appeal without any pre-deposit. In view of the orders of this Court dated 09.09.2019, more so, paragraph No.9 of the order, wherein the Tribunal has been asked to direct all the parties as a rule to deposit 75% in all circumstances and only in exceptional and extraordinary cases, where an application is filed, then there must be an adjudication and the reasons must be recorded for granting of waiver and the quantum of amount to be waived or reduced to be deposited under Section 7-O of the Act, it is submitted by the learned counsel for the appellant that such a direction runs counter to Section 7-O of the Act and that the exercise of discretionary power by the Tribunal is being taken away by the said order and that the Tribunal is forcing the employer to deposit the amount.

4. Learned counsel for the respondents would submit that in terms of Section 7-O of the Act, the Tribunal has got discretionary power and that the same has been exercised by the Tribunal. The Tribunal and the learned Single Judge have not taken note of Section 17B of the EPF Act and that when the Tribunal has exercised its jurisdiction and reduced the pre-deposit from 75% to 45% and that the said partial waiver has been still reduced by the learned Single Judge from 45% to 40%, the employer is liable to deposit the amount as directed by the learned Single Judge and that there should not be any further reduction as the claim is for the period prior to transfer of the company and that the amount due to the employees has not been remitted. It is not a case of damages for which a request has been made by the employer and that the contribution in terms of Section 6 of EPF Act read with paragraph 29 of the EPF Scheme, 1952 has not been remitted by the employer.

5. Heard both parties.

6. Considering the issue involved, it would be relevant to extract Section 7-I and 7-O of EPF Act, for useful reference, which read as under:

*"**7-I. Appeals to Tribunal**.—(1) Any person aggrieved by a*

notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order. (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed. "

*"**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."*

Further, as per Rule 7 of The Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, the employer has got to prefer an appeal within a period of 60 days and a further period of 60 days is available if the Tribunal is satisfied that the employer was prevented by sufficient cause to prefer the appeal within the prescribed time i.e, the total time limit is 120 days. In the present case on hand, the appeal has been filed in time. However, without depositing 75% of the amount determined by the 1st respondent, the appellant herein had preferred the appeal along with an application for waiver under Section 7-O of EPF Act. The Tribunal, after considering the contentions of both parties, had reduced the pre-deposit to be made to 45% of the determined amount and same has been further reduced to 40% by the learned Single Judge.

7. It is pertinent to note that the demand by the respondent EPFO is for the period from January, 2015 to May, 2018 before the transfer of the company to a third party. Section 17B of EPF Act, which deals with ***"Liability in case of transfer of establishment",*** states that, *"Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or [the [Pension] [Scheme or the Insurance Scheme] [as the case may be, in respect of the period up to the date of such transfer;.."* It is the mandatory duty of the employer to pay the EPF contribution of the employer and the employees, in case, the employer has not deducted the

contribution from the employees' salary in terms of Para 30 of EPF Scheme, 1952.

8. Insofar as the direction given by the learned Single Judge in W.P. No. 25540 of 2019 is concerned, we are not in agreement with the said direction of the learned Single Judge in the order dated 09.01.2019 as the pre-deposit of 75% in all circumstances may not be mandatory. The powers of the Tribunal to exercise its discretion cannot be curtailed by this Court. It does not mean that in all circumstances, the employer has got to be let off by waiving the entire pre-deposit of 75%, which is a pre-condition for filing an appeal, as contemplated under the EPF Act, more so, under Rule 7 of The Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997.

9. Taking note of the fact that company had been transferred and taking note of the contention of the respondent EPFO that the contributions of the employer and employees have not been paid in terms of Section 6 r/w Paragraph 29 of the EPF Scheme, 1952, we direct the appellant employer to deposit 30% of the amount determined by the 1st respondent under the EPF

Act.This leverage given by this Court cannot be treated as a precedent. If the deposit of 30% is not made within a peirod of four weeks from the date of receipt of a copy of this order. then the order of the learned Single Judge will stand and it is open to the respondent EPFO to proceed in accordance with law including taking action for civil imprisonment under the EPF Act. We expect the Tribunal to take up the matter on a day-today basis without adjourning the matter beyond 10 working days at any point of time to bring the issue to its logical conclusion as there is a complaint from the Labour Law Practitioners' Association regarding the Presiding Officer, who is holding the office today that the matters are not taken up periodically and are being adjourned beyond 6 months from that point of time.

10. The writ appeal is disposed of with the above direction. No costs.

(S.V.N.J.) (R.K.M.J.)
21.02.2023

nv

To

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