IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1438 OF 2024

M/s Rajdeep Buildcon Pvt. Ltd. .. Petitioner

versus

Employees' Provident Fund Organisation .. Respondent

Mr. P. S. Shendurnikar, Advocate for the Petitioner.
Mr. N. K. Choudhari, Advocate for the Respondent.

CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.

RESERVED ON : 12th APRIL, 2024.
PRONOUNCED ON : 24th APRIL, 2024

ORDER (PER R M JOSHI, J)

1. This Petition is essentially filed, due to the non-availability of the CGIT, in order to seek relief against coercive action being taken by the Provident Fund Commissioner in Recovery Case No. MH/PF/DO/ANG/51071/Damages/2023-24/62/232 under the provisions of Section 7-Q and 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act").

2. Being aggrieved by the aforestated notice, the Petitioner has preferred an appeal before the Central Government Tribunal No.

II at Mumbai and a stay application is also moved. The post of learned Presiding Officer of the Tribunal is vacant. The Petitioner, therefore, was unable to seek any relief from the Tribunal irrespective of the fact of filing of the appeal under Section 7-I of the Act, within the appeal period. The Petitioner claims to be a Civil Contractor involved in the construction of roads etc. The Respondent, vide letter dated 27.06.2022, issued summons informing the Petitioner that on scrutiny of the record it shows that certain payments towards PF contributions, were made after the due dates. An amount of Rs. 21,93,477/-, as damages under Section 14-B and an amount of Rs. 13,81,272/-, towards interest under Section 7-Q of the Act, total amounting to Rs. 35,74,709/-, became due and payable. The Petitioner replied to the said notice and explained its position and sought waiver of the penal damages.

3. The Petitioner has relied upon a Circular bearing No. 1112 dated 15.05.2020 giving relief to all establishments covered under the Act for levy of damages for the belated remittance. On 07.07.2023, Respondent passed an order under Sections 14-B and 7-Q of the Act. Feeling aggrieved by the said order, an Application came to be filed before the Central Government Industrial Tribunal II

(CGIT), at Mumbai, with a prayer for seeking waiver of damages. For want of availability of the Presiding Officer, the said appeal with application could not be moved. In the meantime, the Assistant Provident Fund Commissioner (Damages) has issued prohibitory order dated 26.10.2023 invoking provisions of Section 8-F of the Act.

4. The learned Advocate for the Petitioner submits that though no dispute can be made with regard to the calculation done by the Provident Fund Commissioner in respect of Section 7-Q, and liability of payment thereof, however, he seriously disputes any liability towards payment of any amount of damages under Section 14-B of the Act. It is sought to be canvassed by referring to provisions of Section 7-I and Section 7-O of the Act, that there is no mandate that the 75% amount or any other amount is required to be deposited as a condition precedent while preferring the Appeal. To support his submissions, he placed reliance on judgment in the case of Shiv Harbal Research Laboratory vs. Asst. P. F. Commissioner, **LAWS(SC) 2010-4-121**. By relying upon judgment of Division Bench of this Court in case of Larsen & Toubro Ltd. vs. Union of India and others, **2013(2) Bom.C.R. 556**, it is canvassed that for the period of

appeal no coercive action can be taken and considering the fact that here in this case, appeal is filed and the Tribunal is not available, the same analogy needs to be applied. He made grievance that inspite of this position of law, the coercive action has been initiated and the account bearing No. 923020036557912 has been prohibited from operation. To support his submissions, he has placed reliance on the following judgments :-

i) M/s Tasty Nut Industries vs. Union of India & others
Writ Petition (Civil) No. 999/2014.

ii) Sardar Patel Seva Trust vs. The Regional Provident Fund Commissioner II
MANU/GJ/0984/2022

iii) Gaurav Enterprises vs. Union of India
2021 SCC ONLINE Del. 4235

iv) M/s Carona Ltd. vs. Asst. P.F. Commissioner
LAW FINDER Doc. ID 2081971

5. The learned Advocate for the Respondents-P. F. Authority opposed the said submissions by contending that the provisions of Section 7-I do not contemplate the order under Section 7-Q but it speaks about the authority under Section 7-Q having passed the order and in all such orders the provisions of Section 7-I would come into play and that it would be necessary for the Petitioner to deposit the amount if he wishes to avoid any coercive action.

6. At the outset, we would like to clarify that the Petitioner has already preferred a statutory Appeal before competent Tribunal and is only seeking stay to the impugned order dated 07.07.2023 and remedial measure against the coercive action already taken by the Provident Fund Commissioner, in view of Petitioner's inability to work out the Appeal before the Central Government Tribunal. We, therefore, do not wish to go into the merits of submissions made by both sides which could be gone into by the Tribunal while testing the correctness and legality of the impugned order dated 07.07.2023 and moreso, in view of the fact that the Petitioner has volunteered to deposit the entire interest amount and a portion of the damages.

7. In order to appreciate contentions raised for a limited purpose, it would be relevant to refer to the purpose and intent of the Act, which is social security legislation, meant for a class of employees who are beneficiaries of the said statute. In such circumstances, it is imperative for the Petitioner to deposit at least some part of the amount of damages/penalty before the Court to show its bonafides. During the course of hearing, the learned Advocate for the Petitioner, on instructions, has made submission that the Petitioner is ready to deposit the entire amount under

Section 7-Q of the Act, but he has reservations to deposit the amount in respect of the damages under Section 14-B. The record indicates that a total sum of Rs. 35,74,709/- is due to the Respondent from the Petitioner. Out of this amount, the Petitioner has no issue to deposit the interest amount of Rs.13,81,232/-. As far as the amount of damages under Section 14-B is concerned, having regard to the facts and circumstances of the case, it is stated that some amount would be deposited. The Petitioner agrees to deposit a total amount of Rs. 20,00,000/- (entire Sections 7-Q and portion of 14-B amounts), for seeking interim protection. The contentions raised by the rival parties before us are kept open for consideration of the appellate authority.

8. The **Writ Petition is partly allowed** as per the following order :-

ORDER

a) The Petitioner would deposit sum of Rs.20,00,000/- within a period of four weeks from today, before this Court.

b) The amount of Rs. 20,00,000/- be permitted to be debited from Bank Account No. 923020036557912, Axis

Bank Ltd., Plot No. 1, Ganeshkhind Road, Corporate Banking Branch, Pune 411007.

c) Respondents are hereby restrained from taking any coercive action against the Petitioner on the basis of impugned order dated 07.07.2023.

d) Respondents are directed to permit the Petitioner to operate Account No. 923020036557912, with Axis Bank Ltd., Plot No. 1, Ganeshkhind Road, Corporate Banking Branch, Pune- 411007.

e) This order shall remain in force till the appellate authority takes up the appeal for hearing and passes any appropriate order in the appeal.

f) The appellate authority, after appointment of the Presiding Officer, shall decide the appeal within a period of six months.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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