IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2316 OF 2024

Agile Real Estate Private Limited …Petitioner
Versus
Regional Provident Fund Commissioner-II & Anr. …Respondents

WITH

WRIT PETITION NO.2318 OF 2024

Ananta Landmarks Private Limited …Petitioner
Versus
Regional Provident Fund Commissioner-II & Anr. …Respondents

Mr. Saket Mone and Mr. Krishna Raja, Advocates, i/b. Makarand Savant, for the Petitioners in WP/2316/2024 and WP/2318/2024.
Ms. Payoja Gandhi, Advocate, for the Respondent No.1 in WP/2316/2024 and WP/2318/2024.
Ms. Shehnaz V. Bharucha, Advocate, for the Respondent No.2-UOI in WP/2316/2024 and WP/2318/2024.

CORAM: MADHAV J. JAMDAR, J.
DATED : 14th JUNE 2024

P. C.:

1. In both these Writ Petitions, the Petitioners are challenging the Order dated 13th February 2023 passed by the Regional PF Commissioner-II, Regional Office, Bandra, Mumbai-I, which is the Order passed under Section 14B of the Employees' Provident

Funds and Miscellaneous Provisions Act, 1952 ("EPF Act") (Pages 44 to 47) and Order dated 13th February 2023 (date is incorrectly mentioned as 12th December 2022) passed under Section 7Q of the EPF Act.

2. It is the main contention of Mr. Mone, learned Counsel for the Petitioners that the default was during the period from March 2020 to November 2021 i.e. the period when functioning of the companies were affected due to COVID-19 pandemic. He submitted a chart giving details of the defaults committed by the Petitioners. The said chart produced by Mr. Mone, learned Counsel for the Petitioners is set out herein below:

Agile Real Estate Pvt. Ltd. (Writ Petition No.2316 of 2024)

Impugned SCN imposing for Rs.1,44,20,795/- (i.e. Rs.95,16,253/- u/s. 14B + Rs.49,04,542/- u/s. 7Q)

Sr. No.	Particulars	Amount
1	**Total Remittance amount** (allegedly defaulted as to be deposited on or before 15th of every month)	**Rs.5,97,48,447/-**
2	**For the year 2016 in respect of wage months mentioned in the SCN** (including twice paid for wage month of December 2016) Total amount of Damages u/s. 14B	 Rs.629/-

	Total Amount of Interest u/s. 7Q	Rs.1516/-
	Total (A)	**Rs.2,145/-**
3	**For the wage month April 2019** Total amount of Damages u/s. 14B Total Amount of Interest u/s. 7Q	 Rs.72/- Rs.176/-
	Total (B)	**Rs.248/-**
4	**For the wage months November 2019 to February 2020** Total amount of Damages u/s. 14B Total Amount of Interest u/s. 7Q	 Rs.1,91,103/- Rs.1,68,621/-
	Total (C)	**Rs.3,59,724/-**
5	**For the wage months from March 2020 to November 2021** Total amount of Damages u/s. 14B Total Amount of Interest u/s. 7Q	 Rs.93,24,449/- Rs.47,34,229/-
	Total (D)	**Rs.1,40,58,678/-**
	Total A+B+C+D	**Rs.1,44,20,795/-**

Ananta Landmarks Private Limited (Writ Petition No.2318 of 2024)

Impugned SCN imposing Rs. 4,59,648/- (i.e. Rs.2,40,848/- u/s. 14B + Rs.2,18,800/- u/s. 7Q)

Sr. No.	Particulars	Amount
1	**Total Remittance amount** (*allegedly defaulted*)	**Rs.1,06,30,289/-**
2	**For the Wage Months April 2020 to October 2021 as per SCN** Total amount of Damages u/s 14B Total amount of Interest u/s 7Q	 Rs. 2,40,848/- Rs. 2,18,800/-
	Total	**Rs. 4,59,648/-**

3. Mr. Mone, learned Counsel for the Petitioners further submitted that in fact, the Employees' Provident Fund Organization ("EPFO") has issued a circular dated 15th May 2020 (Exhibit 'B' to the Writ Petitions). The said circular is issued in view of the extraordinary situation due to the COVID-19 pandemic. He pointed out the following portion of the said circular:

> "*....Considering the difficulty faced by the establishments in timely deposit of contributions during the period of lockdown due to operational and economic reasons, it is evident that such delays are without mens rea of the employer. Thus, the delay in deposit of contributions during the period of lockdown announced in terms of the Disasters Management Act, 2005 cannot be attributed to any culpable state of mind of the employer and will not, therefore, attract the provisions of Section 14B of the EPF Act.*
>
> *Therefore, for any delay in payment of any contributions or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases.*"

4. Mr. Mone, learned Counsel for the Petitioners also pointed out further circular dated 27th March 2022 issued by the EPFO on the basis of the Supreme Court's decision in *Horticulture Experiment Station v. Provident Fund Organization* [1]. He

1 (2022) 4 SCC 516

submitted that as the default is during the period from March 2020 to November 2021 i.e. when the circular dated 15th May 2020 was in operation, the Petitioners' case is required to be considered.

5. On the other hand, Ms. Gandhi, learned Counsel for the Respondent No.1-EPFO and Ms. Bharucha, learned Counsel for the Respondent No.2-UOI strongly opposed the said contentions.

6. Ms. Gandhi, learned Counsel for the Respondent No.1 apart from opposing the Writ Petitions on merits submitted that insofar as the order passed under Section 14B of the EPF Act there is an alternate remedy of Appeal provided under Section 7I of the EPF Act.

7. In view of the said objection raised by the learned Counsel for the Respondent No.1, Mr. Mone, learned Counsel for the Petitioners seeks withdrawal of the Writ Petitions with liberty to prefer statutory Appeal under Section 7I of the EPF Act as far as orders passed under Section 14B of the EPF Act are concerned. He states that said statutory Appeal will be filed within a period of four weeks from today. If such statutory Appeal under Section 7I of the EPF Act is filed within a period of four weeks from today before the Central Government Industrial Tribunal ("CGIT"), the CGIT is requested to decide the same expeditiously. This direction is issued as the impugned Order passed under Section 14B of the EPF Act is dated 13th February 2023 and it has been communicated to the Petitioners on 1st March 2023 and the present Writ Petitions challenging the said Orders were filed on 20th March 2023.

8. As far as the impugned Orders passed under Section 7Q of the EPF Act are concerned, Mr. Mone, learned Counsel for the Petitioners states that as composite Writ Petitions are filed challenging legality and validity of impugned Orders passed under Section 14B and Section 7Q of the EPF Act, he seeks withdrawal of the Writ Petitions as far as orders passed under Section 7Q of the EPF Act with liberty to prefer fresh Writ Petitions only concerning the same.

9. Accordingly, the Writ Petitions are disposed of as withdrawn with liberty as prayed aforesaid.

10. However, it is clarified that this Court has not considered the merits and all contentions thereto are expressly kept open.

[MADHAV J. JAMDAR, J.]

SONALI MILIND PATIL Digitally signed by SONALI MILIND PATIL Date: 2024.06.15 14:46:27 +0530