A-30
Ct No.16
10.02.2025
TN

FMAT 274 of 2024
IA No: CAN 1 of 2024

Sunbeam Vanijya Private Limited and another
Vs.
Employees' State Insurance Corporation and others

Mr. Soumya Majumdar, Ld. Sr. Adv.,
Mr. Ayan Poddar,
Mr. Debdut Mukherjee,
Mr. Agnish Basu,
Mr. Vipul Vedant

….for the appellants

Mr. Tilak Mitra

….for the respondent (ESI corporation)

Ms. A. Rao

….for the respondent no.6

1. The present appeal has been preferred against an order whereby the appellants' application under Section 75(2B) of the Employees' State Insurance Act, 1948 has been partially allowed and partially rejected. The appellants sought a complete waiver of the statutory fifty per cent prior deposit to be put in by an entity challenging an order of the Employees' Insurance Court. While dealing with the said application, the Employees' Insurance Court dealt with several issues and ultimately reduced the deposit to twenty per cent from the statutory fifty per cent.

2. Learned senior counsel appearing for the appellants contends that the impugned order is tainted by perversity.

3. First, although the agreement by which the present appellants took over the functioning of the company categorically mentioned the cut-off date of the liabilities to be taken by the appellants, which commenced after the date when the dues-in-question accrued, the learned Trial Judge completely overlooked such aspect of the matter by observing in a perverse manner that no such provision is found in the agreement.

4. That apart, the learned Employees' Insurance Court also held that the applicant, that is, the present appellants were served notices by the Corporation at the "relevant point of time". There was no question of such service of notice since it was found by the ESI Corporation that the predecessor-in-interest of the appellants, one Union General, had the liability to pay the dues of the employees under ESI Act, when the appellants had not yet taken over management of the concern.

5. Learned senior counsel places stress on the proviso to Section 75(2B) in support of his contentions and argues that for reduction and/or waiver, reasons have to be given. In the present case, the reasons

given are insufficient and perverse, calling for interference by this court.

6. However, with respect to the erudition of learned senior counsel for the appellants, we are unable to accept such contention. The default provision in Section 75(2B) of the 1948 Act imposes a mandatory duty on the appellants to deposit fifty per cent of the amount due from it in order to prefer a challenge to any order of the Employees' Insurance Court.

7. The proviso to the said sub-section carves out an exception to the effect that the Court may, that too for reasons to be recorded in writing, waive or reduce the amount to be deposited under the sub-section.

8. Thus, it is only by way of an exception that the court has the discretion to reduce or waive the deposit amount. As such, the proviso casts a duty on the court, if it chooses to waive or reduce the amount, to attribute reasons for doing so.

9. However, it is evident from the language of the proviso that the converse logic is not borne out by the said language. In the event the appellants are directed to deposit the entire fifty per cent as mandated by sub-section (2B), there is nothing in law to mandate the court to give reasons therefor, since it is the default requirement of preferring a challenge. Only in the event a waiver or reduction is granted by the court, reasons are to be attributed by the court.

10. In the present case, the Employees' Insurance Court has reduced the pre-deposit from fifty per cent to twenty per cent. By no stretch of imagination can the appellants be aggrieved by such reduction to twenty per cent. The only conceivable grievance of the appellants can be that the entire pre-deposit was not waived, that is, with the twenty per cent deposit directed to be made.
11. Thus, the grievance of the appellants boils down to the non-waiver of the prior deposit to the extent of twenty per cent of the dues, for which no reasons are required to be given as discussed above.
12. Thus, we do not find any error and/or any substantial question of law being involved in the present appeal, which is a prerequisite for the maintainability of an appeal before this court under Section 82(2) of the Employees' State Insurance Act, 1948.
13. As such, FMAT 274 of 2024 is dismissed on contest.
14. Consequentially, CAN 1 of 2024 is also dismissed.
15. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)