IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17354 OF 2024
WITH
INTERIM APPLICATION NO.15253 OF 2024
IN
WRIT PETITION NO.3346 OF 2009
WITH
INTERIM APPLICATION NO.15271 OF 2024
IN
CONTEMPT PETITION NO.138 OF 2023

General Mills India Private Limited & Anr. ....Petitioners
V/S
Regional Provident Fund Commissioner-II & Ors.....Respondents

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Mr. Sanjay Ghose, Senior Advocate a/w Mr. Rohan Mandal, Mr. Jeevan B. Panda, Ms. Dhriti Mehta, Ms. Yashasvi Kanodia, Mr. Tapamoy Ghose i/b M/s. Khaitan & Co. *for the Petitioners.*
Ms. Pooja Gandhi *for Respondent Nos.1 to 4.*
Ms. Purnima Awasthi *for Respondent No.5/UOI.*

CORAM: SANDEEP V. MARNE, J.
DATE : 29 JANUARY 2025.

P.C.:

1. On 18 December 2024 this Court passed following interim order:

> "6. In view of the above position, following interim order is passed:
>
> i) The enquiry initiated under provisions of section 7A of the Act for the period September 2008 to December 2019 shall remain suspended till the next date of hearing.

ii) Petitioner shall transfer the accumulations from its existing provident fund to the Respondent-EPFO in a manner provided for under paragraph 28 of the Scheme as on 31 December 2024 on or before 31 January 2025. This would be without prejudice to the rights and contentions of both the sides.

iii) Respondents to file their Affidavit-in-Reply to the Petition within a period of four weeks from today."

2. It appears that in pursuance of direction No.6(ii) of the order dated 18 December 2024 Petitioners approached the Regional Provident Fund Commissioner with Demand Draft of Rs.3,36,33,76,273/- vide letter dated 23 January 2025. The Demand Drafts are however returned by Regional Provident Fund Commissioner vide letter dated 23 January 2025 by citing following reasons:

> "Mr. Sripad More and Mr. Nitin Gijam (Reportedly representatives have approached this office today @ 04.:30 PM with some papers/folders along with Demand Draft dated 23.01.2025 of amount. 336.14 crore.
>
> Upon enquiry both the above named persons informed that they had no relationship with the establishment and are neither carrying any authority letter for the stated work. Further, it is also prima facie observed that the proposal as contained in the letter does not follow the extant Law/Rule provisions.
>
> First hand bare scrutiny indicates that the papers/records being forwarded falls short of the prescribed procedures and merit. In good faith, accordingly, all such papers/records along with Demand Draft are hereby returned to you without any prejudice. You are requested to kindly scrutinise in detail your referred proposal in terms of the rule and legal provisions in place for example the contents of Section 17 of EPF and MP

> Act, related provisions of EPF Scheme, 1952, the applicable rules/SOP and thereafter accordingly approach this office."

3. The learned counsel appearing for Respondent Nos.1 to 4 would invite my attention to the Standard Operating Procedure for Surrender of EPF Exemption and would submit that one of the requirements for transfer of accumulations from existing provident fund to Respondent-EPFO under paragraph 28 of the Scheme is to get third party audit done in consultation with RPFC as well as to secure prior permision of RPFC for liquidation of the securities. She would submit that since prior permission of the RPFC was not obtained before liquidation of securities and since third party audit has not been done, the EPFO cannot accept the amounts from the Petitioners under paragraph 28 of the Scheme.

4. Mr. Ghose, the learned Senior Advocate appearing for the Petitioners would submit that the application for surrender of EPF exemption was made in April 2024 and it was the responsibility of the EPFO to nominate the third party Auditor for conduct of audit.

5. The purpose of third party audit is to ensure that correct amount of accumulation is transferred to EPFO. In the event, it is found that the liability of Petitioner towards accumulations exceed the amount deposited, it can always be directed by this

Court to make good the differential amount. Till conduct of audit, if the process of surrender is suspended, the employees would suffer.

6. In my view, the EPFO can be directed to provisionally accept the amount of Rs.3,36,33,76,273/- from the Petitioners in terms of directions issued in paragraph 6(ii) of the order dated 18 December 2024 so that the employees do not suffer in the meantime. So far as conduct of third party audit is concerned, the EPFO can be directed to nominate a third party Auditor and process of audit can continue in the meantime.

7. Accordingly I proceed to pass the following order.

i) The Respondent-EPFC shall provisionally accept the amount of Rs.3,36,33,76,273/- from the Petitioners under paragraph 28 of the Scheme without prejudice to its rights and contentions.

ii) The Respondent-EPFC shall nominate an Auditor for conduct of third party audit in respect of funds to be transferred to the EPFO within the period of two weeks.

iii) The third party Auditor shall forthwith commence the audit proceedings and complete the same in an expeditious manner. The report of the third party Auditor shall be placed before this Court on the next date of hearing.

8. List the Petition on **18 March 2025.**

9. Interim relief granted earlier shall continue to operate till the next date of hearing.

10. Time to file Reply shall stand extended by a period of four weeks.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

Digitally signed by SUDARSHAN RAJALINGAM KATKAM
Date: 2025.01.31 10:40:54 +0530