

CGIT-1/EPFA/20 of 2020

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI

Date:-10.11.2020

M/S.BEAUTY ART DYERS CLEANERS LTD

MUMBAI

: APPELLANT

VS.

ASSISTANT PROVIDENT FUND COMMISSIONER

MUMBAI

: RESPONDENT

ORDER

Mr.H.L.Chheda, Authorized Representative for the Appellant is present.

Mrs.Kashimira Sawant, Adv. Present for the Respondent.

The matter was held through video conferencing.

The present appeal is filed by the Appellant under Section 7-I of the EPF & MP Act, 1952 (hereinafter referred to as the Act) against the order dated 06.02.2020 passed by the Regional Provident Fund Commissioner, the Respondent under section 14B of the Act.

Alongwith appeal Appellant has filed application for waiver of deposit u/s 7-O of the Act.

An application for condonation of delay has also been filed by the Appellant.

Copies have already been furnished to the Respondents.

Learned counsel for the Appellant submitted that the Respondent, Assistant Provident Fund Commissioner passed an impugned order dated 06/02/2020

ignoring the prescribed procedures in most mechanical manner. The appellant



was surprised to notice that, the mitigating circumstances stated by the authorized representative were not considered by the Respondent. He further submitted that his bank account was attached on 06/03/2020. The appellant stated that the impugned order passed by the Respondent Commissioner is ex-facie bad in law besides being illogical and illegal and needs to be quashed. The respondent commissioner has been functioning in "Dual Capacity" as prosecutor as well as quasi-judicial authority which is against the principles of natural justice. The appellant further submitted that the respondent commissioner did not apply his mind while passing the impugned order without considering the written as well as verbal submissions made by the appellant thereof and passed non-speaking and non-reasoned order.

Learned counsel for the respondent while supporting the impugned order submitted that all the grounds taken by the appellant including the jurisdictional grounds are open for consideration during the regular hearing of the appeal. The EPF& MP Act is a beneficial legislation and aims at the benefit of the employees. Any order or stay of the impugned order would defeat the very purpose of the legislation.

So far as application for stay is concerned, I have gone through the contentions raised by both the parties. The total amount of penal damage is Rs.1,24,190/-

With regard to the application for waiver of deposit under proviso to section 7-0 of the PF Act, learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 14-B dated 06.02.2020 and has levied penal damages of Rs.1,24,190/- ignoring the settled law as held by the Hon'ble Judiciary and without deciding whether the appellant was a wilful defaulter or



not, that found neither mens rea nor actus reus in the actions of the appellant was not wilful defaulter. The Appellant stated that the impugned order is neither a speaking nor a reasoned order as the penal damages were levied by the respondent commissioner mechanically in most cursory manner.

In this case, the damages levied is Rs.1,24,190/- Moreover, appellant has disputed the same on the various grounds mentioned in appeal and waiver applications. All these aspects no doubt makes out a strong arguable case for the appellant. If there would not be stay on the execution of the impugned order certainly that could cause undue hardship to the appellant. At the same time, it is held that the stay shall not be unconditional and it is in these facts and circumstances, it is directed that the appellant shall deposit nominal amount i.e. 10% of the assessed damages as pre-condition for grant of stay within one month from the date of communication of the order failing which there would be no stay order.

It is made clear that the order passed separately u/s 7Q of the Act not being appealable shall not be affected by this Interim order of stay.

I hereby pass the following order.

***Appeal is admitted.**

***Appellant is directed to deposit 10% of the assessed amount with the Respondent within one month from the date of order.**

***On depositing 10% of the assessed amount with the Respondent within one month from the date of order, the impugned order is stayed.**

***The Respondent is directed not to take coercive steps till further orders.**




(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER