

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT DELHI1
ROOM No.207 ROUSE AVENUE, DISTRICT COURT COMPLEX,
NEW DELHI-110002**

Present: Justice Vikas Kunvar Srivastav (Retd.)
Presiding Officer,
CGIT-cum-Labour Court Delhi-1.

**Misc. Application No.175/2022 (Dismissed Appeal
No. D-1/80/2019)**

M/s. Gammon India Ltd. Appellant

Vs.

RPFC, Delhi (S) Respondent

Through Counsels:-

1. Sh. S.K Gupta, for the Appellant
2. Sh. S.N Mahanta, for the Respondent

ORDER:- 16.12.2022

1. The present application is filed on behalf of the Appellant under Rule 21 of the Tribunal (Procedure) Rules, 1997 read with Section 151 C.P.C., 1908 seeking permission to make the pre-deposit to the tune of 10% of the Impugned Demand determined by the Respondent under Section 7 A of the 'Employees' Provident Funds & Miscellaneous Provisions Act, 1952' (which shall hereinafter be referred for brevity and convenience as "the Act" only).

2. Notice having been served and as the copy of the aforesaid Misc. application was already served upon the opposite party (the 'Respondent'), the written reply/

objection to the said application filed on 24.11.2022 by the Ld. Counsel for the Respondent. Heard the Ld. Counsels for both the parties.

3. Briefly stating, the appellant/the present applicant, M/s. Gammon India Ltd. came before this Tribunal in appeal against the order dated 29.05.2019 and 12.07.2019 passed by R.P.F.C.-II, Delhi South u/s 7A & 7B of “the Act”. The Respondent/ present opposite party had assessed an amount of Rs. 37,33,96,429/- against the Appellant u/s 7 A of “the Act” and the review of the said assessment was also rejected vide order passed u/s 7B of “the Act”.

4. Aggrieved from the orders of the Respondent, the appeal filed in this Tribunal is registered as Appeal No. D-1/80/2019, referred herein above.

5. The said appeal is accompanied with an application filed under section 7 O of “the Act” praying reduction/ waiver of the pre-deposit amount of 75%. The provisions of Section 7-O of “the Act” are quoted below for easy reference:-

Section 7-0- Deposit of amount due, on filing appeal.-No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five percent. of the amount due from him determined by an officer referred to in section 7A: Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce as the amount to be deposited under this section.

6. This tribunal after hearing the arguments of both the parties on the aforesaid application passed order

dated 20.11.2019 reducing the requisite pre-deposit from 75% to 30% of the assessed amount of the impugned demand order and directed the appellant to deposit the same within 08 weeks. The operative portion of the order is being reproduced hereunder for easy reference:-

Considering all these aspects it is directed that the appellant shall make deposit of 30% of the assessed amount by way of bank draft in this Tribunal as a precondition for admission of the appeal. The Appellant is also directed to comply with the direction within 8 weeks from the date of this order. The interim stay shall continue for a period of 8 weeks from today. If the Appellant would comply with the direction the appeal shall be admitted and there would be stay operation of the impugned order and the matter shall be listed for reply of the Respondent. It is made clear that if the Appellant would fail to comply the direction the appeal shall stand dismissed without further reference.

7. Aggrieved from the order of the tribunal, the appellant approached the Hon'ble Delhi High Court by filing W.P.(C) No. 6063/20202 and the Hon'ble High Court vide its order dated 07.09.2020 reduced the pre-deposit amount ordered by the Tribunal from 30% to 10%, which was required to be deposited within 08 weeks. The relevant portion of the directions given by the Hon'ble High Court is reproduced as follows:-

7. The pre-deposit of 30% would be more than Rs. 9 crores. It is stated that the petitioner is in financial distress and proceedings are pending before the Bombay High Court. The question as to whether the evidence was recorded or not and whether the petitioner is guilty of non-compliance of the statutory requirements is to be considered in the appeal. The sum is W.P. (C) 6063/2020 Page 3 of 3 substantial. Considering the overall facts and circumstances as also the fact that the Petitioner is stated to be in financial distress, the condition of predeposit is reduced to 10% of the assessed amount. Subject to the 10% of the assessed amount being deposited within 8 weeks, the appeal shall be heard on merits by the Tribunal.

8. With these observations, the petition is disposed of. Needless to add, the merits of rival contentions of the parties have not been considered by this Court. All pending applications are also disposed of.

8. Without assigning any reason or justifiable cause, before the tribunal, the Appellant failed to comply with the aforesaid directions under the order dated 07.09.2020 passed by Hon'ble Delhi High Court to make the pre-deposit within 8 weeks, the time prescribed by the Hon'ble High court is passed, therefore, the Tribunal vide its order dated 06.10.2021 dismissed the appeal on account of non-compliance, which runs as under:-

The Ld. Counsel for the Respondent submitted that the Appellant has not complied to the instructions of pre-deposit as directed vide order dated 20.11.2019 and the modified directions of pre-deposit as done by Hon'ble Delhi High Court in W. P. (C) No. 6063/2020.

As the appellant fails to comply the orders, present appeal stands dismissed due to non-compliance on the part of Appellant. Consign the record as per rules.

9. It is revealed from the present misc. Application to the Tribunal, that the Appellant filed an LPA bearing No. 438/2021 aggrieved from the order of Hon'ble Single Judge dated 07.09.2020 before the Hon'ble Delhi High Court. Hon'ble the High Court vide it's judgment dated 17.08.2022 dismissed the appeal issuing following directions:-

14. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficiary legislation and the said Act was enacted to ensure that the workers/employees under the various Establishments are entitled to their legitimate right of provident fund and pension, and receive the same. The present case is the case where prima facie the Order passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reflects that the provident fund dues in respect of employees/workers have not been deposited with the Provident Fund Commissioner from February, 2002 to August, 2009 and, therefore, this Court does not find any reason to interfere with the Order dated 07.09.2020 passed by the

Ld. Single Judge in W.P. (C) 6063/2020.

15. In view of the above, the appeal is dismissed, along with pending application (s), if any.

16. However, it is made clear that any observations made by this Court in the present Order will not come in the way of the Appellate Authority in deciding the matter on merits.

10. This is noteworthy here that the appeal preferred by the present Appellant (Applicant) stands dismissed by virtue of the order dated 20.11.2019 in the event of Appellant failed to comply the direction to make the pre-deposit within 08 weeks from the date of the order.

Consequent upon the aforesaid order, on 06.10.2021 recording the failure of the Appellant (Applicant) in complying with the direction and also in complying the direction of pre-deposit given by the Hon'ble Delhi High Court vide it's order dated 07.09.2020, the tribunal recorded the consequential order that "Appeal stands dismissed due to non-compliance on the part of the Appellant".

11. Under section 7 I of the 'Act' read with Rule 7(2) of the Tribunal (Procedure) Rules, 1997, the two conditions precedent for entertaining an Appeal u/s 7 I are respectively:-

i. the appeal is preferred well within time from the date of order within 60 days and if sufficient causes are shown by reason of which the appellant was

prevented to file with aforesaid 60 days then with a further extension of 60 days by the Tribunal.

ii. On making the mandatorily required statutory deposit to the tune of 75 % of the demand or as ordered by the tribunal at a reduced amount or waived by the tribunal as a whole.

12. Both the conditions are sine qua non and run concurrently being coexistent. In case of non-fulfillment of any of the condition aforesaid, the appeal shall stand not admitted and not to be entertained by the tribunal.

13. In the facts and circumstances of the present case, this is to be kept in mind that the Appellant failed to comply with the pre-requisite mandatory condition for the admission and entertainment of appeal at the very stage of the admission, by reason of which, the appeal could not be proceeded for hearing.

14. In the aforesaid context, the provision of Rule 15 of the Tribunal (Procedure) Rules, 1997 which runs as under:-

15. Action on appeal for appellant's default. (1) Where on the date fixed for hearing of the appeal or on any other date to which such hearing may be adjourned, the appellant does not appear when the appeal is called for hearing, the Tribunal may, in its discretion, either dismiss the

appeal for default or hear and decide it on merit.

(2) Where an appeal has been dismissed for default and the appellant files an appeal within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his nonappearance when the appeal was called for hearing, the Tribunal shall make an order setting aside the order dismissing the appeal and restore the same.

Provided, however, where the case was disposed of on merits the decision shall not be re-opened except by way of review.

It is seen in the aforesaid provision that the legislation has contemplated the date fixed for hearing of the appeal or on any other date to which such hearing may be adjourned, the consequence of default in appearance by the appellant ensue two alternative actions to be taken by the Tribunal:-

- i. Dismissal of the appeal for default, or
- ii. To hear and decide the appeal on the merit.

This must further be kept into mind that the aforesaid provision is akin to principle incorporated with regard to adjournment and default on adjourned date by the Appellant in a civil proceeding before the court under Order XVII Rule 2& 3 of the Code of Civil Procedure, 1908.

15. Here two things are emerging from the facts and circumstances of the present case that no date for hearing of the appeal could be fixed by the tribunal, and even the date of default was not an adjourned date of hearing fixed by the Tribunal. Moreover, the appeal stands dismissed by virtue of order of the Tribunal passed in accordance with the statutory condition precedent of the pre-deposit @30% under section 7 O of “the Act” in the event of default in compliance. This is also kept into mind that there is no provision either in the Act or the Rules with regard to the dismissal of an appeal which is not posted for hearing. And, at the very stage of admission, in the event of failure to comply with the condition precedent for the admission of the Appeal. To cover such an event, the legislation has itself provided that the appeal shall not be entertained, as if not admitted.

16. Where there is no provision covering a situation at any stage of the proceeding before the Tribunal, keeping in mind that Section 7 J of “the Act” under the head “Procedure of Tribunals” in subsection (1) provides that a tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its power or of the discharge of its function including the places at which the Tribunal shall have its sittings. Though, the Tribunal is not a court for all purposes but while exercising its powers and duties in discharge of its function, it is required to regulate its own procedure with a view to act in judicious manner. For this, though, there is no inherent power but it is legally expected that the discretion is incidentally attached with the Tribunal for the sake of ends of justice to apply it in judicial manner. Moreover, the

Code of Civil procedure, 1908 is not applicable but the principle incorporated therein may be applied when the power of the tribunal for discharge of its function is akin to any analogous provision in the Code of Civil Procedure, 1908. A Civil Court can dismiss a suit or appeal in the event of failure to comply with the order passed by it in the furtherance of proceedings, therefore, the Tribunal may also have the same power to exercise in its discretion for the purpose of securing and ensuring the ends of justice.

17. Therefore, the Tribunal which has made a condition to the effect that if the mandatorily required pre-deposit is not made within 8 weeks, the appeal shall stand dismissed and in the event of failure of the Appellant, the tribunal by virtue of its earlier order recorded the appeal stand dismissed in taking the steps as ordered by the Tribunal. This clearly attracts principle as incorporated under Order IX of the Code of Civil Procedure, 1908 covering the restoration of suit or proceedings dismissed in default of taking steps as directed by the court.

18. If sufficient reasons are shown which prevented the Appellant reasonably from compliance of the order, the Tribunal has power to restore the appeal to its original number subject to the willingness and readiness of the appellant to comply with the mandatorily required pre-requisite conditions to the admission of the appeal, if it is not prohibited anywhere else. This is also important to note that there is not anything contrary to the aforesaid in the provisions of “the Act” or Rules in express words or by necessary implication.

Whether reasons set forth by the Appellant / applicant in not making the compliance of the tribunal's order dated 20.11.2019 are justifiable and satisfactory:-

19. The Appellant (Applicant), since the very inception of the filing of the appeal has stated about the financial distress whereupon:-

(i) the Tribunal vide its order dated 20.11.2019 reduced the amount of pre-deposit exercising its discretion under section 7 O of the 'Act' from 75% to 30%. This would also be pertinent here that owing to his financial distress, the Appellant (Applicant) applied for a complete waiver of the pre-deposit,

(ii) 08 weeks time was also given by the tribunal to the appellant but the appellant approached to the High court for the purpose of getting a complete waiver of the amount of pre-deposit which was mandatorily required for the purpose of the admission of the appeal. The High court vide its order dated 07.09.2020 did not grant the relief of complete waiver of the pre-deposit but looking into the financial distress, reduced the amount ordered by the tribunal for pre-deposit from 30% to 10% within 08 weeks as directed by the Tribunal.

(iii) Aggrieved there from, the Appellant (applicant) further tried to get the complete waiver owing to its financial distress by moving an LPA before the Division Bench of the High Court, which after considering all the circumstances dismissed the appeal and confirmed the order of the Ld. Single Judge with direction to the Appellant/ Applicant to approach the tribunal and participate in the hearing. The fact of appeal before the Appellate Authority 'The Central Government Industrial Tribunal' having been dismissed by virtue of the tribunal's order dated 06.10.2021 was not

brought before the Hon'ble Division Bench of the High Court.

20. The present application dated 03.10.2022 is moved on 03.11.2022 before the Tribunal for restoration of the appeal along with a copy of the order of the Hon'ble Division bench of High Court dated 17.08.2022. The Appellant has set forth all the aforesaid stages of his legal battle from tribunal upto the High Court in his application. In view of the aforesaid facts, the first and utmost important stage of the legal battle in furtherance of the order of the Tribunal dated 20.11.2019, is that, the tribunal giving 08 weeks time in it's order to make the pre-deposit to the tune of 30%. Though, the order was challenged in the High Court, the same was not set-aside or reversed but modified in terms of amount of pre-deposit to the tune of 10% of the assessed amount within 08 weeks from the date of the order of High court.

21. Further, the order of the single judge was challenged before the Division Bench. The proceedings of the Tribunal were running as the same was not stayed by the Hon'ble High court in LPA No. 438/2021. As a natural consequence of the order of the Tribunal dated 20.11.2019, the appeal automatically stands dismissed on 06.10.2021. Further, Hon'ble Division bench of the High Court dismissed the appeal of the present applicant and affirmed the order of the Ld. Single Judge which directs to make the pre-deposit before the tribunal within 08 weeks. The order of the Division bench was of dated 17.08.2022.

22. This is established legal principle that the order impugned in the Appeal merges with the order of the

Appellate Court. As such the order of the Ld. Single Judge dated 07.09.2020 merges with the Appellate Order dated 17.08.2022 of affirming the same. The direction of the single judge to make the pre-deposit to the tune of 10% of the demand before the tribunal, therefore, runs into operation from the date of the order of Division Bench dated 17.08.2022. the counting of the 08 weeks is to be commenced from the order of the Division Bench dated 17.08.2022 which ends upto 12.10.2022. The application by the present Appellant (Applicant) is moved on 03.11.2022.

23. The Appellant (Applicant) still has set forth in the present application, it's financial distress and said that the company has been facing acute financial difficulties. The appellant's company incurred losses for last three years. It has further pleaded in the application that the Appellant intends to deposit the amount of 10% as directed by the Hon'ble Single Judge of the Delhi High court upheld by the Division bench of the Delhi High Court vide judgment dated 17.08.2022 by way of FDR in place of Demand draft to avoid interest loss. As such there has been a continuous stand of financial difficulties faced by the Appellant company, the time consumed in the legal battle may be considered as a satisfactory reason which prevented the appellant to make the pre-deposit.

24. The readiness and willingness of the Appellant at this stage to make the pre-deposit by way of FDR is also bonafide in it's part to get the disputed demand made by the respondent on account of provident Fund. The 'Act' is made for the welfare of the employees. The provident fund is a benevolent fund for them, therefore, to get quitus from the dispute and litigation

would be in the larger interest of the employees as such the application of the Appellant (applicant) deserves to be allowed exercising the power emanated from that provided under Section 7 J of “the Act” with a view to secure the ends of justice and to afford opportunity of hearing the appeal in accordance with the principle of natural justice (Audi alteram partem), the Tribunal allows the application and set aside the order dated 06.10.2021 by which the appeal was dismissed in default of not taking the required steps.

ORDER

The applicant is, therefore, permitted to make the pre-deposit of 10 % of the assessed amount, without any further failure forthwith within 07days by way of FDR in the name of ‘Registrar CGIT’ initially for a period of one year having auto –renewal mode thereafter.

On fulfilling the condition aforesaid, the order dated 06.10.2021 shall be treated as recalled and the compliance of order dated 20.11.2019 of the Tribunal along with order dated 07.09.2020 passed by the Hon’ble Delhi High Court shall be recorded by the office. Report be placed before the Tribunal on 09th January, 2023 for order as to the restoration of the appeal.

Justice Vikas Kunvar Srivastav (Retd.)
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.

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