

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT 1, DELHI**

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

**Misc. Application No. 200/2022 and 201/2022 (in
Appeal No. D-1/57/2022)**

M/s. Dynamic Engineer Ltd. Appellant

Vs.

APFC/ RPFC, Delhi (Central) Respondent

Order: - 03.03.2023

Through Counsels: -

1. Sh. Ravi Ranjan, for the Appellant
2. Sh. Kushaj Bhushan, Ld. Counsel and Assistant of
Sh. Rajesh Kumar, Ld. Counsel for the Respondent.

**Misc. Application No. 200/2022 filed under Section
7 O of the Employees' Provident Funds &
Miscellaneous Provisions Act, 1952 for waiver of
Pre-deposit (in Appeal No. D-1/57/2022):**

1. The present applications is filed on behalf of the applicant/ appellant 'M/s. Dynamic Engineer Ltd.' under Section 7 O of the "Employees' Provident Funds & Miscellaneous Provisions Act, 1952" (which shall hereinafter be referred for brevity and convenience as "the Act" only) seeking waiver of pre-deposit of 75% of the assessed amount under Section 7 A of "the Act" as mandated under Section 7 O of "the Act".

2. The Applicant/ Appellant has filed an Appeal against the order dated 30.05.2022 (which shall hereinafter be referred for brevity and convenience as “the impugned order” only) passed u/s 7-A of “the Act” by which the Assistant P.F. Commissioner (EPFO, Delhi Central), the Respondent has assessed an amount of ₹1,26,81,294/- as dues to be paid by the Appellant towards P.F. Contributions for the period 09/2014 to 03/2019.

3. The Ld. Counsel for the Applicant has submitted through the averments made in the said application that “the impugned order” has been passed by the Ld. Respondent authority without considering the facts and not appreciating the submissions regarding the excluded employees and excluded part of the salary. The Inquiry officer did not give any heed to the submissions which were given in the rebuttal of the departmental representative i.e. the Enforcement Officer’s report dated 07.10.2019.

4. Relying upon various judgements passed by Hon’ble Supreme Court and different High Courts, the Ld. Counsel for the Applicant has submitted that he has a good prima facie case and balance of convenience is in his favour. He has also taken the plea of financial difficulty and submitted that the Appellant is not in a situation of affording the pre-deposit of 75% of the assessed amount. Further, he also submitted that as the bank accounts of the Appellate establishment are attached, he is facing difficulty in running day to day business and is also unable to disburse the salaries of his employees resulting in their resignation.

5. The Ld. Counsel for the Respondent in the rebuttal to the said application, submitted a written reply/ objection which is taken on record. In the said reply, the Respondent has submitted that the enquiry was conducted by following the due process of law and

pursuant to the enquiry, the competent authority has rightly determined the PF and allied dues of ₹1,26,81,294/- against the appellant vide “the impugned order”.

6. The Ld. Counsel for the Respondent has further stated in his reply that the plea regarding non identification of the beneficiaries in “the impugned order” and the PF dues being quantified on a lump-sum basis are totally misconceived by the Applicant/ Appellant as it is a settled law that the principal employer is liable to pay the PF and allied dues, if the same is not paid by the contractor in the context of the various provisions of “the Act”. It is also submitted in the said reply that the burden of providing the facts related to identification of the beneficiaries also lies upon the Applicant/ Appellant as per the provisions of Section 106 of the Indian Evidence Act, 1872. Submitting the above arguments the Respondent has heavily relied upon the judgment of Hon’ble Supreme Court in the matter of ESDIC Vs. M/s. Harrison Malyalam Pvt. Ltd., AIR 1993 SC 2655 wherein Hon’ble Court had observed that:-

Since the respondent Company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-Company as to how many workers were employed by its contractor.

Further reliance is put by the Respondent on another matter titled Regional Director, ESI Corporation Vs. Kerala State Drugs and Pharmaceutical Ltd., 1995 Supp(3) SCC148 wherein it was observed that:-

As regards the finding that the workmen were unidentifiable, what is forgotten is that under the act, once an establishment comes to be covered by the Act. the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period

has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment.

7. This Tribunal heard both the parties and during the course of argument on 20.02.2023, the Ld. Counsel for the Appellant/ Applicant was asked to submit a brief submission regarding the amount lied in the attached bank accounts and a specific question was put that the details of the amount deposited by the appellant qua the assessed amount categorically prior to the passing of impugned order and subsequent thereto be provided. The appellant was also asked to provide the details of amount recovered, if any, by the Respondent authority.

8. A brief submission in response to the aforementioned queries is filed by the Appellant on 01.03.2023 during the course of hearing which is taken on record.

9. The said submission reveals that although seven bank accounts of the Appellant are lying attached and the Appellant is not allowed to make transactions consequent upon the said attachment; no amount has been transferred to the Respondent as recovery and the same is lying with the bank of the Appellant.

10. Considering all the submissions, both written and oral, this Tribunal is of the view that the Appellant although succeeded in establishing a prima facie case for admission of the appeal, but no case for total waiver of the pre-deposit of the mandated 75% of the Assessed amount is made out.

Misc. Application No. 201/2022 filed under Rule 21 of the Tribunal Procedure Rules, 1997 for de-attachment of the Bank Accounts of the Appellant (in Appeal No. D-1/57/2022):

1. The present applications is filed on behalf of the applicant/ appellant 'M/s. Dynamic Engineer Ltd.' under Rule 21 of the Tribunal (Procedure) Rules, 1997 (which shall hereinafter be referred for brevity and convenience as "the Rules" only) for de-attachment of the bank accounts of the applicant. The details of the bank account are marked as Annexure A-1 which is attached to the brief submission filed by the Ld. Counsel for the Appellant. The same is reproduced for the sake of convenience: -

Sr. No.	Bank Name	Account No.
1.	YES BANK	001484100001753
2.	YES BANK	001484600000352
3.	STATE BANK OF INDIA	31975863333
4.	ICICI BANK	081651000001
5.	ICICI BANK	003110031587
6.	ICICI BANK	003114525601
7.	UNION BANK	413705040140047

2. The reply/ objection on behalf of the Respondent is also filed which is taken on record. In the said reply filed on behalf of the Respondent, briefly the contents of para 1-7 as well as prayer clause of the application filed for de-attachment of the bank account are specifically denied except the facts which are a matter of record.

3. During the course of arguments, the Ld. Counsel for the Appellant has relied upon the judgement passed in WPL No. 21 of 2022 dated 23.02.2022 in the matter of Guru Ghasidas Vishwavidyalaya Vs. Employees Provident Fund

Organization and Ors. wherein, the Hon'ble High Court of Chhatisgarh at Bilaspur has further relied upon the judgement of Hon'ble Delhi High Court in Vijaya Bank Vs. EPFO MANU/DE/1807/2014:2015 (1) CLR 485. The same is reproduced here for ready reference and convenience:

14. The provisions of Section 8F(3) of the EPF Act provide for a machinery to recover amounts which are due from an establishment by directly recovering the same from its debtors. Thus if any amount or an asset is owed by any person to the establishment, the authorized officers of the Provident Fund Organization can directly recover the same from such persons. The proceedings under Section 8F(3) of the Act are similar to garnishee proceedings and the authorized officer of the Employees Provident Fund Organisation is placed in a position similar to that of a garnisher. And, can directly reach out to the funds owed to or held on account of, the establishment by other persons. However, the precondition to proceeding under Section 8F(3) is a conclusion that the third parties hold money for or on account of the establishment, which is liable to pay the provident fund dues."

The Hon'ble Chhattisgarh further stated in the aforementioned judgement that:-

"14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder: (SCC p. 273, para 17)

"17.....It is a well settled salutary principle that if a statute provides for a thing to be done in a

particular manner, then it has to be done in that manner and in no other manner”.

Therefore, if the salutary principle is kept in perspective, in the instant case, though the Authorised Officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying due process under law. We have found fault with the Authorised Officer and declared the action bad only in so far as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note in appropriate proceedings if at all any issue is raised by the aggrieved party.”

4. Accordingly, this Tribunal 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, the present application of the Appellant for de-attachment of the bank account deserves to be allowed.

ORDER

Considering all the facts, circumstances and hearing the arguments of both the parties, it would be just and proper that the Appellant be directed to deposit 30% of the assessed amount in “the impugned order” (i.e. 30% of ₹1,26,81,294/-) by way of FDR in the name of “Registrar CGIT” initially for a period of one year having auto renewal mode subsequent thereto and deposit the same with the registry of this Tribunal.

Accordingly, the Bank Manager, ICICI Bank where the account No. 081651000001 is maintained is directed to prepare an FDR amounting to ₹38,04,389/- (30% of ₹1,26,81,294/-) in the name of the “Registrar CGIT” initially

for a period of one year having auto renewal mode subsequent thereto and thereafter de-attach the bank account No. 081651000001 of the Appellant/ Applicant and the Appellant shall have the liberty to operate the said bank account.

After the production of the copy of the FDR duly certified by this Tribunal by the Appellant, as mentioned in the above para, the other six bank accounts having the following details shall also be de-attached by the respective Bank Managers and the Appellant shall have the liberty to operate the said bank accounts: -

Sr. No.	Bank Name	Account No.
1.	YES BANK	001484100001753
2.	YES BANK	001484600000352
3.	STATE BANK OF INDIA	31975863333
4.	ICICI BANK	003110031587
5.	ICICI BANK	003114525601
6.	UNION BANK	413705040140047

If, the same is deposited by the Appellant, the appeal shall be entertained for further hearing on merits of the case.

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

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