

CGIT-1/EPFA//37 OF 2021

18.7.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt. Pranita Mohanty, Presiding Officer

Municipal Corporation for the City of Kalyan/Dombivili ... Appellant

Vs

Regional Provident Fund Commissioner ... Respondent

Thane

Presence:

For the Appellant : Absent.

For the Respondent : Ms. Krunali Satra, Adv.

ORDER

1. The matter came up today for orders pursuant to the order received on 14.3.2022 passed by the Hon'ble High Court of Bombay. Today, none appeared on behalf of the appellant on repeated call. The learned counsel for the management being present insisted that some order need to be

passed for admission of the appeal in view of the order dated 04.5.2022 passed by the Supreme Court of India in SLP No. 5153 of 2022. On hearing the counsel for the Respondent and on perusal of the record following is observed:

2. Being aggrieved by the order dated 29.10.2020 passed by the Regional Provident Fund Commissioner, the appellant had preferred this appeal. Along with the Memo of Appeal, two statutory applications were filed praying for waiver of the condition of pre-deposit as contemplated under Section 7-O of the EPF&MP Act and a separate petition been filed for Stay of the impugned order pending disposal of the appeal.
3. This Tribunal heard the matter being argued by both the parties and passed the order on 03.9.2021 wherein it was directed that the appellant will deposit 40% of the assessed amount which comes close to 45 crores as the pre-deposit amount in compliance of the Section 7-O of the Act. Being aggrieved, the appellant challenged the said order before the Hon'ble High Court of Bombay by filing WP No. 7471 of 2021. The Hon'ble High Court while deciding the matter came to hold that the appellant would be depositing 40 crores for compliance of the provisions of Section 7-O of the Act instead of 45 crores as directed by this Tribunal. At the same time, the Hon'ble High Court observed that the impugned order passed under Section 7-A of the Act is set aside and the RPFC is directed to re-hear the matter after summoning the contractors the list of which was furnished by the appellant establishment at the time of 7-A enquiry.
4. The Appellant establishment again became aggrieved for the confusion created in the order and approached the Hon'ble Supreme Court by filing

SLP (C) No. 5153 of 2022. After hearing the matter the Hon'ble Supreme Court observed that when the High Court in exercise of the power under the Article 226 of the Indian Constitution by order dated 16.2.2022 set aside the very enquiry order passed under Section 7-A of the EPF Act by the RPFC should not have passed the order directing the appellant establishment to deposit a quantified sum against pre-deposit for entertaining the appeal. Consequently, the Hon'ble Supreme Court passed the order modifying the order dated 16.2.2022 passed by the High Court and also set aside the directions given in para 11 of the said order. The Hon'ble Supreme Court while restoring the order passed by the RPFC under Section 7-A issued directions for expeditious consideration of the matter on its own merit and in accordance with law by this Tribunal.

5. Thus the matter came up for hearing today, When the appellant was found absent on call the learned counsel for the Respondent strenuously argued that the order of the Hon'ble High Court having been modified, this Tribunal has to hear the application filed under Section 7-O of the Act afresh. Perusal of the record show that the appellant establishment i.e. Municipal Corporation of Thane city of Ulhasnagar had filed the writ petition before the Hon'ble High Court and the SLP petition before the Hon'ble Supreme Court for modification of the order initially passed by this Tribunal under Section 7-O of the Act. The appellant is very much aware of the progress of the case. Non-appearance of the appellant today cannot be termed as ignorance or non-information about the date. Hence argument on the petition filed under Section 7-O is heard and the following order is passed.

6. The entire assessment is for the period from January 2011 to November 2015. The amount assessed is 110,07,47,838/- only. The period of assessment is long and the amount assessed is remarkably high. The learned counsel for the Respondent insisted that the appellant having knowledge of today's adjournment has intentionally avoided to participate in the hearing. She, therefore, insisted that either the appeal be dismissed for the default of the appellant or the application filed under Section 7-O be decided.
7. Except the financial constraint, the appellant has not stated any reason for waiver of the condition of pre-deposit. The provision laid down under Section 7-O deals with the mandatory pre-condition for admission of the appeal. The appellant has taken various grounds in the appeal to justify its chance to succeed in the appeal. But at this stage, the Tribunal is not supposed to make any roving enquiry on the merit of the appeal. The facts which need to be considered for disposal of the application filed under Section 7-O are the duration of the period of enquiry and the amount assessed. In the case of Srikrishna vs. Union of India reported in 1989 LLR (104) (Delhi the Hon'ble High Court of Delhi has held:

“The Order of the Tribunal should say that the appellant has a prima facie case as it must likely to exonerate him from payment and still the Tribunal insists on pre-deposit of the amount which would amount to undue hardship”.

8. In this case, considering the pleadings of the appellant and the submissions made by the respondent, it is held that the circumstances would not to justify total waiver of the condition of pre-deposit admitted under Section 7-O of the Act. Justice would be met if the amount would be reduced from 75% to 40%. Accordingly, it is directed that the appellant shall deposit 40% of the assessed amount within six weeks from the date of communication of this Order before the EPFO and report compliance. Subject to compliance of the direction, the appeal shall stand admitted, failing which the appeal shall be dismissed.

9. Fix on 02.9.2022 for compliance of the direction.

PRESIDING OFFICER

CGIT-1, MUMBAI.