CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 1, DELHI

Mr. Justice Vikas Kunvar Srivastav, Presiding Officer,
Retired Judge of Hon'ble High Court of judicature at Allahabad
Misc. Application No. 89/2024

M/s. Sun Business Machines Pvt. Ltd. **Appellant**

Vs.

APFC/ RPFC, Delhi (Central) **Respondent**

1. Sh. S.K. Gupta, Advocate for the Appellant
2. Sh. Chakradhar Panda, Advocate for the Respondent.

ORDER

PROLOGUE

1. The present application is filed on behalf of the Appellant de-attachment of the bank account by the respondent authority and continuation of the interim orders.

2. The appellant herein had preferred an appeal under section 7 I of the 'Employees' Provident Funds & Miscellaneous Provisions Act, 1952' (which shall hereinafter be referred for brevity and convenience as "the Act" only) challenging an order passed under Section 7 A (which shall hereinafter be referred for brevity and convenience as "the impugned order" only) of 'the Act'.

3. The appeal was accompanied with a misc. application filed under Section 7 O of 'the Act' seeking waiver/ reduction in the mandatory pre-deposit of 75% of the assessed amount. The said application was disposed by this tribunal vide order dated 25.08.2023 directing the appellant to deposit 50% of the assessed amount vide 'the impugned order'.

4. The appellant herein stated that in compliance of the order dated 25.08.2023, the appellant deposited a FDR no. 695424 (Central Bank of India) amounting to Rs. 4,86,850/- on 01.04.2024.

5. The ld. counsel for appellant submits that despite having interim order, the respondent has attached the bank account no. 1010507534, maintained with Central bank of India, Gulmohar

Park, New Delhi and prayed to de-attach the same.

6. The ld. counsel for the respondent has filed written objection/ reply to the misc. application filed by and on behalf of the appellant wherein the prayer of appellant is opposed on several factual grounds stating that the appellant aggrieved by the order dated 25.08.2023, preferred a writ petition before Hon'ble Delhi High Court bearing no. W.P. (C) 15785/2023 and the same was dismissed by Hon'ble High Court on 08.12.2023. despite the order of the tribunal and dismissal of the writ petition by Hon'ble High Court, the appellant did not comply with the order dated 25.08.2023 and therefore, the respondent authority proceeded for recovery and attached the bank account of the appellant.

7. Ld. counsel for respondent further stated that once the recovery proceedings started, the appellant submitted the FDR after expiry of seven months from the order dated 25.08.2023 and the action of the appellant are blatant abuse of process of law.

DISCUSSIONS

8. After giving a lengthy hearing to both the parties, I have gone through the materials placed before this Appellate Tribunal. Before traversing through the discussion, it would be pertinent to keep into mind the nature and scope of the provision of Section 7 O of the Act which is quoted here in below for the purpose of easy reference and convenience:-

> *7-O. 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 per cent. of the amount due from him as determined by an officer referred to in section 7A: Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.*

In connection with the aforesaid provision the Rules framed for the purpose of the appellate tribunal to exercise power under Section 7 I is important. The Tribunal (Procedure) Rules, 1997, in it's Rule 7 provides that:- (only relevant portions are reproduced below)

7. *Fee, time for filing appeal****, deposit of amount due***

on filing appeal.—
(1) ………………………………………………………..

(2) Any person aggrieved …………………………

Provided that ………………………………………

Provided further that no appeal by the employer *shall be entertained by the Tribunal* ***unless*** *he has deposited with the Tribunal a* ***Demand Draft*** *payable in the Fund and* ***bearing 75% of the amount due from him as determined under Section 7-A****. Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.*

9. A plain reading of the above provisions make it clear that the condition as laid down under section 7 O of 'the Act' and further re-iterated in the proviso appended to Rule 7 of the Tribunal (Procedure) Rules, 1997 makes an appeal worthy of entertaining only and only if the mandatory condition of pre-deposit of 75% is complied by the appellant, although, the tribunal is empowered to waive or reduce the amount of pre-deposit after recording the reasons of such waiver or reduction. Therefore, the appellant is supposed to be ready for complying with the condition of 75% of the assessed amount at the stage of filing of the appeal and if not so, the condition is required to be complied forthwith once the application of waiver/ reduction of pre-deposit is decided by the tribunal. The tribunal comes into position of entertaining the appeal only once the condition laid down by the statute or the tribunal is complied.

10. The operative portion of order dated 25.08.2023 is also reproduced herein for sake of convenience and proper adjudication:-

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 50% of the assessed amount in "the impugned order" (i.e. 50% of ₹9,73,700/-) 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.

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

11. In the present case it is evident that the appellant had not complied with the condition of pre-deposit up to a period of seven months after disposal of his application filed under section 7 O of 'the Act' praying waiver/ reduction of the pre-deposit and the FDR was deposited only when the recovery actions were initiated by the respondent authority.

ORDER

Taking into consideration all the submissions made on behalf of both the parties, the appellate tribunal is of opinion that the adjudication on merit is much better and best recourse of disposing of a case. In the present case appellant/ applicant has complied with the condition of pre-deposit and the appeal is qualified to be heard on merits. Therefore, the present appeal is admitted for hearing. Respondent is directed to de-attach the bank account of appellant establishment bearing number 1010507534, maintained with Central Bank of India, Gulmohar Park, New Delhi. Respondent authority to put a self-restrain on further course of recovery as the matter is under consideration and hearing before this tribunal.

Ld. counsel for respondent is directed to file the reply to this appeal positively within three weeks from the date of this order along with supplying a copy of the reply to ld. counsel for appellant. The appellant may file rejoinder, if any, within a period of further two weeks thereafter. It is made clear that no further time shall be given to either of the parties for completion of pleadings after this period and registry is directed to place the case for final arguments on the next date of hearing. List the matter on 11.11.2024 for final arguments.

Sd/-

Justice Vikas Kunvar Srivastav
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.
Retired Judge of Hon'ble HighCourt of judicature at Allahabad

Date: 04/October/2024_
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