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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 24th January, 2022

+ **W.P.(C) 1423/2022**

M/S TELEONE CONSUMERS PRODUCT PRIVATE
LIMITED

..... Petitioner

Through: Mr. Rajiv Arora and Mr. S.P. Arora,
Advocates.

versus

REGIONAL P.F. COMMISSIONER I, DELHI,
NORTH

..... Respondent

Through: Mr. Shivanath Mahanta, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

CM APPL.4116/2022 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 1423/2022 & CM APPL.4115/2022 (for interim stay)

3. The present petition has been filed challenging the order dated 14th December, 2021 passed by the *Presiding Officer, Central Government Industrial Tribunal, Delhi* (hereinafter "CGIT") in *ATA No.D-1/91/2019* titled *M/s Telecom Consumers Products Pvt Ltd. v. RPFC, Delhi (North)* wherein the Appellant/ Establishment (hereinafter "Establishment") has been directed to deposit 30% of the amount assessed under section 7A of the Employees' Provident Fund and Miscellaneous Act, 1952 (hereinafter "the Act") as the pre-deposit condition under section 7-O of the Act.

4. An order under Section 7A of the Act was passed by the RPFC on 31st July, 2019 raising a demand of Rs.1,59,08,286/- against the Establishment.

An appeal was preferred by the Establishment before the CGIT under Section 70 of the Act, in which interim stay was prayed for. In the said interim order dated 14th December, 2021, the Tribunal has held as under:

*“Considering the submission advanced by the counsel for both the parties an order needs to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-0 of the Act. For the same it need to be considered that the period of default in respect of which inquiry was initiated is very short i.e from April 2017 to March 2018 but the amount assessed is 1,59,08,286/- Without going to the other details as pointed out by the appellant for challenging the order as arbitrary ,and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of **Mulchand Yadav and another**. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as has been held by the Apex court in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in (1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.*

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default, the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre-deposit. But the ends of justice would be met by reducing the

amount of the said pre deposit from 75% to 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 7-0 of the Act by way of FDR in the name of the Registrar CGIT initially for a period of one year with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. There would be an interim stay on the impugned order till the next date. Call the matter on 02.02.2022 for compliance of the direction.”

As per the above order, the CGIT directed the Petitioner to deposit 30% of the assessed amount as a condition for grant of interim relief.

5. The submission of Mr. Arora, Id. Counsel appearing for the Establishment is threefold. He submits that there are three components, which have been added for making the demand i.e., Housing Rent Allowance, Conveyance Allowance, and dues in respect of Excluded Employees which were paid to the employees. Even if all these three components are added, the employee's share would not be payable by the employer in terms of the judgment of the Supreme Court in ***The District Exhibitors Association Muzzafarnagar & Ors. v. Union of India, AIR 1991 SC 1381***. He submits that as per the said judgment, the Establishment cannot be made to bear the contribution to be made by the employee. The relevant observations of the Supreme Court are as under:

“20. The question however, is whether by making the Scheme with retrospective operation, the employer could be saddled with

the liability to pay employees' contribution w.e.f. 1st October, 1984 and if not from what other date? The answer to the question turns upon the implementation of the Scheme and in particular the giving effect to paras 30 and 32 of the Scheme. Para 30 provides that the employer shall, in the first instance, pay both the contributions payable by himself and also the contribution payable by the employees. It shall be the responsibility of the principal employer to pay both the contributions payable by himself and also in respect of the employees directly employed by him and also in respect of the employees employed by him or through a contractor. Para 32 confers upon the employer the right to recover the employees contribution that has been paid by him under para 30. That could be recovered by the employer by means of deduction from the wage of the employees who are liable to pay. First proviso to para 32(1) however, limits that liability in expressly stating that no such deduction may be made from any wage other than that which is paid in respect of the period of which the contribution is payable. It is obvious from paras 30 and 32 that the employer has to pay the contribution of the employee's share but he has a right to recover that payment by deducting the same from the wages due and payable to the employees. It is significant to note that the deduction is not from the wages payable for any period, but only from the wages for the period in respect of which the contribution is payable and no deduction could be made from any other wages payable to the employees. In other words, the payment of employees contribution by the employer with the corresponding right to deduct the same from

the wages of the employees could be only for the current period during which the employer has also to pay his contribution.

In the instant case for the period from 1st October, 1984 up to the date of the impugned Notification the employer has paid the full wages to the employees since during that period, there was no scheme applicable to his establishment. By retrospectively applying the scheme, could he be asked to pay the employees contribution for the period antecedent to the impugned notification. We think not. The Act and the Scheme neither permit any such payment nor deduction. He cannot be saddled with the liability to pay the employees' contribution for the retrospective period, since he has no right to deduct the same from the future wages payable to the employees."

6. He further submits that during the COVID-19 pandemic the Establishment is also facing financial difficulties and has taken loans from the financial institutions, hence prays that the pre-deposit be reduced. Finally, he argues that a *prima facie* view with regard to the merits of the case has not been taken by the CGIT. The CGIT has merely considered the grounds taken, the period of default and the amount assessed and no *prima facie* view has been given by the Tribunal in view of the settled law. To substantiate his case, he placed reliance upon the judgment of the Bombay High Court in ***Gondwana Engineering Pvt. Ltd. v. RPFC-I 2019 LLR 2106.***

7. Mr. Mahanta, Id. Counsel for the Respondent submits that the pre-deposit order is a discretionary order and in terms of the view taken by this Court in ***M/s. Vibhor Marketing (P) Ltd. v. Assistant Provident Fund***

Commissioner, W.P.(C) 3431/2018, such a discretionary order does not warrant interference by this Court in a writ petition.

8. The Court has heard the submissions of the Id. Counsels. Last two years have been difficult for businesses in view of the pandemic. Insofar as the calculation of the total demanded amount is concerned, it is not in dispute that the employee's share of contribution is also included in the demanded amount. As per the decision in ***The District Exhibitors Association (supra)***, the employer cannot be asked to pay the employees' portion of the contribution for a past period.

9. In view of this, without going into the merits, in the facts and circumstances of the present case, this Court is of the view that the pre-deposit condition under section 7O of the Act ought to be reduced to Rs.25 lakhs, which would be approximately 50% of the amount directed to be deposited by the CGIT. The said deposit shall be made by the Establishment on or before 31st March, 2022. Subject to the said deposit being made, CGIT shall take up the appeal on merit and decide the same in an expeditious manner.

10. With these observations, the petition along with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 24, 2022/dk/sk