

(2017) 04 BOM CK 0247
In the Bombay High Court
Case No : 5829 OF 2013

Assistant Provident Fund Commissioner, & Anr.

APPELLANT

Vs

Ravi Spinning Ltd, Akola, & Ors.

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

[Employees Provident Funds and Miscellaneous Provisions Act, 1952](#), [Section 6](#), [Section 6](#), [Section 7A](#), [Section 7A](#), [Section 17B](#)

Citation : (2017) 04 BOM CK 0247

Hon'ble Judges : R. K. Deshpande

Bench : SINGLE BENCH

Advocate : H.N.Verma, Anjan De, M.G.Sarda

Final Decision : Allowed

Judgement

1.] Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

2.] The Assistant Provident Fund Commissioner assessed the liability of M/s. Ravi Spinning Limited in respect of provident fund dues to the extent of Rs.3,93,710/on 29.04.2004. In Appeal ATA No. 952 (9) 2004, the Employees Provident Fund Appellate Tribunal has set aside the order passed under Section 7A of the Assistant Provident Fund Commissioner and therefore, this writ petition by the Central Board of Trustees, challenging the decision of the Appellate Tribunal.

3.] The Tribunal has held that until and unless the beneficiaries are not identified, the determined dues by taking hypothetical percentage of the total contract value of labour charges towards wages and recovering the same from the establishment of the respondent, would not help the workers as the money would not reach to them till the time they are identified. I have gone through the findings recorded by the Assistant Provident Fund Commissioner. The respondent

No.1 Employer has admitted to have paid the wages of the employees for the period 200001 to 200203. The total amount of wages was worked out to Rs.34,47,891/and the provident fund dues to the extent of Rs.19,10,564/were paid, but it is found that the liability was not discharged in respect of wages paid to the tune of Rs.15,37,327/.

The amount has been assessed as per Section 6 of the Provident Fund Act. This aspect has been totally ignored by the Appellate Tribunal. The order impugned cannot, therefore, be sustained.

4.] The Assistant Provident Fund Commissioner passed an order on 14.06.2004. The respondent No.1 Company went into liquidation and it was wound up in the year 2006. Prior to that, an appeal was preferred by the respondent No.1 Company before the Appellate Tribunal which was dismissed in default and subsequently restored. The properties of respondent No.1 were taken over by SICOM Limited under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) and ultimately it was sold to respondent No. 5 ? M/s. Twist Spin Industries, Ahmedabad, which subsequently sold it to respondent No.6 Mr. Harish Ratan Alimchandani of Akola. The respondent Nos. 5 and 6 were not parties before the lower appellate Tribunal.

5.] Shri Verma, the learned counsel for the petitioners submits that the provident fund dues can be recovered from the purchasers of the establishment by virtue of Section 17B of the said Act. However, the said provision can be invoked only if the dues against the erstwhile employer attains finality. Though, the respondent Nos. 5 and 6 can have an opportunity in response to any proceedings if instituted by the petitioner under Section 17B of the said Act, they can also be heard by the lower appellate Tribunal on the question of the liability of the erstwhile employer.

6.] In view of this, the writ petition is allowed. The order dated 12.11.2012 passed in Appeal ATA No. 952 (2) 2004 by the Employees' Provident Fund Appellate Tribunal, New Delhi, is hereby quashed and set aside. The matter is remitted back to the said Tribunal for the decision afresh after giving an opportunity to the parties including the respondent Nos. 5 and 6 , who shall be permitted to intervene in the matter. The parties to appear before the said Tribunal on 08.05.2017. No fresh notices shall be issued to the parties concerned. Needless to say that the Official Liquidator has no role in the matter and if any dues are found to be outstanding against the respondent no.1, it shall be open for the petitioner to lodge the claim before the Official Liquidator, which shall be dealt in accordance with law.

Rule made absolute in above terms.

No order as to costs.