(2011) 03 DEL CK 0239

In the Delhi High Court

Case No : Writ Petition (C) No. 1501 of 2011

Craftech Numerics (P) Ltd. APPELLANT

Vs

Assistant Provident Fund Commissioner RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11(2), 7(O), 7A
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(12)

Citation : (2011) 03 DEL CK 0239

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Basant C. Agrawal, for the Appellant; R.C. Chawla and Ram Kamal, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—The Petitioner before me had preferred an appeal before the Employees'' Provident Fund Appellate Tribunal (in short, called the "Tribunal") against an order passed u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the "Act"). The Tribunal, vide order dated March 26, 2010, had directed the Petitioner to deposit 30% of the assessed amount within three months and subject to the deposit had stayed the operation of the impugned order. The Petitioner rather than depositing the amount as directed filed an application before the Tribunal stating therein that its assets had been taken over by Canara Bank u/s 13(12) read with Rule 9 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the same have been disposed of by the Bank by way of auction/sale for a total sum of Rs. 3,52,30,000/-. Accordingly, the Petitioner prayed that the Assistant Provident Fund Commissioner be directed to recover the dues assessed u/s 7A of the Act from the Bank/Auction Purchaser. The said application was taken up for hearing by the Tribunal on October 11, 2010. The

Tribunal dismissed the same by passing the following order:

x x x x x x

Present: Sh. Nagesh, Advocate for Appellant.

None for Respondent.

Heard the arguments of the advocate for Appellant on the Miscellaneous Application filed. u/s 7(O) it is the Appellant who is to deposit the pre-deposit. In this case, instead of depositing the pre-deposit the Appellant prayed to direct the Respondent to realize the same from the bank. The appeal has not yet been admitted so the Appellant is not entitled to any interim relief. Hence the application filed is rejected. The Appellant was directed to make the pre-deposit by 2.6.2010 and that order has not been complied with yet.

2. The case is adjourned for further order on 18.10.2010.

Sd/-

(Srikanta Nayak)

Presiding Officer, EPFAT

2. On October 18, 2010, when the appeal was taken up for hearing, none was present for the Petitioner, nor had the Petitioner deposited 30% of the assessed amount. Hence, the Tribunal dismissed the appeal as not maintainable. It is this order of October 18, 2010 as well as the order dated October 11, 2010 which have been assailed in the present writ-petition.

3. The learned Counsel for the Petitioner has referred to Section 11(2) of the Act which provides that, "if any amount is due from an employer whether in respect of the employee''s contribution (deducted from the wages of the employee) or the employer''s contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts", and relying upon the same, has contended that in view of the Canara Bank having sold the property of the Petitioner and having realized the amount of Rs. 3,52,30,000/-, the Respondent, namely, Assistant Provident Fund Commissioner should claim the amount due to it from the Canara Bank.

4. It is true that Section 11(2) of the Act provides that the dues payable to the Provident Fund Commissioner by a firm are liable to be paid on priority to all other debts, but whether the Respondent was liable to recover those dues from the Canara Bank as a first charge, was not an issue before the Tribunal. What the Petitioner had challenged before the Tribunal was its very liability to pay the dues as determined u/s 7A of the Act. The question of recovery of the amount, how and from whom, would have arisen only after the Tribunal had dismissed the appeal of the Petitioner. The Tribunal, as noticed above, before hearing the appeal had directed the Petitioner to deposit 30% of the amount due from it and

as the Petitioner failed to deposit the said amount, the Tribunal dismissed the appeal. The Canara Bank with which, as per the Petitioner, a sum of Rs. 3,52,30,000/- is lying, was neither made a party before the Tribunal, nor before this Court. One does not know, whether the Canara Bank is still holding the amount received or has already appropriated the same towards the dues payable to it. Therefore, for the Petitioner to contend that the Respondent should approach the Canara Bank for recovery of its dues is based on incomplete information and in any case, in the absence of the Canara Bank being a party before this Court, no order thereon can be passed. The writ-petition is dismissed on the sole ground that the Petitioner failed to make the pre-deposit as ordered by the Tribunal.