(2015) 02 KAR CK 0453

In the Karnataka High Court

Case No : Writ Petition No. 30863/2008 (L-PF)

Dandeli Ferro Private Ltd. APPELLANT

Vs

The Central Board of Trustees, Employees'' Provident Fund Organisation and Others RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : (2015) 146 FLR 1065 : (2015) LLR 773

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Ravi Hegde, for the Appellant; M.B. Kanavi, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Bopanna, J.

1. The petitioner is before this Court assailing the communication/order date 26.8.2008 (Annexure-E) and the demand notice dated 08.09.2008 (Annexure-G) to the petition. The undisputed fact is that the petitioner is a Sick Industrial Company and was before the Board of industrial and Financial Reconstruction (''BIFR'' for short) under Section 15 of the Sick Industrial Companies (Special Provision) Act, 1985 ''CSICA'' for short). During the period when the establishment was going through the financial difficulties, the amount payable towards provident fund was defaulted. In that view, the respondents in exercise of the powers under Section 14(B) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (the 1952, Act'' for short) had levied the damages. The petitioner had assailed the action of the respondents in a petition filed in W.P. (C) No. 540/2006 before the High Court of Delhi at New Delhi. The High Court of Delhi by its order dated 16.01.2006 on noticing the provisions contained in Section 14(B) of the Act, 1952 had allowed the petitioner herein to make an appropriate representation to the respondents seeking reduction or

waiver of the damages that had been levied. Considering that the second proviso to Section 14(B) had vested such power with the Central Board, the petitioner had thereafter made a representation seeking waiver of the damages which had been levied to the tune of Rs. 32,34,981. The said waiver had been sought in view of the fact that the BIFR had sanctioned the scheme and if the damages are levied, the scheme would not materialize.

2. The Central Board of trustees on considering the representation made by the petitioner has reduced the damages to the extent of 50% and as such has made the demand for the balance of the amount to the extent of Rs. 16,40,664. It is the said order and demand which are impugned at Annexures-E and G to the petition.

3. The respondents have filed their objection statement. The sequence as noticed above is not disputed. The contention of the respondents however is that the power to be exercised by the Central Board of Trustees is in terms of the Clause 32B of the Employees'' Provident Fund Scheme, 1952 (the Scheme, 1952'' for short). In that view, it is contended that such waiver to the extent of 100% could be granted only if there is recommendation from the BIFR as provided in sub-clause (b) to clause 32B and in all other cases as contemplated under sub-Clause (c) to Clause 32B, the Central Board of Trustees has discretion only to reduce the damages up to 50% which has been done. It is therefore contended that the waiver in its entirety is not within the powers of the Central Board of Trustees. It is therefore their contention that in the instant facts, the maximum of 50% has been granted.

4. In the light of the rival contentions, in view the fact that there being no dispute that the petitioner is a Sick Industrial Company and that the BIFR has sanctioned a scheme of rehabilitation the nature of recommendation made by the BIFR is to be notice. The BIFR while making the recommendation in case No. 321/1998 has recorded its observation insofar as the Employees'' Provident Fund is concerned, as hereunder:

"7.1.7. Employees'' Provident Fund: (there have been some delays in the remittances of contributions to the Employees'' Provident Fund. The said fund in their letter No. KN/HBL71065/ENF/743/1967/2005, dated 17.6.2005 stated that damages and interest on these delayed payments in Rs. 32,92,249 and Rs. 11,07,398 respectively).

To extend relief''s and concessions as prescribed in the Section 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, and as per their rules."

(Emphasis supplied)

5. The BIFR has therefore in the emphasised portion of its recommendation noticed the damages claimed at Rs. 32,92,249 and Rs. 11,07,398 towards damages and interest. Presently, we are concerned with the damages that has

been levied, Thereafter, the BIFR has recommended to extend the relief''s and concession as prescribed in Section 14B of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 and as per their Rules. The said observation in the scheme sanctioned by the BIFR is to the effect of recommending that the relief as available under the Act and the Scheme is to be granted. Therefore, if the said recommendation of the BIFR is kept in view, the instant case would fall within the provisions contained in Clause 32B(b) of the Scheme, 1952 as a recommendation made by the BIFR for waiver of the damages upto 100%, since the same is one of the consideration made by the BIFR to sanction the scheme and to make it effective.

6. Hence, in such circumstance when the High Court of Delhi at the first instance had granted leave to the petitioner herein to make a representation and a direction had been issued to the respondents to consider such representation, the said Consideration ought to have been in its correct perspective, so as to carry out the object of the rehabilitation approved by the BIFR in the scheme sanctioned by it. Therefore, in my opinion, the contention raised by the respondents that the waiver permissible is only to the extent of 50% is not sustainable in the instant facts as the respondents have misconstrued the provisions and the recommendations as made by the BIFR. In that view, the order dated 26.06.2008 granting reduction only to the extent of 50% of the damages is not sustainable and the waiver is held admissible to 100%. Consequently, the demand elated 08.09.2008 (Annexure-G) is not sustainable, the same is accordingly quashed.

The writ petition is allowed in the above terms. No costs.