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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 24.06.2019

+ W.P.(C) 6876/2019

M/S MAYAR HEALTH RESORTS LTD Petitioner
Through: Ms. Akanksha Kaul and Ms. Akanksha Narang, Advocates.

versus

THE ASSISTANT PROVIDENT FUND
COMMISSIONER & RECOVERY OFFICER & ANR

..... Respondent

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

C.M. Appl. No. 28626/2019 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

W.P.(C) 6876/2019 and C.M. Appl. Nos. 28625/2019 (for stay)

2. The petitioner entered into an agreement on 1st April, 2011 with Survagya IT Management Pvt. Ltd. whereby a Consultant was required to provide services on statutory compliances under the EPF/ESI and other labour laws, including payment of contribution towards the Employees Provident Fund. It is the case of the petitioner that it transferred adequate funds to the consultant for making the contribution and was under the impression that the said cheques were being deposited by the consultant. However, in 2011, the consultants

forwarded a letter to the petitioner from the EPF office stating that the cheques were to be paid in favour of CEPfAccounts.In.

3. The petitioner thereafter handed over the cheques again to the consultants and did not apprehend any foul play. However, certain complaints were received by the petitioner and on inquiry made by the PF office on 31st January, 2013 the petitioner discovered that from November, 2011 the consultants were not depositing the cheques with the PF authority but were depositing the same in the personal account of one of the Directors of the consultants. Accordingly, an FIR No. 43/13 dated 1st February, 2013 was got registered against the consultants for cheating and forgery.

4. On 9th May, 2014, the petitioner received summons from the EPF office that the petitioner was liable to pay Rs.15,93,593/- as damages and Rs.8,09,056/- as interest, since it had failed to make its contributions. On 5th August, 2014, the petitioner sent a letter to respondent no. 1 stating that a sum of Rs.85,25,685/- was deposited by the petitioner for the period December, 2011 to October, 2012 towards the EPF and the default payment and also requested that the interest and damages be waived off. On 19th December, 2014, respondent no. 1 was further informed that another sum of Rs.8,09,056/- had been deposited by the petitioner between 12th August, 2014 and 18th December, 2014. The petitioner again requested that penal damages be waived off in view of the fact that a fraud had been played upon the petitioner.

5. Vide order dated 19th December, 2014/13th January, 2015 respondent no. 1 levied damages under Section 14B of the EPF Act amounting to Rs.15,93,593/- . The petitioner then filed an appeal against the order dated 13th January, 2015. However, since there were no Members, in the Appellate Tribunal, the appeal could not be listed. On 23rd February, 2015, respondent no. 1 issued an order whereby bank of the petitioner was directed to pay Rs.15,93,593/- to the RPFC from the account of the petitioner. The petitioner was then constrained to file a writ petition being W.P.(C) No. 2573/2015 in this Court and on 17th March, 2015 this Court directed that no coercive steps will be taken against the petitioner to enforce the order dated 13th January, 2015 till the appeal is taken up for hearing.

6. The appeal came up for hearing on 12th May, 2017 before the learned EPFAT for final arguments. However, all the matters were adjourned *sine die*. Thereafter, as per the Finance Act, 2017, the EPFAT was merged with the CGIT and the appeal was not listed for hearing and it is the case of the petitioner that no notice of hearing was also received until December, 2018.

7. Learned counsel for the petitioner submits that in fact pursuant to a litigation between the petitioner and the ITDC, the petitioner had vacated the business premises at Hotel Ashok on 28th February, 2019. Thus, according to her, the notice of the appeal sent for hearing could not be received by the petitioner. She further submits that at that point of time when the notice was perhaps sent for hearing, only the labourers or some employees of the petitioner were present at the premises and that the petitioner did not know about the hearing of the

appeal. Learned counsel for the petitioner further submits that it was only when a demand notice dated 16th May, 2019 was received by the petitioner that it came to its knowledge that the appeal had actually been dismissed in default on account of non-appearance on 3rd May, 2019. On 31st May, 2019, respondent no. 1 issued an order under Section 8F of the Act directing the respondent no. 2 to pay from the accounts of the petitioner the amount of damages. On 7th June, 2019, the petitioner received a copy of the order dated 3rd May, 2019. The petitioner thereafter immediately filed an application seeking restoration of the appeal, on 17th June, 2019. The learned counsel, however, submits that since the Tribunal is closed for vacations, the application for restoration cannot be listed till the Tribunal re-opens after vacations.

8. Learned counsel for the petitioner, thus contends that till the application for restoration is heard by the Tribunal the operation of the order dated 31st May, 2019 as well as the demand notice dated 16th May, 2019 be stayed in the interest of justice.

9. Learned counsel for the petitioner submits that an advance copy of petition has been served on the respondent and she has also informed the standing counsel of respondent No.1 with regard to listing of the writ petition today.

10. The matter was passed over three times, however, none appears on behalf of the respondents.

11. I have heard learned counsel for the petitioner. I find merit in the contention of the learned counsel that if an application for

restoration has been filed and the Appellate Tribunal is closed for vacation, naturally the restoration application cannot be listed. Therefore, in the interest of justice, I direct that till the application for restoration of the appeal is taken up for hearing by the Tribunal the operation of the order dated 31st May, 2019 and the demand notice dated 16th May, 2019 will remain stayed. A further direction is issued to respondent No.2 that no further liquidation of the deposits of the petitioner shall be done till the final outcome of the restoration application before the Tribunal. Needless to say, the petitioner would be permitted to operate their bank account.

12. In terms of the above directions, the present writ petition is disposed of.

Dasti.

JUNE 24, 2019

JK

JYOTI SINGH, J

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