

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2,
MUMBAI

APPEAL NO. CGIT- 2/EPFA106/2023

M/s. Marco Cables & Conductors Ltd.,
(Formerly known as a M/s. Marco Cables Pvt. Ltd.)
Plot No. A-55-56, STICE,
Taluka, Sinnar,
Nashik- 422 103.

- Appellant

V/s.

The Assistant Provident Fund Commissioner
Employees Provident Fund Organization,
Regional Office,
P-11, Bhavishya Nidhi Bhawan,
MIDC, Satpur,
Nashik- 422 007.

- Respondent

ORDER

(Delivered on 04-03-2025)

M/s. Marco Cables & Conductors Ltd./appellant - applicant has challenged the legality of order dated 24.07.2023, passed u/s. 14-B of the EPF & MP Act 1952, in the present appeal and by this application prays for stay to the effect and operation of the order under appeal during pendency of lis.

2. The establishment of the applicant is a private company engaged in the business activity of manufacturing of LT XLPE & PVC Power Cables, Control Cables and Aerial Bunched Cables and amenable to the provisions of EPF Act & Scheme since 01.04.1993. The applicant added that, due to various reasons, he failed to remit monthly P.F. Contribution and remitted the same belatedly however after conducting of enquiry for the period from May 2019 to

March 2022, the Authority vide order dated 24.07.2023 assessed the amount of damages based on summons dated 14.07.2022. The applicant further added that, while passing the order the mitigating circumstances, financial constraints/difficulties should have been taken into consideration. The Covid-19 has profound Global Recession and had substantial adverse effect on operation and due to that financial situation, salaries of employees were also delayed, however without considering this aspect the opponent passed the order that too without following due procedure of law laid down under the EPF Act, as such the order under appeal is illegal.

3. The opponent resisted this application by reply. The opponent contended that, the applicant was served with the summons for enquiry for the period from 01.05.2019 to 31.03.2022. The applicant attended virtual hearing and after giving ample opportunity, the applicant failed to file reply and documentary evidence and on the basis of material available on record, the Authority has passed the order under appeal. The opponent further contended that, the applicant made delayed payment for thirty four (34) months, no reason was communicated. The financial problem is not suitable ground for waiver of damages. The Authority has no discretionary power to reduce the damages. The applicant is willful defaulter and the order under appeal has been passed by following due process of law therefore legal and unconditional order of stay may not be granted.

4. I have heard Mr. Chheda representative for the applicant and Mrs. K. Sawant advocate for the respondent.

5. Undisputedly on the basis of summons dated 14.07.2022 the enquiry was initiated against the applicant for belated remittance of

P.F. contribution for the period from 01.05.2019 to 31.03.2022, though the enquiry was kept on various dates however the representative of the applicant appeared for some dates, no written reply was submitted on behalf of the applicant and thereafter the enquiry was closed for order, accordingly the order has been passed on 24.07.2023. It goes to show that, the applicant failed to participate in the enquiry on the material dates, not submitted reply nor produced on documents

6. It is contended on behalf of the applicant that, though there are mitigating circumstances and financial difficulty in not deposited the P.F contribution. Similarly, it is pointed out on behalf of the applicant that, there was Global Recession due to COVID-19, which had substantial adverse effect an operation. True it is that, the belated remittance is for the period from 01.05.2019 to 31.03.2022 and some of the period certainly covered in COVID-19 and during that period it seems that salaries of the employee were also delayed.

I have observed earlier that, the applicant failed to participate in the enquiry though the representative was asked to appear in the enquiry therefore the above referred grounds raised on behalf of the applicant remained to be considered as such these points needs to be required while considering the legality of order under appeal and those can be considered only while deciding the appeal on merit.

7. In such circumstances, it can be safely said at this stage that, the applicant has made out a prima facie case, the balance of convenience certainly lies in favour of the applicant as the ground raised remained to be considered while passing

the order and considering the comparative hardship, the applicant is certainly entitled for stay to the effect and operation of the order. In the order under appeal the amount of Rs.12,68,203/- has been determined as such it will be just to direct the applicant to pay or deposit the 25% of amount towards damages with the opponent.

In the result, the application is allowed. The opponent is hereby directed to stay the effect and operation of order under appeal till the decision of appeal only on depositing 25% of amount of damages as determined in the order under appeal within four weeks from the date of this order.

Sd/-

Date: 04-03-2025

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai