

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPEAL NO. CGIT- 2 / EPFA /124/2023

M/s. Mutual Automotive Pvt. Ltd.

- Appellant

V/s.

The Regional Provident Fund Commissioner-II,

EPFO, Pune.

- Respondent

**ORDER
(Delivered on 24-02-2025)**

M/s. Mutual Automotive Pvt. Ltd./appellant-applicant has challenged the legality of order dated 18.09.2023 passed u/s. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short "the EPF Act") and by these applications, prays for waiver from pre-deposit of 75% amount as per Sec. 7-O of the EPF Act and also for stay to the effect and operation of the order under appeal during pendency of lis.

2. The applicant engaged in the business of manufacturing plastic products, registered as Private Limited Company and covered under the EPF Act since 22.09.1997, however the opponent u/s. 7-A, determined the amount for the period March 2000 to March 2018, amounting the Rs.95,96,610/- on the non-enrolment and different wages and allowances and Rs.07,31,669/- for non-enrolment of contractual employees. The applicant added that, while passing the order, the Authority failed to consider the excluded employee and no obligations to extend the P.F. membership, there was no identification of employees, direct employees and dues calculated on apprentices who were only learners. The Authority failed to consider that, the

establishment of the applicant is an Industrial establishment. The Authority also not considered about the allowances and clubbing of basic wages excludes the employees from coverage. The dues have been assessed on excluded employees, availment of dues assessed on employees, who left the employment as such the order under appeal is contrary to the provisions of Law therefore illegal. The applicant also contended that, he has a good case on merit there is no legal basis for passing the order under appeal, therefore the condition of pre-deposit cannot be enforced in law.

3. The opponent resisted the application for stay as well as waiver by reply. The opponent submitted that, the applicant's establishment is an Industry, specified in "Schedule I" and 20 or more persons are employed on the basis of recommendation. The enquiry u/s. 7-A for the period from March 2000 to May 2017, has been initiated to assess the actual liability, as the establishment was avoiding production of record purposely. The enquiry was extended upto March 2018. The assessment has been made by following due process of law and also principles of natural justice.

As regards the waiver, the opponent further submitted that, the order u/s. 7-A of the EPF Act was finalized, based on the documents submitted by the opponent, during the course of hearing and duly following principles of natural justice affording him sufficient opportunities. It is the primary duty of the principle employer to maintain relevant records in respect of directly or indirectly engaged employees, produced before the authorities. The sufficient opportunity was afforded to produce records, however the applicant failed to produce the same. The applicant failed to produce substantive documents and relevant records establishing the

submissions made and assessment has been made after due process of law, as such the statutory requirement of pre-deposit of statutory amount cannot be relinquished.

4. I have heard Mr. Chheda representative for the applicant & Mrs. Todankar advocate for the opponent.

5. After considering the oral submissions advanced on behalf of the parties, in the light of the copy of order under appeal, it reveals that, the enquiry u/s. 7-A has been initiated against the applicant for the period from March 2000 to May 2017. The enquiry was continued during 03.08.2017 to 11.09.2023 and various officers of the applicant and also the officers of the opponent attended the enquiry on behalf of the parties. In the enquiry both the parties submitted written as well as oral submissions, thereafter the enquiry was closed and the order under appeal came to be passed.

6. It appear that, during enquiry various aspects were considered while passing the order under appeal such as regular employees, contractual employees, trainee/learners, industrial establishment, apprentice appointed under the standing orders, excluded employee and also availment of due in respect employees who left the employment. It is also contended on behalf of the applicant that, there was no identification of employees and basic wages as well as allowances were wrongly considered in respect of the employees. To my mind, all these aspects need to be considered exhaustively at the time of deciding the appeal on merit as such it can be said at the stage that, there are arguable points in appeal on merit made out by the applicant, therefore it can be said that, the applicant has made out a prima-facie case at the stage. Furthermore considering the other facts and circumstances of the case, the balance of

convenience also lies in favor of the applicant and considering the comparative hardship, the applicant is certainly entitled for stay to the effect and operation of the order under appeal till the disposal of the appeal on merit.

7. As regards the waiver of amount u/s. 7-O of the EPF Act, no appeal shall be entertained by the Tribunal unless he has deposited 75% of the amount due from him as determined by an officer however as per proviso to this Section, the Tribunal may for reasons to be recorded in writing waive or reduce the amount to be deposited under this Act.

In the present appeal, the amount of Rs.95,96,610/- & Rs.07,31,669/- has been determined in the order u/s. 7-A of the EPF Act. Considering the issue, involved in the matter of which the legality can be decided only on merit and the amount involved in the order under appeal, it will be just to direct the applicant to deposit the 40% of both the amounts with the opponent within a period of 10 weeks from the date of this order.

In the result, the applications are allowed. The opponent is directed to stay the effect and operation of the order under appeal only on depositing 40% of both the amounts assessed in the order under appeal within a period of 10 weeks from the date of this order.

Sd/-

Date: 24-02-2025

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

