

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

APPEAL NO. CGIT- 2 / EPFA /14 /2024

M/s. Aishwarya Fashion Couture - Appellant

V/s.

The Regional Provident Fund Commissioner-I,
EPFO Bandra (E), Mumbai. - Respondent

ORDER
(Delivered on 10-12-2024)

M/s. Aishwarya Fashion Couture / appellant-applicant has challenged the legality of the order dated 14.12.2023 passed u/s. 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for short, "the EPF Act") in the present appeal and by this application, the applicant is seeking stay to the implementation of order under appeal during pendency of appeal.

2. The applicant is a partnership firm deals in the business activities of retail garments, amenable to the EPF Act since 01.04.2009 and making compliance of the EPF Act meticulously. On the basis of Enforcement Officer report, the opponent for the period from 04/2009 to 07/2022 issued show cause notice and after enquiry passed composite order dated 14.12.2023 in respect of damages and interest. The applicant contends that, the opponent partially applied the Amnesty scheme and without initiated the enquiry u/s. 7-A of the EPF Act. The opponent before conducting enquiry invoked the

powers vested u/s. 14-B of EPF Act and fixed the rates of damages at the maximum and mechanically calculated the quantum of damages, there was no findings of willful default, mens-rea and in violation of own circular therefore the order under appeal is illegal, improper and in violation of the EPF Act.

3. The opponent resisted the application by reply. The opponent states that, the applicant has applied for Amnesty scheme dated 30.12.2016 therefore the applicant was directed to submit required details in respect of Amnesty scheme within 7 days from the date of receipt of letter dated 15.06.2023. The applicant was defaulter from 01.04.2009 and intends to seek Covid-19 benefits. The order u/s. 7-Q is not amenable and not deposited the amount as required u/s 7-O of the EPF Act and ultimately prays for rejection of the application.

4. I have heard Mr. Chheda representative for the applicant and Mrs. Humane Advocate for the opponent. Perused the documents available on record.

5. After careful scanning the oral submissions advanced on behalf of the parties. It seems that, the main controversy is about the applicability of Amnesty scheme notified dated 30.12.2016 to the applicant, there was no deduction of employees share, as per the scheme share of employees is waived, still the damages have been imposed however there was no declaration about the applicability of the scheme to the applicant, whereas the opponent states that, there was no application of scheme to the applicant as the applicant has not applied for the Amnesty scheme. Similarly according to the applicant, the damages have been calculated without any enquiry u/s. 7-A of the EPF Act and also about

maximum damages. To my mind these aspects needs detail enquiry while deciding the appeal on merit. However considering the points raised in the appeal it can be safely said that, the applicant has made out a prima-facie case at this stage.

6. Furthermore considering the issue involved in the appeal, it can be safely said that, the balance of convenience lies in favour of the applicant and considering the hardship, the applicant is entitled for stay to the order under appeal.

7. It will not be out of place to mention here that, as per composite order, the opponent has assessed the damages of Rs.03,31,754/- and interest of Rs.01,96,186/-. True it is that, the order in respect of interest is not appealable and the provisions of Sec.7-O of the EPF Act is not applicable against the appeal u/s. 14-B of the EPF Act. In such circumstances, it will be just to direct the applicant to deposit the amount of interest i.e., Rs.01,96,186/- with the opponent within six weeks from the date of order by Demand Draft, if not paid earlier.

In the result, the application is allowed. The order under appeal is stayed during pendency of appeal only on condition of depositing the amount of interest Rs.01,96,186/- with the opponent by Demand Draft with the opponent within six weeks if not deposited earlier.

Sd/-

Date: 10-12-2024

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

