

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

APPEAL NO. CGIT- 2 / EPFA /145/2024

M/s. Deshbhakt Ratnappanna Kumbhar Panchanganga
Sahakari Sakhar Karkhana Ltd. - Appellant
V/s.

The Regional Provident Fund Commissioner-II,
EPFO, Kolhapur. - Respondent

ORDER

(Delivered on 15-04-2025)

M/s. Deshbhakt Ratnappanna Kumbhar Panchanganga Sahakari Sakhar Karkhana Ltd./ appellant-applicant has challenged the legality of order dated 30.08.2024, passed u/s. 14-B of the EPF & MP Act 1952 (for-short, the “EPF Act”) by RPFC Kolhapur/respondent-opponent and by this application, the applicant prays for stay to the effect and operation of the order under appeal during pendency of lis..

The applicant is a sugar factory, engaging in the manufacture of sugar for more than 50 years and covered under the EPF. Due to acute shortage of working capital, the said factory started facing financial crunch resulted in liabilities therefore financial institutions initiated actions under SARFAESI Act, therefore the plant and machinery gave on lease of 18 years to Shri Renuka Sugars Ltd. vide lease deed dated 30.09.2011, from c rushing season of 2011-2012 to 2028 - 2029. Even after lease, the employees deputed to work with Shri Renuka Sugars Ltd., still continuous to be an

employees of the applicant, they ensure to deposit PF contribution of employees under the code number of the applicant. Still the opponent by notice dated 15.06.2016 regarding delay in depositing contribution on retention allowance paid to the employees and thereby claimed damages and interest for the period from 01.03.2014 to 31.05.2016 by order dated 21.06.2018 and claimed an amount of Rs.09,16,164/- towards damages. The applicant contended that, the order has been passed without considering the material placed on record, the opponent failed to consider the seasonal calendar of sugar industry and concept of retention allowance to the employees for off season, paid after first crushing season if reported on duty in new season.

The opponent failed to consider that, the retention amount is being paid only after 90 days of joining as such the order under appeal is contrary to law equity and the same has been without application of mind therefore illegal.

The opponent resisted the application by reply. The opponent contended that, summons dated 28.01.2022 u/s. 14-B & 7-Q was issued for the period from 01.04.2016 to 31.03.2021 (12/2011 to 09/2020) and enquiry was initiated, after enquiry the amount of damages and interest has been assessed, during enquiry the applicant admitted delayed payment of contribution, therefore the amount has determined. The opponent contended that, the applicant is habitual in paying contribution late. The applicant has no merit on facts nor on legal grounds and unless and until the 50% of assessed amount is deposited, the order under appeal may not be stayed.

I have heard Ms. Pavitra Manesh advocate for the applicant and Mrs. K. Sawant advocate for the opponent.

After carefully scanning the order under appeal in the light of various grounds raised in the appeal memo, it seems that, the opponent has claimed the damages for the period from 01.04.2016 to 31.03.2021 (12/2011 to 09/2020) and thereby determined the amount of Rs.09,16,164/- towards damages. It has come on record that, in the enquiry the applicant participated and raised various grounds regarding payment of retention allowance to the employees for non crushing season. The counsel for the applicant tried to pointed out that, in seasonal industries, the retention allowance is being paid to the employees only if that employees joined the services in the next crushing season and then only the contribution of PF in respect of such employees is being paid or deposited. Considering these aspects regarding retention allowance and practice followed in the industries of seasonal character. In my opinion, this aspect can be dealt with exhaustively only while deciding the appeal on merit and also considering the legality of order under appeal, it can be said that, the applicant has made out a strong prima-facie case.

Furthermore considering the other facts and circumstances of the case in respect of various points raised in the appeal memo, the balance of convenience certainly lies in favour 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 during pendency of lis. The counsel for the applicant pointed out that, the order in respect of interest passed u/s. 7-Q is

challenged before High Court, therefore not necessary to consider the same in the present proceedings.

I have gone through the decision of **Kerala High Court in Chempaka Kindergarten v/s. EPFO 2015 SCC Online Kerala 13454** relied on behalf of the opponent, in which it has been appreciated that, considering the above circumstances it is directed that, demand with respect to Sec.14-B of the EPF Act shall be kept in abeyance and stay of demand shall be applicable only on petitioner satisfying of 30% of amount due demanded as per EPF Act. In such circumstances, I am also directing the applicant to deposit 25% of assessed amount towards damages within the period of four weeks from the date of this order.

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

Sd/-

Date: 15-04-2025

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