

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

APPEAL NO. CGIT- 2 / EPFA /152 /2024

M/s. The Pen Co-operative Urban

Bank Ltd.

- Appellant

V/s.

The Assistant Provident Fund Commissioner,

EPFO, Navi Mumbai.

- Respondent

ORDER

(Delivered on 30-12-2024)

M/s. The Pen Co-operative Urban Bank Ltd./ appellant-applicant has challenged the legality of the orders dated 28.06.2024, passed u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short "the EPF Act"), by the Assistant Provident Fund Commissioner Vashi / respondent in the present appeal and by this application, the applicant prays for stay to the effect and operation of the orders under appeal during pendency of lis.

2. The appellant is a Co-operative Bank engaged in the business of providing banking services to its various customers. The Commissioner and Registrar Co-operative Societies appointed Board of Administrator and as per direction issued by the Reserve Bank of India, the appellant Bank is precluded from incurring any liability and restricted its operation and by order dated 09.02.2012 the Reserve Bank cancelled the license of the

Bank and there is no scope for revival. The appellant contends that for the period from 01.08.2013 to 20.02.2019 summonses were issued by the respondent for enquiry u/s. 14-B & 7-Q of the EPF Act and thereby fixed the maximum rate of Damages and Interest however while initiating enquiry the respondent elected totally incorrect, improper and arbitrary procedure which is against the principle of nature Justice and without proper analysis simply confirmed the predetermined amount stated in the summons, the respondent has not given any cogent reason for levying Damages and Interest and ignore the fact that, the delay was not intentional and there is no Mens-rea as such the orders under appeal are bad in law, illegal and improper.

3. The respondent resisted the applications by reply Ex-12. The respondent contended that, there is no provision for appeal against the order u/s. 7-Q of the said Act. The respondent further submits that, the appellant has not shown any reason nor produce any documents in support of their contention. The appellant was given reasonable opportunity of representing his case and the orders under appeal are valid, good in law and in accordance with the principles of natural Justice. The same have been passed by affording reasonable opportunity to the appellant to represent its case during enquiry therefore there is no illegality in the order under appeal. The appellant has not made out any prima-facie case at the stage and ultimately prayed for rejection of the application.

4. I have heard Mr. Chheda representative for the appellant and Mr. Rattesar Adv. for the respondent.

5. I may mention here that, though this is contended on behalf of the respondent that, the appeal against the order passed u/s. 7-Q is not appealable, however the Apex Court of the land in **Textile Mills Ltd. v/s. RPFC & Ors. (2013) 16 SCC I** and the same has been considered by our Bombay High Court in **Corona Ltd v/s. The Assistant Provident Commissioner MANU/MH/ 4308/2022** I, appreciated that the appeal being a creature of statute, no appeal u/s. 7-I of the EPF Act is available against the order passed u/s. 7-Q of the EPF Act, however if the order u/s. 7-Q levying interest is passed alongwith the order u/s. 7-A of the EPF Act, the same should be constitute composite order, which would be amenable to appeal u/s. 7-I of the EPF Act. In-short the composite order u/s. 7-Q and 14-B is amenable to the appeal u/s. 7-I of the EPF Act.

6. In the case in hand, though the orders from Damages and Interest have been passed separately however both the orders were passed on common show-cause notice/summons, both orders are identical one, enquiry in both the matters were conducted on similar date therefore though the orders appears to be passed separately, however those orders prima-facie seems to be composite order as such appeal against order u/s. 7-Q alongwith the order u/s. 14-B is maintainable.

7. It reveals from the copy of order under appeal that, the applicant failed to deposit contribution of Provident Fund for the period from 04/2014 to 08/2020 within 15 days from the end of every month on multiple occasions. In response to the summons, the representative of the appellant appeared in the enquiry on

various occasions and also admitted the delay in payment of contribution and agreed to pay the damages.

8. Moreover it is contended on behalf of the applicant that, the penalty has not been levied in the manner prescribed however the same has not been levied without using any discretion and maximum penalty has been levied. The applicant is not coming under the provisions of the EPF Act upon Liquidation. Similarly the damages are levied for the Covid period and there was no willful delay in depositing the payment nor there was Mens-rea on the part of the appellant. Considering all these aspects, in my opinion all these points can be considered only on merit that too while deciding the appeal on merit, however in the light of these objections raised on behalf of the appellant it can be safely said that, these points are arguable on merit as such the appellant has made out a prima-facie case at the stage. Similarly considering the other facts and circumstances of the case, in my opinion the balance of convenience lies in favor of the appellant and considering the comparative hardships the appellant is entitled to stay to the operation of the orders under appeal till the disposal of the complaint.

9. It is pertinent to write here that, though I have observed earlier that being a composite order the appeal against the order u/s. 7-Q of the EPF Act is maintainable, however it will be just to direct the appellant to deposit the total amount of Interest levied/assessed in the order u/s. 7-Q of the EPF Act under appeal within a period of eight weeks from the date of this order.

In the result, the application is allowed. The effect and operation of the orders under appeal is stayed during pendency of appeal only after depositing the total amount of interest assessed in the order passed u/s. 7-Q of the EPF Act under appeal within a period of eight weeks from the date of this order.

Sd/-

Date: 30-12-2024

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