

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

APPEAL NO. CGIT- 2 / EPFA176/2024

M/s. Shivtara Properties Pvt. Ltd. - Appellant

V/s.

1. Employees Provident Fund Organization

through Enforcement Officer,

2. Regional Provident Fund Commissioner-II

EPFO, Pune.

- Respondents

ORDER

(Delivered on 18-02-2025)

M/s. Shivtara Properties Pvt. Ltd./appellant-applicant has challenged the legality of order dated 27.08.2024 passed u/s. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short, "EPF Act") and by this applications the applicant prays for stay to the effect and operation of the order under appeal alongwith waiver from pre-deposit of 75% amount as required u/s. 7-O of the EPF Act.

2. The applicant is a private limited company engaged in construction, development and re-development of Real Estate for more than 13 years in Pune City, covered under EPF Act since July 2016. It is the case of the appellant that, on the basis of report of Area Enforcement Officer dated 14.05.2019, he was served with the show cause notice, enquiry u/s. 7-A (I) (a) & 7-A (I) (b) was initiated, in which the objection was filed on 29.05.2024 on calculated dues, still the Authority passed an order. The same is

cryptic, no reasons are given for discarding the objection filed by them on 29.05.2024, the same is perverse and also passed without application of mind therefore illegal.

3. The applicant further contended that, the amount of Rs.1,77,73,861/- has been determined by order under appeal. The orders suffer from lacuna, however considering the peculiar facts and circumstances of the matter seeking waiver from pre-deposit. The company is also in loss for more than 04 years continuously. The Bank also initiated recovery measures. The Bank also disposes the Director of the company and sold the Residential bungalow of Director in an auction, as such the financial situation is in distribe thus requested for waiver from pre-deposit as required u/s. 7-O of the EPF Act.

4. As against this, it is submitted on behalf of the opponent that by order dated 27.08.2024, the applicant has been directed to deposit the amount of Rs.1,77,73,861/- for the period from April 2013 to April 2019, unless and until the appellant deposited the 75% dues assessed, stay may not be granted. The application for waiver filed by the applicant is baseless and ultimately prayed for rejection of the applications.

5. Undisputedly, the Enforcement Officer was deputed to confirm the date of coverage and also compliances, accordingly Enforcement Officer visited the establishment of the applicant on 26.05.2018 and directed to produce the record, however the same was not produced therefore show cause notice was issued, accordingly compliance was made upto September 2017. It further seems that, the enquiry initiated against the applicant was heard continued for more than 80 times, during which the authorized

representative of the applicant however, failed to appear and thereafter the order u/s. 7-A came to be passed.

6. The counsel for the applicant raised various objections on the order under appeal, however those can be considered while deciding the appeal on merit, as such it can be safely said that, the applicant has made out a prima-facie case at this stage and considering the facts and circumstances of the case, in my opinion the balance of convenience also lies in favor of the applicant therefore the applicant is certainly entitled for stay to the effect and operation of the order under appeal.

7. As regards the pre-deposit of amount u/s. 7-O of the EPF Act, it is clear that, no appeal shall be entertained by the Tribunal unless he has deposited with it 75% amount due from him as determined by an officer referred to in Sec.7-A, 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 Section.

8. It is clear from the above provisions of Sec.7-O of the EPF Act, the same is mandatory in nature and unless the 75% amount has been deposited, the appeal cannot be entertained by this Tribunal, however the Court can waive or reduce the amount to be deposited under this Section. In the case in hand, the amount involved in the appeal is about Rs.1,77,73,861/- and it has been contended on behalf of the applicant that, the company is in loss for more than 04 years continuously and the Bank also initiated recovery measures against the appellant and the residential bungalow was also auctioned by the Bank. In such circumstances, more particularly considering the financial condition of the applicant, I am inclined to waive some amount as assessed in the order under

appeal and instead of 75% amount, I am directing the appellant to deposit 35% amount against pre-deposit as required u/s. 7-O of the EPF Act.

In the result, the applications for stay are allowed. The opponent is directed to stay to the effect and operation of the order under appeal till the disposal of the appeal on merit only on the condition of depositing 35% of assessed amount by the applicant with the opponent within a period of 15 days from the date of this order. Needless to say that, earlier order passed by this Court on 28.01.2025 with remain continue till 15 days from the date of this order and thereafter only the appeal will admit.

Sd/-

Date: 18-02-2025

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