

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

APPEAL NO. CGIT- 2 / EPFA /18 /2023

M/s. Modern Cafe.

- Appellant

V/s.

The Assistant Provident Fund Commissioner,

EPFO, Pune.

- Respondent

ORDER

(Delivered on 08-04-2025)

M/s. Modern Cafe/ appellant-applicant has challenged the legality of the order dated 21.10.2022 passed u/s. 7-A of the EPF & MP Act 1952, (for short, 'the EPF Act') by the APFC Pune/respondent-opponent and by application prays for waiver from pre-deposit of 75% amount as required u/s. 7-O of the EPF Act, stay to the effect and operation of the order under appeal and also for refund of amount illegally recovered by the opponent.

The establishment of the applicant is registered under the Maharashtra Shops and Establishment Act running small restaurant in Pune, covered under the EPF and complying the provisions of EPF Act. Initially for the period from 04/2012 to 06/2019 show cause notice/summons dated 17.09.2019 was issued and enquiry was initiated for assessing the contribution of EPF. In the enquiry, the applicant was represented by representative and on conclusion of enquiry the Authority has assessed the amount of Rs.5,85,991/-. The applicant submitted that order under appeal has been passed in cryptic

manner with prejudice mind. The Authority wrongly relied the decision of Supreme Court in Surya Roshni and mis interpreted the ratio in Panther security, opportunity to cross examine the author of the report was denied. The whole enquiry was conducted in blatant violation of the provisions of Section 7-A of the EPF Act, thus the order under appeal is illegal, improper and unsustainable under law.

The applicant also submitted that without waiting for the decision of application for stay and waiver and without issuing notice illegally recovered the amount of Rs. 5,85,991/-, thus the action of the opponent is illegal.

The opponent resisted the applications by reply. The opponent contended that, in order to determine the quantum of dues u/s. 7-A of the EPF Act, summons was issued on 17.09.2019 calling upon the applicant for determination of dues sufficient opportunities were given to the applicant before determination of dues however the applicant failed to produce any material records or documents and proceeding was concluded in compliance with the procedure. There is no plausible ground for interfering with the order. The compliance of Section 7-O of the EPF Act is mandatory.

The opponent further contended that, the order u/s. 8-F of the EPF Act is passed after completion of 60 days. During enquiry the applicant was absent, he is least bother about the order in respect of statutory dues, thus prayed for rejection of the applications.

I have heard Mr. Chheda learned representative for the applicant and Mrs. Sawant learned counsel for the opponent.

It is contended on behalf of the applicant that, while passing the order under appeal the Authority made assessment only on difference of balance sheet. There was no identification of employee and whole enquiry was conducted in blatant violation of the provisions of Section 7-A of the EPF Act. Similarly it is the contentions of that, the decisions of the Supreme Court was not interpreted properly while passing the order under appeal. Considering the various grounds raised by the applicant while challenging the legality of order in my opinion there is arguable points and all those points can be dealt with exhaustively on merit as such 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 my opinion the balance of convenience lies in favour of the applicant and considering the comparative hardship the applicant is entitled for stay to the effect and operation of the order under appeal.

As regards the waiver, an attempt has been made on behalf of the appellant to point out that, in the order under appeal total dues shown is Rs.16,45,025/- and payment made is shown as Rs.10,59,034/-, therefore sufficient amount was already paid, therefore the applicant is entitled for waiver as per Section 7-O of the EPF Act. However the order has been passed after considering that amount and finally assessed the amount of Rs.5,85,991/-, u/s. 7-A of the EPF Act and the same is under appeal in such circumstances and considering the amount assessed, the applicant has to deposit 60% amount towards compliance of Section 7-O of the EPF Act with the opponent and then only, the opponent

is directed to refund the remaining amount to the applicant within 08 weeks from the date of order.

In the result, the applications are allowed. The opponent is directed to stay to the effect and operation of the order under appeal by deducting 60% amount as assessed in the order towards compliance of Section 7-O of the EPF Act and returned the remaining amount within (08) eight weeks from the date of this order.

Sd/-

Date: 08-04-2025

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