

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

APPEAL NO. CGIT- 2 / EPFA /26/2024

M/s. Alcon Group.

- Appellant

V/s.

The Regional Provident Fund Commissioner-II,

EPFO, Pune.

- Respondent

ORDER

(Delivered on 25-03-2025)

M/s. Alcon Group / appellant-applicant has challenged the legality of order dated 24.11.2023, passed u/s. 7-A of the EPF & MP Act 1952 (for-short, the "EPF Act") and by these applications, the applicant prays waiver from pre-deposit of amount as per Section 7-O of the EPF Act and also stay to the effect and operation of the order under appeal during pendency of lis.

2. The establishment of the applicant is a partnership firm, engaged in the business of construction, having projects at Yevlewade Pune, covered under the EPF Act since 21.08.2018. The applicant submitted that, he was served with the show cause notice on 14.11.2018 for remittance of P.F. dues for the period from February 2013 to September 2018 and thereafter the summons was issued on 15.01.2019 and the enquiry was initiated by the opponent. After enquiry the Authority has determined the amount of contribution vide order dated 24.11.2023. The applicant further submitted that, while passing the order the Authority has not considered the submissions that, the Enforcement Officer

incorrectly included those employees who were drawing salaries more than limit. During the period 2013 to 2018, mainly employees as well as contractors left, resigned and retired and the by ignoring all the aspects, the Authority has passed the order under appeal, which is against the settled position of law, the same is illegal, bad in law and suffers from non application of mind. The applicant also submitted that, if he has been asked to deposit the amount as per Section 7-O of the EPF Act, it will be cause serious prejudice, thus the applicant requested to waive the amount of 75% as per Section 7-O of the EPF Act.

3. The opponent without submitting separate reply to the application for stay as well as application for waiver u/s. 7-O of the EPF Act, mainly relied the counter reply filed on record. The opponent contended that, initially the show cause notice dated 14.11.2018 was issued to the applicant, however the applicant failed to remit the dues therefore summons was issued on 15.01.2019 and the enquiry was initiated against the applicant, in which the applicant participated and after enquiry the order u/s. 7-A of the EPF Act has been passed for the period from February 2013 to September 2018 and determined the amount of contribution of Rs.31,77,942/- on the basis of available record therefore the order under appeal is legal and proper. The opponent also contended that, the appeal should not be entertained unless deposit of 75% amount and ultimately prayed for rejection of both the applications.

I have heard Mr. Chheda representative for the applicant, perused the written submissions filed on behalf of the opponent. It reveals from pleadings of the parties as well as the copy of order

under appeal that, the establishment of the applicant was covered by letter dated 26.10.2018, (copy of that intimation letter is available on record) and by show cause notice as well as summons, the authority has claimed the contribution for the period from February 2013 to September 2018. It means for the period during which the establishment of the applicant was not covered under the EPF Act. The applicant came up with the specific case that, while determining the amount, the excluded employees of the contractors were also considered for the assessment of the amount. There was no identification of employees which is necessary and required to be considered while passing the order u/s. 7-A of the EPF Act.

Not only this but, the employees of the contractors were not called in the enquiry and the authority also put his reliance on Soorya Roshni case, in view of this, all these aspects are arguable points in the matter on merit and can be exhaustively dealt with while deciding the appeal finally, therefore it can be safely said that, the applicant 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 applicant and considering the comparative hardship, the applicant is entitled for stay to the effect and operation of the order under appeal till the disposal of the appeal on merit.

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

the Tribunal may for reasons to be recorded in writing waive or reduce to amount to be deposited under this Section.

In short, deposit of 75% amount due is a pre-condition under EPF Act, for maintaining an appeal. In the instant case, I have observed earlier that, the applicant has made out a prima-facie case and the balance of convenience also lies in favor of the applicant, therefore in the light of these observations, instead of depositing 75% amount, I am directing the applicant to deposit 50% of amount assessed in the order under appeal within a period of four weeks from the date of this order.

In the result, the applications are allowed. The opponent is directed to stay the effect and operation of the order under appeal till the decision of the appeal on merit only on depositing the 50% amount of assessed in the order under appeal within a period of four weeks from the date of this order if not deposited earlier. Then only the appeal will be admitted.

Date: 25-03-2025

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