

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
2, MUMBAI

CGIT-2/EPF Appeal No. 40 of 2022

M/s. Allied Digital Services Ltd. -Appellant

Vs.

**The Assistant Provident Fund Commissioner,
EPFO, Bandra East, Mumbai. -Respondent**

ORDER

(Delivered on 29-07-2024)

M/s. Allied Digital Services Ltd., / Applicant has challenged the legality of the order dated 29-07-2021 passed under section 14-B of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to "the said Act") and by this application, the appellant prays for stay to the effect and operation of the order under appeal during pendency of lis.

It is contended on behalf of the appellant that, the company of the appellant is registered under the company's Act, since 01.09.1998 covered under the said Act and has been remitting the contribution regularly. The respondent issued combined summons dated 11.04.2017 u/s. 14-B & 7-Q of the said Act by fixing the damages and interest in advance for the period from 04/2013 to 01/2017 on account of delay in remittance of Provident Fund dues. The company facing huge acute financial loses and cash flow, utilized the huge funds in completing the project and on receipt of the bills from the Government, the PF dues were paid belatedly however without considering the reasons and

projecting the opportunity of hearing, the authority with pre determined passed an order on composite s/c notice as such the order under challenge is illegal and improper.

The respondent without filing separate reply to this application filed the counter reply to the appeal, thereby denied all the contentions made on behalf of the appellant and also requested for rejection of stay application.

After careful scanning the oral submissions advanced on behalf of the parties in the light of copy of order under appeal, there appears no dispute that, the contribution towards Provident Funds from the period from 04/2013 to 01/2017 was delayed and the authority has ordered the amount of interest of Rs. 57,71,320/- and damages of Rs. 1,19,92,766/- by order under appeal.

Though it is contended on behalf of the appellant that, during enquiry the opportunity of hearing was denied, however it reveals that, the enquiry was conducted on various dates, the representative of the appellant was present during enquiry, no reply was filed on behalf of the appellant in the enquiry and the representative of the appellant admitted during enquiry about the delay in filing the contribution and also shown willingness to remit the amount of interest and damages. In such circumstances it will be unsafe to say at this Prima-facie stage that, there is denial of the principles of the natural Justice during enquiry.

On careful perusal of the copy on summons dated 11.04.2017 it seems that, the common summons for hearing u/s. 14-B damages and 7-Q interest has been issued by the respondent and on that basis the order in respect of damage has been passed however there is no challenge to the order in respect

of interest u/s. 7-Q passed by the authority. The Counsel for the appellant fairly submitted before the Tribunal that, the appellant has deposited the amount of interest.

It is contended on behalf of the appellant that, the composite order has been passed on the basis of common summons however the order under challenge is only in respect of 14-B of the said Act for damages therefore it cannot be said that, the order under challenge is a composite order however it is certain that, the both the orders have been passed on composite show cause notice. I have gone through the various decisions relied by the superior court, in which the aspect of composite order has been dealt with. In my opinion this aspect can be dealt with while considering the appeal on merit.

An attempt has been made on behalf of the appellant to point out before the Court that, the delay in making the payment was caused due to financial losses, cash flow and utilization of huge funds in completing projects and on receipt of Government bills contribution was remitted belatedly. True it is that, the Counsel for the opponent rightly pointed out that, financial difficulty cannot be ground for belated remittance of contribution however this aspect can be considered exhaustively while deciding the appeal on merit therefore it can be safely said that, the appellant has made out the Prima-facie case at the stage. Furthermore considering the issue involved in the matter, in my opinion the balance of convenience lies in favour of the appellant and considering the comparative hardships, the appellant is entitled for stay to the effect and operation of the order dated 29-07-2021 under challenge.

In the result the application is allowed, the effect and operation of the order dated 29-07-2021 under appeal will remain stayed till the disposal of the appeal on merit

Sd/-

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

Dated: 29-07-2024

