

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

**APPEAL NO. CGIT- 2 / EPFA /41/2023**

M/s. Hotel Midland, - Appellant  
V/s.

The Regional Provident Fund Commissioner-II,  
EPFO, Regional Office Bandra. - Respondent

**ORDER**  
**(Delivered on 10-02-2025)**

M/s. Hotel Midland/appellant-applicant has challenged the legality of the order dated 29.12.2022, in respect of applicability of the EPF Act, passed u/s. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short "the EPF Act") and by this application prays for stay to the effect and operation of the order under appeal during pendency of appeal

2. According to the applicant, its establishment was a small partnership firm incorporated in 26.08.1985 and being a hotel providing lodging facility without any facility of restaurant and since inception engaged less than 20 employees, still the respondent/opponent initiated proceedings about the applicability of EPF Act to its establishment, however the number of employees have not been calculated, added random persons whose names are not in the salary or attendance register and without proper identification considered the employees without Aadhar Card as such proceeding initiated by the opponent is incorrect, improper, unjust and also against the principles of natural justice.

3. The opponent resisted the application by reply. The opponent contended that, there is mis-joinder of parties and the appeal is bad

in law. The applicant was avoiding liability in respect of registering the establishment under the EPF Act, inspite engaged more than 20 employees and thereby suppressed the number of employees. During enquiry it was revealed that, the number of employees are above 20, the applicant failed to produce the record of 8 employees and thereby suppressed the material facts. The order under appeal has been passed after considering all material facts appealed its mind and passed the order as such there is no illegality as alleged and ultimately prayed for rejection of the application.

4. I have heard Mr. Chheda Representative for the applicant and Ms. Rai Advocate for the opponent.

5. Undisputedly on the basis of visit note dated 09.10.2017, the enquiry was initiated in respect of the applicability of the EPF Act to the establishment of the applicant. It is clear from the visit note that, there are names of 15 employees and their particulars have been mentioned in the report only after head counts. There is mentioned of two security persons engaged through contractor, however except this 15 + 2, the visit note does not show the strength of employees as more than 20. Moreover while passing the order under appeal, the Authority considered another 5 employees, however there is no detail particulars about those employees nor there is mentioned about the identification of those employees. Not only this but, the names of those 5 employees were not find place in the visit note, which was the basis for passing of order under appeal. In such circumstances and in the light of submissions advanced on behalf of the applicant that, there is no identification of employees nor those employees were identified based on documents also it can be safely

said that, the applicant has made out a prima-facie case at the stage.

I have carefully gone through the decision of **Kerala High Court** in **Abdul Gaddafi v/s. State of Kerala (2016) 01 KL CK 0053** relied on behalf of the opponent however I do not think that, the said decision is anyway helpful for the opponent at this prima facie stage that too decision application for stay during pendency of appeal.

Furthermore considering the other facts and circumstances of the case, more particularly about the dispute in respect of the strength of the employees, in my opinion the balance of convenience also lies in favor of the applicant and considering the comparative hardship, the applicant is certainly entitled for stay to the effect and operation of the order under appeal till the disposal of the appeal on merit.

In the result, the application is allowed. The effect and operation of the order dated 29.12.2022 under appeal is stayed till the disposal of the appeal on merit.

Sd/-

Date: 10-02-2025

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

