

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

**APPEAL NO. CGIT- 2 / EPFA /79 /2023**

M/s. Bhore Engineering Pvt. Ltd.

- Appellant

V/s.

The Regional Provident Fund Commissioner-II,

EPFO, Pune.

- Respondent

**ORDER**

**(Delivered on 11-03-2025)**

M/s Bhore Engineering Pvt. Ltd./appellant-applicant has challenged the legality of order dated 31.03.2023 passed u/s. 7-A of the EPF & MP Act 1952, (for short- "EPF Act") in the present appeal and by these applications prays for waiver from pre-deposit as per Section 7-O of the EPF Act, stay to the effect and operation of the order under appeal and also for direction to the respondent opponent to release lien kept on fixed deposits.

According to the applicant, its establishment is in the business of manufacturing of piping assembly, sheet metal and fabrication etc, covered under EPF Act since 01.10.2003, on the basis of show cause notice dated 17.09.2018, the enquiry was initiated, alleging non-remittance of P.F. dues for the period from 04/2016 to 02/2019 and conducted enquiry based on report of Enforcement Officer however he was unaware about the proceeding therefore could not file reply to show cause notice issued by the opponent. The applicant added that, in fact RPFC-II lacked Jurisdiction to issue notices, conclusion drawn are based on

suspicious. No relevant material was available on record of enquiry, There was no identification of employees, washing allowance as well as overtime amount uniform allowance were considered as wages. Copy of report dated 31.03.2023, as well as report dated 27.05.2016, were not provided. There was difference in Balance Sheets also however this aspect was not considered and also calculated dues in respect of payments made by contractors without calling contractors in the enquiry as such the order under appeal is illegal.

The opponent resisted the applications by separate reply. The opponent contended that by order date 31.03.2023, the applicant directed to pay dues of Rs.92,41,294/- for the period from 04/2016 to 03/2019 as determined in exercise of powers conferred u/s. 7-A of the EPF Act. The opponent has given sufficient opportunities to submit say, relevant record however applicant failed to submit during enquiry. The opponent further contended that Section 7-O of the EPF Act mandates to deposit the 75% amount when appeal is filed and then only appeal be considered. The enquiry has been conducted by following due process of law. The opponent also contended that, in appeal there is no stay from the Tribunal against the order dated 30.05.2023, the appellant has paid dues of Rs.25,05,629/- under protest therefore prohibitory order dated 15.02.2024 that too after 10 months as such there is no illegality in the order and ultimately prayed for rejection of the applications.

I have heard Mr. Chheda representative for the applicant and Mr. M. N. Rajput advocate for the opponent.

There appears no dispute about initiation of enquiry for determination of amount of contribution which was remained to be deposited u/s. 7-A of the EPF Act for the period from 04/2016 to 02/2019 based on show cause notice dated 17.09.2018. The representative of the applicant appeared in the enquiry and on completion of enquiry the opponent determined the amount u/s. 7-A of the EPF Act.

True it is that, the applicant challenged the impugned order on various grounds such as non-availability of record in the enquiry, there was no identification of employees, considering various allowances as wages which cannot be considered as wages, difference in Balance Sheets and also calculation of dues in respect of payments made by contractors that too without calling contractors in the enquiry as such orders. All these points raised on behalf of the applicant needs to be considered exhaustively while deciding the appeal on merit as such it can be safely said at this stage that, the applicant has made out prima-facie case. Furthermore considering other facts and circumstances of the case the balance or convenience lies in favour of the applicant and considering comparative hardship, the applicant is certainly entitled for stay to the effect and operation of the order.

As regards waiver from depositing the amount, it is mandatory on the part of the applicant to deposit 75% of amount determined in the order u/s.7-A of the EPF Act and unless the Tribunal cannot entertain the appeal as such it is obligatory on the part of the applicant to deposit 75% of amount Rs.92,41,294/- as determined in the order under appeal. However the opponent fairly admitted that, the applicant paid dues of Rs.25,05,629/- under

protest with them. In such circumstances, I am directing the applicant to deposit Rs. 20 Lac with the opponent so that both the amounts can be considered as proper compliance of the provisions of Sec.7-O of the EPF Act and only after depositing the amount of Rs. 20 Lac, the opponent is directed to stay the effect and operation of order under appeal till the disposal of appeal on merit, and also entitled for direction to release lien on fixed deposits amount.

In the result, the applications are allowed. The opponent is directed to stay the effect and operation of the order under appeal, till the disposal of appeal on merit and also release the lien on fixed deposits of the applicant only on depositing further amount of Rs 20 Lac within 06 (Six) weeks from the date of this order.

Date: 11-03-2025

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