

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

**APPEAL NO. CGIT- 2 / EPFA / 01 /2024**

**Between:**

M/s. Shivnagar Vidya Prasarak Mandals Institute,  
Malegaon. - APPLICANT

V/s.

Regional Provident Fund Commissioner-II,  
EPFO, Pune - OPPONENT

**ORDER**

**(Delivered on 01-07-2024)**

M/s. Shivnagar Vidha Prasarak Mandals Institute, Malegaon (BK) / Applicant has challenged the legality and propriety of the order dated 20-10-2023 passed by the RPFC-II Pune / Opponent, in an appeal under section 7-I of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ( for-short "the said Act" ) and by these applications, the applicant prays for waiver from depositing the amount required under section 7-O of the said act, and also for staying the effect and operation of the order during pendency of lis.

According to the applicant, its establishment is an educational institute providing education to the poor students in rural areas at concessional fees and providing scholarship funds, educational loans and financial aid to the needy

*SKD*

students, to promote education in rural areas. The establishment depends upon the scholarship funds received from Social Welfare Department Pune. The applicant added that, during March 2020 to November 2021 they did not receive funds and due to Covid there was financial recession therefore suffered loss, <sup>h</sup>Therefore could not timely pay the contribution, there was delay in depositing the contribution however the delay was not intentional still the opponent vide order dated 20-10-2023, passed U/S 14-B of the said Act, levying damages as such the order under appeal is illegal and improper.

The opponent without filing separate reply to the applications for waiver as well as stay application filed counter reply to the appeal and thereby denied all the contentions made on behalf of the applicant and ultimately prayed for rejection of the applications.

I heard Mr. Borkar Advocate for the applicant and Mrs. Humane Advocate for the opponent.

I have given anxious consideration to the oral submissions advance on behalf of both the parties, in the light of a copy of order dated 20-10-2023 under appeal. There appears no dispute that, the amount towards Provident Fund contribution in respect of the employees employed by the opponent was delayed during the period mentioned in the order and the opponent has ordered penal damages from 01-04-2020 to 31-05-2022 for the wage months November 2019 to November 2021 amounting to Rs. 59,35,385/-.



True it is that considering the period of delayed payment as per order under appeal, it was a Covid period and due to that, there was lockdown. It is the contention of the applicant that, during that period they did not receive the grants timely from Social Welfare Department and due to that there was financial recession in the establishment therefore there was delay in making the payment in respect of contributions.

To substantiate the same the applicant has filed certain documents on record, such as certain correspondence alongwith the report given by Chartered Accountant and it reveals from those documents that during 2019 – 2020 to 2021 – 2022 the expenditure of the applicant is excess than the income therefore it can be safely said Prima-facie at the stage that, the contention of the applicant regarding the financial recession and delay in making contribution due to that, seems to be proper and it can be said that, the applicant has made out a 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 applicant and considering the comparative hardship. The applicant is certainly entitled for stay to the effect and operation of the order dated 20-10-2023.

As regards the waiver from depositing 75% amount, the Section 7-O reads as follows-

**7-O** :- Deposit of amount due, on filing appeal – No appeal by the employer, shall be entertained by a Tribunal unless he has

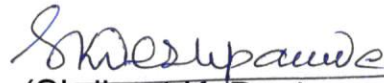


deposited with it Seventy Five percent of the amount due from him as determined by an officer referred to in Section A.

On plain reading of this Section, it is clear that Section 7-O of the said Act deals with deposit of Seventy Five percent amount in case of Appeal against the order passed / or determination made under section 7-A. Whereas the present appeal is against the order passed U/S. 14-B of said Act as such there is no question of deposit or waiver at all.

In the result, the effect and operation of the order under appeal dated 20-10-2023 will remain stayed till the disposal of the appeal on merit.

Date: 01-07-2024

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