

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

**APPEAL NO. CGIT- 2 / EPFA /111 /2024**

M/s. Abhinav Education Society. - Appellant

V/s.

The Regional Provident Fund Commissioner-I,  
EPFO, Pune. - Respondent

**ORDER**

**(Delivered on 03-09-2024)**

M/s. Abhinav Education Society / Appellant-Applicant has challenged the legality of the order dated 31.05.2024. passed u/s.. 7-A 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 pre-deposit of 75% amount as per Section 7-O of the said Act and also for stay to the effect and operation of the order dated 31.05.2024 till the disposal of the appeal.

According to the applicant its society is an educational institution in rural areas and running technical school and colleges. Initially the opponent passed an order u/s. 7-A of the said Act, that order was challenged before the High Court and by order dated 10.12.2018. the High Court was pleased to remand the matter for fresh enquiry and thereafter Authority conducted enquiry for the period from March 2010 to March 2016 and passed an order on 31.05.2024 and thereby assessed the dues of Rs. 1,64,52,671/-. The

applicant added that, there was no identification of the employees. The opponent only determined the actual concrete difference in payment of Provident Fund contribution. The contribution claimed against the employees have already left the employment and the names of employee had provided but they were not summoned. Similarly the Authority blindly relied incorrect deposition of the Inspector and passed the order it is in violation of the principles of natural Justice improper and illegal.

Similarly, out of total dues Rs. 08,82,24,926/- the applicant paid the amount of Rs. 07,17,72,255/- to the opponent this amount is more than 81% and the opponent has not received the grant from the Government and more than Rs. Six crore is due from the Government as such they be granted waiver from pre-depositing the amount.

The opponent resisted the application by reply. The opponent contended that, the order under appeal is from the period from March 2010 to March 2016 and the amount assessed is Rs. 01,64,52,641/-. The applicant is chronic defaulter and since last decade always remitting the contributing late. They deducted employees share of contribution from their salary and misappropriated and for that F.I.R. is also filed against the applicant. The applicant is defaulter and financial problem is not suitable ground for delayed payment of contribution there is no specific legal ground for delayed payment of contribution and the Authority has passed the order by following due process of Law

following principles of natural Justice there is no infirmity of in the order.

The opponent further added that, there is no such genuine reason or exceptional circumstances to show that, they are unable to deposit 75% of assessed amount as such the applications be rejected and stay be granted subject to deposit of 75% amount in the Court.

I have given anxious consideration to the oral submission advanced on behalf of the parties. Admittedly after remand by the High Court the Authority conducted fresh enquiry u/s. 7-A of the said Act for the period from March 2010 to March 2016. It seems that, the enquiry was initiated on the basis of modify terminal report dated 02.03.2020 and 10.06.2021, during enquiry the applicant challenged the legality of Inspector report dated 02.07.2021 however the same was rejected without proper reason. Not only this but, another objection raised by the applicant about identification of beneficiary which were not examined in the enquiry. He put a reliance on the decision of Supreme Court in **Builders Association of India v/s. Union of India & Ors. special leave to appeal (C) No. 8035 / 2016**. In which it has been observed and I quote-

“Apprehension of the petitioner appears to be that, without identifying the beneficiary workman, the contribution is being sought. The process of identification will arise only at the stage of enquiry i.e., to be conducted by the respondent that organization. Therefore it is



made clear that, during the process of enquiry conducted by the respondent organisation, the stay will also be taken to identify the workman either of the petitioner or engaged through contractor. Needless to say that, the organisation will ensure that, the contribution taken from the petitioner will actually go to the benefit of employees.”

It is clear from the above discussion, alongwith the decision of the Supreme Court that, the identification of the beneficiary is necessary as such in absence of identification of employees Prima-facie seems to be improper.

Similarly, the Authority also pointed out that, they have not received the Government grants i.e., more than Six crore from the Government and the statement is also made before the Court that, the Writ Petition is filed against the Government before High Court. True it is that, financial difficulty is not a ground, however it has come on record that, almost 80% amount was paid by the applicant from the total dues. In such circumstances it can be safely said that, there is arguable point on merit thus the applicant has made out a Prima-facie case at the stage. Furthermore considering the other facts and circumstances of the case, in my opinion the balance of convenience lies in favour of the applicant and considering the comparative hardship the applicant is entitled for stay to the effect and operation of the order under appeal.

As regard the waiver from pre-deposit the 75% amount as per Sec. 7-O of the said Act, no appeal by employer shall

be entertained by Tribunal unless he has deposited 75% of the amount due from him as determined by officer referred to in Sec. 7-A and for reasons to be recorded in writing Tribunal may waive or reduce the amount to be deposited under this Section.

In the instant case, the applicant has stated on oath that, out of total dues of Rs. 08,82,24,926/- he paid the dues of Rs. 07,17,72,255/- and residual dues is of Rs. 01,64,52,671/-. Not only this but, it has come on record that, in earlier order u/s. 7-A of the said Act the Hon'ble Lordship of the Bombay High Court directed the applicant to deposit Rs. 50/- lacs with the opponent, thereafter the Writ Petition was disposed off by remanding the matter to the Authority. It goes to show that, the applicant has already deposited Rs. 50/- lacs with the opponent in respect of order dated 10.12.2018, which was remanded for fresh enquiry and the same is with opponent under such circumstances the applicant is certainly entitled for waiver from depositing the amount as required u/s. 7-O of the said Act.

During pendency of the application, the applicant also moved an application for DE-FREEZING the accounts, which were seized by the opponent. The opponent objected the same on the ground that unless depositing some amount with the opponent the accounts should not be de-frozen. However in the light of stay to the order under appeal by this Court and the fact of recovery order based without notice, it will be just to direct the opponent to de-freeze the Bank

accounts of the applicant by issuing necessary direction to the Bank.

In the result, both the applications are allowed. The opponent is directed to stay to the effect and operation of the order dated 31.05.2024 till the disposal of the present appeal and the applicant is entitled for waiver from depositing the amount in the Court. The opponent is further directed to de-freeze the Bank Accounts of the applicant immediately. A letter be issued Bank Authority.

Date: 03-09-2024

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