

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

CGIT-2/EPFA-19 of 2022

M/s. Metric Consultancy Ltd

-Appellant

V/S.

The Regional Provident Fund Commissioner, EPFO,

Pune

-Respondent

ORDER

(Delivered on 22-07-2024)

In an appeal u/s. 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "EPF Act"), M/s. Metric Consultancy Ltd/ appellant-applicant has challenged the legality and propriety of order dated 06.03.2020 passed u/s. 14-B of EPF Act and by this application the applicant prays for stay to the effect and operation of the order under challenge during pendency of Lis.


According to the applicant its company is registered under the company's Act 1956, voluntarily got registration under the EPF Act and discharging statutory obligations smoothly, however due to global recession, late receipt of the attendance of the employees from various locations, financial cash flow crisis and late receipt of payments from crisis, he was not able to pay the salary to the employees as well as PF



contribution in stipulated time therefore the opponent issued combined summon dated 06.08.2019 for damages. Legitimate submissions were made before the authority, still without considering the mitigating circumstances the authority passed an order under challenge however while passing the order the authority failed to apply his mind to prove the ingredients of Mensrea, no cogent reasons were given. The delay in payment was not intentional as such the order under challenge is illegal and unjust.

The opponent resisted the application by reply Ex-8. The opponent contended that, the applicant has made delay in payments not for one month but for 96 months in willful manner, not furnished reasons for delay beyond this control during the course of hearing. The applicant on 18.09.2019 has accepted the delay in enquiry and agreed to pay the same. The proper procedure was followed inconsonane with the principles of the natural Justice as such the order under challenge is legal and proper therefore the applicant is not entitled for stay to the effect and operation of the order.

I have heard Mr. Chheda Representative for the appellant-applicant & Mrs. Kashmira Sawant for Respondent-Opponent.

 After careful scanning the oral submissions advanced on behalf of the parties it seems that, though it is contended on behalf of the

applicant that, while conducting the enquiry proper procedure was not followed however it is clear from the copy of order available on record that after receipt of summon dated 06.08.2019, the representative of the applicant appeared before the authority on 16.09.2019, 07.10.2019, 14.10.2019, 25.10.2019, 18.11.2019, 23.10.2019 & on 18.11.2019, the representative of the applicant accepted the delay in paying the contribution and thereafter the enquiry was closed for orders. The applicant could not point out that, which opportunity was denied to him during enquiry for damages initiated by the authority and in absence of that, it will be unsafe to accept at this stage that, the enquiry conducted by authority was improper.

An attempt has been made on behalf of the applicant to point out before Tribunal that, the delay in making the payment was caused due to global Recession, late receipt of attendance of employees from various locations, he was not able to pay the salaries of the employees therefore could not pay the contribution within time. True it is that, rightly pointed out by the Counsel for the opponent that, the financial crisis cannot be ground for delayed payment of contribution, however the fact remains that, the salaries of the employees were not paid during that time therefore this may be one of the reason for not making the payment of contribution in time. Similarly considering the other

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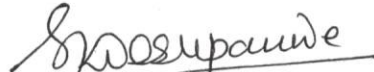
mitigating circumstances and in the light of fact that, the applicant paid the amount of interest claimed by the opponent, it can be safely said at this Prima-facie stage that, the applicant has made out a Prima-facie case for grant of interim relief/stay.

I have gone through the various decisions relied by the Parties. The decision relied by the opponent are mostly in respect of 7-O under the Employees' Provident Funds and Miscellaneous Provisions Act 1952 and much relevant at this stage.

Furthermore considering the circumstances of the case in my opinion the balance of convenience lies in favour of the applicant and considering the hardships, the applicant is entitled for stay to the recovery of damages as per order dated 16.03.2020.

In the result, the application is allowed. The opponent is directed not to initiate a recovery proceeding against the applicant on the basis of order dated 16.03.2020 under challenge till the disposal of appeal.

Date: 22-07-2024


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