

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

APPEAL NO. CGIT- 2 / EPFA /21 /2023

M/s. K. J. Infrastructures Projects India

Pvt. Ltd.

- Appellant

V/s.

The Assistant Provident Fund Commissioner,

EPFO, Pune.

- Respondent

ORDER

(Delivered on 17-09-2024)

M/s. K. J. Infrastructures Projects India Pvt. Ltd./ appellant-applicant has challenged the legality and propriety of the order dated 04.11.2022 passed u/s. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act 1952, (for-short, "EPF Act") by the Assistant Provident Commissioner/ respondent-opponent and by these applications prays for waiver from pre-deposit of amount u/s. 7-O of the EPF Act and stay to the effect and operation of the order dated 04.11.2022 during pendency of lis.

According to the applicant, he is in the business of providing service in civil engineering and civil work and also contractor and its company is covered under the EPF Act since 01.08.1999. The opponent initiated an enquiry for the purpose of contribution for the period from 04 / 2015

to 08 / 2019 and passed an order on 04.11.2022 however while conducting enquiry, arbitrary process was adopted and the whole order was passed on assumption and presumption. No beneficiary is identified in the enquiry. In fact the assessment should have been on factual basis and assessing the amount of 60% of contractual amount is contrary to the order of Bombay High Court. Similarly without summoning the record from the contractor, the Authority assumed wages of number of employees including excluded employees of the contractor and the assessment is without application of mind as such the order under appeal is illegal.

The applicant submits that, the financial condition of the company is precarious and he is not in a position either to pre-deposit of amount for entertaining an appeal which is totally illegal as such requested for waiver from pre-depositing the amount.

The respondent-opponent resisted both the applications by separate reply. The opponent contended that, the applicant has been directed to pay the amount of Rs. 08,87,14,084/- vide order dated 04.11.2022 by exercising the powers of conferred u/s. 7-A of the EPF Act and that too after considering the evidence place on record and submissions of the applicant, as such the order is legal and proper and if the stay is granted it will cause prejudice to the opponent.

Similarly, as per the provisions of the 7-O, the appellant has to deposit 75% of the amount due from the appellant as such the applicant is required to deposit 75% amount

assessed by the opponent and ultimately prayed for rejection of both the applications.

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

After careful scanning the oral submissions advance on behalf of the parties in the light of their respective pleadings there appears no dispute that, the applicant served with the show cause notice for assessment of contribution and only after enquiry the Authority passed an order u/s. 7-A of the EPF Act and thereby assessed the contribution of Rs. 08,87,14,084/- vide order dated 04.11.2022 however various objections were raised on behalf of the applicant in respect of enquiry such as non-application of mind, assessment is not based on factual assessment and excluded employees of contractor in the order under appeal, which requires to be considered exhaustively on merit.

Furthermore it is contended on behalf of the applicant that, during enquiry there was no identification of beneficiaries nor they were called in the enquiry. Needless to say that as per the Law laid down by the Apex court of the land that, the process of identification will arise only at the stage of enquiry, which was initiated by the Authority therefore the stage will also be taken to identify the workmen, either of the petitioner or beneficiaries engaged to the contractor. The Organization ensures that, the contribution taken from the company will actually go to the benefits of employee.

It is clear from the above discussion that, the identification of beneficiaries is necessary and in absence of identification of beneficiaries, the enquiry conducted by the Authority, Prima-facie seems to be improper. In such circumstances as well as considering the points raised in respect of enquiry, it can be safely said at the stage that, there is an arguable point in the matter on merit thus the applicant has made out a Prima-facie case. Similarly considering the other facts and circumstances of the case, in my opinion the balance of convenience lies in favor of the applicant and considering the comparative hardships, the applicant is certainly entitled for stay to the effect and operation of the order dated 04.11.2022 under appeal till its disposal.

As regards the waiver from depositing 75% amount as per Sec. 7-O of the EPF Act, no appeal shall entertained by the Tribunal unless the appellant has deposited 75% amount due from him as determined by the Officer referred to Sec. 7-A of the EPF Act and for reasons to be recorded in writing, the Tribunal may waive or reduce the amount to be deposited under this Section.

In the case in hand, though it is contended on behalf of the applicant about the financial condition of the establishment of the applicant and to substantiate the same, pleading has been made in the appeal memo and also placed document from record however considering the amount involved in the appeal, the appellant is not certainly entitled for total waiver from pre-deposit of amount. Still I am inclined

to waive some amount which was assessed in the order and instead of 75% I am directing the appellant to deposit 20% amount with the opponent within a period of six weeks from the date of this order.

In the result, both the applications are allowed. The appellant is directed to deposit 20% of total amount assessed in the order under appeal within a six weeks from the date of this order by Demand Drafts and only on the condition of depositing the said amount, the effect and operation of the order will be stayed till the disposal of the appeal.

Sd/-

Date: 17-09-2024

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