

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

APPEAL NO. CGIT- 2 / EPFA /44 /2021

M/s. B.S.K. Constructions. - Appellant

V/s.

The Regional Provident Fund Commissioner,

EPFO, Pune. - Respondent

ORDER

(Delivered on 27-08-2024)

M/s. B.S.K. Constructions.,/appellant-applicant has challenged the legality of the order dated 08-07-2021 passed under section 14-B & 7-Q of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for-short "the said Act") and by this application, the appellant prays for stay to the effect and operation of the order during pendency of lis.

According to the applicant he is carrying out the exclusive work of Pune Municipal Corporation & Government Civil Contracts. The Code no. of Provident Fund is allotted to him and since then he has been diligently following the compliances under the said Act. The employees are employed as per work order and payment from principal employer is pending. Due to that, he was in facing financial crunch and not in a position to incur expenses including salary of the employees regularly therefore could not remit the PF dues of the employees. The applicant added that,



while passing the order under appeal the opponent has not considered number of defaults, period of delay, frequency of defaults as such the order is cryptic. The opponent failed to give satisfactory reasons and failed to consider the financial crunch and also ignored the explanation and representation placed on record and without considering the same and without offering any opportunity of being heard the order has been passed as such the order under appeal is illegal and improper.

2. The opponent without submitting the reply to the stay application submitted a counter reply before the Court and thereby denied all the contentions of the applicant in totality.

3. The only point for my determination is whether the applicant is entitled for stay to the order under appeal and if yes on what term?

4. It will not be out of place to mention here that for the delay in payment of PF contribution for the period from April 2013 to July 2018, the opponent levied damages and interest on the applicant. The applicant is carrying out exclusive work of Pune Municipal Corporation and providing manpower on contract. It means the payment of employees working with the corporation certainly depends on the payment received from the Corporation therefore, the contention of the applicant that, due to non-receipt of payment from corporation there was delay in paying the contribution Prima-facie seems to be acceptable.



Furthermore the opponent issued summons dated 15.10.2019 and enquiry was conducted till 29.06.2021. The representative of the applicant remained present in the enquiry for some dates and specifically stated reasons for not paying the contribution in time due to non-receipt of payment from the corporation however without considering the same along with other necessary aspects, the order in respect of damages and interest has been passed. To my mind all these aspects needs to be considered exhaustively on merit therefore it can be safely said at this stage that, the applicant has made out a Prima-facie case. Similarly considering the other facts and circumstances of the case the balance of convenience lies in favour of the applicant and considering the hardship the applicant is certainly entitled for stay to the effect and operation of the order under appeal.

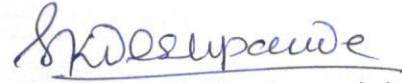
It has come on record that, the applicant has not paid the amount of 7-Q and the counsel for the opponent requested that, the applicant be directed to deposit the amount of damages. In such circumstances I am directing the applicant to pay the amount of interest of Rs. 05,81,631/- within four weeks from the date of this order and considering the amount of damages, I do not think any necessity of direction to deposit some amount of damages in the Court.

In the result, The application is allowed. The effect and operation of the order under appeal is stayed only on depositing the amount of interest i.e., Rs. 05,81,631/- with the



opponent within four weeks from the date of order if not paid or recovered earlier.

Date: 27-08-2024



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