

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

**APPEAL NO. CGIT- 2 / EPFA /58 /2020**

M/s. S.M.S. Integrated Facility

Services Pvt. Ltd.

- Appellant

V/s.

The Regional Provident Fund Commissioner,

EPFO, Pune.

- Respondent

**ORDER**

**(Delivered on 20-08-2024)**

M/s. S.M.S. Integrated Facility Services Pvt. Ltd./ appellant-applicant has challenged the legality of the order dated 08.01.2020 passed u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for-short "the said Act") in an appeal and by these applications the applicant prays for waiver from depositing the amount of pre-deposit as per Sec. 7-O of the said Act and also for stay to the effect and operation of the order under appeal during pendency of lis.

According to the applicant, its establishment is governed under the provisions of the said Act and amenable employees are duly governed and their contribution is being paid regularly. Their manpower was throughout in the Pune District their information was received late, then their



payment was made therefore there was belated remittance for the period from February 2015 to April 2019. There was financial difficulty also and for that combined summons u/s. 14-B & 7-Q of the said Act was served. The applicant added that, the office was shifted to the new location, new address was communicated, however notices were sent to the old address therefore the representative were unable to appear in the enquiry as such the order under appeal is ex-facie bad in Law, illogical and illegal.

The opponent resisted the application by reply and also filed counter reply to the main appeal. The opponent contended that, the applicant made delayed payment and reasons for delay was not communicated therefore summons were served however the applicant remained absent in the enquiry, could not produce any record nor evidence which compelled to make belated remittance and reasons which were beyond control and in absence of that, damages were rightly levied as per the provisions of the Act as such the order under appeal is legal proper.

Admittedly, the appeal is against the order of damages and interest i.e., u/s. 14-B & 7-Q of the said Act. It is contended on behalf of the applicant that, the amount of interest assessed in the order has been deposited by the applicant with the opponent.

It reveals from the copy of order as well as the pleading of both the Parties that, the order in respect of damages as well as interest is an Ex-parte order and during whole enquiry the representative of the applicant was not present.



According to the applicant because of changed address he did not receive any notice sent by the opponent therefore his representative could not be present in the enquiry. The aspect of non-receipt of letter of enquiry can be exhaustively dealt with while deciding the appeal on merit however the fact remains that, the enquiry was Ex-parte and in absence of representative of the applicant in the enquiry the reasons putforth by the applicant before court were not in the enquiry while passing the order. In-short the reasons for delay of remittance of PF contribution was not in the enquiry therefore in the light of Ex-parte enquiry it can be said that, the applicant has made out a Prima-facie case at the stage. Furthermore considering the Ex-parte enquiry the balance of convenience lies in favour of the applicant therefore the applicant is certainly entitled for stay.

As regards the waiver, I must say that, the provision of Sec. 7-O is applicable only in respect of appeal u/s. 7-A of the said Act and not for appeal u/s. 14-B. It has been held by the Apex court of the land that, there is no pre-condition to indicate that, any part of the amount awarded u/s. 14-B was required to be deposited at the time of appeal, as such there is no necessity to direct the applicant to deposit any amount as pre-deposit u/s. 7-O of the said Act.

Mrs. Kashmira Sawant learned Advocate for the opponent strongly contended that, even in an appeal against damages u/s. 14-B of the said Act, it is obligatory on the part of the applicant to deposit 75% amount as



pre-deposit as per Sec. 7-O of the said Act and for that she put her reliance on the decision of Kerala High Court in **M/s. Chempaka Kindergarten Sthuthi V/s. APFC reported in 2015 SCC Online Ker Page. No. 13454.**

I have carefully gone through the decision relied on behalf of the opponent, in which it has been appreciated that," considering the above circumstances it is directed that, the demand with respect to Sec. 14-B of the EPF & MP Act shall be kept in abeyance till the interim application in appeal or the appeal itself consider whichever is earlier however the stay demand shall be applicable only on the petitioner satisfied 30% of amount demanded as per the EPF & MP Act. Petitioner is also granted 02 months time to satisfy the said amount failing which recovery shall be proceed to recover the amount due that, the EPF & MP Act.

From the above observation though the 30% amount is directed to be deposited however it is because of the stay granted to the petitioner and not u/s. 7-O of the said Act therefore the applicant cannot not be directed to deposit amount as per Sec. 7-O of the said Act.

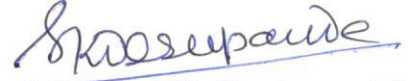
However considering the request of stay, I am directing the applicant to deposit 20% amount assessed as per the order within a period of eight weeks from the date of this order, then only the order of damages will be stayed till the disposal of appeal.

In the result, the applications are disposed off. The opponent is directed to stay the effect and operation of the

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order dated 08.01.2022 only on depositing 20% of amount within a period of eight weeks.

Date: 20-08-2024



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