

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

APPEAL NO. CGIT- 2 / EPFA /75 /2024

M/s. Vilas Sahakari Sakhar

Karkhana Ltd.

- Appellant

V/s.

The Regional Provident Fund Commissioner-II,

EPFO, Solapur.

- Respondent

ORDER

(Delivered on 19-08-2024)

M/s. Vilas Sahakari Sakhar Karkhana Ltd. / appellant-applicant has challenged the legality of the order dated 12.03.2024 passed u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 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 stay to the effect and operation of the order dated 12.03.2024 till the disposal of the appeal.

According to the applicant, its establishment is not a profit making company and due to the accumulated losses, he was not in a position to remit the contribution of Provident Fund for the period from April 2019 to July 2022. The applicant submitted that, while processing the payment of Provident Fund amount in April 2021 on retaining allowances of seasonal workers in the year 2018 & 2019 was in process,



workers raised dispute and after the settlement of dispute, the amount of Provident Fund was paid in March 2023. There was delay in making the payment of Provident Fund amount of seasonal workers however the PF amount of Provident Fund of regular workers has been paid without any delay. The delay in respect of the payment of the seasonal workers was not deliberate nor intentional therefore the amount of damages are unjustified and illegal.

The opponent resisted the application by reply the opponent contended that, the summons u/s. 14-B was issued on 12.03.2024 for the delay of contribution from April 2019 to July 2022. No reason for delay beyond the control of the establishment was communicated and it was proved during enquiry that, the applicant is habitual in making belated remittance. The liability imposed on the applicant is strict liability and as there was delay in the remittance of dues the damages are rightly levied as per the provisions of Act therefore the order under appeal is legal and the stay may not be imposed unconditional and direct the appellant to deposit 50% amount with the opponent.

It is worthwhile to mention here that, the applicant has specifically stated in the application for stay that, the amount of interest of Rs. 13,58,575/- as ordered vide order dated 12.03.2024 has been paid, It means there seems to be proper compliance of Sec. 7-Q of order under appeal.

Undisputedly, there was delay in payment of PF contribution by the applicant for the period April 2019 to July 2022. The applicant stated in the appeal memo about

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the dispute in respect of payment of retention amount to the workers engaged in the season. Initially there was dispute in respect of retention allowance in the year 2018-2019 and the dispute raised was settled and the PF amount was paid in March 2023 the applicant also pleaded that, there were accumulated losses in the establishment and due to that, there was delay in making the payment. He also relied the decision of Bombay High Court reported in **Law Suite Case No. 8510 of 2015 Bombay High Court, Case No. 3884 of 1992 Gujarat High Court and Case No. of 4879 of 1978 Madras High Court**, in which the financial crises as well as Mens rea is necessary to consider while passing the order in respect of damages considering these aspects.

In my opinion there are arguable points on merit and as such can be said that, the applicant has made out a Prima-facie case at the stage. Considering the other facts and circumstances of the case the balance of convenience lies in favour of the applicant therefore the applicant is certainly entitled for stay.

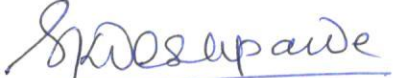
As regards the waiver, I must say that, the provision of Sec. 7-O is applicable only in respect of appeal u/s. 7-A of the said Act and not for appeal u/s. 14-B. It has been held by the Apex court of the land that, there is no pre-condition to indicate that, any part of the amount awarded u/s. 14-B was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



However considering the request of stay, I am directing the applicant to deposit 20% amount due demanded as per the said Act 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, both the applications are disposed off. The opponent is directed to stay the effect and operation of the order dated 12.03.2024 only on depositing 20% of amount within a period of eight weeks.

Date: 19-08-2024


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