

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

APPEAL NO. CGIT- 2 / EPFA /87/2024

M/s. Abhinav Education Society. - Appellant

V/s.

The Regional Provident Fund Commissioner-I,
EPFO, Pune. - Respondent

ORDER

(Delivered on 03-09-2024)

M/s. Abhinav Education Society/ appellant-applicant has challenged the legality of order dated 25.04.2024 passed u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act 1952, (for-short, "the said Act") by the RPFC Pune / respondent-opponent and by this application the applicant prays for stay to the effect and operation of the order during pendency of lis.

According to the applicant, its society is an educational institution in the rural areas and running technical school & colleges. The opponent issued combined summons dated 20.06.2024 u/s. 14-B & 7-Q for the delayed payment of contribution from July 2016 to May 2022. On that basis written submission was made on 03.10.2022 and also Rejoinder submission was submitted on 06.02.2024 stated therein that delay is attributable due to non-receipt of scholarship from the Government. The delay in depositing the contribution during the period of Lock-down announced in

terms of Disaster Management Act 2005 it may not be attributed to any culpable state of mind of the employer therefore will not attract the provisions of Sec. 14-B of the said Act there was no intentional delay there was no element of Mens-rea i.e., thus the order under appeal is in violation of the provisions of Law of principles of natural Justice therefore illegal.

The opponent resisted the application by reply and denied all the contentions of the applicant in totality the opponent contended that, the order u/s. 14-B & 7-Q was passed for the period from 07/2016 to 05/2022 and as per the said order dues for an amount of Rs. 02,21,78,195/- towards damages and Rs. 01,08,17,908/- against the interest has been levied against the applicant and the applicant paid an amount of interest of Rs. 02,91,376/- and Rs. 2,00,000/- out of 1,08,17,908/-. The opponent further added that, the applicant has continuously deducted the employees share of contribution from their salaries and retained that amount illegally with him thereby misappropriated the amount therefore F.I.R. was lodged against him. The applicant submitted the representation of 06.02.2023 during enquiry contending that therein about financial crisis, the applicant has no merit and no legal ground for delay in the payment therefore the application may be rejected.

Admittedly the order under appeal is based on order dated 25.04.2024 passed u/s. 14-B & 7-Q of the said Act and the same is for the period from 07/2016 to 05/2022. These orders have been passed after enquiry for which common

summons was issued, common proceeding was initiated and common order has been passed. The main contention of the opponent in the enquiry that, there was delay in depositing the contribution of P.F. by the applicant.

It is contended on behalf of the opponent that, the applicant collected the P.F. contribution from the salary of the employees, kept with them and not deposited that amount with the opponent and thereby misappropriate the amount. The F.I.R. has been registered against the applicant and the said F.I.R. has not quashed till this date. This fact of misappropriation has been denied by the applicant. In my view, this aspect can be exhaustive dealt with at the time of deciding the appeal on merit and it will be unsafe to comment anything about the same at this Prima-facie stage.

Moreover, it is contended on behalf of the applicant that, the applicant has not received the amount of scholarship and Grants from the Government, the period shown for delayed payment is of Covid-Pendamic also during that time the institutions were closed, not received the fees from the students also. Similarly it is also contended on behalf of the applicant that, the representation made during enquiry initiated for damages and interest was not considered properly and rejected the same without proper reasons.

Not only this but, the opponent has specifically pleaded in reply that, "14-B & 7-Q was passed on 25.04.2024 for the period from 07/2016 to 05/2022 as per said order dues for an amount u/s. 14-B Rs. 2,21,78,195/- & u/s. 7-Q Rs. 1,08,17,908/- respectively against the Appellant. The

Appellant paid an amount of interest of Rs. 2,91,376/- & Rs. 2,00,000/- out of Rs. 1,08,17,908/-." In such circumstance it can be infer at this stage that, the applicant was bonafide in making payment.

True it is that, financial difficulty is not a ground for denying the liability. However considering the points raised in the appeal it can be safely infer at this stage that there are arguable points on merit thus the applicant has made out a Prima-facie case furthermore considering the other facts and circumstances of the case in my view the balance of convenience lies in favour of the applicant and considering the comparative hardship the applicant is certainly entitled for stay to the effect and operation of the order under appeal till the disposal of main appeal.

As regards the waiver from depositing the amount, the pre-deposit of 75% amount is required only on determination of amount u/s. 7-A of the said Act and not for appeal against Sec. 14-B of the said Act. Similarly it has been appreciated by **High Court Delhi in Simplex Infrastructures Ltd. v/s. Central Board of Trustees, EPFORG. MANU/DE/2416/2018** that it is composite order under Section 14-B & 7-Q of the EPF Act hence the petitioner was not required to pre-deposit any amount u/s. 7-Q of the EPF Act as assessed and determined by EPFC. In such circumstance coupled with the fact that, the applicant has deposited sumptuous amount there is no necessity to deposit any amount for appeal u/s. 7-Q of the said Act.

It seems that, the applicant also moved an application for DE-FREEZING the accounts, which were seized by the opponent. The opponent objected the same on the ground that unless depositing some amount with the opponent the accounts should not be de-frozen. However in the light of stay to the order under appeal by this Court and the fact of recovery order based without notice, it will be just to direct the opponent to de-freeze the Bank accounts of the applicant by issuing necessary direction to the Bank.

In the result, the application is allowed. The opponent is directed to stay the effect and operation of the order dated 25.04.2024 till the disposal of the present appeal and further directed to de-freeze the Bank Accounts of the applicants immediately. A letter be issued Bank Authority.

Date: 03-09-2024

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