

CGIT-1/EPFA/18 of 2021

19.02.2021

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI**

M/S.MERIDIAN BUILDPRO PVT. LTD

THANE : APPELLANT

VS.

ASSISTANT PROVIDENT FUND COMMISSIONER

THANE : RESPONDENT

**ORDER**

Mr.H.L.Chheda, Authorized Representative for the Appellant is present.

Mr.Ravi Ratheesar, Adv. Present for the Respondent.

The present appeal is filed by the Appellant under Section 7-I of the EPF & MP Act, 1952 (hereinafter referred to as the Act) against the order dated 07.12.2020 passed by the Regional Provident Fund Commissioner, the Respondent under section 7A (1) of the Act.

Alongwith appeal Appellant has filed application for waiver of deposit u/s 7-O of the Act.

Copies have already been furnished to the Respondents.

Perusal of the record reveals that the appeal is in time.



Learned counsel for the Appellant submitted that the Appeal has been filed ~~time~~ within the statutory period of time. Respondent, Assistant Provident Fund Commissioner passed an impugned order dated 07.12.2020 ignoring the prescribed procedures in most mechanical manner. The appellants are into construction business. The business activities are amenable to the EPF&MP act 1952. The appellant submitted that there was no construction activity until November 2015 and appended the copy of the commencement certificate issued by the TMC. The grounds raised by the Appellant is that of Date of Applicability and identification of contractor's employees and consequentially the actual liability.

The Advocate for the Respondent submits that the Establishments is in the business of construction and was made coverable on the basis of recommendation of Area Enforcement Officer and the Establishment failed to produce records for coverage of construction workers as per EO squad report. The employer cannot escape the liabilities under the Act and the Schemes framed there under by way of non-submission of the said records. Further as per Para 30 of the Employees Provident Fund Scheme, 1952 it is clearly stated that it shall be the Responsibility of the principal employer to pay both the contribution in respect of employees directly employed by him and also in respect of employees employed by or through a contractor.

Further before passing the Impugned Order, the Appellant had availed ample opportunity of being heard thus the principal of natural justice is followed and whereas the Appellant has willfully suppressed and concealed the information necessary to arrive at identification of employees and assessment of



dues on their wage and depending upon the available information the assessment of dues has been done.

Learned counsel for the respondent while supporting the impugned order submitted that all the grounds taken by the appellant including the jurisdictional grounds are open for consideration during the regular hearing of the appeal. The EPF & MP Act is a beneficial legislation and aims at the benefit of the employees. Any order or stay of the impugned order would defeat the very purpose of the legislation.

Hence, the appellant should be directed to pre-deposit 75% of the dues as per Section 7-O of the EPF & MP Act, 195.

So far as application for stay is concerned, I have gone through the contentions raised by both the parties. The total assessed amount is Rs.5,42,594/- and the period of default is from 07/2014 to 04/2016.

With regard to the application for waiver of deposit under proviso to section 7-O of the PF Act, learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 7-A dated 07.12.2020. The appellant stated that the impugned order is passed by the respondent commissioner abusing the process of law and in gross violation of principles of natural justice and the judgments of the Hon'ble Judiciary. It was further stated that if the waiver is not granted it will double jeopardize the Appellant. The Appellant stated that the impugned order is neither a speaking nor a reasoned order. Moreover, the appellant has disputed the same on the various grounds mentioned in appeal and waiver applications. Broadly submitting that appellant are into construction



business and there was no construction until November 2015. Date of applicability and identification of contractor employees and consequently the actual liability is challenged. All these aspects no doubt make a prima facie strong, arguable case for the appellant. Balance of convenience is also in favour of appellant which makes it a prima facie case for reducing the percentage of the amount required as a pre-deposit for entertaining the appeal.

Under these facts and circumstances, it is directed that the appellant shall deposit 25% of the assessed due amount as a pre-condition for entertaining this appeal and grant of stay of the impugned order.

I hereby pass the following order.

\*Appeal is admitted.

\*Appellant is directed to deposit 25% of the assessed amount with the Respondent within one month from the date of order.

\*On depositing 25% of the assessed amount with the Respondent within one month from the date of order, the impugned order is stayed.

\*The Respondent is directed not to take coercive steps till further orders.

Fix on 25/05/2021

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TRUE COPY



*Nobany*  
Secretary to the Court  
Central Government Industrial  
Tribunal-cum-Labour Court No. I  
Mumbai

*[Signature]*  
(JUSTICE R.N. KAKKAR)

PRESIDING OFFICER