

CGIT-1/EPFA/16 of 2021

19.2.2021

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

M/S.KOOVERJI DEVSHI CO. PVT. LTD

MUMBAI

: APPELLANT

VS.

ASSISTANT PROVIDENT FUND COMMISSIONER

NAVI MUMBAI

: RESPONDENT

**ORDER**

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

Mr.Sunivil Surana, Adv holding brief for Mr.Suresh Kumar, 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 20.01.2021 passed by the Regional Provident Fund Commissioner, the Respondent under section 14B of the Act.

The impugned order was passed by the Respondent on 20.01.2021. Appeal is filed on 05.2.2021 which is well within time.

Alongwith appeal an application for exemption under 7-O of the Act has also been filed.

An application for grant of stay and to suspend the operation of impugned order dated 20.01.2021 has also been filed.

So far as the application for exemption under 7-O is concerned, learned counsel for the appellant submitted that the respondent commissioner has levied penal damages ignoring to inquire into the mitigating circumstances under which the



appellant has remitted the monthly provident fund contributions belatedly. The appellant was not a wilful defaulter and the actions of the appellant in remitting the monthly provident fund contributions cannot be termed as either mens rea or actus reus. For various reasons attributed to market conditions, there arose lean period in business activities and the appellant could not generate funds that were required to disburse the salaries and the statutory dues in time as per the existing laws in force. In the initial stages of limply period the appellant could manage to not only disburse the salaries but also the statutory dues but when the market conditions turned from bad to worse, the appellant could not continue to remit the statutory dues in time, but was compelled to remit the remittances to the statute belatedly. Financial losses were incurred and even salary was not paid then a Memorandum of Understanding was made between the Workers and the Management and then salary was paid. Learned counsel for the appellant further submitted that if the waiver is not granted it will double jeopardize the Appellant and the balance of convenience is also in favour of the Appellant.

The learned counsel for the respondent opposed the appeal by contending that the damages have been assessed in accordance with law. Further submitted that the period of default was spread over between 01/2017 to 02/2020. There is belated payment which is admitted by the appellant. Reasons given in the Hon'ble Court has not been substantiated during the personal hearing. The appellant have not submitted any documentary evidence in support of their claim. Further learned counsel for the Respondent submitted that the right of waiver of damages is vested with the Central Trustees Board.

So far as application for stay is concerned, I have gone through the contentions raised by both the parties. The total amount of penal damage is Rs.6,40,977/- With regard to the application for waiver of deposit under proviso to section 7-0 of the PF Act, learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 14-B dated 20.01.2021 and has levied

damages of Rs.6,40,977/- ignoring the settled law as held by the Hon'ble



not, that found neither mens rea nor actus reus in the actions of the appellant was not wilful defaulter. He also submitted that the balance of convenience is also in favour of the Appellant. Moreover, appellant has disputed the same on the various grounds mentioned in appeal and waiver applications.

All these aspects no doubt makes out a strong arguable case for the appellant. If there would not be stay on the execution of the impugned order certainly that could cause undue hardship to the appellant. At the same time, it is held that the stay shall not be unconditional and it is in these facts and circumstances, it is directed that the appellant shall deposit nominal amount i.e. 10% of the assessed damages as pre-condition for grant of stay within one month from the date of communication of the order failing which there would be no stay order. It is made clear that the order passed separately u/s 7-Q of the Act not being appealable shall not be affected by this interim order of stay.

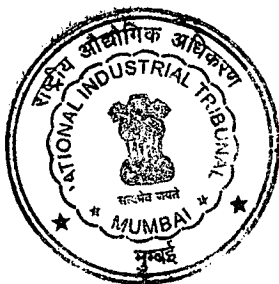
I hereby pass the following order.

Appeal is admitted.

Appellant is directed to deposit 10% of the assessed amount with the Respondent within one month from the date of order.

On depositing 10% 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.



*True copy*  
*Secretary*  
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(JUSTICE RAVINDRA NATH KAKKAR)  
PRESIDING OFFICER  
Secretary to the Court  
Central Government Industrial  
Tribunal, Labour Court No. I