BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI

APPEAL NO. CGIT- 2 / EPFA /08/2025

M/s. Tavora Vegtures - Appellant

V/s.

The Regional Provident Fund Commissioner-II,

EPFO, Panaji, Goa. - Respondent

ORDER

(Delivered on 04-03-2025)

M/s. Tavora Vegtures/appellant-applicant has challenged the legality and proprietary of order dated 28.10.2024, passed u/s. 14-B & 7-Q of the EPF & MP Act 1952, in the present appeal filed on 16.01.2025 and by these applications, the applicant prays for condonation of delay in filing an appeal, waiver from pre-deposit of 75% amount and stay to the effect and operation of the order under appeal during pendency of lis.

According to the applicant, its establishment is a partnership firm engaged in the hotel business under the name “Navtara Veg Restaurants” and covered under the EPF w.e.f. 01.11.2010. After various visits of Enforcement Officer and submissions of record as demanded, the show-cause notice dated 14.06.2022 was issued for the period from 03.01.2022 to 27.07.2023 and after enquiry the orders came to be passed u/s. 14-B & 7-Q of the EPF Act and thereby determined the amount of Rs.17,08,810/- towards damages and interest of Rs.08,20,226/-. The applicant added that, there is no intentional delay in remitting P.F. Contribution however it is due to KYC issue of employees, which was beyond their control. UAN of employees is generated only after KYC mandate, which is requirement of P.F. portal and KYC cannot be rectified as the employees already left the employment. Similarly, as per circular issued by EPFO delay in payment of contribution or administrative charges should not be levied during the period of Lock-down. Still ignoring the circular, the order under appeal has been passed without considering the mitigating circumstances as such the orders under appeal is illegal.

The opponent resisted the applications by common reply. The opponent contended that, the applicant deposited the entire contribution for the period from 03.01.2022 to 27.07.2023 belatedly and miserably failed to remit regular contribution for its regular employee, therefore enquiry u/s. 7-A of the EPF Act has been initiated as per wage register and attendance register. The opponent further contended that, the applicant without generating UAN Number, remitted defaulted amount through ECR and obtained to pay through Demand Draft without locating the employees and collecting their KYC/s. UAN was introduced in 2014 and it was mandatorily to linked with AADHAAR for UAN generation was introduced in 2018, as such the orders under appeal are just legal, proper & in accordance with the law. There is delay of more than 60 days in filing an appeal, therefore there is no illegality in the orders under appeal and the applicant is not entitled for relief as prayed and ultimately prayed for rejection of the application.

I have heard Mr. Chheda representative for the applicant and Mrs. P. Janvekar advocate for the opponent.

Undisputedly, the applicant has challenged the order dated 28.10.2024 in the present appeal which has been filed on 16.01.2025. It is the contention of the applicant that, due to administrative reasons as the partner of the firm are based out of state hence necessary inspections could not be obtained as such the appeal could not be filed within time. In my opinion, the reason mentioned in the application is certainly sufficient to prevent the applicant from filing the appeal late, however considering the period in between passing the order as well as filing the appeal, though the present appeal has not been filed within the prescribed period of limitation i.e., 60 days but it is certainly within the extended period of limitation i.e., 120 days, therefore the applicant is certainly entitled for condonation of delay in filing an appeal.

After carefully gone through the oral submissions of the parties, in the light of their respective pleadings it appear that, there was dispute in respect of UAN, which cannot be generated without KYC and due to KYC's issue of certain employees, P.F. remittance were not made as their UAN were not generated due to said reasons. Those employees who left the employment were not traceable, therefore the KYC of those employees could not be generated. It is the case of the applicant that, he has taken all steps to trace the employees whose KYC was incomplete, therefore their UAN number was not generated and it was beyond the control of the applicant therefore they could not remitted the P.F. contribution of those employees.

There appears no dispute about the incomplete KYC and generation of UAN Number by the applicant therefore it can be safely said that, the remittance was belated due to the KYC issue and this aspect can be very well considered while deciding the appeal on merit. Furthermore, there seems to be non-consideration of delay in payment of contribution as well as administrative charges during the period of Lock-down. In such circumstances, it can be safely said that, the applicant has made out a strong prima-facie case at the stage.

Similarly considering the other facts and circumstances of the case, in my opinion the balance of convenience lies in favour of the applicant and considering the comparative hardship, the applicant is certainly entitled for interim relief as prayed till the disposal of the appeal on merit.

It will not be out of place to mention here that, the applicant has challenged the legality of the order passed u/s. 7-Q of the EPF Act alleging the composite order, however without going into that aspect, I am directing the applicant to deposit the entire amount of interest i.e., Rs.08,20,226/- within the period of four weeks from the date of this order.

As regards the waiver from pre-deposit of 75% amount, needless to say that, the provision of Section 7-O is applicable to the appeal filed u/s. 7-A of the EPF Act and as per the various decisions of the superior court, it has been laid down that, the Section 7-O in respect of waiver is not applicable to the appeal u/s. 14-B of the EPF Act, therefore there is no question of any direction to deposit the amount of 75% as per Section 7-O of the EPF Act. Moreover, considering the amount involved in the order in respect of damages, I am directing the applicant to deposit 10% of amount of damages as assessed in the order u/s. 14-B of the EPF Act. In short, the delay in filing an appeal is condoned, the applicant is directed to deposit the amount of interest as assessed in the order u/s. 7-Q of the EPF Act as well as 10% of amount of damages assessed in the order u/s. 14-B of the EPF Act within a period of four weeks from the date of this order.

In the result, the applications are allowed. The delay in filing the appeal is hereby condoned. The opponent is directed to stay the effect and operation of the orders under appeal during pendency of appeal only on depositing the amount of interest i.e., Rs.08,20,226/- as well as 10% of amount of damages as assessed in the order within a period of four weeks from the date of this order.

Sd/-

Date: 04-03-2025

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