HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7587 OF 2025

A V Bhatt Builders Private Limited .. Petitioner

Versus

Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Cantonment Board Building, Golibar Maidan,
Pune-411001. .. Respondent

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- Ms. Samiksha Kanani a/w. Ms. Gayatri Naik, Advocates for Petitioner.
- Mr. Arsh Misra, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 24, 2025

P.C.:

1. Heard Ms. Kanani, learned Advocate for Petitioner and Mr. Misra, learned Advocate for Respondent.

2. The present Writ Petition impugns the order passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short '**the said Act**') by the Competent Authority – Respondent against the Petitioner. Admittedly the said order is based on two Reports filed by the Enforcement Officer. In the first instance the Enforcement Officer computed amount for the period July-2007 to July-2019 for the first time on 26.12.2024 and assessed the liability of the Petitioner to the tune of Rs.63,91,765/-. Petitioner promptly deposited amount of Rs.51,20,061/- out of the aforesaid assessed amount leaving balance amount of Rs.12,71,704/- subject to further proceedings.

3. What transpired next is that without adjusting the amount which was deposited by Petitioner, the same Enforcement Officer of Respondent filed a separate report dated 21.02.2025 within a period of three months after making the first report and enhanced the amount of assessment / liability under Section 7A of the said Act to Rs.1,63,00,888/- against the Petitioner and called upon Petitioner to remit and deposit the balance amount of Rs.1,11,80,827/-. After receiving the Enforcement Officer's second Report dated 21.02.2025 within a week the order under Section 7A of the said Act was passed upholding the liability of the aforementioned assessed amount against Petitioner leading the Petitioner to immediately seek recourse of this Court, as also, file the statutory Appeal as available to the Petitioner before the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai (for short '**CGIT – 2**').

4. Ms. Kanani would submit that statutory Appeal has been filed under Section 7I of the said Act by Petitioner before the CGIT – 2. She would however persuade the Court to consider the coercive steps taken by the Corporation in the interregnum by passing order under Section 8 of the said Act, *inter alia,* being prohibitory order and would also request the Court to consider the threat of execution under

Section 8F of the said Act if not intervened at this stage.

5. ***PER CONTRA***, Mr. Misra would in his usual fairness inform the Court that assessed liability under the first Enforcement Officer Report was to the tune of Rs.63,00,000/- approximately which was considered by the Petitioner and in response thereto the amount of approximately Rs.51,00,000/- was deposited leaving a balance of Rs.12,71,704/-.

6. He would however submit that the assessment computed thereafter by the same Enforcement Officer is delineated in the second report dated 22.02.2025 and it was based upon the computation of the statement of accounts, salaries, ledger accounts and other data submitted by the Petitioner and therefore pursuant to second report, the assessment of liability of a further differential amount of Rs.99.09 Lakhs was levied and it is therefore incumbent upon Petitioner to show its *bonafides*.

7. He would submit that if it is Petitioner's contention that Petitioner has shown its *bonafides* pursuant to assessment computed under Enforcement Officer's first Report then in the same breath Petitioner be called upon to deposit a substantial amount if the Court is inclined to grant any interim relief.

8. I have heard Ms. Kanani, learned Advocate for Petitioner and Mr. Misra, learned Advocate for Respondent and with their able assistance perused the record of the case. Submissions made by them have received due consideration of this Court.

9. *Prima facie*, it is seen that Enforcement Officer's second Report is nothing but extension of the first Report itself. The period of assessment is the same for the purpose of filing the twin Reports *albeit* with a gap of three months between them. Petitioner has shown its *bonafides* but that is without prejudice to its rights and contentions for having filed the statutory Appeal under Section 7I of the said Act before the Appellate Authority. Even otherwise if an Appeal is to be filed directly the Act requires the assessee to deposit 75% of the assessed amount. Needless to state that discretion lies with the Appellate Authority in view of the provisio to Section 7-O of the said Act to re-determine the amount of deposit in given cases.

10. In the present case, it is seen that Enforcement Officer second Report was prepared on 21.02.2025 and within a week thereof the order under Section 7A of the said Act was passed re-assessing the outstanding arrears amount to tune of Rs.1.63 Crores approximately.

11. This Court in several cases has taken a consistent view that all material referred to and relied upon by the Enforcement Officer in order to come to the conclusion for the assessed liability is required to be disclosed to the assessee i.e. Petitioner in this case before passing order under Section 7A of the said Act.

12. Here in the present case it is an admitted fact that report of the Enforcement Officer dated 21.02.2025 is enforced by passing the statutory order under Section 7A of the said Act without giving any opportunity to the Petitioner to deal with Enforcement Officer's second Report. Once that is the fact, the Court will have to intervene. Enforcement Officer's second Report is an extension of the Enforcement Officer's first Report. In these facts and circumstances the entire data was available with the Enforcement Officer in the first instance. Hence, I am of the opinion that Petitioner having deposited a substantial amount of Rs.51.20 Lakhs has shown its *bonafides*.

13. Needless to state that the statutory Appeal shall determine the liability of the Petitioner.

14. In view of the above observations and findings which are borne out from record of the case, Petition is disposed of by passing the following order:-

(i) Statutory Appeal filed under Section 7-I of the said Act before CGIT-2, copy of which is appended at page No.52 of the Writ Petition alongwith interim applications therein, if any, are directed to be heard and decided by CGIT-2 as expeditiously as possible and in any event within a period of six (6) months from today;

(**ii**) Amount of Rs.51.20 Lakhs deposited by Petitioner with Respondent is directed to be held by Respondent in escrow and the same shall be governed by and shall be subject to the final decision passed in the Statutory Appeal decided by CGIT-2;

(**iii**) Until disposal of the Statutory Appeal, Respondent shall not take any coercive steps whatsoever in furtherance of the orders under Section 7-A of the said Act for recovery against the Petitioner with respect to the impugned orders;

(**iv**) Action of Respondent of attaching of Bank Account of Petitioner is immediately set aside. This Court directs the Petitioner's Bank Account No.548102000000444 bearing IFS Code – IBKL0000548 held in Sadashiv Peth Branch of IDBI Bank, Pune to be immediately released from attachment forthwith on Petitioner serving a server copy of this order on the Branch Manager of the Bank wherein the said Bank Account is held;

(**v**) The Branch Manager of the aforesaid Bank is directed to act on the basis of a server copy downloaded from the website of the High Court and made available to them by the Petitioner and immediately release the said account from attachment without waiting for any letter or communication from the Respondent; Petitioner shall be entitled to utilise the aforesaid Bank accounts in the usual and normal course of business.

15. It is clarified that though Petitioner has substantiated several grounds against passing of the impugned order, I have not expressed any opinion on merits of the same and the learned Appellate Authority shall also not be influenced by any of the findings and observations in the impugned order and it shall decide the Appeal on its own merits and strictly in accordance with law after hearing the Petitioner and Respondent.

16. All contentions of Petitioner as well as Respondent are expressly kept open in the statutory appeal without expressing any opinion on merits.

17. Writ Petition is allowed and disposed in the above terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]