

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE AVENUE
DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-1/17/2021

M/s. Rajiv Gandhi Cancer Institute & Research Centre Appellant
Through:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.

Vs.

APFC, Delhi (North) Respondent
Through:- Sh. S.N. Mahanta, Ld. Counsel for the Respondent.

Order dated 23.08.2021

The appeal challenges the order dt9/2/21 passed by the RPFDC Delhi(N)u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs56,97,157/-towards damage for delayed remittance of EPF dues of it's employees for the period 1.4.17to 10.10.2020. Notice being served on the respondent, learned counsel Sh S.N. Mahanta appeared and participated in the hearing, held on 18.8.21.via video conferencing. He has also filed a written reply to the application filed by the appellant praying stay on the impugned order.

Perusal of the record and office note of the registry reveals that the impugned order was passed on5.4.21 and forwarded to the appellant on 8.4.21. And the captioned appeal was filed on line on 9.4.21, challenging the order communicated on 9.2.21. A prayer was made for stay on the execution of the impugned order pending disposal of the appeal.

When the matter was listed for admission and hearing on the petition of stay it was pointed out that the order communicated to the appellant on 11.2.21 is not the order assessing damage but the copy of the inquiry proceeding dt 9.2.21. The defect being pointed out, the learned counsel for the respondent fairly conceded and thus liberty was granted to the appellant to file amended appeal memo after obtaining the copy of the damage assessment order intended to be challenged. Hence the appellant filed the amended appeal memo challenging the order dt 5.4.21 passed u/s 14B of the Act. For the circumstances indicated above the appeal is held to be filed within the prescribed period of limitation. There being no other defect pointed out by the Registry, the appeal is admitted.

The other petition filed by the appellant contains a prayer for an interim stay on the impugned order passed u/s 14B of the Act , pending disposal of the appeal for the grounds taken in the appeal.

The appellant has stated that the impugned order is illegal and arbitrary since the commissioner had failed to appreciate the mitigating circumstances pointed out during the inquiry. It has also been stated that the establishment, a nonprofit making organization engaged in the service of health care and Research was diligent in deposit of EPF contribution in respect of its employees until the inquiry u/s 7A was initiated following the observation made by the Hon'ble S C in order dt18/2/19 in civil appeal No 6221/11 wherein it has been held that the allowances are to be taken in to consideration as basic wage for calculation of EPF contribution by the Employee. Though the said judgment of the Apex court ,in absence of a specific direction is effective prospectively, the commissioner, pursuant thereto initiated the 7A inquiry for the period 1/18 to 3/19 and passed the order dt 24/9/19 assessing Rs1,50,61,193/-as the deficit P F contribution payable by the appellant establishment. The appellant being aware and conscious of its statutory liabilities complied the said order by depositing the assessed amount towards both employer share and employees' share, even though the later was never deducted from the dues of the employees. There was patent illegality in that order as the commissioner had made the calculation on the allowances not universally paid and took in to consideration the variable pay and performance based incentive paid to certain employees but not on regular basis.

It is also submitted that the basis for the impugned inquiry is illegal as no liability for the penal damage and interest can be imposed retrospectively for the observation made by the Hon'bleSC , which is a new law. More over the order has been passed in complete violation of the principles of natural justice, in as much as no finding has been given on the mensrea of the establishment for the delay in remittance. She also submitted that the appellant has a strong case to argue and the amount assessed is equally big. Unless the impugned order would be stayed unconditionally, pending disposal of the appeal, serious prejudice shall be caused and the relief sought for would become illusory.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance during the period 4/17 to 10/20. Not only that in the past inquiry proposing penal damage was also conducted for the period 1/15 to 12/18. He also submitted that the Hon'ble SC in their order dated 28.02.2019 have only

reiterated the old principle for bringing the universally paid allowances under the fold of basic wages and the same has been followed by all the authorities dealing with the matter. While rejecting the plea of the appellant that principles of natural justice was not followed by the commissioner, he submitted that no stay should be granted on the execution of the well discussed and well reasoned order passed by the commissioner.

From the impugned order it is noticed that the commissioner has not given any finding on the mensrea of the appellant in not making the deposit in time. No discussion has been made in the order to presume at this stage that the establishment having knowledge that contribution is payable on the variable pay and performance based incentives had avoided contribution on the same.

All these aspects when taken into consideration, makes out a strong arguable case for the appellant. On hearing the submission made by both the counsels, a decision is to be taken on the relief of stay as prayed by the appellant. The factors which are required to be considered for passing the order of stay include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held

“The order of the tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insists on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen from the impugned order spreads over almost 3years and the damage levied is huge. Moreover, the appellant has disputed the same on the ground that the amount deposited belatedly is not deduction of EPF dues on wage but for compliance of the 7 A order.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit a nominal amount i.e. 5% of the assessed damage as a pre condition for grant of stay within 4 weeks from the date of communication of the order failing which there would be no stay on

the impugned order. The said amount shall be deposited by the appellant by way of Challan. Call the matter 27.09.2021 for compliance of this direction and filing of reply by the Respondent. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made. But there would be no stay on the order passed u/s 7Q of the Act challenged in this appeal.

(Presiding Officer)