

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No.D-1/26/2021

M/s Cyber Media India Limited

Appellant

Vs.

APFC, Delhi (East)

Respondent

ORDER DATED:- 26.08.2021

Present:- Shri Harbansh Manav, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

The appeal challenges the order dated 26/2/21 passed by the APFC Delhi South, u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs1,35,079/- towards damage for delayed remittance of EPF dues of its employees for the period 4/2010 to 4/2014. Notice being served on the respondent, learned counsel Shri B.B. Pradhan appeared and participated in the hearing .

Perusal of the record and office note of the registry reveals that the impugned order was passed on 26/2/21 and the appeal has been filed on 26/8/21 i.e. beyond the prescribed period of limitation. But the record reveals that the appeal was originally filed on 27/4/21, whereas the 60 days limitation period was to expire on 30/4/21. But at the time of admission it was noticed that the appeal filed and registered as D-1-22/2021 is respect of two separate orders. Hence the appellant was directed to withdraw the appeal and file separate appeals for distinct orders. Liberty was granted to file the appeal notwithstanding the delay. Hence this appeal is held to have been filed within the prescribed period of limitation. There being no other defect pointed out by the Registry, the Appeal is admitted. Along with the appeal memo a separate petition has been filed, where in a prayer has been made for stay on the execution of the impugned order pending disposal of the appeal for the grounds taken in the appeal.

The learned counsel for the appellant during course of argument submitted that the impugned orders u/s 14B has been passed by the APFC in a mechanical manner for the overlapping period. He elaborated his argument to say that another order was passed by the commissioner u/s 14 B for the delay in remittance during April/10 to March/18. Again the impugned inquiry was initiated for the period 4/2010 to 4/2014. For the earlier order of assessment a separate appeal registered

as D-1/14/21. These aspects of the matter though pointed out were not considered. More over the commissioner has not given any finding on the mensrea of the appellant which makes the order unsustainable in the eye of law. Citing the judgments of the Hon'ble SC in the case of RSL Textiles and the judgment of the Hon'ble High Court of Madras in the case of DCW Employees Co operative Canteen VS PO EPFAT, he submitted that for want of finding on mensrea the order is liable to be set aside as the imposition of damage can not be made automatically for all the delay in remittance. He thereby submitted that the appellant has a prima facie strong case to argue in the appeal and unless the impugned order would be stayed, the relief sought in the appeal would become infructuous.

In his reply the learned counsel for the respondent submitted that the commissioner during the inquiry had given proper opportunity to the appellant for placing the documents. The commissioner after considering the matter from all angles passed the order which is based upon sound reasoning and decided principle of law laid down by the higher courts in various judgments. He also argued that the plea of overlapping period of the assessment was duly considered and a revised calculation was handed over to the establishment to which no further dispute was raised. In the concluding part of the order there is a typographical error and the period of default has been wrongly described. A conjoint reading of the notice, revised calculation sheet and the impugned order removes all confusion. Describing the order under challenge as a speaking order he argued for rejection of the prayer of stay.

From the impugned order it is noticed that the inquiry was held for the period commencing from 4/10 to 4/14 and calculation sheet was accordingly provided to the establishment. Neither party has placed the revised calculation sheet on record at this stage.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage and penal interest since the inquiry was held for an old period. The representations explaining the mitigating circumstances were never considered during the inquiry. He thereby submitted that the appellant has a good case to argue in the appeal having a fair chance of success. Unless the impugned orders would be stayed, the relief prayed would become illusory.

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 insist 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 ten years, though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the commissioner has omitted to give a finding on the mensrea of the appellant for the delayed remittance, which is against the decided principle of law.

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 Rs15000/- 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 27th September, 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.

Presiding Officer