

**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-2/22/2021

M/s. Angels Infraheight Pvt. Ltd.

Appellant

VS.

APFC, Noida

Respondent

ORDER DATED:- 08/12/2021

Present:- Shri Ravi Ranjan, Ld. Counsel for the Appellant.
None for the Respondent.

This order deals with the admission of the appeal and a separate application filed by the appellant for an interim order of stay on execution of the impugned orders. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, a Pvt. Ltd Company challenging the order dated 8/7/21, passed by the APFC, Noida, u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs. 4,31,808/ as damage and Rs. 2,10,800/- as interest for the period 04/15 to 02/20.

It has been stated by the appellant that the commissioner by a common notice dated 8.12.2015 had called upon the establishment to show as to why damage shall not be imposed and interest shall not be calculated for the delay in remittance of the PF contribution of its employees for the above said period. In response to the same the authorized representative of the establishment appeared and asked for the basis of calculation. A written reply dated 20.2.21 was submitted explaining the mitigating circumstances for delay in remittance. But the commissioner during the inquiry, without considering the oral submission made on the grounds disputing the proposed damage passed the impugned order in which no finding on mensrea has been rendered nor any reason in support of imposing maximum rate of interest has been assigned. Citing the judgment of the **Kranti Associates Pvt. Ltd vs. Masood Ahmed Khan and Others (2010)9, SCC, 496** he submitted that a quasi judicial authority must record the reasons in support of its conclusion. Absence of reason makes the finding illegal and arbitrary. He also submitted that the commissioner in utter violation of the principle laid down by the Hon'ble SC, in the case of RSL Textiles, has not given any finding on the mensrea of the establishment behind the delay in remittance. He also submitted that the commissioner illegally recorded that one Manoranjan, the authorized representative of the establishment admitted the correctness of the calculation and

agreed to deposit the calculated amount of damage. While pointing to the observation made by the commissioner in the impugned order about the appearance of the representatives of the establishment which does not reflect the name of Manoranjan, he submitted that the commissioner made a wrong observation in the order. Not only that the mitigating circumstances explained in the written reply dated 20.2.21 was never taken in to consideration, which amounts to denial of the opportunity for setting up a defence against the proposed penal damage. Not only that no finding has been rendered with regard to the mensrea behind the alleged delayed remittance. He thereby submitted that the appellant has a strong case to argue in the appeal and serious prejudice shall be caused if the appeal is not admitted and an interim order preventing execution of the impugned orders is passed pending disposal of the appeal. He also submitted that the common notice u/s 14B and 7Q being served on the appellant, the separate orders passed be read as composite orders in view of the judgment of the Hon'ble SC in the case of Arcot Textiles and the recent order passed by the Hon'ble High Court of Delhi in the case of Rajib Gandhi Cancer Research Institute.

The Registry has reported about the appeal filed within the prescribed of limitation. There being no other defect pointed out, the appeal is admitted.

In respect of the prayer for interim stay, the appellant has described the impugned order as a composite order and prayed for stay of both the findings of the commissioner. In his reply the learned counsel for the Respondent while pointing out the legislative intention behind the Act, argued against the prayer of interim stay. He also submitted that when two separate orders were passed , those cannot be treated as composite orders and appeal in respect of the order passed u/s 7Q be dismissed as not maintainable.

A bare perusal of the order challenged in the appeal shows that a common notice proposing proceeding u/s 14B and 7Q was served on the appellant and after inquiry two separate orders were passed. In view of the fact that a common proceeding was held pursuant to a common notice , at this stage ,in absence of materials to the contrary, the orders hare held to be composite orders making the order passed u/s 7Q appealable. The submission made by the appellant without delving into other details lead to a conclusion that the appellant has a strong case to argue in the appeal. Unless the execution of the orders impugned in the appeal assessing damage and interest would be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. But at the same time it is held that the said interim order of stay cannot be un conditional. Hence the appellant is directed to deposit 40% of the damage assessed within 4 weeks from the date of this order as a precondition on stay of the impugned order assessing damage and interest, by

depositing Challan before the EPFO, failing which there would be no stay on the impugned orders. Call on 11/01/2021 for compliance of the direction and reply by the respondent.

Presiding Officer