

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.
Pronounced from Camp Court at Dehradun**

Present:

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

ATA No. D-1/20/2022

M/s. Bandana Electricals
Appellant

VS.

CBT & APFC, Delhi(E)

Respondent

ORDER DATED :-19/05/2022

Present:- Shri Rajiv Shukla & Shri Sanjay Kumar, Ld. Counsel for
the appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

The appeal challenges two separate orders dated 29.06.2021, passed by the APFC Delhi East u/s 14B and 7Q of the EPF&MP Act communicated on 08.07.2021, wherein the appellant has been directed to deposit Rs 5,19,518/- and Rs 2,49,570/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 06/2018 to 02/2020.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held for admission, condo nation of delay and stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned orders were communicated to the establishment on 08.07.2021 and the appeal was filed on 29.03.2022, i.e beyond the period of limitation. Along with the appeal, a separate petition has been filed for condo nation of delay. Though the learned counsel for the respondent opposed the admission of the appeal being barred by limitation, for the condo nation of delay allowed by the



Hon'ble SC in the suo motto WPC No. 03/2020 on account of the outbreak of COVID 19, the delay is condoned. There being no other defect pointed out by the Registry, the appeal is admitted. A prayer has been made in the appeal praying stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that the impugned order is illegal and arbitrary since the commissioner decided the matter ex parte. The order does not contain the reasons supporting the finding of the commissioner and the rate of damage prescribed in Para 32A of the scheme has been mechanically applied in as much as no valid reason has been mentioned for imposition of damage at the highest rate.

The other contention of the appellant is that the appellant proprietorship firm was under the management of her husband who died of cancer on 19/12/2018. During his life time the appellant was having a strained relation with him and litigations were going on. The appellant was staying separately having no knowledge of the assets and liabilities of her husband. She, with the help of other family members, restarted the business in April 2019 only. The notice of the impugned inquiry was never served on her. The impugned order for the first time came to her knowledge on 26/07/2021 when the same was served on her. Hence the appellant has prayed that the exparte order passed against the deceased proprietor is liable to be set aside. Since the present appellant has a strong case to argue in the appeal, the execution of the order be stayed pending disposal of the appeal, otherwise the relief sought for would become illusory. It is also submitted that the interest assessed u/s 7Q has already been deposited on installments. Subsequently the appellant filed a separate application seeking a direction for defreezing the Bank account of the appellant frozen by the respondent.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance



which spans over almost two year depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation. Arguing that the orders being separately passed cannot be treated as composite order, he submitted that the appeal can not be admitted in respect of the 7Q order. However the learned counsel for the respondent did not dispute the stand of the appellant that the proposed interest has been deposited by the establishment. But he pointed out that the notice of inquiry was served on the establishment.

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. It is not disputed that the appellant took over the business of her husband in April 2019. Though the inquiry started after that, there is no evidence that the notice was duly served on her. 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 as well as the mitigating circumstances. 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, thus, considering the stand taken by the appellant it is held that the appellant has a prima facie case to argue in the appeal. If there would not be a stay on the execution of the impugned order passed u/s 14B of the Act, 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 20% of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there



would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant through Challan. Call the matter 07- July-2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made. The Bank account of the appellant if frozen by the respondent shall be de frozen immediately. There being two separate orders passed this appeal is admitted against the order passed u/s 14B only.

Presiding Officer

