

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,

MUMBAI

PRESENT

SMT.PRANITA MOHANTY

EPFA-69/2021

Parties:

M/s.Boehringer Intelheim India Pvt Ltd. : Appellant

Vs.

Regional Provident Fund Commissioner

Bandra : Respondent

Appearance:

For the Respondent : Mr.Ravi Rattesar, Adv

For the Appellant : Mr.H.L.Chheda,
Authorized Legal Representative.

ORDER

This order deals with the admission of the appeal and a separate petition moved by the appellant for an interim order of stay on the execution of the impugned order. The matter was originally posted to 28/10/2022, but came up today for the urgent hearing application moved by the appellant after serving copy on the Respondent.

Counsel for the Respondent appeared and participated in the hearing.

Heard the counsel for both the parties on the point of admission.

The learned counsel for the appellant submitted that the Respondent , though aware of the fact that the appeal has been filed, taking advantage of the fact that the appeal has not been admitted has attached it's Bank account impacting his business activities. The learned counsel for the respondent admitted about the freezing of the account.

Perusal of the record shows that the appeal as per the note of the Registry was filed after expiry of the period of limitation. This Tribunal by order dt 20/10/2021 has condoned the delay. Though there was no other defect pointed out by the Registry, for some inadvertent omission the appeal has not been admitted. Hence the appeal is admitted today.

A petition has been moved by the appellant for stay on execution of the impugned order. A separate petition under Rule 21 of the Tribunal Rules is also pending for de freezing the Bank account.

The plea advanced by the appellant is that the commissioner has passed a non speaking order which is under challenge in this appeal. Learned counsel for the appellant further submitted that a common notice for damage and interest was served on the appellant and a joint proceeding too was held before the commissioner. But to defeat the legal rights of the appellant the commissioner passed two separate

orders. Citing the judgement of the Hon'ble S C in the case of Arcot Textiles he submitted that the tribunal has jurisdiction to entertain appeal against the order passed u/s 7Q of the Act, and pass an interim order of stay pending disposal of the appeal when a composite order is passed for levy of damage and interest. Unless the execution of the order would be stayed serious prejudice to the appellant shall be caused and the appeal would become infructuous.

On behalf of the respondent the learned counsel while supporting the impugned order argued that the order passed u/s 7Q not being appealable, no order of interim stay can be passed against it. She also argued on the legislative intention behind the EPF&MP Act and opposed the prayer for stay made by the appellant.

On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the interim relief of stay as prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt Ltd vs Union Of India reported in 2005SCCpage1** and in the case of **Escorts Limited and another vs Union Of India reported in 43(1991)DLT 207** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

In this case the period of default as seen from the impugned order is from 07/2014 to 09/2014, but the amount of damage assessed is Rs6,44,782/-. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore in the case of **Mulchand Yadav and Another vs Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order passed u/s14B of the Act pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit 15% of the assessed amount of damage with the EPFO within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. The Hon'ble SC in the case of Arcot Textiles have expressly held that the order u/s7Q, if separately passed,

can not be construed as a composite order and appeal against the said separate order would not be maintainable as right to appeal can not be assumed to exist unless expressly provided for under the statute. But the facts of the present appeal is distinguishable from the facts of Arcot Textile case. Hence put up after three weeks i.e on for

compliance of the direction and reply to the appeal by the respondent. Interim stay granted earlier shall continue till then. The respondent authority is directed to de freeze the bank account of the appellant within 48 hours from the communication of this order.

PRESIDING OFFICER

CGIT-1 MUMBAI

