

**BEFORE THE HON'BLE 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.

M/s. BSC-C &C “JV”

Appellant

Vs.

RPFC, Gurgaon East

Respondent

ATA No. D-2/17/2021

ORDER DATED:- 18.08.2021

Present:- Shri S.K Khanna, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with appellant's prayer for admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges the order dated 11.5.21, passed by the RPFC, Gurgaon,(East), u/s 14B and of the EPF&MP Act, wherein the appellant has been directed to deposit Rs4,92,02,081/- as damage for delayed remittance of EPF dues of it's employees for the period 5/12 to 8/18. Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held on 11/8/21 via video conferencing .

Perusal of the record and office note of the registry reveals that the impugned order was passed on 11.5.21. The appeal has been filed on 15.7.21.i.e within the period of limitation .Therebeing no other defect pointed out by the Registry, the appeal is admitted.

A prayer has been made by the appellant for stay on the execution of the impugned order passed u/s 14B of the Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal.

During course of hearing of the petition seeking stay, the learned counsel for the appellant submitted that the inquiry has been conducted on the basis of a finding in a proceeding initiated u/s 7A of the Act, ignoring the principles of law on the subject pronounced by the Hon'ble S C and other High courts and the principles of natural justice as well. The mitigating circumstances and acute financial problem of the appellant represented in writing was never considered by the commissioner which makes the impugned order not sustainable in the eye of law. It is also submitted that the establishment is a joint venture company engaged in the business of Infrastructure Development and most of it's clients are Government Departments and corporation. The company receives payment from it's clients on reimbursement basis which often taken more than 45 days. However the company is diligent about it's statutory obligations under the EPF ACT and continued to deposit the EPF Dues of it's employees ,though at times slight delay occurred in the remittance. More over one of the partners i.e M/S C C Construction is already before the NCLT and RP has been appointed by the order of NCLT. All these aspects, though pointed out in the written submission filed during the inquiry, were not considered by the commissioner nor any finding has been given on the mensrea of the establishment for the delay in remittance. The learned counsel for the appellant added that the notice was initially served alleging delay in remittance for the period 4/13 to 6/18. Subsequently the period of inquiry was extended from 5/12 to 8/18, basing upon the objection raised by the internal audit committee. The objection by the establishment to separate that period for a separate inquiry was never considered by the commissioner. It was also submitted that a portion of the amount proposed under the notice towards interest was deposited by the appellant during the pendency of the inquiry before the commissioner, which proves the bonafides of the establishment. He thereby submitted that the appellant has a strong arguable case in the appeal.

Unless the appeal is admitted with a direction of interim stay on the impugned order, serious prejudice would be caused to the appellant.

The learned counsel for the respondent while acknowledging the fact of deposit of the interest by the establishment submitted that the commissioner has passed a speaking and well reasoned order. A clear observation has been made in the impugned order with regard to the mensrea of the establishment for the delayed remittance. Pointing out the period of delay as mentioned in the calculation sheet sent to the appellant along with the notice and filed along with the appeal, he pointed out that the establishment is a habitual defaulter and the provision of law laid u/s 14 B since has an underlying purpose of deterring the employer from causing delay in remittance of PF dues, no order for interim stay should be passed.

In reply the learned counsel for the appellant submitted that the commissioner has not given any finding on the mensrea of the establishment in holding back the deposit. Even there is no evidence placed on record that the employees share was deducted and retained by the appellant for some ulterior intention. Whatever observation in this regard has been made in the impugned order is nothing but the personal and general observation of the commissioner. The assumption of the commissioner can not be accepted as a finding in the line of the direction given by the Hon'ble CS in the case of R S L Textiles. He thereby submitted for an unconditional order of interim stay on the impugned order pending disposal of the appeal.

Having heard the argument advanced by the counsel for both the parties the undisputed facts which, emerged are that the appellant had deposited a portion of the proposed amount of interest during the inquiry, and had filed a written submission explaining the mitigating circumstances causing delay in remittance. The commissioner has not given any finding in the impugned order on the mensrea of the establishment. Rather he has reflected his own general assumptions with regard to the delay often caused by the establishments. The content of the

impugned order is on the legislative intention behind the statute and observations of the Hon'ble SC and HC on this aspect. The personal assumption of an officer discharging the functions of a quasi judicial Authority can not be taken as a reason for any order passed under the facts of a given case.

But at the same time it is felt proper to observe that the Tribunal, at this stage of admission of the appeal is not supposed to make a roving inquiry on the merit of the matter since the reply of the respondent is yet to be filed. For consideration of the prayer for interim stay, 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 2005 SCC page 1** 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.

Thus considering the submission advanced by the learned counsel for both the parties and the factors like the period of default and amount assessed, it is felt proper to stay the impugned order passed under section 14B, pending disposal of the appeal.

Hence in this case it is directed that there would be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 20% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after three weeks i.e on 14-September-2021 for compliance of the direction and filing of reply by the respondent. Interim order of stay granted earlier shall continue till the next date.

Presiding Officer