

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/18/2020

M/s. Bata India Limited

Appellant

Through:- Shri Anil Bhatt, Ld. Counsel for the Appellant.

Vs.

RPF, Faridabad

Respondent

Through:- Shri Abhik Mishra, Ld. Counsel for the Respondent.

ORDER DATED 29.10.2020

The appeal challenges the order dated 18.2.2020, passed by the RPF Faridabad u/s 14B & 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 2,10,778/- and Rs 3,13,549/- towards damage and interest respectively for delayed remittance of EPF dues of its employees for the period 01.04.1996 to 06.02.2015. Notice being served on the respondent, learned counsel Shri Abhik Mishra appeared and participated in the hearing on 19th October 2020, held via video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 18.02.2020 and the appeal has been filed on 05.10.2020 i.e. beyond the period of limitation. A separate petition has been filed by the appellant praying condonation of delay and admission of the appeal for the reasons explained therein. A prayer has also been made for 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 had failed to appreciate the mitigating circumstances pointed out during the inquiry. It has also been stated that the establishment was diligent in deposit of EPF contribution in respect of its employees until the workers of its Faridabad factory resorted to an illegal strike on 24th February 1999 leading to a lockout on 25th February 1999. On behalf of the workers union, labour dispute was raised and reference was made to the Industrial Tribunal cum Labour Court, Faridabad. The said tribunal adjudicated the dispute holding the strike to be illegal and the lockout by the management justified, ruling further that the workmen are not entitled to wage during the lock out period. The award being challenged before the Hon'ble Punjab and Haryana High Court, the Ld. single judge came to hold that that the lockout was not justified and workmen are entitled to 50% of the back wage during the lockout period. The appellant management challenged the order by filing LPA and the division bench by order dated 22.02.2010 passed an order of stay and in the same order directed the management to deposit 50% of the amount directed by the Hon'ble single judge before the Industrial Tribunal as an interim measure pending disposal of the LPA. That direction was complied by the

appellant. Thereafter the union made an application before the Industrial Tribunal for release of the amount by the management to the workers after deducting the statutory dues. Accordingly PF dues were deposited. During the pendency of the LPA the union entered into a compromise with the management and as per the terms of compromise the workers are not entitled to wage during the lockout period. The LPA is still pending in which the justification of the lockout and entitlement of wage are to be decided. While the matter stood thus, the RPF Faridabad, served a notice for inquiry u/s 14B and 7Q of the Act for delayed remittance of the PF contribution. Though, it was pointed out that the amount deposited before the Industrial Tribunal is not wage and the amount deducted is not towards EPF contribution but for the compliance of the High Court order, the commissioner failed to appreciate the same and passed the impugned order which is illegal and the appellant has a strong arguable case in the appeal. Unless the impugned order would be stayed, the relief sought in the appeal would become illusory.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance during the period 01.04.1996 to 06.02.2015. The lock down was for a brief period between 25.02.1999 to 19.08.1999. No explanation was offered by the establishment as to why delay occurred in remittance for the remaining period. He also submitted that any order to stay execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation as the LPA has been disposed off by the Hon'ble High Court in view of the compromise arrived between the union and management without giving any finding on the entitlement of the wage for the lockdown period. He thereby submitted that the amount paid in terms of settlement is wage on which EPF contribution is payable.

With regard to the delay it is submitted that the appeal could not be filed within the period of limitation prescribed under the Act on account of the lockdown for the COVID-19 outbreak. Relying on the order of the Hon'ble SC in the suo moto writ petition, appellant prayed for condonation of delay and admission of the appeal. The impugned order was passed on 18th Feb 2020 and the appeal has been filed on 5th Oct 2020. The nationwide lock down started on 15th March 2020. Thus, it can be visualized that the appellant was prevented from filing the appeal within time for a situation beyond his control which has been pleaded in the petition filed by the appellant praying condonation of delay. Hence, it is held to be a fit case for condonation of delay. Accordingly, the delay is condoned and the appeal having no other defect is admitted.

From the impugned order it is noticed that the inquiry was held for the period commencing from the period 01.04.1996 to 06.02.2015 out of which, only for six months the establishment was under lockout. But for the remaining period the establishment was functioning and workers were engaged.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage and penal interest since there was lockout and the delay for other wage months were very short. All these aspects

when taken into consideration, makes out a strong arguable case for the appellant. 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 20 years though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the amount deposited belatedly is not deduction of EPF dues on wage but for compliance of the High Court order and the RPF is not the competent Authority to decide entitlement of wage during lockout period.

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 a nominal amount i.e. 10% of the assessed damage 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 with the Respondent by way of Challan. Call the matter on 30.11.2020 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. But there would be no stay on the order passed u/s 7Q of the Act challenged in this appeal.

Sd/-

Presiding Officer