

**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. 265(14)2015

M/s. Mascot Foot Care

Appellant

VS.

APFC, Noida

Respondent

ORDER DATED :-01/11/2022

Present:- Shri Sanjay Kumar & Sh. Rajiv Shukla, Ld. Counsels for the
Appellant.

Shri Narender Kumar, Ld. Counsel for the Respondent.

This appeal challenges the composite orders passed by the APFC Noida on 03/03/2015 u/s 14B & 7Q of the EPF and MP Act 1952 (herein after referred to as the Act) levying damage of Rs. 2,67,032/- and interest of Rs. 2,58,802/- on the appellant/establishment for the delayed remittance of the PF dues of it's employees for the period March 2010 to January 2013.

The plea of the appellant taken in this appeal is that it was a part of the Lakhani Group of Industries. Due to several contentious issues between the members of the company, several petitions were filed before the erstwhile Company Law Board. After several rounds of discussion, a settlement was arrived among the members and the Company Law Board by order dated 22.05.2008, recorded the settlement subject to various Terms. Thereafter the members of the said company had to make division of both movable and immovable properties, which took a considerable time. The terms were related to the division of business too. Due to such indulgence, the business of the companies including the appellant was almost stopped. The Bank accounts of the company were frizzed too. Though the appellant company was surviving, it's business came to a halt for the cash crunch. The situation was such that at times the salary was not paid to the employees in time. However the appellant being a pro employee company never effected retrenchment of workers. But there was delay in payment of salary so also delay in deposit of the PF dues. But the delay was never with any evil intention but for the mitigating circumstances relating to division of company and business. While the matter stood thus, a notice was received in the year 2013 with regard to an inquiry u/s 14B of the Act alleging delay in remittance of the PF dues. The AR of the appellant establishment appeared and explained the mitigating circumstances causing delay in remittance. It was also explained that after the division in the Lakhani Group, it is a fresh beginning for the appellant which is still in the process of recovery. The delay which had allegedly occurred was never intentional or with some evil intention. It was also explained that the salary of the employees was paid during that period belatedly and at that time the contribution was deposited too. Hence, there being no intentional delay, the establishment is not liable for the penal damage.

Amongst other grounds it has also been pointed out that the commissioner without considering the mitigating circumstances and without giving any reason in the order for imposing penalty at

the highest rate, abruptly closed the inquiry and passed the impugned order without application of mind and without giving any finding on the mensrea of the appellant behind the delay in deposit of the PF contribution. The Principle of Natural Justice were flaunted as the commissioner never called the department's representative to plead and show how the appellant is liable for the damage, and thereby afforded the opportunity of rebuttal. While pointing out various legal aspects and the position of law settled by the Apex Court and different High Courts, with regard to the mensrea as a condition precedent to imposition of penal damage, the appellant has pleaded that the impugned order is liable to be set aside on various legal grounds as has been stated in the appeal memo.

The counsel appearing on behalf of the respondent has filed a written reply objecting the stand taken by the appellant. Citing various judgments of the Hon'ble High Courts and the Apex Court he submitted that when the EPF Act and the EPF Scheme prescribe explicitly that the interest and damage are payable when the contribution is not deposited within the due date, the plea of the appellant is baseless and cannot be accepted. He also submitted that several adjournments were allowed to the appellant during the inquiry who was arguing for waiver of the damage on the ground that there was no intentional delay in remittance of the PF dues. The establishment had admitted the delay and the mitigating circumstances shown by the appellant was considered and rejected by the commissioner, which has been observed in the impugned order. Thus, the commissioner has passed a reasoned and speaking order.

The Ld. Counsel for the appellant during course of argument submitted that the APFC at the first instance initiated the inquiry after lapse of 3 years which stands contrary to the circular issued by the EPFO. The mitigating circumstance explained during the inquiry was not at all considered and no finding has been rendered

on the mensrea of the establishment behind the delayed remittance which in view of the judicial pronouncements makes the order illegal. He also argued that the commissioner has not assigned any reason as to why damage at the maximum rate was imposed when the commissioner has the discretion of reducing the same which is evident from the word "May" used in the section 14B of the Act. He also submitted that the statute doesn't provide any time limit for initiating an inquiry u/s 14B of the Act. But the EPFO by its circular dated 15.10.1990 have issued guideline for initiating the inquiry u/s 14B within a period of 3years from the date when it falls due. In reply the Ld. Counsel for the respondent citing various judgments of the Hon'ble High Court of Gujarat submitted that when the legislature has made no provision for limitation, it would not be open to the court to introduce any such limitation on the grounds of fairness or justice. He placed reliance in the case of Hon'ble High court of Gujarat in **Gandhi Dham Spinning and manufacturing company limited vs. RPF and another (1987LabI.C 659GUJ)** to argue on the principles that causes prejudice on account of delay in initiation of a proceeding. In the said judgment it has been held that prejudice on account of delay could arise if it was proved that it was irretrievable. In the said judgment it has also been held that for the purpose of section 14B there is no period of limitation prescribed and that, for any negligence on the part of the department in taking the proceeding the employees who are 3rd parties cannot suffer. The only question that would really survive is the one whether on the facts and circumstances of a given case the show cause notice issued after lapse of time can be said to be issued beyond reasonable time. The test whether lapse of time is reasonable or not will depend upon the further facts whether the employer in the mean time has changed his position to his detriment and is likely to be irretrievably prejudiced by the belated issuance of such a show cause notice.

Considering the facts of the present appeal in the light of the principle decided in the above mentioned case the stand of the appellant that the impugned inquiry was barred by limitation seems not acceptable as there is absolutely no material to presume that belated issue of show cause notice has caused prejudice to the

appellant. More over as stated by the appellant, the division in business took place in the year 2008 which finds support from the memorandum of family settlement filed in this appeal. But the period of inquiry is from 2010 to 2013. There is no evidence placed on record to prove that during this post business division period the business of the appellant was stopped. There is also no evidence to believe that the appellant had no employees during this period. On the contrary, the admission of the appellant that during this period the appellant had not retrenched any employee, proves that the appellant was having the usual business activities.

In respect of the financial difficulty, as pleaded by the appellant, it is observed that, neither during the 14B inquiry nor during the hearing of the appeal any document was placed to presume the said financial difficulty. The only document placed in this appeal record is the family settlement deed. No other document showing production and receipt of the same during the 14B inquiry has been placed to make this Tribunal believe that the mitigating circumstances pointed out during the inquiry were not considered. On a plain reading of the impugned order shows that the appellant had taken the only stand of financial difficulty without any document to support the stand. The plea appeared not convincing to the commissioner and he rightly rejected the same. The facts reveal that the Bank Accounts, pending the family settlement, were freezed from 2006 to 2008. Following the settlement, all the parties to the settlement carried out their business separately. In absence of evidence to the contrary, it is difficult to accept that for the freezing of the account, the appellant was going through financial hardship causing delay in remittance. At the cost of repetition, it is observed that no document relating to the mitigating circumstances and financial hardship has been placed on record of this appeal. There is also no evidence to believe that any evidence relating to the same was ever produced before the commissioner.

In the case of **M/S Maharashtra State Co operative Bank Ltd vs. Kanna Sahakari Sakhar Karkhana Ltd. (SLP No 14772-14773/2010)** the Hon'ble SC have upheld the priority of the EPF dues and further observed that the said dues not only include the dues assessed u/s 7A of the Act, but also the dues payable as damage and interest. Of course the learned counsel for the appellant emphasized during the argument that the commissioner discharging a quasi judicial function is bound to follow the judicial pronouncements made by the Hon'ble SC and the principle laid down there in and should return a finding on the mensrea behind the delay in remittance. To support his argument, he has relied upon the judgments of the Hon'ble SC in the case of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Others reported in (2014)15 S.C.C 263** and the case of **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017LLR 337** to submit that the Hon'ble Apex Court held that absence of finding on mensrea makes the impugned order illegal and not sustainable in the eye of law.

It is true that in the impugned order the commissioner has not given any finding on mensrea. But it is a matter to be appreciated that mensrea is a state of mind, inferable from the circumstances and cannot be proved or disproved by tangible evidence. When the quasi judicial authority is required to give a finding on the mensrea behind the delayed remittance, it is obligatory on the part of the establishment to point out the mitigating circumstances assisted by oral or documentary evidence and make the adjudicating authority believe the non existence of mensrea. In the instant case the appellant establishment had not produced any evidence at all before the commissioner in respect of mitigating circumstances, except making oral submission that the Bank Accounts were frozen from 2006 to 2008. The commissioner could not find any relevancy of that period with the period of inquiry and rightly rejected the same. It is also observed that no evidence was produced during the hearing of the appeal to

show that the mitigating circumstances shown during the inquiry were not considered. Hence it is concluded that in absence of materials suggesting the mitigating circumstances, the order passed by the commissioner cannot be viewed as an illegal order for want of finding on mensrea. No other defect and illegality is noticeable in the order impugned. Hence, ordered.

ORDER

The appeal be and the same is held without merit and accordingly dismissed. The order passed by the APFC and challenged in this appeal is here by confirmed.

Presiding Officer

**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-2/25/2018

M/s. PoleStar Public School

Appellant

Through:- Sh. Rajiv Shukla & Sh. Sanjay Kumar, Ld. Counsels for the Appellant

Vs.

APFC/RPFC, Gurugram

Respondent

Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 01/11/2022

The Ld. Counsel for the Respondent filed the reply to the Misc. Application filed u/r 21 of the Tribunal Rules, 1997 by the Ld. Counsel for the Appellant. Taken on record. Arguments of both the counsels on the said application heard and the prayer of the Appellant/ Applicant to take on record the copy of attendance register , February-2003 as Annexure A-28 is allowed.

Further, list the case on 12.01.2023 for final arguments.

Presiding Officer

**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-2/16/2022

M/s. Rakushka International Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

RPFC, Gurugram
Through Sh. Chakradhar Panda, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/11/2022

Today the matter was listed for reporting compliance of the order dated 05.09.2022. The Ld. Counsel for the Respondent submitted that the compliance was to be reported before the Registry of this Tribunal. Hence, the same be confirmed by the Registry. Report called and it is found that no compliance of the order dated 05.09.2022 has been made by the Appellant. Accordingly, the present appeal stands dismissed due to non-compliance. Consign the copy of this order to both the parties as per rules. Consign the record to the record room thereafter.

Presiding Officer

**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-2/22/2022

M/s. Jaypee Healthcare Ltd.
Through:- Shri S.K. Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

APFC/RPFC, Noida
Through Sh. S.N. Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/11/2022

Today the matter was listed for reporting compliance of the order dated 07.09.2022 passed by Hon'ble Delhi High Court in W.P.(C) No. 13009/2020. The Ld. Counsel for the Appellant has filed an FDR amounting to Rs. 68,02,752/- which is taken on record vide VDR No. 187 dated 17.10.2022. Accordingly, the present appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal.

Further, list the case on 12.12.2022 for filing the reply of the Appeal by Ld. Counsel for the Respondent.

Presiding Officer

**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. 771(16)2015

M/s. Lakhani Arman Shoes Pvt. Ltd. Appellant
Through:- Sh. Rajiv Shukla & Sh. Sanjay Kumar, Ld. Counsels for the Appellant

Vs.

APFC/ RPFC, Faridabad Respondent
Through Sh.B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 01/11/2022

Final arguments of both the counsels in the matter heard and concluded. List the matter on 06.12.2022 for pronouncement of order.

Presiding Officer

**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-2/02/2019

M/s. Brijlaxmi Paper Products Pvt. Ltd. Appellant
Through:- Sh. Deepak Jain, Ld. Counsels for the Appellant (Vakalatnama filed)

Vs.

APFC/ RPFC, Faridabad Respondent
Through Sh.B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 01/11/2022

Final arguments of both the counsels in the matter heard and concluded. List the matter on 09.01.2023 for pronouncement of order. The prayer made by Ld. Counsel for the Respondent to file written notes of arguments in the matter is allowed.

Presiding Officer