

**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. D-2/02/2019

M/s. Brijlaxmi Paper Products Pvt. Ltd.

Appellant

VS.

APFC, Faridabad

Respondent

ORDER DATED:- 09.01.2023

Present:- Shri Deepak Jain, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This appeal challenges the order dated 14.12.2018 passed by the APFC Faridabad u/s 14B and 7Q of the EPF and MP Act imposing Rs. 8,67,869/- as damage and Rs. 3,86,367/- as interest for the delayed remittance of the PF dues of the employees for the period 01.06.2014 to 12.02.2018. The appellant has stated that it was having its office at Mathura Road Faridabad and on 07.03.2018 a computer generated notice supported by the statement u/s 14B and 7Q was issued to the appellant to showcause as to why damage and interest shall not be imposed for delay in remittance. On the first date of hearing the representative of the establishment appeared and submitted that the administrative office of the establishment has been shifted to the factory in the month of June 2018 and thus, no reply can be submitted to the showcause notice. The said shifting took about 4 months to be completed. On 10.12.2018 the A/R for the appellant appeared before the APFC to ascertain the status of the inquiry and learnt that the inquiry has been concluded and order has already been passed. The appellant was shocked to know the progress of the inquiry

as opportunity to defend was denied by the respondent. However, during the pendency of the inquiry the appellant had deposited Rs. 418590/- towards a part of the demand for damage and interest as proposed in the inquiry. During the period for which inquiry was held, the appellant establishment was facing heavy loss in business and the said mitigating circumstance could not be brought to the notice of the respondent as proper opportunity was not afforded. Being aggrieved the appeal has been filed.

Notice of the appeal being served the respondent appeared through its counsel and filed written reply refuting the stand taken by the appellant in the appeal. Besides pleading about the legislative intention of the Act it has been stated that the appellant establishment was duly served with the notice of the inquiry. As per their own admission they had appeared on different dates and received the detail statement of the damage and interest proposed to be levied. Thereafter the establishment stopped appearing and the matter was adjourned on 5 occasions. Thereafter one Anoop Kumar Nagar appeared and participated in the inquiry with authority letter and requested for time to make deposit of the proposed amount. Accordingly they made part deposit of the damage and interest proposed. The commissioner in due consideration of the deposits assessed the balance of the damage and interest payable by the establishment. Since the appellant had never disputed the amount proposed and no mitigating circumstances was pointed out during the inquiry though the A/R was participating in the proceeding, the stand taken in the appeal is not maintainable and liable to be dismissed.

During the hearing of the appeal the Ld. Counsel for the appellant while placing reliance in the case of **Central Tool Room and Training Centre vs. EPFO and others decided by the Hon'ble High Court of Calcutta reported in 2022LLR676** and in the case of **M/s Scorpion Security Limited vs. RPFC and Another decided by the Hon'ble Karnatak High Court reported in 2022LLR457** submitted that opportunity when not granted to the establishment for setting up a defence during the inquiry, the order passed pursuant

thereto is liable to be set aside. He also argued that the commissioner conducting the quasi judicial inquiry is duty bound to give a finding on the mensrea before imposing damage which has been held by the Hon'ble Supreme court in the judgment 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**. Thereby he argued that the tribunal should remand the matter to the commissioner to hold a fresh inquiry after giving proper opportunity to the appellant.

The Ld. Counsel for the respondent took serious objection to the submissions and counter argued that this is not a case of denial of opportunity. He submitted that as seen from the impugned order the appellant was appearing and participating in the inquiry through it's A/R. The establishment had accepted the proposed damage and interest. They also made part deposit of the same on intervals. Hence, there being no dispute raised by the appellant with regard to the amount at the time of the inquiry and no mitigating circumstance being pointed out the appeal is liable to be dismissed.

Perusal of the impugned order clearly shows that the appellant establishment had never pointed out the mitigating circumstances behind the delay. Rather the delay was accepted and part amount was deposited. There is no evidence on record to hold that the mitigating circumstances held back the appellant from making timely deposit. The order dated 12.02.2019 shows that the appellant was directed to deposit the balance of the assessed interest amount as a pre condition for stay of the impugned order. That direction was complied by the appellant which means the entire interest amount has already been deposited. The impugned order reveals that the commissioner has assessed Rs. 8,67,869/- as damage taking into consideration the part deposit made during the inquiry. Since, the appellant has miserably failed to establish the mitigating circumstances during the inquiry though it was participating this tribunal doesn't find it proper to consider the plea of the mitigating circumstances as taken in this

appeal. It is also not a case of denial of opportunity as the appellant was participating in the inquiry through it's A/R and the judgments relied upon by him are not applicable on facts. The order passed by the commissioner is held to be proper and needs no interference. Hence, ordered.

ORDER

The appeal be and the same is dismissed on contest. The order passed by the APFC is hereby 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-2/33/2022

M/s.OYO Hotels & Homes Pvt. Ltd.

Appellant

Through:- Ms. K.K. Pandey, Ld. Counsel for the Appellant

Vs.

APFC/ RPFC, Noida

Respondent

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

And

Shr Ajay Monga & Shri Devmani Bansal, Ld. Counsel for the Applicant (Kotak Mahindra Bank)

ORDER DATED :-09.01.2023

Matter stands posted today for compliance of the order dated 02.11.2022. As reported by the office the direction has been complied and the FDR has been deposited with the Registry. Another application has been moved by the Kotak Mahindra Bank Ltd. invoking the provision of section 151 CPC wherein a direction has been sought in the nature of a clarification in lien created over the current account account of the Appellant bearing no. 9411618477 maintained with the Bank shall be lifted or not in view of the order dated 02.11.2022. The ld. counsel represented the bank inform that as per the order of this tribunal the account freezed as per the direction of the EPFO has been de-freezed but the lien has not be lifted.

The Ld. Counsel Sh. B. B Pradhan, representing the respondent EPFO on instruction, intimated that the direction given in the order dated 02.11.2022 having been complied, the recovery proceedings has been stayed and by necessary implications the lien has ended. In view of the said submission the bank is instructed to lift the lien created in respect of the assessed amount from the above mentioned account. This order is passed as a matter of clarification sought by the applicant Kotak Mahindra Bank. The Application is disposed of accordingly. Call the matter on 23.02.2023 for filing the reply by the Respondent.

Presiding Officer