

**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-2/24/2022

M/s. A2Z Infra Engineering Ltd.

Appellant

VS.

RPFC/APFC, Gurugram

Respondent

ORDER DATED:- 12/09/2022

Present:- Shri J R Sharma & Shri Bhupesh Sharma, Ld. Counsel for the
Appellant.

Shri S N Mahanta, Ld. A/R for the respondent.

The appeal challenges two separate orders dated 20/04/2022 passed by the RPFC II Gurugram u/s 14B and 7Q of the EPF&MP Act communicated on the same day, wherein the appellant has been directed to deposit Rs. 28,50,998/- and Rs. 15,03,807/- as

damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 12/2016 to 03/2021

Notice being served the learned counsel for the respondent appeared and participated in the hearing resisting the prayer for grant of stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned orders were communicated to the establishment on 20/04/2022, and the appeal was filed on 20/06/2022, i.e within the period of limitation. There being no other defect the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that the notice of the inquiry was served when the establishment was struggling to come out of the setback of COVID impact. Not only that the period from March 2020 to March 2022 is the period during which Govt. had declared lock down for the outbreak of COVID 19 and there was a clear direction from the CPFC to allow relaxation to the establishment from the liability of damage on account of delay in remittance during that period. By placing the circular on record the appellant has pleaded that the RPFC in clear defiance of the department guide line issued by the CPFC fixed liability of damage on the appellant for the lock down period too. The objections raised and submissions made pointing out the mitigating circumstances were not considered at all. This makes the impugned order illegal and liable to be set aside. He thereby submitted for an order of interim stay on the execution of the impugned order pending disposal of the appeal.

The learned counsel for the Respondent, besides supporting the impugned order advanced his argument on the legislative intention behind the beneficial legislation. He also pointed out that the establishment was participating in the inquiry and had admitted the delay in remittance. It was the stand of the appellant during inquiry that the delay occurred only due to delay in clearance of Bills by it's clients. It was never the case that the salary was not paid to the employees. The employees share of the contribution for the inquiry period was deducted and retained by the establishment which makes it liable for damage. As such any order of stay on the impugned order will certainly defeat the very purpose of the legislation.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. The only factor which drove the commissioner for passing the impugned order is the non deposit in time.

On hearing the submission made by both the counsels it appears that the commissioner ignoring the departmental guidelines and without any reason supporting his finding passed the impugned order.

Moreover the order of the commissioner does not show that the mitigating circumstances pointed out by the establishment were taken into consideration.

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 passed u/s 14B of the Act, 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 30 % of the assessed damage, as a

pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. It is held that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. Call the matter on 03.11.2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14 B of the Act till the compliance is made.

Presiding Officer

**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-2/25/2022

M/s. Louis Berger Consulting Pvt. Ltd.

Appellant

VS.

RPFC/APFC, Gurugram East

Respondent

ORDER DATED:- 12/09/2022

Present:- Shri Vipin Upadhyay & Shri Rochit, Ld. Counsels for the
Appellant.

Shri B B Pradhan, Ld. A/R for the respondent.

The appeal challenges two separate orders dated 19/04/2022 passed by the RPFC Gurugram East u/s 14B and 7Q of the EPF&MP Act communicated on the same day, wherein the appellant has been directed to deposit Rs. 2,68,65,766/- and Rs. 1,98,94,616 /- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 1/06/2007 to 17/06/2021.

Notice being served the learned counsel for the respondent appeared and participated in the hearing resisting the prayer for grant of stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned orders were communicated to the establishment on 19/04/2022 and the, appeal was filed on 09/06/2022, i.e within the period of limitation. There being no other defect the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that the notice of the inquiry was served when the establishment was struggling to come out of the setback of COVID impact. It was also intimated that some time is required to reconcile the documents and records. Before the impugned inquiry for levy of damage and interest, the Respondent had initiated another inquiry u/s 7A of the Act and deficit PF liability was assessed. Thus it was intimated to the commissioner that pursuant to that inquiry, the dues so assessed were deposited after the due date. Hence there was no intentional delay on the part of the appellant establishment. But none of the submissions made were considered nor the commissioner gave any reason in support of his finding. The mensrea behind the delayed remittance was not discussed too, and in a hyper technical manner, only considering the date of deposit of the PF consideration, the impugned order was passed, which is illegal and cannot stand the test of judicial adjudication. Hence the appellant has prayed for an order of interim stay on the execution of the orders challenged in this appeal. It was also canvassed that the order passed u/s 7Q being on the basis of a common proceeding held is appealable too.

The learned counsel for the Respondent, besides supporting the impugned order as a well discussed order advanced his argument on the legislative intention behind the beneficial legislation. He also pointed out that the commissioner has rendered his finding on the mensrea as well. The other point argued in opposing the prayer for interim stay is that the establishment had not challenged the order passed u/s 7A of the Act, but deposited the assessed amount which amounts to admission of the delay in remittance. As such any order of stay on the impugned order will certainly defeat the very purpose of the legislation.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. The only factor which drove the commissioner for passing the impugned order is the non deposit in time.

On hearing the submission made by both the counsels 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 14 years and the damage levied is huge. Moreover the order of the commissioner does not show that the mitigating circumstance pointed out by the establishment were taken into consideration.

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 passed u/s 14B of the Act, 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 30 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. It is directed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. Call the matter on 03.11.2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14 B of the Act till the compliance is made.

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-2/07/2021

M/s. International Hospital Ltd.
Through Sh. Gyan Prakash, Proxy Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/09/2022

No Rejoinder filed. Accordingly, list the matter on 19.10.2022 for final arguments. Meanwhile, the Appellant shall have the liberty to file the rejoinder along with supplying a copy of the same upon the 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. 219(16)2015

M/s. Inductis (India) Pvt. Ltd.
Through Sh. Alok Bhasin, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Gurgaon
Through Sh. Abhishek Mishra, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/09/2022

Arguments in this matter heard in part. List the matter again
on 20.09.2022 for continuation of the 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. 265(14)2015

M/s. Mascot Foot Care Appellant
Through Sh. Sanjay Kumar & Sh. Rajiv Shukla, Ld. Counsels for the Appellant

Vs.

APFC, Noida Respondent
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 12/09/2022

Arguments in this matter heard and concluded. List the matter
on 01.11.2022 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. 260(16)2017

M/s. Tact India
Through Sh. S.K Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Gurgaon
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/09/2022

Arguments in this matter heard in part. List the matter again on 26.09.2022 for continuation of 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-2/14/2018

M/s. UPSRTC, Noida
Through Sh. Shadab Khan, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Noida
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 12/09/2022

Due to paucity of time the matter could not be taken up. List
the matter on 23.11.2022 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-2/25/2018

M/s. Pole star Public School Appellant
Through Sh. Sanjay Kumar & Sh. Rajiv Shukla, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 12/09/2022

The Ld. Counsel for the Appellant filed one application under rule 21. Taken on record. Copy of the same stands supplied today to the Ld. Counsel for the Respondent. List the matter on 10.10.2022 for filing reply and consideration of the said application.

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.
Through None for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 12/09/2022

None appeared on behalf of the Appellant despite several calls.
One last opportunity is granted for final arguments to the Appellant.
Accordingly, list the matter on 21.09.2022 for final arguments.

Presiding Officer