

**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-2/13/2022

M/s. AA Foundation for Safety

Appellant

VS.

RPFC-Raipur (Chhattisgarh)

Respondent

ORDER DATED:- 13/09/2022

Present:- Shri S.P Arora & Shri Rajiv Arora, Ld. Counsels for the Appellant.

Shri B B Pradhan, Ld. Counsel for the respondent.

This appeal has been filed by the appellant establishment challenging the order passed u/s 7A of the EPF& MP Act by the RPFC-II, Raipur, in the state of Chhattisgarh, where in the appellant has been directed to deposit a certain amount towards the EPF contribution of it's employees, omitted from being remitted for the period February 2015 to March 2016. On registration of the appeal notice dated 22.04.2022 was issued to the Respondent. Adv. B. B. Pradhan appeared and participated in the hearing on

admission of the appeal. Since Mr. Pradhan took serious objection on the maintainability of the appeal for want of territorial jurisdiction of the Tribunal it was listed for hearing on the same at the first instance.

The learned counsel for the Respondent argued that after inclusion of sec 7D to the to the EPF&MP Act, by notification dated 23rd June 2017, the erstwhile EPFAT stood abolished and all the CGITS across the country are now exercising the power as EPF Tribunals with effect from 26th May 2017 to entertain appeals under the Act. All the CGITS are thus exercising their specific territorial jurisdiction for the purpose of entertaining appeal as notified on 23rd June 2017. Drawing attention to Rule 6 of the Tribunal Procedure Rules 1997, he argued that the appeal shall be filed by the appellant with the Registrar of the Tribunal within whose jurisdiction the cause of action arose. The impugned order having been passed by the RPFRC Raipur, the cause of action arose in Raipur and not within the jurisdiction of the Registrar of the CGIT Delhi and as such the appeal filed in Delhi is not maintainable for want of territorial jurisdiction. He thereby argued for dismissal of the appeal without admission.

In reply the learned counsel for the appellant submitted that the cause of action is not a single act entailing legal action but a bundle of facts creating the circumstance for a legal action. Though the order was passed in Raipur, the Head Office of the appellant is in Delhi and the recovery notice has been served in Delhi. Not only that the Bank accounts in Delhi have been attached. Hence, part of the cause of action arose in Delhi and the appeal is maintainable in Delhi.

The term cause of action has not been specified either in the code of civil procedure or elsewhere. Under sec 20 of CPC 1908,

cause of action means any fact that must be produced in favour of the right to obtain a judgment.

On the factual aspect of the present case it is submitted by the appellant that it has its administrative office in Delhi. It was undertaking the execution of a particular project in Raipur Chhattisgarh. To facilitate remittance of PF contribution of workers engaged there a code no was obtained at Chhattisgarh. After closure of the project the presence of the appellant establishment is no more in Raipur Chhattisgarh. The RPFC conducted the inquiry at Raipur and passed the impugned order there. But the notice u/s 8F was served on the appellant in Delhi and now recovery action is being taken by attaching 13 Bank Accounts of the appellant in Delhi and across the country. The copies of 13 such notices sent to different Banks for attachment have been filed.

While considering the submission of the learned counsel for the Respondent with reference to Rule 6 of the Tribunal Procedure Rules, it could be noticed that pursuant to the said Rule and inclusion of sec 7D in the Act delegating the power of appeal under EPF&MP Act, by notification dated 23rd June 2017 issued by the Govt. of India, Ministry of Labour and Employment, the territorial jurisdictions have been prescribed for filing of the appeals in the CGITs but surprisingly no jurisdiction has been prescribed for the appeals to be filed challenging the order passed by the EPF commissioner of Chhattisgarh or Raipur.

Admitted facts are that the assessment was made in Raipur where the appellant had taken a code no during execution of a project. After closure of the project it is now functioning from its head quarters in Delhi. The cause of action for this appeal partly arose in Raipur where the impugned order was passed and partly in Delhi where recovery action has been initiated by attachment of the

Bank accounts. The appellant being the *dominus litis* has the choice of choosing the jurisdiction of either of the places where the cause of action has arisen.

The learned counsel for both the parties could not meet the query with regard to the jurisdiction for filing appeal challenging the orders passed by the PF Commissioner in Raipur Chhattisgarh. From the circumstances indicated above, it is thus concluded that for the part cause of action having arose in Delhi, and there being no Territorial jurisdiction prescribed by the Govt. for filing appeals challenging orders passed in Raipur, the appellant has a choice open for filing the appeal in Delhi. The objection raised by the learned counsel for the Respondent is accordingly answered.

List the matter on 19.09.2022 for hearing on admission and petition filed u/s 70 of the Act. The interim protection granted earlier shall continue till then.

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-2/14/2022

M/s. BHP Infrastructure Pvt. Ltd.

Appellant

VS.

APFC, Faridabad

Respondent

ORDER DATED:- 13/09/2022

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

Shri Chakardhar Panda, Ld. Counsel for the respondent.

The appeal challenges order dated 11.01.2022 passed by the APFC Faridabad u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 31,51,834/- as damage for delayed remittance of EPF dues of it's employees for the period 01/02/2015 to 31/07/2018.

Notice being served on the respondent, learned counsel Shri C D Panda for the respondent appeared and participated in the hearing on admission and 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 order was passed on 11.01.2022 and the appeal was filed on 18.04.2022, i.e beyond the period of limitation. The office has reported about the delay. The learned counsel for the appellant submitted that the order impugned in the appeal was communicated by e-mail on 08/04/2022 and soon thereafter the appeal has been filed and thus there is no delay. In absence of materials to the contrary, the stand taken by the appellant is accepted. The delay pointed out by the office is hereby condoned. There being no other defect pointed out, the appeal is admitted.

In the appeal, prayer has been made for an interim order of 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 by the establishment. It has also been stated that the appellant establishment during the inquiry had made a detail written submission which was not considered at all. Copy of that written submission has been placed on record. It has also been stated that since 2014 the appellant establishment is suffering huge financial loss and in the year 2015 had approached BIFR for declaring it as a sick Industry. But for merger of BIFR with NCLT, the matter could not be taken up and the premises and other assets of the appellant establishment were sealed and taken over by the creditors leading to delay in remittance of the statutory dues. Though the appellant establishment was earlier very careful toward compliance of it's

statutory obligations, for the situation beyond his control the delay occurred. It is also submitted that being compelled by the creditor for one time settlement of the loans the appellant had to sale it's factory. But none of the submissions were considered by the commissioner which on the said ground makes the impugned order illegal and liable to be set aside. He also pointed out that the commissioner without assigning reason for levying damage at the maximum rate passed the impugned order in a fanciful manner. Thus it is argued that 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 which spans over more than two and half year depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation. Relying on the judgment of the Hon'ble High Court of Delhi in the case of **Sam (India) Builtwell (p) Ltd vs. APFC decided in WPC No 9178/2015** he submitted that any order of interim stay should be subject to deposit of 50% of the assessed amount.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when none of it's submissions were considered by the respondent and the financial condition is such that it can not comply with the condition.

On hearing the submission made by both the counselson the prayer for interim stay, it is found that the establishment is in an acute state of financial constrain. 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 two and half years and the damage levied is huge. The mitigating circumstances were not at all considered by the commissioner.

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 25% of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within six 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. The respondent is directed not to take any coercive action against the appellant in respect of the impugned orders till the compliance is made. List the matter on 03.11.2022.

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 Sh. Anil Bhatt, & Sh. K.K Pandey, Ld. Counsel for the Appellant

Vs.

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

ORDER DATED :- 13/09/2022

Arguments on the delay condonation application, admission of the appeal and application filed u/s 7 O of the EPF & MP Act, 1952 heard and concluded. List the matter on 02.11.2022 for pronouncement of order on the same. Meanwhile, the respondent authority is directed not to take coercive of the amount as mentioned in the impugned order till next date of hearing.

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-2/12/2020

M/s. ASF Insignia SEZ
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Regional Office Gurgaon
Through Chakardhar Panda, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 13/09/2022

Both the counsels requested for the permission to file written notes of arguments. Accordingly, list the matter on 11.10.2022 for filing written notes of arguments as well as oral submissions.

Presiding Officer