

**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-2/04/2023**

Revent Precision Engineer Limited.  
(formerly known as Amtek Auto Limited –Unit-II,

Appellant

VS.

Regional P.F Commissioner –Ii,  
Regional office Gurugram (West)

Respondent

**ORDER DATED:- 3<sup>rd</sup> July, 2023.**

Present:- Ms. Kanishka Prasad, Ld. Counsel for the Appellant.  
Sh. B. B Pradhan, Ld .A/R for the Respondent.

The appeal challenges the orders dated 31.03.2023, passed by the APFC Gurugram u/s 14B 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs3,41,134/ and Rs2,45,055/- towards damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 01/2015 to 03/2019.

Notice being served on the respondent, the learned counsel Mr. B.B.Pradhan appeared and participated in the hearing held for admission of the appeal and the prayer made by the appellant for grant of interim stay.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 31.03.2023 and the appeal has been filed on 29.05.2023 i.e within the period of limitation. No other defect has been pointed out by the Registry. The appellant has described the impugned orders as a composite order being passed pursuant to a common proceeding. But at this stage of admission, no opinion can be

formed on the compositeness of the order. The appeal in respect of both the orders is admitted.

A separate petition has been filed by the appellant praying an interim order of stay on the execution of the impugned orders pending disposal of the appeal.

The appellant has stated that the impugned orders are illegal and arbitrary since the commissioner had failed to appreciate that CIRP has been initiated against the establishment prior to the inquiry and the matter is now pending before the Hon'ble NCLT, Chandigarh. The adjudicating authority also declared a moratorium by order dated 24.07.2017 and Interim Resolution Professional has been appointed. Following such appointment a public announcement was made by the IRP in the news papers inviting submission of the claims. This was pointed out to the commissioner during the inquiry. Though the superior courts have time and again decided that no legal proceedings can be initiated for the period prior to the approval of the resolution plan and all the claims for that period be advanced before the Resolution Professional appointed, the Respondent of this proceeding conducted the inquiry for the previous period, which makes the order illegal and liable to be set aside. She thus submitted that the appeal be admitted and an interim order of stay be granted in respect of the impugned orders till disposal of the appeal.

Mr. Pradhan, the learned counsel for the Respondent counter argued that two separate orders have been passed by the commissioner and thus those cannot be construed as composite orders. More over there is no restriction for initiation of inquiry merely because Resolution professional has been appointed.

At this stage of admission it is not felt proper and desirable to form any opinion on the merit of appeal, when reply of the respondent has not been filed. The Registry has pointed out that the appellant has already deposited 75% of the amount assessed as damage and interest in the impugned orders with this Tribunal, while filing the appeal. Thus considering the circumstances that the appeal has been filed in time and suffers no other defect, it is directed that there will be an interim stay on execution of both the orders pending disposal of the appeal. Call the matter on 10/08/2023 for reply to be filed by the respondent to the

appeal. The Respondent shall not take any cohesive action in respect of the impugned orders till disposal of the appeal.

Presiding Officer  
3<sup>rd</sup> July, 2023.

**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-2/05/2023**

M/s. Ghatak Security Services

Appellant

VS.

APFC, Noida

Respondent

**ORDER DATED:- 3<sup>rd</sup> July, 2023.**

Present:- Sh. Ravi Ranjan, Ld. Counsel for the Appellant.  
Sh. S.N. Mahanta , Ld. Counsel for the Respondent.

The appeal challenges two separate orders dt 05/05/2022 passed by the APFC Noida u/s 14B and 7Q of the EPF&MP Act, wherein, the appellant has been directed to deposit Rs 2,13,702/- and Rs.1,31,800/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 10/2013 to 01/2020.

Notice being served Sh. S.N. Mahanta the learned counsel for the respondent appeared and participated in the hearing resisting the prayer for condo nation of delay and 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 passed on 05/05/2022 and the appeal has been filed on 27.06.2023, i.e beyond the period of limitation. A separate petition has been filed by the appellant praying condonation of delay. In the said petition the Appellant has stated that the impugned orders were communicated to the establishment for the first time on 15.05.2023 when an e mail was received from the respondent authority having attachment of recovery notice and the impugned orders. Though the appellant was regularly participating in the inquiry, the orders were

never communicated to it. Hence the appellant has stated that the appeal has been filed within the prescribed period of limitation from the date of knowledge.

The learned counsel Mr. Mahanta representing the respondent submitted that the order was communicated on the same day when it was passed, by Regd. Post. But no evidence to that effect has been placed on record.

In absence of evidence to contrary it is held that the appeal has been filed within the period of limitation. There being no other defect, the delay is condoned and 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 after a long gap alleging delay in remittance. As per the rulings of the High Court and circular the department of the Respondent, for any delay in remittance proceeding should have been initiated within a reasonable period. The proprietor of the establishment had entrusted the compliance work to a consultant, who has now absconded with all the records. On receipt of notice for inquiry when steps were taken to contact him, his whereabouts are not traceable. There is no malafide intention behind the delay in remittance. The learned counsel for the appellant also submitted that earlier there was an assessment made u/s 7A of the Act. The same has been challenged by the appellant denying the liability there under. When the appeal is pending, the inquiry u/s 14B and 7Q should not have been undertaken. He also argued that the impugned order was passed when the entire country was struggling to come out of the grip and slow down occurred on account of the outbreak of the 2<sup>nd</sup> wave of Covid 19. No proper opportunity of setting up the defence was allowed as the inquiry was concluded hurriedly. More over, the commissioner has not given any finding on the mensrea behind the delay. He thereby argued that the appellant has a strong arguable case and impugned orders, if would not be stayed the very purpose of filing the appeal would be defeated. 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 has challenged the order passed u/s 7A of the Act, but the same does not prevent any action for levy of damage or calculation of damage. When any delay in remittance is detected, the same attracts the liability for damage and interest. 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 six years. But 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 25% 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 16/08/2023 for complying the direction by the appellant and reply to the appeal by the respondent. 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-2/06/2023**

M/s Sai Print & Pack  
Prithala-Dhatir Road,  
Opp. HPL, Ltd. Village Dudhola,  
Palwal, Haryana, 121102.

Appellant

VS.

The Assistant Provident Fund Commissioner,  
EPFO Complex, Sector 15A, Faridabad,  
Haryana-121007.

Respondent

**ORDER DATED:- 3<sup>rd</sup> July, 2023.**

Present:- Sh. B. K Chhabra, Ld. Counsel for the Appellant.  
Sh. Chakradhar Panda, Ld .A/R for the Respondent.

This order deals with the prayer for condo nation of delay, admission of the appeal and an interim order of stay on execution of the impugned order.

The appeal has been filed by the appellant, a proprietorship concerned and engaged in the business of printing and packaging. It is a covered organization under the EPF&MP Act. In the appeal challenge has been made to the order dated 19/04/2023 passed u/s 14B and 7Q of the EPF & MP Act by the APFC Faridabad, where under the establishment has been directed to deposit Rs 9,32,938/ as damage and Rs 4,54,353/- as interest for the period 04/02/2022 to 10/11/2022. It has been stated that the appellant establishment was busy in respect of some other legal affairs and the Tribunal and courts were closed on account of summer vacation. Hence there is a delay of few days in filing the



appeal and the Tribunal has power to condone the delay. A separate petition praying condonation of delay has been filed.

Sh. Chakradhar Panda appeared to represent the Respondent and raised objection to the stand taken by the appellant for explaining the delay alleging that the stand taken is not bonafide. But on perusal of the record it is found from the report of the registry that impugned orders were passed on 19.04.2023 and the appeal has been filed on 28.06 2023, i.e few days after expiry of 60 days time period as prescribed under the Rule. But the same has been filed within the extended period of further 60 days up to which this Tribunal can condone the period of limitation. Considering the same the delay is condoned. No other defect has been pointed out by the Registry in presentation of the appeal.

The learned counsel for the appellant submitted that the commissioner without considering the submission of the establishment advanced during the inquiry passed the unreasoned order without giving any finding on the meansrea. More over the order passed u/s 7Q of the Act is appealable being a composite order passed pursuant to a common proceeding. Hence the appeal be admitted in respect of both the orders and an interim order of stay be passed in respect of both the orders pending disposal of the appeal. He also added that the orders if would not be stayed, the purpose of filing the appeal shall be defeated.

Mr. Panda the learned counsel for the Respondent counter argued that when two separate orders have been passed, the same cannot be construed as a composite order and the appeal in respect of the order passed u/s 7Q cannot be dealt in this appeal. To support his contention, he has relied upon the judgment of the Hon'ble SC in the case of Arcot Textiles. He also emphasized that the appeal if admitted there should not be an unconditional order of stay as the whole purpose of the legislation is to take care of the employees.

On hearing the submission of the learned counsels an order need to be passed on the admission of the appeal and prayer for interim stay on execution of the order. In the previous paragraph of this order the delay has been condoned. There being no other defect, the appeal is admitted in respect of both the orders. But at this stage since no opinion can be formed on the compositeness of the order, it is not desirable to

stay execution of the order passed u/s 7Q of the Act. However the order passed u/s 14B need to be stayed pending disposal of the appeal.

There is no dispute on facts that remittance has been made after considerable delay. But the appellant has offered an explanation of it's bonafides in doing so. The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Morirokuut India Pvt Ltd vs Union Of India reported in 2005SCCpage1** and in the case of **Escorts Limited and another vs Union Of India reported in 43(1991)DLT 207** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

In this case the period of default as seen from the impugned order is from 04.02.2022 to 10.11.2022i.eless than a year. But the amount of damage assessed is equally big. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Hence in this case it is directed that there would be an interim stay on the execution of the impugned order passed u/s 14B of the Act pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit 25% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. Put up after three weeks i.e on 26/07/2023 for compliance of the direction. Respondent is directed not to take any cohesive action for recovery in respect of the impugned order till the next date and the order if complied till disposal of the appeal.

Presiding Officer  
3<sup>rd</sup> July, 2023

