

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, No. 2 DELHI

D-2/39/2024

M/s Leeway Manpower Pvt. Ltd. vs. APFC/RPFC Gurugram East.

Present: Sh. S.K. Khanna, Ld. Counsel, for the Appellant.
Sh. S.N. Mahanta, Ld. Counsel for the Respondent.

Order dated-24.04.2025

1. This is an appeal preferred by the appellant establishment assailing the order dated 23.02.2021 passed under Section 7A of the **EPF & MP Act, 1952** (hereinafter referred as the Act) wherein the respondent has assessed an amount of Rs.26,69,209/- as PF Dues for the period 03/2013 to 06/2020.
2. Appellant counsel has stated that the respondent has travelled beyond the scope of enquiry. Notice for enquiry u/s 7A was issued for the period 04/2016 to 11/2016 while the final order has been passed from 3/2013 to 6/2020. No notice was given for extending the period of enquiry. Moreover, it is an ex-parte order. Director in charge of the appellant company is in jail. Even the copy of the enquiry report has not been furnished to him. Therefore, he submits that order be set aside and recalled and the matter be remanded back.
3. Reply has been filed by the respondent department wherein the respondent has stated that the appellant has not approached this tribunal with clean hands and has suppressed material facts. Appellant has also distorted facts to gain sympathy from this tribunal. Relief claimed by the appellant cannot be granted as the equity and good conscience are not in his favour. It is a case where during the proceedings Sh. Baljit Singh (DR) filed his report stating that despite all efforts, whereabouts of the establishment could not traced. Record of the establishment has already been verified up to Feb, 2013. (15:32) He submits that the enquiry as well as the assessment is well founded and reasoned one, therefore, appeal shall be dismissed.
4. I have heard the arguments at par. There is no dispute that the director in charge of the appellant was in jail when the enquiry proceeding



was concluded. Therefore, argument that non participation of the inquiry willfully by the appellant has no basis. The person in jail cannot participate in the enquiry. Moreover, no summon has ever been issued to the jail authority seeking production of the director or ask him to represent the case. Record further speaks that initially the appellant has participated in the enquiry through one Sh. Himanshu Luthra, advocate but since, director was in jail, at the time of conclusion of the enquiry, nobody has appeared to counter the submission of enquiry officer. Even the enquiry report has not been supplied to the establishment.

5. It is also a matter of fact that the establishment was closed from May, 2016. In spite of this, administrative charges has been levied by the department as reflected from Table B of the impugned order. Moreover, department has assessed the amount as per table C on Rs.15,000/- including the project allowance. No opportunity has never been availed by the appellant because he was in jail to deny that the project allowance cannot be assessed for the purpose of PF contribution.

6. In view of the fact of non-participation of the appellant because he was in jail, order dated 23.02.2021 being ex-parte, cannot be sustained. The order of the respondent authority is set aside. Appeal is remanded back for fresh adjudication. Respondent is directed to decide the appeal afresh within six months from the date of receiving of this order after issuing a comprehensive show cause notice. Record be consigned to the record room as per rules. The amount of Rs.3,00,000/- deposited by way of FDR during the proceedings of appeal shall remain with the tribunal till the enquiry before the RPFC is concluded as per time set out by the tribunal.



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Atul Kumar Garg
(Presiding Officer)

Secy. to the Coun
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