

**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-1/22/2021

M/s Cyber Media (India) Ltd.

Appellant

Vs.

RPFC/APFC Delhi (South)

Respondent

ORDER DATED:-29.09.2021

Present:- Shri Haribansh Manav, Ld. Counsel for the Appellant.
Shri B.B. Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate prayer made by the appellant for an interim order of stay on the execution of the impugned order, pending disposal of the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri B.B. Pradhan, representing the respondent participated in the hearing, though no written objection has been filed.

The appellant has challenged the order dated 26/2/21 passed by the APFC Delhi, South, u/s 14B and 7Q of the EPF &MP Act assessing Rs 1,35,079/-as damage and Rs 77,048/-as interest payable on account of delayed remittance of PF Dues of it's employees by the appellant for the period 07/97 to 12/2007. Describing the same as a composite order, the appellant has prayed for admission of the appeal and stay on the execution of the orders.

The appellant has stated that the establishment is engaged in the business of publishing and selling few magazines, which is it's only source of income. The business, since 2010-2011 has suffered huge loss due to emergence of online social media leading to substantial reduction in sale of the magazine. On receipt of notice for inquiry the authorized representative of the establishment appeared and pleaded about the reason for delay and also disputed the calculation of deposit attached with the notice. Pursuant thereto the calculation was revised, so also the default period. The inquiry thus was held for the default period 7/97 to 12/2007. But the commissioner did not consider the Challans placed before him by the establishment.

It has also been alleged that the order of damage has been passed in a mechanical manner, without application of mind in

as much as no reason has been assigned for imposition of penal damage. Not only that the order does not reflect the basis of calculation of damage u/s 14B of the Act, though damage has been calculated @100%. The other argument advanced is that the EPFO had issued circular dated 20/8/90, directing that the inquiry relating to damage should be dealt and disposed of within a period of three years from the date of default. The commissioner in gross violation of the departmental circular initiated the inquiry. Not only that the establishment during the inquiry under challenge, though had ventilated about the financial difficulties leading to delay in remittance the commissioner with out application of mind and without giving reasonable opportunity of replying the EO's report concluded the inquiry and passed the impugned order.

Citing the judgment of the Hon'ble S C in the case of **APFC Vs Management R S L Textiles Pvt. Ltd, reported in AIR 2017 SC676**, he submitted that the impugned order, for not discussing the mensrea of the appellant for the delay in deposit is not sustainable and no damage can be imposed as a punitive measure, for the mere delay in remittance. While pleading about the mitigating circumstances, the learned counsel for the appellant also submitted that the appellant has suffered heavy loss in consecutive years preceding to the time of inquiry. But the commissioner never considered such mitigating circumstances while passing the impugned order.

The learned counsel for the respondent while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation.he also argued that the Tribunal should not interfere on the executability of the order passed under section 7Qof the Act as two separate orders have been passed and the order assessing interest is not appealable before this Tribunal.

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. On hearing the argument advanced by the counsel for both the parties it is found that the appeal has been filed within the time stipulated under the statute and does not suffer from any other defect. Hence the appeal is admitted. Now a decision is to be taken on the prayer for interim relief of stay made by the appellant. 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 7/97 to 12/2007, and the amount of damage assessed is equally big considering the present financial condition of the establishment as plead in the appeal. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount of assessed damage be protected from being recovered from the appellant. Furthermore in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order of damage pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit 10% of the assessed amount of damage through challan within three weeks from the date of communication 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 17.11.2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Presiding Officer