

**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-2/14/2021

M/s. Clixxo Broadband Pvt. Limited

Appellant

Through:- Shri Ravi Ranjan & Shri Vikas Singh, Ld. Counsel for the
Appellant.

Vs.

RPFC/ APFC Noida

Respondent

Through:- Shri Narender Kr., Ld. Counsel for the Respondent

Order dated 10-August-2021

The appeal has been filed by the appellant challenging the order dated 13/4/21, passed by the APFC, Noida, in exercise of the power u/s 14 B and 7Q of the EPF & MP Act assessing Rs 1,57,906/- and Rs 1,16,733/- as damage and interest respectively to be paid by the appellant for delayed remittance of the PF dues of its employees for the period 4/2019 to 11/2019.

This order deals with the admission of the appeal and prayer 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 representing the respondent participated in the hearing, though no written objection has been filed.

It has been stated in the appeal that the establishment is a company registered under the companies Act and engaged in the business of installing, maintaining and servicing of free EPABX system at the customer location of BSNL, a state owned corporation. The appellant company has to invest everything to be reimbursed by BSNL and huge amount was invested in the process. Since the date of coverage it has been depositing the statutory obligations under the Act diligently. But the BSNL failed to reimburse in time and this had substantially influenced the business activities of the company. Drawing attention to other ongoing litigations, it has been stated that when the company was facing acute deficit in cash flow the commissioner by notice dated 12/1/21 proposed to initiate an inquiry for damage and interest and summoned the company for the impugned inquiry. The representative of the appellant appeared and put forth the facts and figures disputing the liability for damage and interest. The balance sheet and other documents in proof of the financial instability of the company for non release of dues by BSNL and MTNL,

both Govt. owned companies were placed before the commissioner. It was also pleaded before the commissioner that the wage months for which damage and interest has been proposed were the months when the establishment could not pay salary to its employees. Hence the allegation as per the inquiry report that the employees' contribution deducted from the salary of the employees was retained by the employer is false and wrong. The establishment also requested for some time to verify and place other details. The mitigating circumstances causing delay in remittance were also brought to the notice of the commissioner. But the commissioner without considering the submission made by the AR of the company passed the impugned order which does not contain any finding on the mensrea of the appellant for the delay in remittance. The order since has been passed in complete violation of the settled principle of law is not sustainable in the eye of law. Thereby the learned counsel for the appellant submitted that the appellant has a good and strong case to argue in the appeal. The impugned order if would not be stayed pending disposal of the appeal, serious prejudice shall be caused and relief sought would become infructuous.

In his reply the learned counsel for the respondent submitted that the commissioner took into consideration all the submissions made by the establishment which is evident from the impugned order itself. The learned counsel for the respondent also submitted that the appellant as per his own admission was somehow managing to pay the salaries to the employees during the period under inquiry. If that is correct, the establishment is guilty of withholding the employees' share of the EPF contribution deducted from the salary of the individual employee. The other argument advanced by him is on the legislative intention behind the provision which aims at the protection of the employees in the hands of the employer. He thus argued against the prayer of interim stay.

The argument advanced by the respondent has been countered with a submission that the principle of natural justice was violated during the inquiry since the reply dated 24/3/21 was not dealt and discussed by the commissioner at all. He also submitted that the judgment of Organo chemicals is now an old judgment and the Hon'ble SC in the case of MacloidRussl and R SLTextiles have clearly held that the commissioner in order to levy damage need to give a finding on the mensrea of the establishment for the delay in remittance. In absence of a finding in that respect the order would become illegal.

The Tribunal, at this stage of admission of the appeal is not supposed to make a roving inquiry on the merit of the matter since the reply of the respondent is yet to be filed. For consideration of the prayer for interim stay, 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.

Thus, considering the submission advanced by the learned counsel for both the parties and the factors like the period of default and amount assessed as well as the objection about failure in following the principles of natural justice, it is felt proper to stay the impugned order passed under section 14B;

Hence, in this case it is directed that there should be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 20% 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 since two separate orders have been passed and at this stage of admission, no opinion can be formed on the nature of the orders, when no provision under the statute has been made making the order passed u/s7Q of the Act appealable to this Tribunal. Put up after three weeks i.e. on 13-September-2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

(Presiding Officer)