

**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-2/27/2021**

M/s. DLF Golf Resorts LTD. DFL City

Appellant

Vs.

RPFC, Gurugram (East)

Respondent

**ORDER DATED:-10.11.2021**

Present:- Shri Puneet Saini, Ld. Counsel for the Appellant.  
Shri Narender Kumar, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and the 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 Narender Kumar representing the respondent participated in the hearing and raised objection to the prayer for interim stay.

The appellant has challenged the order dated 3/7/21 passed by the RPFC Gurugram u/s 14B of the EPF &MP Act assessing Rs. 34,97,612/- payable as damage on account of delayed remittance of PF Dues of it's employees for the period 10/14 to 9/20. Describing the same as an illegal order, the appellant has prayed for admission of the appeal and stay on the execution of the order. It has further 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 @100%. No finding has been given on the mensrea of the establishment for the delayed remittance. No proper opportunity was also afforded to the appellant establishment for setting up a proper defence. Not only that the establishment during the inquiry under challenge, though had deputed it's representative to ask for an adjournment, 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 holding that the establishment representative admitted the assessed damage. The learned counsel for the appellant also submitted that damage is leviable only when amount payable to

EPFO is due, but not paid. Before commencement of 14B inquiry, one 7A inquiry was held in which amount due was assessed. As soon as the establishment received the 7A order, it deposited the entire assessed amount. Hence, there being no amount due at the time of initiation of the 14B inquiry, the commissioner should not have passed the impugned order imposing 100% damage. He thus described the impugned order as arbitrary and based upon the mathematical calculation of the EO.

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. The learned counsel for the appellant thereby submitted that the appellant has strong case to argue having fair chance of success. Unless there would be an interim order of stay on the recovery action of the impugned order serious prejudice shall be caused and the relief sought for in the appeal will become illusory. He thereby argued for an unconditional interim order of stay.

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 pointed out that the delay in remittance as evident from the calculation sheet is for six long years. More over it is not the case of the appellant that for financial difficulties it had withheld the salary of it's employees. When the salary was paid every month, the appellant has to explain as to why the employees' share deducted was not deposited. Since the appellant had omitted to discharge it's statutory obligation, the commissioner has rightly passed the order. He also submitted that mensrea being a state of mind need to be inferred from the circumstances of a case.

There is no dispute on facts that remittance has been made after considerable delay i.e after the assessment made u/s 7A of the Act. 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 **Moriroku Ut 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 10/14 to 09/20, and 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. 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 40% of the assessed amount of damage through Challan within six weeks from the date of communication this order as a precondition for stay pending disposal of the appeal. Put up after six weeks i.e on 05.01.2022 for compliance of the direction. Interim stay granted earlier shall continue till then.

Presiding Officer