

**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-1/38/2020**

M/s. Dentsu One Pvt. Ltd.

Appellant

Through:- Shri S.P. Arora & Shri Rajiv Arora, Ld. Counsel for the Appellant

Vs.

RPFDC Delhi(South)

Respondent

Through:- Shri Rajesh Kumar, Ld. Counsel for the Respondent.

**ORDER DATED 03.12.2020**

The appeal challenges the order dated 13.08.2020, passed u/s 14B of the EPF & MP Act by the RPFDC Delhi, where under the appellant establishment has been directed to deposit R1,21,33,607/- as damage for delayed remittance of the PF dues of its employees for the period 01.04.96 to 13.03.2014.

The respondent being noticed appeared through its counsel who participated in the hearing held via video conferencing, though no written objection has been filed.

On behalf of the appellant it has been submitted that it is the second round of litigation as the previous order passed u/s 14B and 7Q of the Act by the commissioner against the establishment was set aside by this Tribunal with a direction for refund of Rs62,05,630/- deposited in excess. That order of the Tribunal being challenged by the respondent, the Hon'ble High Court of Delhi while setting aside the order of the Tribunal remanded the matter for reconsideration. The appellant challenged the same before the Division Bench, and a direction was issued to the Respondent to keep the said amount in an interest fetching FDR in a Nationalized Bank till completion of the proceeding and to consider all the submissions and the documents placed on record by the appellant. Hence, the hearing commenced and the impugned order was passed. It has been stated that the appellant establishment has been covered under the provisions of EPF & MP Act on allotment of the code No w.e.f.20.05. 2005. Since then it has been depositing the PF contributions of its employees regularly. But for some inadvertent mistake in the calculation, there was a shortfall in the amount so deposited in respect of the expat employees. As soon as it came to the knowledge of the appellant, it took steps for deposit of the differential PF Dues as well as the interest accrued on the said amount. This itself, exhibits the bonafides and diligence of the appellant establishment towards its statutory obligation. But a notice was served calling upon the establishment as to why damage and interest shall not be levied for the delay in remittance. That round of litigation was contested and the order passed therein was challenged leading to the second round of litigation. But during the second round of litigation the respondent on its own had set up a committee to look after the matter and submit a report on the liability of the appellant establishment. Basing on the report of the committee and without application of mind the impugned order has been passed. The order is in total defiance of the direction given by the Hon'ble High Court to give a finding on the mensrea of the appellant for the delay in remittance. The written submissions made on different dates were not considered too. Hence, this order cannot sustain in the eye of law and bound to be set aside. The learned counsel for the appellant, thus, argued that the appellant has a strong and good arguable case in this appeal. Unless the execution of the impugned order would be stayed unconditionally during pendency of this appeal, the relief sought for would become illusory and appellant would be prejudiced. In order to support his contention the learned counsel for the appellant has placed reliance on

several pronouncements of the Hon'ble Supreme Court and other High Courts. While pointing out the Judgment of the Hon'ble High Court of Madras in the case of DCW Employees co- op canteen VS PO EPFAT, in which the principle decided by the Hon'ble Supreme Court in the case of McLeodRussel has been elaborately discussed, he submitted that all delays or default in remittance of PF dues shall not make the establishment liable for damage or interest unless the mensrea for the same is evident. In this case the expat employees were brought under the fold of the Act for the first time w.e.f. November 2008 and there was no clarity in the direction until those were clarified from time to time. The establishment for such confusion and ambiguity made deposit of PF contribution in respect of the salary paid to such expat employees in India as well as in their Home country Japan. The commissioner instead of considering the same as the bonafide of the establishment towards it's statutory responsibility, took it as delay in remittance and saddled the establishment with interest and damage. The commissioner has failed to appreciate that the establishment is entitled to refund of the excess deposit. He also submitted that by the order of The Hon'ble High Court of Delhi, Rs62,05,360/- was kept in FDR in a Nationalized Bank, which might have been 72 lakh by now. Such a big amount of the appellant being with the Respondent, any other condition for stay if would be passed now, the same shall be prejudicial and cause undue hardship. To explain the circumstances of undue hardship appellant's counsel has relied upon the judgment of the Hon'ble High Court of Allahabad in the case of Moriroku U T India Pvt Ltd VS U O I &another and submitted that when the appellant succeeds in showing a strong prima facie case having a fair chance of success, insistence for pre deposit as a condition for the interim relief of stay will certainly cause undue hardship. He, thus, argued for admission of the appeal, stay of the impugned order without any condition.

In his reply Shri Rajesh Kumar the learned counsel for the Respondent submitted that all the grounds taken by the appellant can very well be considered at the time of final hearing of the appeal. The tribunal at this stage is required to examine the period during which delay in remittance occurred and the amount of damage assessed. In this case the delay spans from 1996 to 2014. The amount of damage calculated is equally big. He also submitted that the amount deposited in FDR has been adjusted towards the the damage and interest calculated. If any other amount has been lying with the respondent it will be dealt according to the result of the appeal. The EPF and M P Act being a beneficial legislation any unconditional stay would be in opposition to the public policy and detrimental to the interest of the beneficiaries. Hence the prayer for unconditional stay is liable to be rejected. With regard to the direction of the Hon'ble High Court to return a finding on the mensrea, the impugned order is well discussed on that point cannot be faulted.

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 a decision is to be taken on the interim relief of stay as prayed 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 1.4.96 to 13.3.2014, 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 as Rs62,03,360/- has already been adjusted from the FDR of 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 the appeal is admitted and there should be an interim stay on the execution of the impugned order pending disposal of the appeal. But the said interim order cannot be unconditional as the same would have the effect of defeating the very purpose of the beneficial legislation. The appellant is, thus, directed to deposit Rs 12,00,000/ which is little less than 10% of the assessed amount of damage by way of challan with the Respondent 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 29.12.2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

(Presiding Officer)