

**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-2/09/2021

M/s Durable Doors and Windows

Appellant

Vs.

APFC, Gurugram

Respondent

ORDER DATED:- 26.04.2021

Present:- Shri S.P. Arora, & Shri Rajiv Arora, Ld. Counsel for the
Appellant.
Shri B.B. Pradhan, Ld. Counsel for the Respondent.

The appeal challenges the order dated 12/1/21 passed by the APFC, Gurugram, u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs5,24,224/- towards damage for delayed remittance of EPF dues of its employees for the period 1/5/13 to 24/2/19. Notice being served on the respondent, learned counsel Shri B.B. Pradhan appeared and participated in the hearing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 12/1/21 and the appeal has been filed on 9/3/21 i.e. within the prescribed period of limitation. There being no other defect pointed out by the Registry, the Appeal is admitted. In the appeal memo a prayer has been made for stay on the execution of the impugned order pending disposal of the appeal for the grounds taken in the appeal.

The learned counsel for the appellant during course of argument submitted that the impugned order u/s 14B has been passed by the APFC in the second round of litigation for the same period. He elaborated to say that, alleging delayed remittance of PF subscription for the period 5/13 to 2/19, inquiry was held by the APFC Gurugram and an order dated 18/10/2019 was passed assessing damage of Rs 5,24,224/-. Being aggrieved the appellant had filed appeal no ATA:-D-216/2020. The Tribunal while admitting the appeal directed for deposit of Rs1,00,000/- as a condition for stay on the execution of the impugned order. Being aggrieved by the said order of the Tribunal, the appellant establishment moved the Hon'ble High Court of Delhi by filing WP(C) No 8281/2020. The Hon'ble High Court by order dated 21/10/20, set aside the said impugned order and the order of the Tribunal as well. The commissioner was directed to hold a fresh inquiry giving adequate opportunity to the establishment to file documents and

after giving due consideration to the documents and material placed by the establishment to pass the order.

He also submitted that the commissioner though served a fresh notice for inquiry, and the appellant establishment placed all relevant documents including a written submission, the commissioner without giving due consideration to the same passed the impugned order dt 12/1/21 which is illegal and liable to be set aside as the commissioner while discharging the quasi judicial function had failed to assign reasons for his finding. No finding has been rendered on the mensrea of the establishment for the delayed remittance. Not only that the, basis of calculation of delay leading to imposition of damage is wrong as the commissioner in computing the period of delay took into consideration the date of encashment of the cheque instead of considering the date of presentation of the same as has been held in various judicial pronouncements. Citing the judgments of the Hon'ble SC in the case of RSL Textiles and the judgment of the Hon'ble High Court of Madras in the case of DCW Employees Co operative Canteen VS PO EPFAT, he submitted that for want of finding on mensrea the order is liable to be set aside as the imposition of damage can not be made automatically for all the delay in remittance. The written submissions made to the commissioner explaining the mitigating circumstances were never considered. He thereby submitted that the appellant has a prima facie strong case to argue in the appeal and unless the impugned order would be stayed, the relief sought in the appeal would become infructuous.

In his reply the learned counsel for the respondent submitted that the commissioner during the second round of inquiry had given proper opportunity to the appellant for placing the documents as was directed by the Hon'ble High Court. The commissioner after considering the matter from all angles passed the order which is based upon sound reasonings and decided principle of law laid down by the higher courts in various judgments relied upon. He also argued that the plea of financial hardship for whatever reason, as taken by the appellant can not exonerate him from the statutory liability. Describing the order under challenge as a speaking order he argued for rejection of the prayer of stay.

From the impugned order it is noticed that the inquiry was held for the period commencing from 1/5/13 to 24/2/19 i.e for a period of six years.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage and penal interest since the inquiry was held for an old period. The representations explaining the mitigating circumstances were never considered during the inquiry. He thereby submitted that the appellant has a good case to argue in

the appeal having a fair chance of success. Unless the impugned orders would be stayed, the relief prayed would become illusory.

On hearing the submission made by both the counsels, a decision is to be taken on the relief of stay as prayed by the appellant. The factors which are required to be considered for passing the order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held

“The order of the tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insist on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen from the impugned order spreads over almost six years, though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the commissioner has omitted to give a finding on the mensrea of the appellant for the delayed remittance, which is against the decided principle of law.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit 1,00,000/ as a pre condition for grant of stay within 3 weeks from the date of communication of the order failing which there would be no stay on the impugned order. The said amount shall be deposited by the appellant by way of Challan within three weeks from the date of communication of the order, failing which there would be no stay on the execution of the impugned order. Call the matter on 26.05.2021 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made. The respondent is also directed to file reply to the appeal on the next date.

Sd/-
Presiding Officer