

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208,
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-1/32/2020

M/s. Dusseldorf India Pvt. Ltd.

Appellant

Through:- Sh. Rajat Jariwal, Sh. Avirat Kumar & Ms. Shruti Khanijow,

Vs.

APFC Delhi-South

Respondent

Through:- Ms. Rashmi Malhotra, Ld. Counsel

ORDER DATED 15.09.2020

Present:- Sh. Rajat Jariwal, Sh. Avirat Kumar & Ms. Shruti Khanijow, Ld.
Counsels for the Appellant.

Ms. Rashmi Malhotra, Ld. Counsel for the Respondent.

The appeal challenges the order dated 18.3.2020 passed u/s 14B of the EPF & MP Act by the RPFC Delhi, where under the appellant establishment has been directed to deposit Rs. 78,64,024/- as damage for delayed remittance of the PF dues of it's employees for the period 03/2002 to 06/2016.

The respondent being noticed appeared through it's counsel who participated in the hearing held on 7th September via video conferencing. though no written objection has been filed.

On behalf of the appellant it has been contended that the appellant establishment has been covered under the provisions of EPF& MP Act, 1952 since 2002. It has been depositing the PF contributions of it's employees regularly. But for some inadvertent mistake in the calculation , there was a shortfall in the amount so deposited. 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 bonafide and diligence of the appellant establishment towards it's statutory obligation.

Though the shortfall was made good by depositing the differential amount on 24.4.2015, the APFC served a notice on 25.10.2016, for the inquiry u/s 14B of the Act alleging delayed remittance. The appellant appeared and disputed the calculation. Though, the representative of the appellant had submitted the records and showed the mitigating

circumstances causing delay in remittance, the commissioner without considering the same passed a nonspeaking order giving no finding on the mensrea of the appellant for the said delay in remittance. Citing the judgment of the Hon'ble Supreme Court in the case of RSL Textiles, he submitted that for want of finding on mensrea the order imposing penal damage is not sustainable in the eye of law. He also argued that delay in remittance would not ipso facto attract the liability of damage unless it is proved that the establishment had an evil intention behind the same. Thereby he submitted that the appellant has a good case to argue in the appeal. Till then the impugned order if would not be stayed the appeal would become infructuous as the authority have already taken steps for recovery of the assessed amount by attaching the Bank account.

With regard to delay in filing the appeal it has been stated that the impugned order though was passed on 18.3.2020, the appeal could not be filed within the prescribed time limit of 60 days as the country went into lockdown due to COVID 19 and the Tribunal and courts suspended functioning. Citing the order of the Hon'ble Apex court passed in suo moto WP (C) No 3/2020 extending the period of limitation until further orders, he submitted that the appeal is within time.

In her reply the learned counsel for the respondent fairly conceded that for a situation beyond the control of the appellant, delay occurred. Registry has not pointed out any other defect in filing the appeal than the delay. Hence, for the foregoing discussion, the delay is condoned and the appeal is admitted.

The further argument advanced by the respondent is that the establishment is a habitual defaulter and defaulted for a prolonged period. The commissioner in his well discussed order has given a clear finding on the mensrea. She also submitted that the plea of bonafide mistake was never taken by the establishment before the commissioner. The said plea is not believable as the appellant omitted to make the deposit for a continuous period of 14 years. Since the the Account of the establishment is subjected to Audit every year, the plea of bonafide mistake is not believable. Describing the EPF & MP Act as a beneficial legislation, aimed at the interest of the employee in the hands of the mighty employer, he submitted against the direction of interim stay prayed by the appellant

On hearing the argument advanced by the counsel for both the parties and on perusal of the record it appears that the appellant had deposited the differential amount before receipt of the 14B notice. Not only that the interest amounting to Rs43,62,574 too was deposited before commencement of the inquiry. This shows that no amount was outstanding to be paid by the appellant when the 14B inquiry started.

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 14 years and the damage levied is huge. Moreover, the appellant has disputed the same on the ground that interest and contributions have already been deposited. 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 a nominal 20% of the assessed damage as a pre condition for grant of stay within 4 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 with the Respondent by way of Challan. Call the matter 22-October-2020 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. On compliance of the above said direction by the appellant, the direction if any given by the recovery officer attaching the bank account of the appellant for recovery of the amount assessed in the impugned order shall stand vacated.

Sd/-

Presiding Officer