

**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-1/34/2022

M/s. PCR Buildtech Pvt. Ltd.

Appellant

VS.

APFC, Delhi (S)

Respondent

ORDER DATED :-01/08/2022

Present:- Ms. Shivani Gole, Ld. Counsel for the appellant.

Shri Narender Kumar, Ld. Counsel for the Respondent.

The appeal challenges two separate orders dated 25/06/2021 passed by the APFC Delhi u/s 14B and 7Q of the EPF&MP Act communicated on 12/07/2021, wherein the appellant has been directed to deposit Rs. 5,02,804/- and Rs. 2,53,844/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 04/1996 to 02/2020.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing resisting the prayer for grant of stay on the execution of the impugned order. A written reply along with supportive documents has been filed in objection to the stand taken for the prayer for stay.

Perusal of the record and office note of the registry reveals that the impugned orders were communicated to the establishment on 12/07/2021 and the appeal was filed on 04/05/2022 i.e beyond the period of limitation. Thus the Registry has pointed out the delay in filing the appeal. But for the extension of limitation granted by the Hon'ble SC on account of the outbreak of COVID 19, the delay is condoned. There being no other defect the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that the notice of the inquiry was never served upon the establishment and the ex parte order was passed under a wrong observation that the establishment failed to participate in the inquiry and did not explain its bonafides for the delay in remittance. They could know about the impugned orders when recovery action was initiated and the Bank account was attached. The other argument advanced is that the commissioner without assigning reason for levying damage at the maximum rate passed the impugned order in a fanciful manner. The authority of the assistant P F Commissioner for levying damage u/s 14B has also been challenged. It has also been pointed out that the damage has been levied for the period 04/1996 to 02/2020, whereas the establishment was covered under the Act from 1st April 2017 only. A document to that effect has been filed as Annexure-5 along with the appeal. Thus it is argued that the appellant has a strong arguable case in the appeal. Unless the impugned orders would be stayed, the relief sought in the appeal would become illusory. The alternate prayer made by the appellant is that the impugned order for the visible illegality be set aside at this stage of admission and the matter be remanded to the commissioner for a fresh inquiry after giving due opportunity to the appellant to set up its defence. It is also pointed out that the orders though have been separately passed u/s 14B and 7Q, in fact it is a composite order being dealt in a common proceeding. The appellant, thereby submitted that the appeal be admitted in respect of the order passed u/7Q of the Act and both the orders be setaside for fresh inquiry or stayed pending disposal of the appeal.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over more than 20 year depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation. Arguing that the orders being separately passed can not be treated as Composite order, he submitted that the appeal can not be admitted in respect of the 7Q order. He also relied upon the interim stay granted by the Hon'ble Division Bench on the judgment of the Hon'ble High Court of Delhi in the case of Gourav Enterprises, wherein it was held that two separate orders even though passed u/s 14B and 7Q of the Act would be treated as composite orders if the same are the out come of a composite proceeding. The learned counsel for the respondent thus argued that the appeal challenging the order passed u/s 7Q of the Act being not

maintainable be dismissed. On behalf of the respondent copies of the postal Tracking Report and e mail communications made with the appellant to show that the appellant deliberately did not participate in the inquiry held in video conferencing. He submitted that considering the period of default which has already caused delay, the matter should not be remanded for re inquiry to the prejudice of the employees.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when notice of inquiry was not served and opportunity to set up a defence was denied and the orders were passed in a mechanical manner without any finding on mensrea.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. Only factor which drove the commissioner for passing the impugned order is the non appearance of the establishment during the inquiry.

On hearing the submission made by both the counsels 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 this case the period of default as seen from the impugned order spreads over almost twenty years though the damage levied is not huge. But the commissioner has not assigned any reason supporting his finding.

All these aspects no doubt make out a strong arguable case for the appellant. On behalf of the appellant it is informed that in the meantime the respondent has recovered the entire amount of the damage assessed and as such, the tribunal should remand the matter and direct the respondent to refund the recovered amount. But hearing the submission and considering the delay allegedly made by the establishment in remitting the PF dues, it is not felt proper to remand the matter. Appeal is admitted. There is no need for any interim order of stay in view the recovered already made. It is directed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. Call on 05.09.2022 for reply by the respondent.

Presiding Officer

**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-1/41/2022

M/s. Gandhi Nursing Home
Through:- Sh. Ganesh Kumar, Ld. Counsel for the Respondent

Appellant

Vs.

APFC- Delhi West
Through:- Sh. Abhishek, Ld. Counsel for the Respondent no. 1 (Vakalatnama filed)
Respondent no 2,3 & 4 in person

Respondent

ORDER DATED:- 01/08/2022

The Ld. Counsel for the Respondent no. 1 asked for some time to address the arguments on admission of the appeal. Granted. List the matter on 16.08.2022 for admission hearing of the matter. Meanwhile, the Respondent authority is directed not take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

The Ld. Counsel for the Appellant is also directed to file the soft copy of the appeal to the designated email id i.e. po.del-cgit@gov.in .

Presiding Officer

**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. 400(4)2016

M/s. ASG & Co.

Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi(S)

Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

Arguments on the miscellaneous petition filed for review of the order dated 12.05.2022 heard and concluded. List the matter on 21.09.2022 for pronouncement of order on the same.

Presiding Officer

**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-1/98/2019

M/s. Frontline (NCR) Business Solutions Pvt. Ltd.
Through Sh. Tathagat, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Delhi (N)
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

The Ld. Counsel for the Respondent filed the reply to the appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Appellant who wishes to file the rejoinder. Accordingly, list the matter on 06.09.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

Presiding Officer

**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-1/99/2019

M/s. Frontline (NCR) Business Solutions Pvt. Ltd.
Through Sh. Tathagat, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Delhi (N)
Through Sh.S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

The Ld. Counsel for the Respondent filed the reply to the appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Appellant who wishes to file the rejoinder. Accordingly, list the matter on 06.09.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

Presiding Officer

**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-1/100/2019

M/s. Frontline (NCR) Business Solutions Pvt. Ltd.
Through Sh. Tathagat, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Delhi (N)
Through Sh.S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

The Ld. Counsel for the Respondent filed the reply to the appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Appellant who wishes to file the rejoinder. Accordingly, list the matter on 06.09.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

Presiding Officer

**INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/09/2017

M/s. Prabhat Zarda Factory
Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi(N)
Through Sh. Prem Prakash, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

The Ld. Counsel for the Appellant wants some more time to file the rejoinder. Granted as last chance. List the matter on 16.08.2022 for filing rejoinder by the Ld. Counsel for the Appellant along with supply a copy of the same upon the Ld. Counsel for the Respondent.

Presiding Officer

**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-2/15/2022

M/s. Sadhu Auto Parts Pvt. Ltd.

Appellant

VS.

APFC, Faridabad

Respondent

ORDER DATED :-01/08/2022

Present:- Shri Jr. Sharma & Shri Bhupesh Sharma, Ld. Counsel for the appellant.

Shri Chakardhar Panda, Ld. Counsel for the Respondent.

The appeal challenges the orders dated 1/04/2022 passed by the APFC, Faridabad u/s 14B and 7Q of the EPF&MP Act communicated on the same day, wherein the appellant has been directed to deposit Rs.18,36,989/- as damage and Rs. 8,98,889/- as interest for delayed remittance of EPF dues of it's employees for the period 01/01/2018 to 23/11/2020.

Notice being served on the respondent, learned counsel for the respondent Sh. Chakradhar Panda appeared and participated in the hearing on admission and resisted the prayer for grant of stay on the execution of the impugned order though no written objection to the petition for interim stay has been filed.

Perusal of the record and office note of the registry reveals that the impugned order was passed and communicated to the establishment on 01/04/2022 and the appeal was filed on 12/05/2022

i.e within the period of limitation. There being no other defect the appeal is admitted.

The appellant has stated that the impugned order is illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that It is astonishing that the commissioner initiated the inquiry for damage and interest for the period 01/01/2018 to 23/11/2020. But the calculation sheet supplied with the summon was for the period 04/2016 to 05/2020. Thus no calculation sheet for the inquiry period 06/2020 to 11/2020 was supplied. The authorized representative of the establishment though had appeared and explained the circumstances leading to delay in remittance, and a written submission was filed, the same was never considered. It has also been submitted that during 2017/2018, the enforcement officer visited the premises of the appellant establishment and noticed some casual workers engaged for some civil construction work going on and advised the staff of the establishment to enroll them as the employees, though it was stated that the said workers are not engaged in the regular business of the establishment which manufactures Automobile parts. The EO also reported about non compliance in respect of some excluded employees and deficit payment with reference to minimum wage rate. The respondent compelled the establishment to deposit the amount as reported by the EO and under the compelling circumstances the establishment made deposit of Rs 28,17,404/- was deposited towards contribution of 128 casual employees engaged during the period Non 2016 to Dec 2017. Similarly the establishment as per the EO Report made deposit of 15,75,450/- in respect of excluded employees and Rs 23,621/- in respect of some employees on the basis of minimum wage notification. But the commissioner, in total defiance to the department circular that damage can not be levied for the remittance made in respect of employees enrolled on the recommendation of the EO, proceeded with the inquiry u/s 14 B and passed the impugned order without considering the objection taken in the written submission. The other argument advanced is that the commissioner without assigning reason for levying damage at the maximum rate, passed the impugned order in a fanciful manner. Thus it is submitted that the appellant has a strong arguable case in the appeal. Unless the impugned orders would be stayed, the relief sought in the appeal would become illusory. It is also pointed out that the orders though have been separately passed u/s 14B and 7Q, in fact it is a composite order being passed in a common proceeding. The appellant, thereby submitted that for the patent illegality visible in the impugned order, an interim order of stay be passed against the execution of both the orders.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over more than 4 years depriving the employees of their lawful rights and the same happened for the negligence of the employer in extending the benefit to eligible employees. He also submitted that any order of stay on the execution of the impugned order shall be prejudicial to the employees and defeat the purpose of the legislation. Arguing that the orders being separately passed can not be treated as composite order, he submitted that the appeal can not be admitted in respect of the 7Q order. He also relied upon the interim stay granted by the Hon'ble Division Bench of the High Court of Delhi, on the judgment of Gourav Enterprises, wherein it was held that two separate orders even though passed u/s 14B and 7Q of the Act would be treated as composite orders if the same are the out come of a composite proceeding. The learned counsel for the respondent thus argued that the appeal challenging the order passed u/s 7Q of the Act being not maintainable be dismissed.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when the orders were passed in a mechanical manner without considering the objection taken in the written submission and without considering the fact that there was no intentional delay.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. Only factor which drove the commissioner for passing the impugned order is thereport of the EO.

On hearing the submission made by both the counsels the factors which are required to be considered for passing the order of stay are 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 more than four years and the damage levied is huge. The commissioner has not assigned any reason supporting his finding and how the objection and dispute raised were dealt during the inquiry.

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 passed u/s 14B of the Act, 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 30 % of the assessed damage with the respondent as a pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. It is observed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. . Call the matter 20.09.2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14 B of the Act till the next date when appellant shall report compliance of the direction given in this order.

Presiding Officer

**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-2/27/2022**

M/s. IL & FS Engineering & Construction Company
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC- Gurugram East
Through Ms. Asha Gopalan Nair, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

Arguments on the admission of the appeal heard in part. The Ld. Counsel for the Respondent wants some time to file the written notes before arguing the matter. Permission to file the written notes granted. Accordingly, List the matter on 18.08.2022 for continuation of the arguments on admission of the appeal. Meanwhile, the Respondent authority is directed not take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

Presiding Officer

**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-2/28/2022

M/s. Rivigo Services
Through Sh. S.K Khanna, Ld. Counsel for the Respondent.

Appellant

Vs.

RPFC- Gurugram East
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 01/08/2022

Arguments on the admission of the appeal heard and concluded. The Counsels shall have the liberty to file the written notes of arguments within 2 weeks from today after serving a copy of the same upon the opposite parties. List the matter on 28.09.2022 for pronouncement of order on the same. Meanwhile, the Respondent authority is directed not take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

Presiding Officer

**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-2/10/2022

M/s. Sandha & Company Appellant
Through Sh. J.R Sharma & Bhupesh Sharma, Ld. Counsel for the Appellant

Vs.

RPFC- I, Gurugram Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 01/08/2022

Reply on behalf of the Ld. Counsel for the Respondent stands filed. Taken on record. Copy of the same supplied to the Ld. Counsel for the Appellant. List the matter on 20.09.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

Presiding Officer

**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-2/13/2021

M/s. Arien Global Lifestyle Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

APFC, Noida
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED:- 01/08/2022

More time prayed for filing reply on behalf of the Ld. Counsel for the Respondent. Granted. List the matter on 29.09.2022 for filing reply.

Presiding Officer

**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-2/27/2019

M/s. Hi-Trac Manpower Services Pvt. Ltd. Appellant
Through Sh. J.R Sharma & Sh. Bhupesh Sharma, Ld. Counsel for the Appellant

Vs.

RPFC, Gurugram Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 01/08/2022

Matter was mentioned by the Ld. Counsel for the Respondent.
Arguments heard in part. List the matter on 28.11.2022 for continuation
of the arguments.

Presiding Officer