

**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-1/25/2022

M/s. Sarvesh Security Services Pvt. Ltd. Appellant

VS.

RPFC-II, Delhi (E) Respondent

ORDER DATED :-03/06/2022

Present:- Shri Sarvesh Singh, Ld. Counsel for the appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

The appeal challenges order dated 11.04.2022 passed by the RPFC Delhi u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs. 42,38,948/- as damage for delayed remittance of EPF dues of it's employees for the period 01.11.2018 to 28.02.2020.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing on admission and the prayer for grant of stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 11.04.2022 and the appeal was filed on 21.04.2022, i.e within the period of limitation. There being no other defect pointed out, the appeal is admitted.

In the appeal, prayer has been made for an interim order of stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that the impugned order is illegal and arbitrary since the commissioner had failed to appreciate the mitigating circumstances pointed out during the inquiry by the establishment. It has also been stated that the appellant establishment is dependent on the clients for clearance of the Bills and a huge amount is outstanding. However the appellant

establishment was very careful toward compliance of its statutory obligations. But for implementation of minimum wage revision, there was some delay in deposit of the PF dues. On receipt of the notice for inquiry, the authorized representative of the establishment appeared before the commissioner and raised dispute with regard to the calculation of damage. It also made deposit of the assessed interest. The establishment is not a habitual defaulter and the delay occurred for a reason beyond its control. The documents forming the basis of calculation were never made available to the establishment for confrontation though a written submission was made on 16.11.2021. The same was not considered at all. The commissioner without assigning reason for levying damage at the maximum rate passed the impugned order in a fanciful manner. The other plea taken is that no adequate opportunity was afforded to the establishment to advance its defence. The notice of inquiry on one occasion i.e on 14.12.2021 was received by the establishment at 4.33p.m whereas the hearing was scheduled to 4.30.p.m.Thus it is argued that the appellant has a strong arguable case in the appeal. Unless the impugned order would be stayed, the relief sought in the appeal would become illusory.

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 one 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. However the learned counsel for the respondent did not dispute the stand of the appellant that the assessed interest was deposited by the establishment during the pendency of the inquiry.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when none of its submissions were considered by the respondent and the order was passed in a mechanical manner without any finding on mensrea.

On hearing the submission made by both the counsel on the prayer for interim stay, it is found that the establishment is diligent in deposit of the interest on delayed remittance of PF dues. 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 only one year. But the damage levied is huge. Moreover, the appellant has already deposited the interest proposed which proves its bonafides. The mitigating circumstances were also not considered by the commissioner.

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, as a pre condition for grant of stay till disposal of the appeal, within six weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. The respondent is directed not to take any coercive action against the appellant in respect of the impugned orders till the compliance is made. Call on 21.07.2022 for reporting compliance

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-1/26/2022

M/s. Bhadra International (India) Pvt. Ltd.

Appellant

VS.

RPFC, Delhi(N)

Respondent

ORDER DATED :-03/06/2022

Present:- Shri Kunal Arora, Ld. Counsel for the appellant.
Shri Atul Kumar, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and an application filed by the appellant praying an interim order of stay on execution of the impugned orders passed u/s 14B and 7Q of the EPF&MP Act , by the RPFC Delhi , North.

Being noticed the Respondent appeared through it's counsel, raised objection to the petition praying interim stay on the execution of the impugned order and the matter was heard being argued by the counsel for both the parties.

Registry has reported on the delay in filing the appeal. Perusal of the record shows that the impugned order was passed on 03.09.2021 and the same was dispatched to the appellant on 22.09.2021. The appeal was filed on 21.04.2022. But the appellant has pleaded that for the extension of limitation granted by the Hon'ble SC in suo motto WPC No 3/2020 the appeal has been filed in time. Be it stated that the Hon'ble SC in the afore mentioned case by order dated 10.01.2022 have excluded the period from 15.03.2020 to 28.02.2022 and have further allowed 90 days time for filing any proceeding if the limitation has run out during the aforesaid period. Hence it is held that the appeal has been filed in time .the delay is accordingly condoned.

The appeal has been filed by the appellant, an establishment engaged in supply of security guards to other establishments, challenging the order dated 18.12.2020 passed by the RPFC u/s

14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs49,50,445/-/- as damage and Rs44,24,798/- as interest for the delayed remittance of the PF contribution of it's employees for the period 22.06.2018 to 28.02.2020.

It has been stated by the appellant that the commissioner by notice dt 21.06.2021 had called upon the establishment to show cause as to why damage shall not be levied and interest shall not be calculated for the delay in remittance of the PF contribution of it's employees for the above said period. In response to the same, the authorized representative of the establishment appeared and pointed out the mitigating circumstances leading to delay in remittance. It was specifically pleaded before the commissioner that the delay was not intentional and for the acute financial crisis faced by the establishment on account of some unexpected legal hurdle created leading to huge loss in business. Since the establishment has been in to the business of ground handling in different Air ports, the same was impacted on account of COVID related slowdown of aviation sector. But the commissioner during the inquiry, without considering the submission, passed the impugned order in which no finding on mensrea has been rendered nor any reason in support of imposing maximum rate of damage has been assigned. While pointing out that the inquiry was held pursuant to a common notice and common proceeding being recorded he submitted that the composite order which has been passed after a common inquiry need to be stayed as the appellant has a strong case to argue in the appeal and serious prejudice shall be caused if the appeal is not admitted and an interim order preventing execution of the impugned order pending disposal of the appeal is not passed.

The learned counsel for the respondent Mr. Atul Kumar in his reply took serious objection to the prayer of interim stay and argued that the delay in remittance has been admitted by the establishment during the inquiry. He thus argued that no order of interim stay should be granted which would have the effect of negating the very purpose of the beneficial legislation. He also submitted that there are two separate orders passed u/s 14B and 7Q of the Act and as such the appeal challenging the order u/s 7Q is not maintainable.

The position of law in this regard was discussed by the Hon'ble SC in the case of Arcot Textiles Mills case and it was held that the order passed u/s 7Q if a composite order being passed u/s 7A is amenable to appeal u/s 7I of the Act. It was further held that any composite order, a facet of which is appealable, the other part would be appealable too. If an independent order is however passed, no appeal would be maintainable in respect of the interest compound under section 7Q of the Act.

The position was again discussed by the Hon'ble High Court of Delhi in the case **Gourav Enterprises vs. UOI**, and it has been held that in order to determine if the order passed u/s 7Q is an independent order or composite order, the facts relevant for consideration are:-

- 1- if the notice to show cause was common
- 2- if common reply was filed by the establishment
- 3- if common proceedings u/s 14B and 7Q were held
- 4- if two separate orders or a common order was passed.

The Hon'ble court have further held that, if the notice to show cause, reply to the notice and proceedings are common, mere passing of two separate orders on the same date would not render the proceedings under section 14B and 7Q independent of each other. But the order passed in the case of Gourav Enterprises has been stayed by the Hon'ble SC. Hence for the separate orders passed u/s 14B and 7Q, the same can not prima facie held to be a composite order.

Hence the appeal is admitted in respect of the order passed u/s 14B only.

Without delving into the other details as pointed out by the appellant, but on perusal of the impugned order which does not contain any finding on the mitigating circumstances pointed out during inquiry and which does not contain any reason of the commissioner for imposing damage at the maximum rate, it is held that the appellant has a strong case to argue in the appeal. Unless the execution of the order impugned in the appeal assessing damage would be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. But at the same time it is held that the said interim order of stay can not be un conditional. Hence the appellant is directed to deposit a nominal amount i.e 25% of the damage assessed within six weeks from the date of this order as a precondition for stay of the impugned orders assessing

damage by depositing challan before the EPFO, failing which there would be no stay on the impugned order. Call on 21/07/2022 for compliance of the direction and reply by the Respondent. Interim stay granted earlier shall continue till the next date.

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-1/12/2022

M/s. Data Link Consultancy

Appellant

VS.

RPFC, Delhi (S)
Respondent

ORDER DATED :-03/06/2022

Present:- Shri Raj Kumar, Ld. A/R for the appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

The matter stands posted today for compliance of the order dated 05.04.2022. The appellant instead of complying the direction has filed an application seeking further extension of time for period of 30 days on the grounds stated therein.

The application is supported by an affidavit and a certified true copy of the statement of account of the appellant maintained with SBI.

The LD. A/R for the appellant submitted that the establishment is encountering acute financial hardship and not in a position to comply the direction. Hence one month time will be allowed.

Shri Rajesh Kumar the Ld. Counsel for the respondent raised serious objection and submitted that the bank statement filed by the establishment clearly negatives the stand of the appellant. Hence no time should be allowed.

Perusal of the record shows that on 05.04.2022 an order was passed wherein the appellant was directed to deposit 30% of the assessed amount within 6 weeks towards compliance of the provision of section 7O. The date was fixed to 25.05.2022. On that day the appellant instead of making compliance ask for extension of time which was allowed. Today again another application has been filed praying extension of time. The bank statement filed by the appellant clearly shows that on 20.04.2022 i.e. 15 days after the passing of the order an amount of Rs. 2317238/- and 0624460/- was credited in the said account as earned interest. Not only that as

on today the balance in the account is Rs. 8006334/-. This is a current account having the credit limit of Rs. 6Crore or more. Thus, the plea of the appellant that the non compliance is on account of acute financial condition seems not acceptable. The application for extension of time is rejected and appeal is dismissed for non compliance of the direction given in the order dated 05.04.2022.

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-2/17/2022

M/s. ACIL Ltd. Ground Floor

Appellant

VS.

RPFC-II, Gurugram
Respondent

ORDER DATED :-03/06/2022

Present:- Shri Toofan Singh, Ld. Counsel for the appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and waiver of the condition prescribed u/s 70 of the Act directing deposit of 75% of the assessed amount as a pre condition for filing of the appeal.

Copy of the appeal and petition being served on the respondent the Ld. Counsel Shri B B Pradhan appeared and participated in the hearing without filing any written objection. The record reveals that impugned order was passed on 04.03.2022 and the appeal has been filed on 24.05.2022. Thus the registry has objected that the same is barred by limitation. From the perusal of the record it is found that the appeal though has been filed after expiry of 60 days, the same is within the extended period of 60 days to which the tribunal is authorized to allow. Hence, the delay is condoned.

A petition has been filed by the appellant for waiver/reduction of the pre-deposit amount contemplated u/s 70 of the Act. The Ld. Counsel appearing for the appellant submitted that the establishment is engaged in the business of high precision engineering automotive components. The company suffered huge loss and the Hon'ble NCLT New Delhi has initiated one corporate insolvency resolution process under IBC 2016. Subsequently one resolution plan was received on 05.08.2019 for the revival and restructuring of the corporate debtor. The said resolution plan has been approved by the committee of creditors and the plan approval application was filed before the NCLT which is now pending for

adjudication. While the matter stood thus, on 01.03.2021 a summons was received from the enforcement officer asking for production of record for a proposed inquiry u/s 7A of the EPF Act. Thereafter, the EO submitted his report to the 7A authority but the same was not shared with the appellant. A notice of 7A inquiry being served the appellant submitted its reply alongwith supporting documents and apprised the authorities conducting the inquiry about the Proceeding pending before the NCLT. It was also apprised moratorium has been granted by the Hon'ble NCLT. But the respondent did not consider the submission and proceeded to pass the impugned order. Thus, the appellant in this appeal has pleaded that the order since has been passed solenly basing on the revised report submitted by the EO and without considering the submissions, the same is illegal and liable to be setaside. Thus, the appellant has stated for the moratorium granted by the Hon'ble NCLT, the respondent shouldn't have proceeded with the inquiry and cannot take any action in terms of section 8B to 8G of the Act. He thereby argued that the appellant has a strong case to argue and the appeal be admitted without insisting for the compliance of the provisions of section 7O of the Act. The other argument is that the resolution plan being pending approval, the company is under the management of the resolution professional and cannot comply with the direction for pre-deposit.

The Ld. Counsel for the respondent on the contrary argued that the provisions of section 7O is mandatory for admission of the appeal u/s 7A and this provision cannot be skipped under any circumstances. He further argued that if the appellant is aggrieved for the 7A inquiry conducted during the moratorium period granted by NCLT, he should have approached the NCLT instead of this tribunal. He thereby argued for a direction to deposit 75% of the assessed amount as a pre condition for admission of the appeal.

On hearing the argument it is observed that the statute provides for the appeal before this tribunal against the assessment made u/s 7A. The NCLT has no jurisdiction to entertain such appeals. If inquiry is permissible during the moratorium period the appellant has a statutory right to challenge the same before this tribunal.

The inquiry was conducted for the period 04/2016 to 02/2021. The amount assessed is Rs. 1,70,7,552/-. The period for which the remittance was not proper spans over almost 5 years depriving the employees of their legitimate rights. Of course the appellant in the application filed u/s 7O of the aCt has explained the hardship which it is likely to face if directed to deposit 75% of

the assessed amount. Without going to the other details pointed out by the appellant challenging the order arbitrary and at this stage of admission without making a roving inquiry on the merits of the appeal it is felt proper to extend the protection to the appellant pending disposal of the appeal keeping in view the Principle of law laid down by the Hon'ble Supreme Court in the case of Mulchand Yadav and another .Thus on hearing the argument advanced,, it is felt proper and desirable that pending disposal of the appeal, the amount assessed be protected from being recovered from the appellant as has been held by the Apex court in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default, the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 20%. Accordingly the appellant is directed to deposit 20% of the assessed amount within 8 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Registrar CGIT initially for a period of one year with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. The interim order of stay granted earlier shall continue till then. Call the matter on 04/08/2022 for compliance of the direction.

Presiding Officer