

**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-1/94/2019

M/s. Trackon Courier India Pvt. Ltd.

Appellant

VS.

APFC, Delhi (North)

Respondent

ORDER DATED:-05/04/2022

Present:- Shri S.K Khanna, Ld. Counsel for the Appellant.
Shri S.N Mahanta, Ld. Counsel for the Respondent.

This appeal challenges the order dated 31.07.2019 passed by the RPFC Delhi North u/s 7A of the EPF and MP Act (herein after referred to as the Act) assessing Rs. 80,34,347/- payable by the appellant establishment as the unpaid EPF dues of its employees for the period August 2015 to March 2018.

The facts, briefly stated, leading to this appeal is that the appellant establishment is a Pvt. Ltd. company engaged in the business of courier service having its office at New Delhi. On 02.02.2017 a complaint was received from All India General Mazdoor Trade Union alleging that the establishment has omitted to enroll more than 100 eligible employees as the members under the Act and thereby avoided to make contribution under the EPF and MP Act in respect of those eligible employees. A squad was constituted for verification and during the inspection the squad found that in respect of two persons namely Ravinder Kumar and Mh. Naushad who left the job of the appellant, no PF contribution has been made on the amount paid towards full and final settlement. The squad also found that the establishment has kept away the conveyance allowance for computation of the basic wage.

11 security guards found employed by the appellant through a contractor and the said contractor has not deposited the PF contribution in respect of 3 security guards. The squad also found 9 of the employees having their basic wage less than 15000/- not enrolled and recommended inquiry. It was also found that conveyance allowance and performance incentive paid to some of the employees not taken into consideration for payment of EPF dues. On the report of the squad summon dated 18.07.2018 was served on the appellant establishment calling upon to participate in the inquiry u/s 7A of the Act. In the meantime another frivolous complaint was received by the respondent from the Delhi Plumber allied industrial workers Union alleging that the appellant has engaged more than 1500 workers who have not been extended the benefit of PF Act. The appellant establishment appeared before the commissioner and filed its written objection meeting all the points raised by the enforcement officer in his report. But the commissioner without considering the written objection of the appellant and the legal points raised there under and without summoning the complainants or making effort of identifying the beneficiaries passed an unreasonable order which is illegal and not sustainable in the eye of law. Thus, in the appeal the appellant has prayed to set aside the impugned order on the ground that the same is not based upon sound reasoning and proper appreciation of fact and law.

The respondent through its counsel filed written objection stating that the impugned order is a reasoned and speaking order and sufficient opportunity was granted to the appellant to set up its stand. All the documents including the written submission filed by the establishment were carefully examined and considered by the commissioner. It has also been stated that EO found that towards full and final settlement Rs. 25000/- was actually given to two of the ex-employee namely Ravinder Kumar and Mh. Naushad. Since the department failed to provide break-up of the amount, the said amount was quantified as wage and the establishment was found liable for not making EPF contribution on the same. With regard to the complaints received from the union it has been stated that the EO made a thorough investigation of the allegation. Though the

allegation was for nonpayment of PF dues to 100 employees, only two were found victimized. Thus, the EO made a report in respect of those two only. Similarly 9 employees having basic salary below 15000 and thus eligible employees were found not enrolled on the pretext that their gross salary exceeds 15000/-. The establishment could not justify this stand for non compliance in respect of the employees pointed out by the EO. So far as inclusion of allowances to basic wage, the respondent has stated that the judgment passed by the Apex Court in the case of Vivekanand Vidya Mandir is only a reiteration of the Principle laid down earlier in the case of Bridge and Roof. Thus, the stand of the establishment that for the allowances paid to the employees prior to the judgment of Vivekanand Vidya Mandir EPF is not payable has no leg to stand and liable to be rejected. He emphasized that the allowances as a part of the basic wage is inbuilt in the act itself and there is no cutoff date in respect of the same. Thus, the enforcement officer as well as the RPFC rightly observed that the establishment has omitted to compute the allowances paid to the employees towards the basic wage to avoid PF contribution. To support his stand the Ld. Counsel for the respondent placed reliance in the case of **Bridge and Roofs Co. Ltd. vs. Union of India** decided by the Hon'ble Supreme Court wherein it has been held that the allowances universally paid across the table are to be considered for calculation of PF Contribution. He also relied upon the judgment of Hon'ble Supreme Court in the case of **Manipal Academy of Higher Education vs. Provident Fund Commissioner** wherein it has also been held that the allowances ordinarily and universally paid shall be construed as basic wage u/s 2(B) of the Act. The respondent has thus taken a stand that the conveyance allowance uniformly and universally paid to all its employees at the rate of 33.33% is a part of the basic wage and the establishment is liable to remit PF contribution on the same. Referring to the expenditure under the head employees benefit, he submitted that no explanation could be furnished by the appellant in respect of 901958. Similarly for the period 01.04.2015 to 31.03.2016 Rs. 7,84,401/- has been described as exempted salary and wage, but no supportive document could be produced. Thus,

the claim of the establishment that Rs. 1703477/- as employees benefit expenses for the year 2015,2016 as shown in the balance sheet is not acceptable. Amount of 76,69,034/- was claimed as payment made to outsourced manpower through independently covered contractor. But the appellant failed to produced the relevant record in respect of Rs. 99259/- paid to other agencies. Thus, the said amount was taken into consideration for quantification of the PF dues. The respondent thereby submitted that the impugned order does not suffer from any infirmity and should not be interfered with.

During course of argument the Ld. Counsel for the appellant submitted that as per the summon and the impugned order the period of inquiry doesn't tally. The EO admitted in his report that a complaint was received in respect of more than 100 employees but that remained unfounded. In respect of 2 employees only the payment was made towards full and final settlement. But the said settled amount not being wage EPF is not payable. He also submitted that the department witness made a deposition basing on the report of the EO and the commissioner accepted the report of the EO without application of mind. He also submitted that had the commissioner applied the mind he would not have assessed the contribution in respect of the allowances giving retrospective effect to the judgment of Hon'ble Supreme Court in the case of Vivekanand Vidya Mandir. He also submitted that EPF deduction is not payable on employees benefit since, that amount shown in the balance sheet was in the nature of either expenses made for the benefit of the employees on the festivals etc or as a manner of help during marriage or other occasions in the family of the employees. That being not a wage earned by the employee PF contribution is not payable. Rather be help extended for marriage or on account of death in a family are recoverable like loans and not earning. He thereby submitted that the commissioner committed error in the assessment making the order liable to be set aside.

Perusal of the impugned order shows that the commissioner has assessed Rs. 80,34,347/- on different counts for the period 08/2015 to 03/2018. The EO submitted that the establishment

before commencement of the impugned inquiry was found in default of Rs. 4,54,838/- in respect of some of the persons who had raised a complaint through the union. The establishment made payment of some amount and still 40,353/- was due to be paid. Similarly 24 employees were found drawing their basic wage less than 15000 per month and the establishment was not extending the benefit to them. The commissioner has also observed that the establishment in order to avoid EPF liability has intentionally bifurcated the salary into basic HRA, conveyance etc. The said allowances being paid universally EPF is payable on the same. The commissioner has relied upon the judgment of the Hon'ble Supreme Court in the case of M/s Bridge and Roof Co. Ltd. vs. Union of India to hold that EPF is payable on the allowances paid universally. The commissioner has further observed that in respect of some outsourced employees no EPF has been paid. The impugned order further reveals that the appellant /establishment disputed certain aspects of the department submission. The main objection is that Rs. 57,976/- quantified in respect of 24 eligible employees was wrong and the establishment had never admitted the same. The Ld. Counsel for the appellant submitted that before 2008 EPF was payable on basic wage, Dearness allowance and house rent allowance only. But the Hon'ble Supreme Court by judgment dated 28.02.2019 held that conveyance allowance is a part of basic wage. Since, prior to that the appellant had no knowledge that conveyance allowance should be computed for calculation of EPF dues no liability can be fastened on the appellant for the same.

The commissioner in this order has observed that conveyance allowance being paid universally attracts the character of basic wage and thus EPF contribution on the same is payable. It is felt proper to observe that prior to the 2018 SC judgment in Vivekanand Vidya Mandir vs. RPFC the allowances other than DA and HRA was never considered as basic wage. Moreover, in this matter when the inquiry was for a period prior to 2018 judgment and when no deduction of employees share on that allowance was made, it would not be proper to compute the said allowance as basic wage. The order of the commissioner impugned in this appeal

with regard to conveyance allowance is patently illegal. The Ld. Counsel also submitted that 2 of their ex employees having name Ravinder Kumar and Mh. Naushad were paid Rs. 12,758/- each for severance of the relationship of employment with the appellant. The amount was so paid to them towards retrenchment compensation and notice pay. The said amount not being earned wage no PF is payable and the order in that regard is also illegal as the compensation paid cannot come under the definition of basic wage u/s 2(B) of the EPF Act.

The impugned order also shows that 11 security guards were engaged through a contractor who as per the Eo's report is independently covered under the Act. Out of those 11 guards the contractor has not extended the benefit to three of the persons. Thus, the commissioner has come to hold that Pf liability for those guards lies with the appellant. A conjoint reading of sec 6 of the EPF and MP Act and Para 30 of the EPF Scheme 1952 leads to a conclusion that the establishment as the Principal employer is obliged to deposit the PF contribution of its own employees and the employees employed through the contractor at the first instance and then to recover the same from the bill payable to the contractor. But the position changes when the contractor providing the manpower is allotted with a separate code No. by the EPFO for depositing the contribution. In that case the contractor being the Principal employer, the establishment can't be held liable for the PF contribution of the outsourced employees through the contractor. In this case the contractor who had supplied the manpower i.e the security guards having a separate code no. is the Principal employer and for any default made by the contractor, the liability can't be fastened on the appellant. The amount in respect of those outsourced employees fixing liability on the appellant is held to be illegal and not sustainable.

A careful perusal of the impugned order shows that the commissioner was basically guided by the judgment of the Hon'ble Supreme Court in the case of Bridge and roof referred supra to determine the liability on the conveyance allowance paid by the employer. This approach of the commissioner is found to be

incorrect since before passing of the Vivekanand Vidya Mandir judgment no Pf contribution was payable on the conveyance allowance. When the employer had not deducted the employees share on the same for the period of inquiry it cannot be held that the judgment of Vivekanand Vidyamandir has a retrospective effect and the appellant is liable for contribution of both employer and employee share on the same. In respect of the Employees Benefit Expenses an amount has been assessed which again appears to be wrong as the same was never paid to anybody as the earned wage but as a mode of assistance recoverable in installments and for the other expenses made during festival etc for the benefit of the employees.

Thus, on a careful analysis of the fact and the submissions made by the Ld. Counsels it is observed that the impugned order seriously lacks the reasoning behind the finding which makes the order not sustainable in the eye of law and liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set aside. The amount if any deposited by the appellant as a part of the assessed amount as per the impugned order either for compliance of the provisions of section 7O or otherwise shall be refunded by the EPFO to the appellant within 60 days from the date of the communication of the order.

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 (South)

Respondent

ORDER DATED:-05/04/2022

Present:- Shri S.K Gupta, Ld. Counsel for the Appellant.

Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the admission and two separate petition filed by the appellant praying condonation of delay and waiver of the condition prescribed u/s 7O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, on the grounds stated in the petitions.

Copy of the petitions being served on the respondent, learned counsel for the respondent appeared and participated in the hearing, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner on 23/12/2021 and the appellant filed the appeal on 28/02/2022. The

Registry, thus has reported that the same has been filed beyond the prescribed period of limitation. But the appellant has stated in the petition for condonation of delay that the order dated 23/12/2021 was communicated to the establishment by cover letter dated 28/12/2021. By placing that letter on record, the appellant has stated that the appeal has been filed within the prescribed period of limitation. There is no dispute at this stage with regard to the dates stated above. Hence it is held that the appeal has been filed within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. The learned counsel for the appellant submitted that the impugned inquiry was initiated on the basis of the report of the EO dated 02/12/2021 alleging non compliance of the statutory deposits under the Act in respect of appellant's employees for the period 03/2020 to 06/2021. Before this report one summon dated 13/01/2020 was served on the establishment for inspection of the EO. In response there to, the establishment had produced all the records of the relevant period before the EO who after considering the materials placed, submitted report dated 23/02/2021 stating that the establishment is depositing the PF dues of the eligible employees from 08/2020 onwards and the inquiry be dropped. Accordingly the 7A inquiry was dropped. Surprisingly the respondent served another notice dated 5/07/2021 for a fresh inquiry for the period 03/2020 to 06/2021 ignoring that the previous inquiry for the overlapping period was dropped. If at all any omission was noticed for that period an inquiry u/s 7C could have been initiated. During this 2nd inquiry the establishment had produced the balance sheet, the salary register and challan etc before the EO who after perusal of the same submitted his report on 2/12/2021. Copy of the EO report was not supplied to the establishment. Though the inquiry was held on receipt of some complaints, the deposition of the complainants or the EO was never recorded by the commissioner giving opportunity to the establishment of rebutting the same. Violating the principles of

natural justice the commissioner had passed the impugned order. Citing the judgment of *Kranti Associates Pvt. Ltd and another vs. Masood Ahemad Khan and Others* (2010) 9 SCC496, he submitted that the impugned order can not sustain the test of a reasoned order for non assigning of the reasons by a quasi judicial authority and the appellant has a strong prima facie case to argue in the appeal. Citing various judgments of the Hon'ble SC, he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He argued that during the period under inquiry, as observed by the EO, the establishment had defaulted in deposit of the contribution for the eligible employees for a period of more than one year. More over during the inquiry held by the commissioner though the establishment had appeared on several dates before the commissioner, no written objection was filed. On some occasion cost was imposed on the establishment for non production of relevant records. No prayer was ever made for cross examination of the EO or the complainant.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the inquiry

has been made for an overlapping period. At this stage no opinion can be formed on the appropriateness of the impugned order as the reply of the Respondent is yet to come on record. At the same time it need to be considered that the period in respect of which inquiry was initiated are from 03/2020 to 06/2021 and the amount assessed is a huge amount i.e Rs48,09,945/- . Without going to the other details as pointed out by the appellant for challenging the order as arbitrary, and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to extend protection to the appellant in respect of the assessed amount pending disposal of the appeal, as insistence for deposit of 75% of the same would cause undue hard ship during this difficult time when commercial establishments are striving hard to recover from the business slow down on account of closure of activities due to outbreak of COVID 19. It is felt proper and desirable that pending disposal of the appeal, the assessed amount be protected from being recovered from the appellant as 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 and considering the grounds taken in the appeal, the period of default, the amount assessed, it is held that the facts of the appeal 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 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 6 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 passed earlier shall continue till the next date. Call the matter on 25.05.2022 for compliance of the direction.

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. 184(4)2014

M/s. Butterflies
Through Sh.S.K. Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Manu Parashar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05/04/2022

The Misc. Petition filed by the Ld. Counsel for the Respondent for vacation of stay is rejected as perusal of the case file shows that there is no stay granted in this case by this Tribunal as on date.

Further, there is also one application filed by the Ld. Counsel for the Respondent for early hearing of the matter. The same is allowed.

At this juncture, Ld. Counsel for the Appellant submitted that the present appeal does not prevent the Respondent department (EPFO) to proceed with the enquiry u/s 7A, if the circumstances demand so.

He also submitted that the pleading has been completed and he is ready for argument on the maintainability of the present appeal. Accordingly, list the matter on 26.04.2022 for hearing on the maintainability of the appeal.

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-1/06/2017

M/s. Profacilities Services Pvt. Ltd.

Appellant

VS.

APFC, Delhi East

Respondent

ORDER DATED:-05/04/2022

Present:- Shri Ravi Ranjan, Ld. Counsel for the Appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

The matter stands posted today for hearing on the petition filed by the appellant requesting initiation of a contempt proceeding for the disobedience caused by the respondent in freezing the bank accounts of the appellant despite the interim order passed. During the hearing the Ld. Counsel for the respondent Mr. Rajesh Kumar submitted that before uploading of the order he had communicated to the department about the order of admission only without mentioning about the interim protection and for that inadvertent omission the respondent had frozen the bank accounts. The mistake being pointed out now the accounts have been defrozeed. In view of the submission the application of contempt filed by the appellant become infructuous and disposed off.

The respondent has filed reply to the petition today. Call the matter on 26.04.2022 for rejoinder.

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-1/26/2019

M/s. Multiserve India Pvt. Ltd.
Through Sh. Sachin Goel, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through Sh. S.C. Gupta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05/04/2022

Matter heard in part. List the matter on 06.05.2022 for further consideration on the prayer for granting stay on execution of the impugned order. Meanwhile, there shall be interim stay on execution of 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-1/03/2022

M/s. Impressive Data Services Pvt. Ltd.
Through Sh. Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (E)
Through Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05/04/2022

Compliance of the order dated 02.03.2022 done as the Ld. Counsel for the Appellant has supplied copies of three challans showing a total deposit of Rs. 2,62,507/- with the Respondent. The same is accepted by the Ld. Counsel for the Respondent. Accordingly, the appeal stands admitted and there shall be stay on execution of the impugned order till finalization of the appeal. List the matter on 06.05.2022 for filing reply to the appeal by the Ld. Counsel for 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-1/38/2021

M/s. Manav Gangwani
Through Sh.S.K. Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (E)
Through Sh. B. B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 05/04/2022

Reply to the appeal stands filed today by the Ld. Counsel for the Respondent. Copy of the same stands supplied to the Ld. Counsel for the Appellant. List the matter on 05.05.2022 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-1/72/2019

M/s. SPML Infra Ltd.
Through None for the Appellant

Appellant

Vs.

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

ORDER DATED :- 05/04/2022

As the court time is over, list the matter on 22.08.2022 for arguments..

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-1/18/2019

M/s. Unitech Ltd.. Appellant
Through Sh. S.P. Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S) Respondent
Through Sh. Naresh Gupta, Ld. Counsel for the Respondent

ORDER DATED :- 05/04/2022

Arguments heard in part. List the matter on 12.04.2022 for
continuation of the arguments.

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-1/19/2019

M/s. Unitech Ltd.. Appellant
Through Sh. S.P. Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S) Respondent
Through Sh. Naresh Gupta, Ld. Counsel for the Respondent

ORDER DATED :- 05/04/2022

Arguments heard in part. List the matter on 12.04.2022 for
continuation of the arguments.

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-1/20/2019

M/s. Unitech Ltd.. Appellant
Through Sh. S.P. Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S) Respondent
Through Sh. Naresh Gupta, Ld. Counsel for the Respondent

ORDER DATED :- 05/04/2022

Arguments heard in part. List the matter on 12.04.2022 for
continuation of the arguments.

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-2/08/2022

M/s. Delhi Public School Ghaziabad Society

Appellant

VS.

APFC, Gurgaon

Respondent

ORDER DATED:-05/04/2022

Present:- Shri S.K Khanna, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and the prayer made by the appellant for an interim order of stay on the execution of the impugned order, pending disposal of the appeal.

Registry has pointed out the delay caused in filing the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri B.B. Pradhan representing the respondent participated in the hearing and raised objection to the prayer for interim stay.

Office has pointed out the delay in filing the appeal. Perusal of the orders show that there is no date mentioned below the signature of the commissioner indicating the date when it was passed. But from the date mentioned at the top it appears that the same was dispatched on 30/12/2021. Since the appeal has been filed on 2/03/2021, it is held to be within the period of limitation.

The appellant has challenged the order dt30/12/2021, passed by the APFC Gurgaon u/s 14B &7Q of the EPF &MP Act assessing Rs24,56,693/-payable as damage and Rs. 12,90,985 as interest on account of delayed remittance of PF Dues of it's employees for the period1/04/2016 to 21/12/2020. Describing the same as an illegal composite order, the appellant has prayed for admission of the appeal and stay on the execution of both the orders. It has further been alleged that the order of damage and interest has been passed in a mechanical manner, without application of mind in as much as no reason has been assigned for imposition of penal damage @100%. No finding has been given on the mensrea of the establishment for the delayed remittance. It has also been pleaded that on 30/03/2020, the commissioner had passed an order against the appellant establishment u/s 7A of the Act assessing dues payable in respect of some excluded employees whose basic wage is above Rs 15000/-. Being under pressure due to issue of warrant of arrest, the establishment made deposit of the entire amount assessed, but filed an appeal now pending before this Tribunal. Though notice of the appeal has been served on the Respondent, the commissioner acted in a mechanical manner and passed the Composite order assessing damage and interest. The other challenge on the legality of the impugned order is that the commissioner who made assessment of the damage and interest is

not authorized by the competent authority to make the assessment u/s 14B of the Act. The period of inquiry during the 7A proceeding was from 04/2016 to 08/2018 and the 14 B inquiry is for the period 04/2016 to 12/2020. For this further period of inquiry though the deposit was made within the 5 days grace period allowed by the CBT by issue of a circular, the commissioner in disobedience of the same passed the impugned order. He thus argued that all these grounds taken make a strong arguable case in favor of the appellant. Unless the execution of the impugned order would be stayed, the relief sought for would become infructuous.

The learned counsel for the respondent while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation. More over it is not the case of the appellant that for financial difficulties it had withheld the salary of it's employees. When the salary was paid every month, the appellant has to explain as to why the employees' share deducted was not deposited. Since the appellant had omitted to discharge it's statutory obligation, the commissioner has rightly passed the order. He also submitted that mensrea, as has been decided recently by the Hon'ble SC in the case of **Horticulture Experiment Station, Gonikoppal, Coorg vs. the RPFC (Civil Appeal No. 2136 of 2012 order dated 23.02.2022)** is not a condition necessary in case of a civil liability.

There is no dispute on facts that remittance has been made after some delay. But the same is not for a prolonged period. On hearing the argument advanced by the counsel for both the parties it is found that the appeal has not been filed within the prescribed period of sixty days but within 120 days up to which the Tribunal has power to extend the period of limitation. The Appeal does not suffer from any other defect. Hence the delay is condoned and the appeal is admitted in respect of the orders passed.

Now a decision is to be taken on the prayer for interim relief of stay made by the appellant. The courts and tribunals while deciding on the prayer for stay 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 less than one year but the amount of damage assessed is big.

Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the amount of the damage assessed need to be protected from being recovered from the appellant since 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 it is directed that there would be an interim stay on the execution of the impugned order of damage pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit 25% of the assessed amount of damage through challan within six weeks from the date of communication this order as a precondition for stay pending disposal of the appeal. No order is passed with regard to the order assessing interest by a separate order as at this stage no opinion can be formed if it is a composite order or not. Put up after six weeks i.e on 25.05.2022 for compliance of the direction. Interim stay granted earlier shall continue till then.

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-2/25/2021

M/s. RBS Services India Pvt. LTd.
Through Sh. Soumya Das Gupta Ld. Counsel for the Appellant

Appellant

Vs.

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

ORDER DATED :- 05/04/2022

Reply to the appeal stands filed today by the Ld. Counsel for the Respondent. Copy of the same stands supplied to the Ld. Counsel for the Appellant. List the matter on 05.05.2022 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-2/26/2021

M/s. Convergys India Services Pvt. Ltd.
Through Sh. S.K. Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

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

ORDER DATED :- 05/04/2022

More time prayed by the Ld. Counsel for the Respondent for filing reply to the appeal. Granted as a last chance. List the matter on 05.05.2022 for filing the reply by the Ld. Counsel for 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. 411(14)2014

M/s. RFB Latex
Through Sh.Kishor Behuriya, Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

ORDER DATED :- 05/04/2022

Arguments on the Misc. petition filed u/s 7 L2 heard and concluded.
The Ld. Counsel for the Appellant submitted two authorities which
are taken on record. List the matter on 19.05.2022 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. 771(16)2014

M/s. Lakhani Arman Shoes Pvt. Ltd.
Through Sh. Rajiv Shukla, Ld. Counsel for the Appellant

Appellant

Vs.

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

ORDER DATED :- 05/04/2022

Final argument in the matter heard and concluded. List the matter on 24.05.2022 for pronouncement of 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-2/09/2021

M/s. Durable Doors & Windows Appellant
Through Sh. S.P. Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Gurgaon Respondent
Through Sh. B.B. Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 05/04/2022

As the court time is over, list the matter on 22.08.2022 for arguments..

Presiding Officer