

08.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present
Smt.Pranita Mohanty
Presiding Officer

Sancheti Hospital Pvt. Ltd.

Vs

... Appellant

Regional Provident Fund Commissioner
Kandivali

...

Respondent

Presence:

For the Appellant

: Mr.P.M.Bhagat, Adv

For the Respondent

: Absent.

ORDER

This order deals with the admission of the appeal and prayer for an interim order of stay on execution of the impugned order.

The appeal has been filed by the appellant ,an establishment engaged in the business of providing health care and other allied medical services to the people. In the appeal challenge has been made to the order dated 03/06/2022 passed u/s 14B and 7Q of the EPF & MP Act by the APFC Kandivali, where

under the establishment has been directed to deposit Rs 6,30,079/ as damage and Rs 4,49,972 /- as interest for the period 04/2007 to 06/2018. It has been stated that the appellant establishment was ignorant of it's liability to deposit PF contribution of the employees employed by it and applicability of the provisions of the Act to it. In the year 2017, the EPFO launched a campaign for voluntary enrollment of the employees not enrolled by the employer for whatever reason thereof. Some relaxation with regard to damage was declared under the scheme for such voluntary declaration and enrollment. Pursuant thereto, the appellant establishment made voluntary enrollment of it's employees with effect from 30/06/2017 and from that day onward made deposit of the PF contribution regularly and in time.

The CBT in it's 165th CBT meeting had clarified that the gap between the effective date of coverage and the actual issue of the coverage letter is the pre discovery period in respect of which damage should not be levied since the said period can not be treated as an intentional delayed period. That guide line has not been withdrawn yet. But the commissioner in utter disregard of the guide line, levied the damage for the pre discovery period which makes the order illegal and liable to be set aside. The commissioner had failed to appreciate this stand

taken during the inquiry and passed the non speaking impugned order. It has further been pleaded that the appellant has a strong arguable case in the appeal. Unless the appeal is admitted and execution of the impugned order is stayed, serious prejudice shall be caused to the appellant. Learned counsel for the appellant further submitted that the orders under challenge is a composite order and thus both be stayed pending disposal of the appeal.

No reply submission was made by the Respondent since none appeared despite proper service of the notice

There being no other defect pointed by the registry, the appeal is admitted.

On hearing the submission of the learned counsels an order need to be passed on the prayer for interim stay on execution of the order.

There is no dispute on facts that remittance has been made after considerable delay. But the appellant has offered an explanation of it's bonafides in doing so. On hearing the argument advanced by the counsel for the appellant a decision is to be taken on the interim relief of stay as prayed by the

appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt Ltd vs Union Of India reported in 2005SCCpage1 and in the case of Escorts Limited and another vs Union Of India reported in 43(1991)DLT 207** the courts and tribunals 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 01/2015 to 04/2019 i.e more than four years and the amount of damage assessed is equally big. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore 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 in this case it is directed that there would be an interim stay on the execution of the impugned order 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 4 weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. Put up after three weeks i.e on09/12/22.....for compliance of the direction. Respondent is directed not to take any coercive action for recovery in respect of the impugned order till the next date.

PRESIDING OFFICER

CGIT-1 MUMBAI