

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty

M/s. Jones Lang Lasalle Property Consultants Pvt Ltd... Appellant

Vs

Regional Provident Fund Commissioner ... Respondent

Bandra

Presence:

For the Appellant	:	Mr. H.L.Chheda
		Authorized legal representative
For the Respondent	:	Mr.Ravi Rattesar, Adv

ORDER

The appeal challenges order 22/11/2021. passed by the RPFC Bandra u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 1,30,63,745/- as damage for delayed remittance of EPF dues of it's employees for the period 1/04/1996 to 04/02/2021. 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 interim 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 22/11/2021 and the appeal was filed on 21/01/2022, i.e. within the prescribed 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 very careful toward compliance of its statutory obligations. But for some misinterpretation and deficiency in understanding of the provision of law, there was some delay in deposit of the PF dues. It has been explained that the appellant was diligently making deposit of PF contribution of all the employees. Of late and during an internal verification of records, it was detected that in respect of three international workers there had been deficit in deposit. This had happened as these three workers for their Indian name were mistaken as Indian workers, though in fact they are the International workers holding passport of other countries and contribution in respect of them was made in accordance to the contribution payable for Indian workers and capped at Rs 15,000/- instead of their gross salary. As soon as it was detected the appellant

made voluntary deposit of Rs 1.94,95,868/- vide multiple challans. Not only that the establishment also deposited a further amount of Rs 64,48,585/- towards interest as calculated for the delay in remittance. But the commissioner without considering the bonafide mistake of the appellant and only for the reason of delay in remittance, issued notice dt 11/02/2021 for inquiry u/s 14B of the Act. The appellant appeared and pointed out the mitigating circumstances behind the delayed remittance and the voluntary action of the establishment in complying the deficit in contribution. But the commissioner did not consider any of the submissions and the mitigating circumstances and proceeded to pass the order without assigning reason for levying damage at the maximum rate. 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 for 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 25 years 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 before the impugned inquiry. He also submitted that the appellant having come to know about the action taken in this regard in respect of other establishments, made the deposit belatedly. This being a case of admission of delay, the establishment can not escape the liability for

damage which has been prescribed under the statute as a deterrent for such intentional omissions.

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 counsels 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 25 year and the damage levied is huge. Moreover, the appellant has already deposited the interest calculated for the delayed remittance which again proves its bonafides. It is also noticed that the mitigating circumstances pointed out were not considered by the commissioner during the inquiry.

All these aspects no doubt make out a strong arguable case for the appellant. Considering the amount assessed as damage, it is held, 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 with the respondent. The respondent is directed not to take any coercive action against the appellant in respect of the impugned orders till the compliance is made.

Fix on 28/11/2022.

PRESIDING OFFICER

CGIT-1, MUMBAI