

**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-1/09/2020

M/s IIMS Detective Pvt. Ltd.

Appellant

VS.

RPFC, Delhi (NORTH)

Respondent

ORDER DATED:-17.03.2021

Present:- Shri Krishan Kartik, Ld. Counsel for the Appellant.
Shri Puneet Garg, Ld. Counsel for the Respondent.

The appeal challenges the orders dated 30/12/19 passed by the RPFC Delhi under section 14B and 7Q of the EPF&MP Act wherein the appellant establishment has been directed to deposit Rs4,20,336/-and Rs4,79,684/-as damage and interest respectively, for delayed remittance of EPF dues for the period 4/2010 to 3/2017.

The appeal having been filed within the time prescribed under the Rule, and there being no other defect, has been admitted. A petition has been filed by the appellant praying interim stay on the impugned order pending disposal of the appeal for the grounds stated therein.

Being noticed the respondent entered appearance and learned counsel Shri Puneet Garg the respondent participated in the hearing for interim stay.

The learned counsel for the appellant Shri Krishan Kartik mainly canvassed two points for challenging the impugned order i.e the mitigating circumstances pleaded during the inquiry were never considered and appreciated by the commissioner who proceeded to pass a nonspeaking order mechanically. Furthermore during the preceeding years of the period under inquiry, the appellant had to face another inquiry and the order passed has been challenged in a separate appeal. Though the commissioner was made aware of the situation that the delay in remittance is attributable to the delay in release of Bills by the principal employer and there is overlapping of period with reference to the previous inquiry, the same was not considered at all by the commissioner. The other point raised by the appellant is that the basis of calculation of damage, though was made available to the appellant,no opportunity was given for verifying the related documents. Placing the documents relating to delay in release of bills on record he submitted that the delay in remittance is not attributable to the appellant

establishment. Moreover the commissioner has not assigned any reason for imposing 100% damage. He thereby submitted that the mitigating circumstances having not been considered and there being no finding by the commissioner on the mensrea behind the delayed remittance the impugned order is not sustainable under law and the appellant has a strong arguable case in this appeal. Unless the impugned orders levying damage and interest are stayed ,serious prejudice would be caused to the appellant.

On behalf the respondent the learned counsel took serious objection Submitted that as per his own admission the establishment is a habitual defaulter and facing more than one proceeding for the delay in remittance.While supporting the impugned orders he submitted that two separate orders u/s 14B and 7Q have been passed. The order passed u/s 7Q not being appealable, the appeal is liable to be dismissed. He also pointed out the legislative intention behind the statute and submitted that an order of stay would defeat the purpose of the legislation.

On behalf of the appellant it was argued that the commissioner has passed a composite order levying damage and interest. Hence the order passed u/s 7Q of the act is appealable and need to be stayed till disposal of the appeal. In order to convince this tribunal that the order passed u/s 7Q is also appealable, he pointed out that pursuant to a common notice, joint inquiry proceeding was held to calculate the damage and interest and a common order was passed on 17.10.19thogh typed out separately.

The Hon'ble SC in the case of Arcot Textile Mills Ltd vs. RPFCD decided in civil appeal no 9488/2013 have held that when two separate orders are passed/s 14B and 7Q of the Act, those are not composite orders and appeal challenging the order u/s 7Q is not maintainable.

On hearing the argument advanced by both the counsels and on a careful reading of the judgment of Arcot Textiles referred supra, it is found that the Hon'ble Apex court have clearly observed that when two separate orders are passed, those can not be treated as composite orders.

On hearing the argument advanced by the counsel for both the parties an order need to be passed 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.

In this case the period of default as seen from the impugned order is from 4/2010 to 3/2017 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 should be an interim stay on the execution of the impugned order levying damage pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit Rs1,25,000/ which is little less than 30% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a condition for stay pending disposal of the appeal. It is hereby made clear that there would be no stay on the order passed u/s 7 Q of the Act as no opinion can be formed at this stage if the orders impugned are composite orders or not. Put up after three weeks i.e on 14.04.2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-
Presiding Officer

