

**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-1/03/2022

M/s Impressive Data Services Pvt. Ltd.

Appellant

Vs.

RPFC/APFC, Delhi (East)

Respondent

ORDER DATED:- 02.03.2022

Present:- Ms. Neha Srivastava, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate application filed by the appellant for an interim order of stay on execution of the impugned orders. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, a Pvt. Ltd Company challenging two separate orders dated 17/12/2021, passed by the APFC, Delhi East, u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs. 8,66,193/ as damage and Rs. 7,35,332/- as interest for the period 12/2018 to 3/2021. It has been stated by the appellant that the commissioner by a common notice dated 6/7/2021 had called upon the establishment to show as to why damage shall not be imposed and interest shall not be calculated for the delay in remittance of the PF contribution of its employees for the above said period. In response to the same the authorized representative of the establishment appeared and asked for the basis of calculation and also prayed for time to check the correctness of the computer generated calculation. The authorized representative also explained the mitigating circumstances for delay in remittance. But the commissioner during the inquiry, without considering the oral submission made on the grounds disputing the proposed damage passed the impugned order in which no finding on mensrea has been rendered nor any reason in support of imposing maximum rate of interest has been assigned. Citing the judgment of the **Kranti Associates Pvt. Ltd vs. Masood Ahmed Khan and Others (2010) 9,SCC, 496** he submitted that a quasi judicial authority must record the reasons in support of its conclusion. Absence of reason makes the finding illegal and arbitrary. She also submitted that the commissioner illegally recorded that the authorized representative of the establishment submitted the payment confirmation slip which was found correct on verification and thus imposed the penal damage at the maximum percentage provided under para 32A of the scheme. While pointing to the observation made by the commissioner in the impugned order about the appearance of the representatives of the establishment she submitted that the commissioner made no observation in the order with regard to the explanation

offered by the establishment. The request made by the establishment for cross checking the calculation sheet not being acceded to, amounts to denial of the opportunity for setting up a defence against the proposed penal damage. She also submitted that the period under inquiry covers the period between March 2020 to March 2021, the period during which all business activities had come to a halt on account of the outbreak of COVID 19. Though for that period there was a govt. guideline for leniency to be shown by all Govt. Authorities, the commissioner passed the impugned order. He thereby submitted that 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 orders pending disposal of the appeal is not passed. He also submitted that the common notice u/s 14B and 7Q being served on the appellant and a common proceeding being held, the separate orders passed be read as composite orders in view of the judgment of the Hon,ble SC in the case of Arcot Textiles and the recent order passed by the Hon'ble High Court of Delhi in the case of Gaurav Enterprises vs. UOI.

The Registry has reported about the appeal filed within the prescribed period of limitation. There being no other defect pointed out, the appeal is admitted.

In respect of the prayer for interim stay, the appellant has described the impugned orders as a composite order and prayed for stay of both the findings of the commissioner.

In his reply the learned counsel for the Respondent while pointing out the legislative intention behind the Act, argued against the prayer of interim stay. He also submitted that when two separate orders were passed , those cannot be treated as composite orders and appeal in respect of the order passed u/s 7Q be dismissed as not maintainable. His other argument is that the document files by the establishment which are the payment confirmation slips of the bank were checked by the department and the delay calculated were found to be correct. Thus the commissioner has appropriately passed the order.

A bare perusal of the order challenged in the appeal shows that a common notice proposing proceeding u/s 14B and 7Q was served on the appellant and after inquiry two separate orders were passed. It also seems that the order u/s 7Q was exactly the same as is the order u/s 14B to which appellant has alleged that the two separate orders have been passed out of a common proceeding and without application of mind. The learned counsel for the Respondent has explained the same as a typographical error. In view of the fact that a common proceeding was held pursuant to a common notice, at this stage, in absence of materials to the contrary, the orders are held to be composite orders making the order passed u/s 7Q appealable. The submission made by the appellant and without delving into other details lead to a conclusion that the appellant has a strong case to argue in the appeal. Unless the execution of the orders impugned in the appeal assessing damage and interest 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 cannot be un conditional. Hence the appellant is directed to deposit 30% of the damage assessed within 4 weeks from the date of this order as a precondition on stay of the impugned order assessing damage and interest, by depositing challan before the EPFO, failing which there would be no stay on the impugned orders. Call on 05.04.2022 for compliance of the direction and reply by the respondent.

Presiding Officer