

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208, ROUSE  
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

**APPEAL NO. D-1/73/2019**

M/s. Nice International Limited

Appellant

Through:- Shri Amod Dalela, Ld. Counsel for the Appellant.

Vs.

RPFC, Delhi South

Respondent

Through:- Shri Puneet Garg, Ld. Counsel for the Respondent.

**ORDER DATED 12.02.2021**

The appeal challenges the order dated 22.03.2019, passed by the RPFC Delhi u/s 14B & 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs.20,13,693/- and Rs.10,65,604/- towards damage and interest respectively for delayed remittance of EPF dues of its employees for the period 03/2012 to 12/2017. Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing, held via video conferencing on 1<sup>st</sup> February, 2021.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 22.03.2019 and the appeal was filed on 18.07.2019 i.e. beyond the period of limitation. Along with the appeal, a separate petition was filed by the appellant praying condonation of delay and admission of the appeal for the reasons explained therein. A prayer was also made for stay on the execution of the impugned order pending disposal of the appeal. This tribunal by order dated 21<sup>st</sup> Nov 2019 had refused to condone the delay and thereby dismissed the appeal as barred by limitation. That order being challenged, The Hon'ble High Court of Delhi in WP(C) 11125 / 2020 passed an order condoning the delay on payment of Rs 10,000/- to the EPFO. That direction, since, has been complied by the appellant, the delay stands condoned and the appeal is admitted. A separate petition has been filed for stay on the execution of the impugned orders passed u/s 14B and 7Q of the Act.

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. It has also been stated that the establishment was diligent in deposit of EPF contribution in respect of its employees until the director suffered a life threatening illness and often remained absent on account of his treatment. Not only that, during the proceeding before the commissioner, the authorized representative of the establishment appeared and prayed for some time to make good of the amount due for deposit. On 15.06.2019 and 25.06.2019, Rs 23,764 and Rs 64,353 were deposited. But the commissioner failed to appreciate the same and passed the impugned order which is illegal as there is an overlapping period of 22 months. Thus, the appellant has a strong arguable case in the appeal. Unless the impugned order

would be stayed, the relief sought 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 during the period 03/2012 to 12/2017, which spans over five years and six months 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.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage and penal interest since there was a circumstance beyond the control of the appellant. All these aspects when taken into consideration, makes out a strong arguable case for the appellant. On hearing the submission made by both the counsels, a decision is to be taken on the relief of stay as prayed by the appellant. 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 almost 5 years and six months though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that there is an overlapping period of 22 months.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order 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 a nominal amount i.e. 10% of the assessed damage as a pre condition for grant of stay within 4 weeks from the date of communication of the order failing which there would be no stay on the impugned order. The said amount shall be deposited by the appellant by way of Challan with the Respondent. Call the matter 15-March-2021 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made. But there would be no stay on the order passed u/s 7Q of the Act challenged in this appeal.

Presiding Officer