

**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-1/30/2020**

M/s. Pratham Education Foundation

Appellant

**Through:-** Sh. Vivek Kaushal & Sh. Rajeev Gupta, Ld. Counsel

Vs.

RPFDC Delhi-North

Respondent

**Through:-** Sh. S.N. Mahanta, Ld. Counsel

**ORDER DATED 16.09.2020**

The appeal challenges the order dated 30.12.2019, passed u/s 14B of the EPF & MP Act by the RPFDC Delhi (North), where under the appellant establishment has been directed to deposit Rs1,98,46,746/- as damage for delayed remittance of the PF dues of its employees for the period 1.4.2015 to 19.6.2018.

The respondent being noticed appeared through its counsel who participated in the hearing held on 7<sup>th</sup> Sept via video conferencing, though no written objection has been filed.

On behalf of the appellant it has been contended that the appellant establishment is a non profitmaking charitable organization engaged in providing education to the children of backward and underprivileged community. Previously it was exempted from making EPF contribution of its employees. But the Govt of India passed an order withdrawing the said notification w.e.f.01.04.2015, which was not within the knowledge of the appellant until April 2017. Though no amount was deducted from the salary of the employees towards their share of EPF dues, the appellant after April 2017, made deposit of both employer and employees share, but there was delay in deposit owing to difficulty in Adhar linking. The RPFDC, served notice dated 25.06.2018 calling the appellant to deposit the amount of damage calculated for such delayed remittance. The appellant appeared and disputed the calculation and the same was revised. Though the representative of the appellant had submitted the records and showed the mitigating circumstances causing delay in remittance, the commissioner without considering the same passed a nonspeaking order giving no finding on the mensrea of the appellant for the said delay in remittance. Citing the judgement of the Hon'ble Supreme Court in the case of RSL Textiles he submitted that for want of finding on mensrea the order imposing penal

damage is not sustainable in the eye of law. He also placed reliance in the judgment of Hon'ble High court of Orissa in the case of Bhubaneswar water supply to argue that delay in remittance would not ipso facto attract the liability of damage unless it is proved that the establishment has an evil intention behind the same. Thereby he submitted that the appellant has a good case to argue in the appeal. Till then the impugned order if would not be stayed the appeal would become infructuous.

With regard to delay in filing the appeal it has been stated that the impugned order though passed on 30.12.2019, was communicated on 06.01.2020 and received on 10.01.2020. The appeal could not be filed within 60 days from the date of receipt as the courts suspended functioning on account of COVID 19. There is slight delay in filing the appeal, but the same is not deliberate.

In his reply the learned counsel for the respondent submitted that the lock down started w.e.f. 15<sup>th</sup> March, 2020 and the limitation had run out for the appellant prior to that. Hence, the appeal is barred by limitation.

It is true that the 60 days time prescribed under the statute for filing the appeal had run out before the lock down. But the Hon'ble Apex court in the suo moto WP(C) 3/2020 have directed for extension of limitation until further order and the WPC is pending. Hence, keeping the direction in mind the delay is condoned. There being no other defect pointed by the registry, the appeal is admitted.

The further argument advanced by the Respondent is that the establishment is a habitual defaulter defaulted for a prolonged period. The commissioner in his well discussed order has given a clear finding on the mensrea. Describing the EPF & MP Act as a beneficial legislation, he submitted against the direction of interim stay 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 3 years and the damage levied is huge. Moreover, the appellant has disputed the same on the ground that interest and contributions have

already been deposited.. 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. 20% 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 with the Respondent by way of Challan. Call the matter on 22-October-2020 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.

Sd/-

Presiding Officer