

**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-1/28/2021

M/s. Ranutrol Industries Pvt. Ltd.

Appellant

VS.

APFC, Delhi East

Respondent

ORDER DATED:- 28.10.2021

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

The appeal has been filed by the appellant challenging the order dated 24/2/21, passed by the APFC, Delhi, in exercise of the power u/s 14 B and 7Q of the EPF & MP Act assessing Rs. 4,28,056/-and Rs. 1,77,517/-as damage and interest respectively to be paid by the appellant for delayed remittance of the PF dues of it's employees for the period 1/4/96 to 28/2/20.

This order deals with the prayer for admission of the appeal and an interim order of stay on the execution of the impugned order, pending disposal of the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri Narender Kumar representing the respondent participated in the hearing, though no written objection has been filed.

It has been stated in the appeal that the establishment is a company registered under the companies Act. Since the date of coverage it has been depositing the statutory dues under the Act diligently. But for the rising competition and entry of foreign finished goods in to the market, the company continued to suffer loss. This has substantially influenced the business activities of the company. The company was facing acute deficit in cash flow and at times could not pay the salary of the employees in time. It attempted to merge different units of production to one and shift the factory to Bhiwadi and transfer the staff to the new location, which led to unrest in the functioning. When the matter stood thus the commissioner by notice dated 3/3/14 initiated inquiry u/s 14B and 7Q of the Act for the period 1/4/96 to 12/2/2014 and passed order dated 27/2/2019 levying damage of 2,15,676 /- and interest of Rs 5,67,347/- which was much higher than the amount proposed in

the notice. The appellant under the threat of recovery made deposit of the assessed interest on 13/11/19.

The appellant filed a review petition against the order dated 27/2/19 and the commissioner soon thereafter issued a fresh notice dated 4/3/20 – 11/3/20 proposing levy of damage and interest for the overlapping period i.e. from 1/4/96 to 28/2/20. The representative of the appellant appeared and put forth the facts and figures disputing the calculation of damage proposed in the notice. He also requested for some time to verify and place other details. The mitigating circumstances for delay in remittance were also brought to the notice of the commissioner. But the commissioner without considering the submission made by the AR of the company passed the impugned order which does not contain any finding on the mensrea of the appellant for the delay in remittance. The order since has been passed in complete violation of the settled principle of law is not sustainable in the eye of law. Thereby the learned counsel for the appellant submitted that the appellant has a good and strong case to argue in the appeal. The impugned order if would not be stayed pending disposal of the appeal, serious prejudice shall be caused and relief sought would become infructuous.

It has also been submitted that the impugned order was passed for an overlapping period as there was an earlier inquiry for damage and interest for the period 1/4/96 to 12/2/2014. Describing the order under challenge as composite, illegal and inappropriate, the learned counsel for the appellant submitted that the inquiry for assessment of damage and recovery of interest has been made in a common proceeding and being composite in nature, the Tribunal has power to entertain the appeal in respect of the order passed for recovery of interest. Drawing attention of the tribunal to the order passed by the Hon'ble S C in the case of **Arcot Textile Mills vs. RPFC and Others (2013) 16 SCC, 1** and decision of the Hon'ble High Court of Delhi delivered recently in WPC No 9019/2021, he submitted that the orders being composite, the appeal be admitted and an interim order of stay be passed in respect of both the orders pending disposal of the appeal.

In his reply the learned counsel for the respondent submitted that the commissioner took into consideration all the submissions made by the establishment which is evident from the impugned order itself. He also submitted that the establishment is a habitual defaulter and other similar proceeding were initiated in which the amount of damage assessed is high. He also pointed out the finding of the commissioner in the order under challenge about the habitual defaults made and the said default and delay at times for more than one year. The learned counsel for the Respondent also submitted that the appellant as per his own admission was somehow managing to pay the salaries to the employees during

the period under inquiry. If that is correct, the establishment is guilty of withholding the employees' share of the EPF contribution deducted from the salary of the individual employee. The other argument advanced by him is on the legislative intention behind the provision which is for the protection of the employees in the hands of the employer. He thus argued against the prayer of interim stay. He also argued that two separate orders u/s 14B and 7Q having been passed, those cannot be considered as composite orders as has been observed by the Hon'ble SC in the case of Arcot Textile Mills referred supra.

The Tribunal, at this stage of admission of the appeal is not supposed to make a roving inquiry on the merit of the matter since the reply of the respondent is yet to be filed. For consideration of the prayer for interim stay, the factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt. Ltd vs. Union Of India reported in 2005 SCC page 1 and in the case of Escorts Limited and another vs. Union Of India reported in 43(1991) DLT 207** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

Thus considering the submission advanced by the learned counsel for both the parties and the factors like the period of default and amount assessed as well as the objection about overlapping period, it is felt proper to stay the impugned order passed under section 14B.

In the Judgment passed in WPC No. 9019/2021 the Hon'ble High Court of Delhi after considering the observation of the Hon'ble Supreme Court in the case of Arcot Textile referred supra and the case of **M/s Net 4 India Limited vs. Union of India and another (WPC 6673/2016)** decided by the Hon'ble High Court of Delhi) observed that the question as to whether a demand u/s 7Q is appealable to the tribunal or not can be decided by looking into certain circumstances. In Arcot Textile referred supra the position that emerged is:-

- (i) An order passed under sections 7A and 7Q together, is a composite order and is appealable under section 7I;
- (ii) If any other composite order is passed, one facet of which is appealable, then even qua the other facet for which appeal is not provided, the appeal would be maintainable, if the order is composite;
- (iii) If an independent order is however passed, no appeal would be maintainable in respect of the interest component under section 7Q.

The question that therefore arises in this case is whether the order u/s 7Q is an independent order or a Composite order

alongwith the order u/s 14B. As seen from the record a common notice dated 04.03.2020-11.03.2020 was issued to the appellant/establishment under the captioned summon to appear for hearing u/s 14B of the EPF Act and order for payment of interest u/s 7Q of the Act for belated remittance during the period 01.04.1996 to 28.02.2020. Not only that the orders passed separately u/s 14B and 7Q there is no difference in the observation of the commissioner except preparation of two separate orders adopting the copy paste method. From the date of adjournments mentioned in both the orders it is evidently clear that a common proceeding was conducted and at the end two separate orders were passed. Not only that, perusal of both the orders shows that the initial order was common. Thus when the inquiry was common the showcause notice was common the reply was common, the mere passing of two separate orders will not render the proceeding under section 7Q and 14B independent of each other. As has been observed by the Hon'ble High Court of Delhi the appeal challenging the order passed under section 7Q despite its compositeness if would not be admitted shall have various disadvantages including multiplicity of proceeding and conflict of opinion. There is also chance of duplicity of legal representations in both forums. Hence, considering all these aspects the appeal in respect of the order passed under section 7Q is also admitted and it is also felt proper to stay the said impugned order passed under section 7Q of the Act pending disposal of the appeal.

Hence it is directed that there should be an interim stay on the execution of the impugned orders levying damage and interest, pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit 20% of the assessed amount of damage and interest respectively through Challan within four weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after four weeks i.e on 06.12.2021 for compliance of the direction and filing of reply. Interim stay granted earlier shall continue till then.

Presiding Officer