

**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-1/18/2020**

M/s. Sarvesh Security Services Pvt. Ltd.

Appellant

VS.

RPFC-II, Delhi (East)

Respondent

**ORDER DATED:- 21.02.2022**

Present:- Shri Sarvesh Singh, Ld. Counsel for the Appellant.  
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

The appeal challenges two separate orders dated 30/01/2020 passed by the RPFC Delhi East u/s 14B and 7Q of the EPF & MP Act communicated on 6/2/2020, wherein the appellant has been directed to deposit Rs 2409670/- and Rs. 1474711/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 4/2009 to 10/2018.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing, held via video conferencing on 14.01.22.

Perusal of the record and office note of the registry reveals that the impugned orders were communicated to the establishment on 6<sup>th</sup> Feb 2020 and the appeal was filed on 19/02/2020, within the period of limitation. Along with the appeal, a separate petition has been filed for stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that the impugned order is illegal and arbitrary since the commissioner initiated the inquiry after a long delay of more than 10 years and had also failed to appreciate the mitigating circumstances pointed out during the inquiry by the establishment in it's written submission filed. It has also been stated that the establishment run by some retired army officers was diligent in deposit of the PF dues of it's employees. Being a manpower supply contractor it was dependant on the Govt. Departments for clearance of the Bills. However the appellant establishment was very careful toward compliance of it's statutory obligations. But for non clearance of bills in time it was facing difficulty in cash flow. On receipt of the notice for inquiry, the authorized representative of the establishment appeared before the commissioner and raised dispute with regard to the calculation of damage and interest.

By filing written reply it was pointed out that the delay in some instances occurred for delay in payment by the principal employer. The establishment is not a habitual defaulter and the delay occurred when there was revision in minimum wage by the order of the Govt. The arrear wage was not released in time by the principal employer as a result of which delay occurred in deposit of the differential PF contribution. It was also pointed out that there was no evil intention behind the delayed remittance and as such the establishment is not liable for the penal damage and interest proposed in the inquiry. The other stand taken during the inquiry was that the establishment is in difficulty for cross checking the demand as the same has been raised after more than 10 years and persons dealing with the same have left the establishment and records are not traceable too. But the commissioner considered none of the submissions and passed the impugned order in a fanciful manner.

Thus it is argued that 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. It is also pointed out that the orders though have been separately passed u/s 14B and 7Q, in fact it is a composite order being passed in a common proceeding. The appellant also submitted the entire interest proposed in the notice has already been deposited. The appellant thereby submitted that the appeal be admitted in respect of the order passed u/7Q of the Act and an interim order be passed against the passed u/s 14B of the Act.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over more than nine year 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. Arguing that the orders being separately passed cannot be treated as composite order, he submitted that the appeal cannot be admitted in respect of the 7Q order. However the learned counsel for the respondent did not dispute the stand of the appellant that the proposed interest has been deposited by the establishment.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when none of it's submissions were considered by the respondent and the order was passed in a mechanical manner without any finding on mensrea. Copies of the written submission filed before the commissioner has been placed on record to show that the commissioner without application of mind passed the order, that to for a belated period.

As seen the appeal does not suffer from any other defect or delay. Hence the same is admitted in respect of the orders passed u/s 14B and 7Q of the Act. 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 insists 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 nine years and the damage levied is huge. The inquiry has been initiated after an inordinate delay. Moreover, the appellant has already deposited the interest calculated which proves its bonafides. The commissioner though has mentioned about the written submission filed during inquiry, has not discussed about the same in the impugned order. There is no finding on the mensrea of the establishment behind the delayed remittance.

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 passed u/s 14B of the Act, 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 15 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 4 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan with the respondent. Call the matter 28.03.2022 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.

Presiding Officer