

**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-1/02/2022

M/s. Seven Seas Hospitality Pvt. Ltd.

Appellant

VS.

APFC/RPFC, Delhi (North)

Respondent

ORDER DATED:- 21.02.2022

Present:- Shri Manish Malhotra, Ld. Counsel for the Appellant.
Dr. S.C Gupta, Ld. Counsel for the Respondent.

The appeal challenges the orders communicated on 3/12/2021, passed by the APFC Delhi u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 860605/- and Rs. 440570/-, as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 1/4/2018 to 30/06.2019. Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing, held via video conferencing on 13.01.22.

Perusal of the record and office note of the registry reveals that the impugned order was passed 2/12/21 and the appeal was filed on 06/01/2022, 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 had failed to appreciate the mitigating circumstances pointed out during the inquiry in it's written submission filed. It has also been stated that the establishment though received notice dt16/07/19, no calculation sheet indicating the delayed remittance was annexed with the notice. During the proceeding before the commissioner, the authorized representative of the establishment appeared and prayed for supply of the calculation sheet, which was supplied on 2/08/2019. On examination of the calculation sheet Annexure-A, it was found that the period of inquiry as per the notice is 1/4/2018 to 30/06/2019, but in the calculation sheet the period indicated was from February 2017 to May 2019. Not only that it was also noticed that there is an overlapping period as wage months of 2/17, 3/17 and 5/18 were the subject matter of another earlier proceeding for damage and interest , for which order dated 29/10/2018 was passed by the RPFC and the said order being challenged in a separate appeal, has been

stayed by this Tribunal. Thus the establishment raised objection with regard to the period of inquiry and the Respondent supplied a revised calculation sheet.

Thereafter the establishment filed its written objection on 11.09.2019. The proceedings were adjourned on various dates and remained pending as such for the outbreak of COVID 19, when activities in all offices, courts and Tribunals virtually came to a halt. No notice was ever served on the establishment about the date of hearing when the COVID-19 restrictions were relaxed. Surprisingly, in the last week of December 2021, the copy of the impugned order was served on the appellant. On perusal of the order the appellant could notice that the commissioner, not only overlooked the written submission of the appellant, but also failed to appreciate the stand and mitigating circumstances indicated in the written statement and passed the impugned order which is illegal as there is an overlapping period. 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 have been separately passed u/s 14B and 7Q, in fact it is a composite order being passed in a common proceeding. He also pointed to the heading of the order passed u/s 14 B wherein there is a clear mentioning that the order is in respect of the inquiry held u/s 14B and 7Q of the Act. He 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 both the orders.

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 one 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 and there is typographical error, he submitted that the appeal cannot be admitted in respect of the 7Q order.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when none of its submissions were considered by the respondent and the order was passed behind its back. Copies of the written submission and the previous assessment orders have been placed on record to show that the commissioner without application of mind passed the order, that to for an overlapping period.

The appeal does not suffer any defect or delay. Hence the same is admitted in respect of both 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 one year 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 and no finding has been rendered on the mens rea 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 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 20% of the assessed damage and interest since it is a composite order, 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. 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 and 7Q order till the compliance is made.

Presiding Officer