

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

APPEAL NO. D-2/19/2020

M/s. Shri Ram Associates

Appellant

Through:- Shri S.K. Gupta, Ld. Counsel for the Appellant.

Vs.

RPFC Noida

Respondent

Through:- Shri Narenderkumar, Ld. Counsel for the Respondent.

ORDER DATED 29.10.2020

The appeal challenges the order dated 30.09.2020 passed by the RPFC Noida, u/s 14B&7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs. 4,07,430/- and Rs. 2,74,850/- towards damage and interest respectively for delayed remittance of EPF dues of its employees for the period 19.11.2016 to 24.1.2020. Notice being served on the respondent, learned counsel Shri Narendar Kumar appeared and participated in the hearing held on 20th October 2020, via video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 30.9.2020 and the appeal has been filed on 12.10.2020 i.e. within the period of limitation. A separate petition has been filed by the appellant praying stay on the execution of the impugned order pending disposal of the appeal.

The learned counsel for the appellant during course of argument submitted that the impugned orders u/s 14B and 7Q though passed separately, in-fact a composite order since a common proceeding was held to determine the damage and penal interest. He also submitted that the order is illegal and liable to be set aside as the commissioner while discharging the quasi judicial function had failed to assign reasons for his finding. Not only that, the basis of calculation was not furnished, nor the written submissions made to the commissioner on different dates i.e. on 20.2.2020 and 14.09.2020 were considered or controverted by the department. He also submitted that the commissioner has also failed to discuss and give a finding on the mensrea of the establishment which is contrary to the observation of the Hon'ble Supreme Court in the case of R S L Textiles. He also pointed out that

the common notice served on the appellant proposing inquiry for damage and interest was for the period from 19.11.2016 to 24.1.2020, but the calculation furnished with the notice was from 19.11.2016 to 11.2019, which prevented the appellant to verify the accounts properly and defend the matter before the commissioner. While relying on the judgment of the Hon'ble High Court of Rajasthan he submitted that unless and until the amount payable is determined u/s 7A of the Act and paid, the amount of damage and interest can not be determined and paid. He thereby submitted that the appellant has a prima facie strong case to argue in the appeal and unless the orders which are composite in nature would be stayed, the relief sought in the appeal would become infructuous.

In his reply the learned counsel for the respondent submitted that there being two separate orders passed, the same can not be termed as a composite order. Further more the order passed u/s 7Q of the Act not being appealable before this Tribunal no order can be passed to stay execution of the said order. He also argued for rejection of the prayer of stay describing the impugned order as proper and based upon good and sound reasoning.

From the impugned order it is noticed that the inquiry was held for the period commencing from 11/2016 to 01/2020 i.e. for a period of four years.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage and penal interest since the basis of calculation was never made available to the establishment. The representations explaining the mitigating circumstances were never considered during the inquiry. He thereby submitted that the appellant has a good case to argue in the appeal having a fair chance of success. Unless the impugned orders would be stayed, the relief prayed would become illusory.

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 4 years, though, the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the commissioner has omitted to give a finding on the mensrea of the appellant for the delayed remittance, which is against the decided principle of law.

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 i.e. Rs.80,000/- 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 30.11.2020 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. But there would be no stay on the order passed u/s 7Q of the Act challenged in this appeal since at this stage of admission of the appeal, no opinion can be formed if the orders challenged are composite orders or not.

Sd/-

Presiding Officer