

**BEFORE THE HON'BLE 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.

M/s. United News of India

Appellant

Vs.

EPFO, New Delhi

Respondent

ATA No. D-1/20/2021

ORDER DATED:- 04/08/2021

Present:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

The appeal challenges the order dated 17/2/21, passed by the RPFC, Delhi Central, u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs. 2,46,50,758/- towards damage for delayed remittance of EPF dues of its employees for the period April 2017 to March 2019. Notice being served on the respondent, learned counsel Shri B. B. Pradhan appeared and participated in the hearing 26/7/21 held via video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 17/2/21 and the appeal has been filed within the prescribed period of limitation. By filing a separate petition a prayer has also been made for stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that it is a nonprofit making company registered u/s 25 of the companies Act and in the field of business as such since 40 years. It has been very sincere in making deposit of the EPF dues of its employees until the business suffered a set back on account of severe loss in business during the period 2012 to 2019. Hence there was unintentional delay in remittance of the EPF dues. During course of inquiry, though the appellant had explained these mitigating circumstances and produced documents to that effect, the commissioner failed to appreciate the same and passed the non speaking and whimsical order which is not sustainable.

Perusal of the Record reveals this is the second round of litigation as the EPF commissioner had earlier passed an order dated 24/10/19, against the establishment imposing damage for

delay in remittance for the period April 17 to March 19. That order was challenged before this Tribunal in Appeal no D-1/120/2019. The appeal was admitted and it was ordered that the execution of the impugned order would be stayed as an interim on condition that the appellant shall deposit 25% of the assessed damage. Being aggrieved the appellant challenged the said order before the Hon'ble High Court of Delhi, and the Hon'ble court finding the order passed by the commissioner as an ex parte order remanded the same for fresh consideration giving opportunity to the establishment to set of it's defence. As such fresh inquiry was conducted and the order under challenge in this appeal was passed.

Mr. Pradhan, representing the Respondent while supporting the impugned order submitted that the commissioner has given a distinct finding on the mensrea of the establishment. As per their own admission another appeal is also pending challenging the order imposing damage for another span of period. This leads to presume that the establishment is a habitual and intentional defaulter of remittance. The stand of financial difficulty as taken by the establishment can not save them against the statutory liability as has been held by the Apex Court in several judgments. He thereby opposed the prayer for interim stay made by the appellant on the ground that the same would defeat the very purpose of the Legislation.

The Ld. Counsel for the appellant strenuously argued that unless there would be an order of stay on execution of the impugned order, the very purpose of filing the appeal would be defeated and the appellant shall be harassed for paying damage for the alleged delay. The reply submission made by the appellant is that the EPF dues since has been deposited after little delay, the establishment should not have been saddled with the damage and penal interest. All these aspects when taken into consideration, makes out a strong arguable case for the appellant. The circumstances justify an unconditional order of stay on the impugned order pending disposal of the appeal. She further submitted that insistence for deposit as a pre condition for stay would force the establishment in the present situation to sale it's assets and close the business which in the long run lead to an employment of it's employees, which would not be in favor of the interest of the beneficiaries. She also pointed to the calculation sheet supplied to the establishment along with the notice to argue that the period of delay and damage calculated by the EO is from April 15 though the inquiry was conducted for the delay committed during the period April/17 to March /19.

The appeal since does not suffer from any other defect, the same is admitted.

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 3 years and the damage levied is huge. Moreover, the appellant has disputed the same on the ground that 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. 10% of the assessed damage as a pre condition for grant of stay within 6 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. Call the matter 20.09.2021 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