

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208,
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-1/29/2020

M/s. Vodafone Idea Ltd.

Appellant

Vs.

RPFC, Delhi(East)

Respondent

ORDER DATED 31.07.2020

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

Shri Puneet Garg, Ld. Counsel for the Respondent

This order proposes to dispose of the application filed by the appellant for stay on the execution of the impugned order and admission of the appeal on grounds stated therein. Copy of the appeal and all related document being served on the respondent Mr. Puneet Garg Ld. Counsel for the respondent appeared and participated in the hearing held through video conferencing held on 24.07.2020.

The appeal challenges the order passed by the RPFC Delhi u/s 14B and 7Q of the EPF and MP Act (herein referred to as The Act) whereby the appellant/establishment has been directed to deposit damage amounting to Rs. 15,16,266/- and Rs. 34,66,254/- as interest for the period 11/1996 to April 2019. Challenging the same as a composite order, the appellant amongst other grounds has stated that the said order not supported by reasons is not sustainable in the eye of law and unless there would be an order of stay on execution of the same, the appellant shall be prejudiced. The facts narrated in the appeal are that Vodafone mobile service limited (VMSL) was an independent entity which was amalgamated with IDEA Cellular limited w.e.f. 31.08.2018 pursuant to a composite scheme of amalgamation approved by the Hon'ble NCLT Bench of Ahmadabad and Mumbai and renamed as Vodafone Idea limited. This company shifted its operation and office from Delhi to Mumbai and obtained a separate EPF Code No. from the RPFC Bandra, Mumbai. While the matter stood thus, summon dated 23.05.2019 issued in the name of VMSL was received by the establishment for the deposit of the proposed damage of Rs. 14,07,026/- and interest of Rs. 4,66,426/- for the period 11/1996 to January/2019. On the same day another summon was issued for damage of Rs. 21,57,466/- and the interest of Rs. 11,06,661/- for the period 07/2009 to 01/2019. Though as per section 6 of the Act damage section of the EPFO has to

remind the employer every month about the delayed remittance, the department slept over the matter and in the year 2019 initiated the inquiry for the delayed remittance for a period spreading over 24 years. The representative of the establishment appeared and participated in the hearing during which it was specifically pointed out that the calculation sheet supplied with the summon doesn't match with the Challan and account records. It was particularly pointed out that the challan for the month of June 2009 showing deposit of Rs. 80,28,681/- was never remitted by the appellant and thus the said delayed remittance cannot create a liability of damage on the appellant. Though the commissioner during enquiry had directed the department to verify the Challan and produce the document, the same never happened. Furthermore, the appellant has challenged the impugned order on the ground that the mensrea of the establishment was never discussed nor any reason has been assigned for imposing the damage as a punitive measure. The jurisdiction of the RPFDC Delhi has also been challenged for the enquiry on the ground that the VMSL is a nonexistent entity and Vodafone Idea Limited is having its office in Mumbai where a code no. has been obtained and EPF contribution are being deposited regularly. Thus, describing the impugned order as illegal and without jurisdiction the appellant has prayed for admission of the appeal and stay on the execution of the impugned order.

The Ld. Counsel for the respondent while supporting the impugned order submitted that all the grounds taken by the appellant including the jurisdictional grounds are open for consideration during the regular hearing of the appeal. The EPF and MP Act is a beneficial legislation and aims at the benefit of the employees. Any order of stay would defeat the very purpose of the legislation.

Perusal of the record shows that the appeal has been filed in time and doesn't suffer from any other defect. Hence, the appeal is admitted.

The Ld. Counsel MR. Gupta 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 in respect of which action has been initiated by the department after 24 years. In reply MR. Garg submitted that no limitation has been prescribed under the Act for initiation of a proceeding u/s 14B of the Act. In this regard reliance can be placed in the case of I.O.L vs. Union of India decided by the Hon'ble High Court of Allahabad and reported in 2011 LLR100 wherein the Hon'ble Court have held thus, "Although no period

of limitation is provided for levy of damages u/s 14B of the EPF and MP Act, yet such a notice has to be issued within a reasonable time and the period of 8 to 17 years for issuance of such a notice is unreasonable.” In this case admittedly a notice has been issued and the inquiry has been held 24 years after the alleged default against a company which is no more in existence. All these aspects when taken into consideration, makes out a strong arguable case for the appellant. 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 impugned order 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 show if the appeal 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 24 years and the damage and interest levied is huge. Moreover, the appellant has disputed the same on the ground that Challan referred to during the inquiry was never deposited by him. 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 3 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. It is made clear that the order passed separately u/s 7Q of the Act not being appealable shall not be affected by this interim order of stay. Call the matter 24.08.2020 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.

Sd/-
Presiding Officer