

**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. Gaurav Enterprises

Appellant

Vs.

CBT
RPFC, Delhi East
Aruna Asaf Ali Govt. Hospital
Deendayal Upadhyay Hospital
Guru Gobind Singh Govt Hospital
Dr. Baba Saheb Ambedkar Hospital
Delhi State Civil Supplies Corporation Limited
Department of Food Supplies and Consumer Affairs

Respondent No.1
Respondent No.2
Respondent No.3
Respondent No.4
Respondent No.5
Respondent No.6
Respondent No.7
Respondent No.8

ATA No. D-1/19/2021

ORDER DATED:- 17.11.2021

Present:- Shri Rajiv Shukla , Ld. Counsel for the Appellant.
Shri S.N Mahanta , Ld. Counsel for the Respondent No.1&2.

This order deals with the admission of the appeal in respect of the order passed u/s 7Q of the Act passed by the RPFC Delhi (East) on 26.05.2021 communicated on 15.06.2021. A separate petition has been filed praying an interim direction of stay on the execution of the order passed u/s 7Q pending disposal of the appeal.

The Ld Counsel Mr. Mahanta representing the respondent participated in the hearing.

The background facts leading to filing of the present appeal in short is that the commissioner had passed two separate orders u/s 14B and 7Q of the EPF and MP Act assessing damage of Rs. 1,14,53,374/- out of which a part was paid and establishment was directed to deposit 69,21,490/- towards damage and interest of Rs. 4081884/- for the period 01/11/2013 to 13.03.2019 the appellant filed the appeal challenging both the orders and prayed for admission of the appeal and an interim order of stay on execution of both the orders. This tribunal heard the matter at length and by order dated 03.08.2021 admitted the appeal in respect of the order passed u/s 14B and directed that there would be an interim stay in respect of the said order pending

disposal of the appeal. It was specifically stated that there would be no stay on the order passed u/s 7Q of the Act as no opinion can be formed at this stage about the compositeness of both the orders. The appellant has filed the copy of the order dated 25th August 2021 passed by the Hon'ble High Court of Delhi in WPC No. 8485 of 2021 wherein the Hon'ble Court have held that the orders passed u/s 7Q and 14B is appealable before this tribunal since both the orders were passed pursuant to a common proceeding and common notice. The Hon'ble High court have discussed the Principle laid down in the case of Arcot Textiles limited vs. RPFC and others (2013)16SCC1.

During course of argument the Ld. Counsel for the appellant submitted that an order u/s 7A was passed without identification of the beneficiaries. When the primary liability is not relatable to any beneficiary secondary liability u/s 14B and 7Q cannot be created. He thereby argued for admission of the appeal in respect of the order passed u/s 7Q and an interim order of stay on execution of the same.

Mr. Mahanta the Ld. Counsel for the respondent raised objection on the ground that interest being compensatory cannot be avoided even if the beneficiaries are not identified. Moreover the appellant has already deposited the amount assessed u/s 7A. He cited a judgment of the Hon'ble Supreme Court in respect of an ESI case. But the Ld. Counsel for the appellant submitted that in ESI the interest realized is meant for establishment of hospitals and development of infrastructure whereas the interest recovered by EPFO is meant to be paid to the beneficiaries. He thereby argued that when the beneficiaries are not identified in the 7A inquiry the interest should not have been calculated.

On hearing the submission advanced by both the counsel and on perusal of the record it is found that the direction given as a pre condition of stay in respect of the order passed u/s 14B has already been complied. Considering the fact that the interest assessed is intended to be paid to the beneficiaries, and in this particular case the EPFO has not identified the beneficiaries, the execution of the order passed u/s 7Q should be stayed unconditionally. Hence, it is directed that the order passed u/s 7Q of the Act shall remain stayed without execution till disposal of the appeal. Call on 15.02.2022 For reply by the respondent.

Presiding Officer