

**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-1/17/2021

M/s Rajiv Gandhi Cancer Institute & Research Centre
VS.

Appellant

APFC, Delhi North

Respondent

ORDER DATED:- 27.10.2021

Present:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

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 on 5.04.2021 communicated on 12.04.2021. 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 the amendment of the appeal memo and petition for stay are that the RPFC Delhi had at the first instance passed an order on 09th February 2021 holding that the establishment is liable to pay damage and interest on the dues assessed u/s 7A. That was a common order passed on 09th February 2021 in respect of the damage and interest but no amount was assessed. The establishment filed the present appeal challenging the said order. During the pendency of the appeal the commissioner passed two separate orders on 05th April 2021 and 8th April 2021 u/s 7Q and 14B of the Act respectively. Thus, the appellant amended the appeal memo and the matter was taken up for admission and hearing on the petition for stay on the execution of both the orders. This tribunal by order dated 23.08.2021 admitted the appeal and passed an order of interim stay on execution of the order passed u/s 14B subject to the deposit of nominal amount of 5% of the assessed damage. The appellant has complied the same. But this tribunal had not accepted the prayer for interim stay in respect of the interest assessed as it was held that the order passed u/s 7Q is not appealable before this tribunal. Being aggrieved the appellant had preferred the WPC No. 9019 of

2021 before the Hon'ble High Court of Delhi wherein the main points canvassed were that the Provident Fund Commissioner had issued a common notice proposing damage and interest and the said notice was issued after assessment of the dues u/s 7A. Not only that a common proceeding was conducted though two separate orders were passed on different dates. Thus, the proceeding was composite in nature and the orders passed separately are also a composite order. Thereby it was argued that the order passed u/s 7Q is also appealable before the tribunal.

The Hon'ble High Court after hearing both the parties and after elaborately discussing the judgment of the Hon'ble Apex Court in the case of **Arcot Textiles Mills Limited vs. RPFC and others (2013)16SCC1** and the judgment of the Hon'ble High Court of Delhi passed in **M/s Net 4 India Limited vs. Union Of India and another (WPC 6673/2016** decided on 2nd August 2016) came to hold that as per the Principle decided in Arcot Textile Mills case referred supra:-

- (i) An order passed u/s 7A and 7Q together is a composite order and is appealable u/s 7I.
- (ii) If any other composite order is passed one facet of which is appealable, then even qua the other facet for which appeal is not provided, the appeal would be maintainable, if the order is composite.
- (iii) If an independent order is however passed no appeal would be maintainable in respect of the interest component u/s 7Q.

In respect of this case the Hon'ble High Court came to hold that in the assessment order made u/s 7A, the computation of the interest was not made and subsequently the inquiry pursuant to the 7A order was initiated for assessment and recovery of damage and interest which culminated in the order dated 09th February 2021 followed by two separate orders assessing interest and damage passed on 5th April 2021 and 8th April 2021 respectively. The Hon'ble Court have thus concluded that the initial order dated 09th February 2021 being a common order holding the liability of the establishment for damage and interest the two subsequent order though passed separately is a composite order.

In that view of the observation of the Hon'ble High Court the appeal filed by the appellant challenging the order dated 05th April 2021 passed u/s 7Q is admitted.

The Ld. Counsel for the appellant while moving the application for interim stay on the execution of the order passed u/s 7Q submitted that the department has erred in assuming these assessed PF dues as there was no existence of liability till the judgment was pronounced by the

Hon'ble Supreme Court on 28th February 2019 with regard to the allowances and furthermore no demand was ever raised for the same. It was also argued that the interest has been calculated and demanded in the most arbitrary manner and contrary to the circular dated 29.05.1990 which states that the section 14B includes damage as well as interest chargeable u/s 7Q of the Act. Since in this case the commissioner has assessed damage and interest separately double jeopardy has been caused. She thus, strenuously argued to stay that the appellant has a strong case to argue and a fair chance to succeed in the appeal. Thereby she insisted for an unconditional stay on the execution of the impugned order passed u/s 7Q of the Act.

Ld. Counsel for the respondent Mr. Mahanta while arguing on the benevolent purpose behind the legislation insisted that atleast 50% of the assessed interest be deposited by the appellant as a pre condition for stay on execution.

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. The amount assessed towards interest is close to Rs. 27,50,000/-. Considering the fact that the interest assessed is intended to be paid to the beneficiaries, the execution of the order passed u/s 7Q should not be stayed unconditionally which would impact the interest of the beneficiaries adversely. Hence, it is directed that the order passed u/s 7Q of the Act shall remain stayed without execution till disposal of the appeal subject to the condition that the appellant shall deposit 30% of the assessed interest by way of challan with the EPFO within 4 weeks from the date of this order. Call on 07.12.2021 for compliance of the direction and reply by the respondent.

Presiding Officer