

**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-1/05/2022

M/s. South Delhi Municipal Corporation

Appellant

VS.

APFC/RPFC, Delhi (North)

Respondent

ORDER DATED:- 24.02.2022

Present:- Shri Sanjiv Sagar, Ld. Counsel for the Appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

This order deals with the prayer of the appellant for admission of the appeal and the interim order of stay on the execution of the impugned order. Matter was heard being argued by the counsel for both the parties. The Ld. Counsel for the respondent has filed a written objection to the application for stay filed by the appellant.

It has been stated by the appellant that it is a corporation of the government covered under the provisions of EPF and MP Act. Though, it was required to deposit the EPF contribution of its employees for the period 01.04.2018 to 26.06.2019 the same was delayed on account of delay in release of funds for grant of salaries leading to delayed payment of salary as well. The respondent authority served a notice dated 01.07.2019 calling upon the appellant to deposit the interest and to appear in the inquiry proposing damage. The inquiry was initiated on the basis of complaints filed by some of

the employees. On receipt of the notice the representative of the appellant had appeared on one day and sought some time for verification of record. Thereafter the matter was adjourned to 23.03.2020 when functioning of all offices came under lockdown due to the outbreak of COVID-19. The appellant establishment was never intimated about the date of adjournment when the case was rescheduled after the situation gradually tends towards normalcy. On the contrary the commissioner in a one sided manner continued with the proceeding and in the impugned order made some false observation that none appeared on behalf of the establishment despite repeated opportunity and thus, the establishment is proceeded ex parte. In the said ex parte order the commissioner has not mentioned anything on the mensrea of the establishment for the delay in remittance of the EPF dues. Thus, describing the impugned order as none speaking and unreasoned order the appellant has prayed that the impugned order be stayed from being executed pending disposal of the appeal. The appellant has further stated that the orders passed under section 14B and 7Q assessing Rs. 1998555/- and 959304/- as damage and interest respectively as composite order and outcome of a common proceeding which is evident from the orders itself. The petition for review filed u/s 7B of the Act was also rejected by the commissioner. The LD. Counsel for the appellant during course of submissions submitted that SDMC the appellant is facing acute financial crises for the crunch in cash flow by way of grant from the government. The arbitrary and ex parte award passed by the commissioner which is under challenge in this appeal would push the appellant to a state of further difficulty. Relying upon the judgment of the **Hon'ble High Court of Delhi in the case of M/s United News of India vs. RPFC (WPC 8851/2020** decided on 09.11.2020 he submitted that this is a classic case where the commissioner passed a whimsical without least bothering about the knowledge of the establishment in respect of the dates of adjournment. He pointed out the relevant paragraphs of the judgment of United News referred supra and the observations made therein to point out that the Hon'ble High Court have clearly held that when the dates of hearing are fixed

before the EPF authority the establishment would be informed not just by speed post but also be email and the mobile no. if available, notice shall be served through whatsapp. Once the date of hearing is fixed and the assessee had appeared before the authority, the next date of hearing would be communicated by the presiding officer or by the staff concerned to the assessee, at the end of hearing so that notice of the next date of hearing is with the assessee. With this the Ld. Counsel for the appellant submitted that when the matter was last taken up before the outbreak of COVID the appellant was aware of the next date. But for the lock down the inquiry could not take place for a pretty long time and the respondent never intimated the date when the hearing was to resume. While challenging the ex parte award passed the LD. Counsel for the respondent submitted that the matter be remanded for rehearing by the commissioner.

In his written submission as well as in the oral submission Shri Narender Kumar the Ld. Counsel for the respondent submitted that the appellant was appearing and participating in the hearing before the outbreak of COVID. He was duly notified about the adjourned dates of hearing but by choice it did not participate in the hearing. While arguing on the legislative intention behind the beneficial legislation he submitted that the appeal is liable to be dismissed in view of the admission by the appellant about the delay in remittance of the EPF dues. He has also pleaded that the appellant has taken a false and misleading stand that the adjourned dates were not intimated to the establishment.

Perusal of the impugned order shows that the case was taken up on several dates before 23.03.2020. On 23.03.2020 it was adjourned to 23.11.20, 16.12.2020, 18.12.2020 and 30.12.2020 before passing of the impugned order on 15.01.2021. Though the respondent has taken the stand that the dates of adjournment after the COVID related lockdown were notified to the appellant in the email id and mobile no. on several occasions, the appellant intentionally did not appear leading to the passing of the impugned order.

No document to support the contention of the LD. Counsel has been placed on record. In the case of United news referred supra the Hon'ble High Court have observed that whenever ex parte orders are appealed before the CGIT, the CGIT shall take into consideration whether the notice of hearing was served in time upon the assessee and pass the pre-deposit direction accordingly.

In this case as observed in the preceding paragraph the respondent counsel though has pleaded about the service of notice in the registered email and whatsapp no document to that effect has been placed on record. Thus, considering the circumstances and the fact that the orders passed u/s 14B and 7Q being the outcome of a common proceeding is a composite order it is felt proper that the appeal should be admitted in respect of both the orders and there would be an interim stay on execution of the said order pending disposal of the appeal. But the order of stay shall not be unconditional. The appellant is directed to deposit 10% of the assessed damage and interest as a pre condition for stay by depositing Challan within 6 weeks from the date of this order failing which there would be no stay. Call the matter on 21.04.2022 for filing of the reply to the appeal by the respondent.

Presiding Officer