

**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-2/28/2021

M/s Sweta Estates Pvt. Ltd.

Appellant

VS.

RPFC, Gurugram(East)

Respondent

ORDER DATED:- 12/11/2021

Present:- Ms. Seema Thapaliyal, Ld. Counsel for the Appellant.
Shri Abhik Mishra, Ld. Counsel for the Respondent.

The appeal challenges the order dated 16.9.21, passed by the RPFC Gurugram u/s 14B 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 12,13,142/-and Rs. 6,15,902/-,towards damage and interest respectively for delayed remittance of EPF dues of it's employees for the period4/15 to 4/20. Notice being served on the respondent, learned counsel Shri Abhik Mishra appeared for the respondent and participated in the hearing on27th October 2021, held via video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 16.9.21 and the appeal has been filed on 5.10.21 i.e within the period of limitation. There being no other defect pointed out by the Registry, the appeal is admitted.

A prayer has also been made for stay on the execution of the impugned orders pending disposal of the appeal for the grounds taken in the appeal and the petition.

The appellant has stated that the impugned order is illegal and arbitrary since the commissioner had failed to appreciate the mitigating circumstances pointed out during the inquiry. It has also been stated that the establishment was diligent in deposit of EPF contribution in respect of it's enrolled employees until the EPFO lunched it's scheme of 2017 for enrollment of escaped employees. Under clause 12 of the scheme benefit was assured for non imposition of damage for the delay in remittance except upfront payment of Rs 1 per year of default towards damage. In response to the same the appellant establishment made declaration of the escaped employees, but could not deposit the defaulted amount within the stipulated time under the scheme as the EPFO directed for the deposit under the designated portal and the portal was not functioning properly. However, on a later date the

establishment made deposit of the contribution in respect of the said declared employees and EPFO received and acknowledged the same. But the commissioner by notice dated 10.08.2020, called upon the appellant as to why damage shall not be imposed and interest shall not be recovered for delay in remittance of PF dues of the declared employee's for the period 4/15 to 4/20. The establishment submitted a written reply to the show cause describing the mitigating circumstances for the delay. But the commissioner without considering the same proceeded with the inquiry and passed the impugned order in which no finding has been given on the mensrea which makes the order illegal in view of the judgments of the Hon'ble SC in the case of RSL Textiles and Macloid Russel. The learned counsel also submitted that the orders passed for recovery of damage and interest being a composite order, the appeal in respect of both the orders be admitted and execution be stayed till disposal of the appeal. She also submitted that the interest calculated has already been deposited being pressurized by the Respondent. The impugned order is illegal and the appellant has a strong arguable case in the appeal. Unless the impugned order would be stayed, the relief sought in the appeal would become illusory.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance during the period 4/15 to 4/20. No explanation was offered by the establishment during the inquiry despite several opportunity given, which is evident from the order itself as to why delay occurred in remittance for the remaining period. He also submitted that any order to stay execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation.

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 almost 5 years though the damage levied is not huge. Moreover, the appellant has disputed the same on the ground that the amount deposited belatedly is not for any fault of the appellant but for the Technical glitch in the designated portal of the EPFO.

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. 20% of the assessed damage as a pre condition for grant of stay within 4 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 on 06.01.2022 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. Since the interest has already been deposited there is no need for passing any interim order in respect of the order passed u/s 7Q of the Act challenged in this appeal.

Presiding Officer