

**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-2/04/2022

M/s. Universal Manpower Services

Appellant

VS.

APFC/RPFC, Faridabad

Respondent

ORDER DATED:- 25.02.2022

Present:- Shri J. R Sharma & Bhupesh Sharma, Ld. Counsel for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the prayer of the appellant for admission of the appeal and an interim order of stay on execution of the impugned order.

Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, a Pvt. Ltd. Company challenging the order dated 11.11.2021, passed by the APFC, Faridabad u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs 6,61,785/- as damage and Rs 5,91,880/- as interest for the period 02.05.2015 to 31.12.2017.

It has been stated by the appellant that the commissioner by notice dated 09.02.2018 had called upon the establishment as to why penal damage and interest shall not be imposed for the delay in remittance of the PF contribution of it's employees for the above said period. In response to the same the authorized representative of the establishment appeared and disputed the calculation on the basis of

which a revised calculation was prepared. During the inquiry a substantial amount out of the proposed amount was also deposited by the establishment and by one of its creditors. But the commissioner during the inquiry, without considering the written submission made and grounds disputing the proposed damage, passed the impugned order in which no finding on mensrea has been rendered nor any reason in support of imposing maximum rate of interest has been assigned. Citing the judgment of the **Kranti Associates Pvt. Ltd vs. Masood Ahmed Khan and Others (2010) 9,SCC, 496** he submitted that a quasi judicial authority must record the reasons in support of its conclusion. Absence of reason makes the finding illegal and arbitrary. He also submitted that the commissioner in utter violation of the Principle laid down by the Hon'ble SC, in the case of RSL Textiles, has not given any finding on the mensrea of the establishment behind the delay in remittance. He thereby submitted that the appellant has a strong case to argue in the appeal and serious prejudice shall be caused if the appeal is not admitted preventing execution of the impugned order pending disposal of the appeal.

While pointing out the defects and discrepancies in the impugned order including none mentioning of the mensrea for delayed remittance entailing liability for damage, Ld. Counsel for the appellant submitted that the appellant has a strong arguable case in the appeal and the Tribunal should not act in a hyper technical manner.

In respect of the prayer for interim stay, the appellant has described the impugned order as a composite order and prayed for stay of both the findings of the commissioner. In his reply the learned counsel for the Respondent while pointing out the legislative intention behind the Act, argued against the prayer of interim stay and submitted that the order was passed after discussing the circumstances paving the wave for imposition of damage. He also submitted that the deposits made on different occasions during the inquiry were taken into consideration and a revised statement was made available to the appellant. Not only that for such revision the amount of proposed damage and interest mentioned in the notice were reduced while

passing the impugned order. The other argument of the Ld. Counsel of the appellant is that the appellant has violated the statutory liability for a long period and on that count only his liable for penal damage which has been rightly imposed.

A bare perusal of the order challenged in the appeal shows that a common notice proposing proceeding u/s 14B and 7Q was served on the appellant and common day to day proceeding were held for the purpose. Thus, the orders though separately passed are held to be composite orders in respect of which the appeal is hereby admitted.

The submission made by the appellant without delving into other details lead to a conclusion that the appellant has a strong case to argue in the appeal as the commissioner failed to consider the written submissions submitted during the inquiry and the daily proceeding though shows participation of the establishment the commissioner took a wrong due and concluded that for non participation the establishment is proceeded exparte. This shows the mechanical approach of the commissioner in deciding the dispute. Hence, it is felt that unless the execution of the order impugned in the appeal assessing damage and interest would be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. But at the same time it is held that the said interim order of stay cannot be un conditional. Hence the appellant is directed to deposit 20% of the damage and interest assessed within 4 weeks from the date of this order as a precondition on stay of the impugned order assessing damage and interest by depositing Challan before the EPFO, failing which there would be no stay on the impugned order. Call on 31.03.2022 for compliance of the direction and reply by the respondent.

Presiding Officer