

**BEFORE SH. S.C YADAV, COMMISSIONER
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI
5, SHAM NATH MARG, DELHI-110054**

No. CEC(D)/75/WD/2013/139.

Dated: 05/07/2022.

~~IN~~ THE MATTER OF:

~~Smt. Radha Pandey & Ors.~~

Through her Counsel Sh. Sanjay Mishra
Seat No 136, Central Hall Tis Hazari Courts,
Delhi - 110054

..... Claimant

V/s

M/s Pratibha Industries Ltd.,

Unit No. 1/B-56 & 1/B-57, 1st Floor,
Phoenix Paragon Plaza, Phoenix Market City,
LBS Road, Kurla (W), LBS Road, Kurla (W)
Mumbai-400070, Maharashtra

Also at:

1249/9, Aruna Asif Ali Marg,
Basant Kunj, New Delhi – 110070

M/s Delhi Metro Rail Corporation

2nd Floor Metro Bhawan, Fire Brigade Lane,
Barakhamba Road, New Delhi-110001

..... Respondents

ORDER

1. By this order, I will dispose of application dated 01/10/2018 filed by applicant regarding issue of penalty in this matter.
2. In the application applicant/claimant submitted that this case has been decided by this Hon'ble Court on 17/12/2014 directing to the respondent to pay Rs. 7,25,480/- along with interest @ 12% pa w.e.f. 10/09/2012 till the realization as compensation. Respondent has neither deposited the ordered amount nor filed any appeal against the order of Employee's Compensation Commissioner due to this the recovery certificate vide No. CEC/D/WD/75/13 dated 29/04/2015 was issued to the District Magistrate/District Collector to recover the same as an arrear of land & revenue u/s 31 of the EC Act, 1923. Further claimant submitted that despite order she has not received any relief due to this she become very helpless and also facing difficulties to survive the 03 minor children without any support. Show cause notice u/s 4A of



the EC Act has been issued to the respondents with direction as to why the penalty be not imposed upon them. Respondent no 2 Delhi Metro Rail Corporation Ltd filed its response vide reply dated 22/05/2019, wherein respondent no 2 submitted that Late Daya Shankar Pandey was never ever employed by the respondent no 2 and as such no employee-employer relationship and servant exists or ever existed. The respondent further submitted that the claimant has neither annexed any proof of employment as such respondent no 2 cannot be held responsible for the payment of penalty.

3. Respondent no. 1 M/s Pratibha Industries Ltd. has filed its reply on behalf of liquidator of respondent no 1, wherein it is stated that Lt. Sh. Daya Shankar Pandey, herein after deceased was an employee of Corporate debater on the basis of agreement dated 15/11/2010 executed between him and the corporate debater. In this case vide order dated 17/12/2014 corporate debater i.e. respondent no. 1 M/s Pratibha Industries ltd. was directed to realize Rs. 7,25,480/- along with 12% interest pa w.e.f 10/09/2012 till its realisation. In the meanwhile Bank of Baroda filed an application/s 7 of the insolvency and bankruptcy code 2016 having CP IB No. 3558(NB) of 2018. The Hon'ble Authority National Company Law Tribunal Mumbai Branch Court No. 1 vide order dated 01/02/2019 passed order by allowing application filed under section 7 of I&B Code 2016 by the Bank of Baroda against the Corporate Debater for initiating Corporate insolvency resolution process by admitting the same and appoint Sh. Sunil Kumar Chaudhary having registration No. (IBBI/IPA-001/IP-PO1243/2018-19/11895) as interim resolution professional to carry out the functions as mentioned under I&B Code. Order of the National Company Law Tribunal Mumbai Bench has been filed on record.
4. On hearing on 01/06/2020 respondents were present before this Authority. Ld. Counsel for respondent no 1 stated that company M/s Pratibha Industries Ltd. has already gone in liquidation and liquidator has been appointed. It is further submitted that if any liability comes on respondents then applicant can approach to the liquidator. From these contentions of respondent no 1 it is clear that respondent no. 1 has not deposited ordered amount in terms of order dated 17/12/2014. In response to Show Cause notice respondent no 1 has not denied as to why the penalty be not imposed upon them u/s 4 A of the Act. In this case deceased Daya Shankar Pandey was employed with respondent no 1 for the work of respondent no 2 as a foreman and on 10/09/2012 he met with an accident out of and in the course of his employment. And as a result he died on 12/09/2012. Despite having notice of death of deceased employee Sh. Daya Shankar Pandey respondent had not paid any



compensation to his dependants. Compelling by these situations wife of deceased employee Smt. Radha Pandey filed a claim dt. 17/11/2013 before the CEC under the provision of EC Act, 1923 and after hearing both the parties the Employee's Compensation Commissioner vide his order dated 17/12/2014 case was decided in favour of claimant Smt. Radha Pandey and directed Resp. No 1 to deposit Rs. 7,25,480/- along with 12% interest within 30 days from this order. Failing same shall be recovered by land revenue. Despite this order respondent no 1 did not comply the direction of the CEC and consequently recovery certificate was issued to the District Collector. Section 4A of the Act provides that compensation u/s 4A(1) shall be paid as soon as it is first due. Subsection 2 of section 4A provides that where the employer does not accept the liability of compensation to the extent claim, he shall be bound to make provisional payment based on the excess of liability which he accepts, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of employee to make any further claim. Sub section 3 of section 4 A provides that where any employer is in defaulting in paying the compensation due under this Act within 01 month from the date it felt due Commissioner shall impose 12% interest pa and penalty sum not exceeding 50% in addition to the amount as ordered.

5. In this case respondent no 1 did not comply order of commissioner dt. 17/12/2014 and also did not comply mandates of section 4A of the act as such I am of the considered opinion that this is fit case for imposing penalty upon respondent no 1.
6. In view of above submission, accordingly I hold that respondent No 1 is responsible for paying penalty 50% of the awarded amount of Rs. 7,25,480/-. Accordingly **I direct respondent no. 1 M/s Pratibha Industries Ltd., to deposit 50% penalty of Rs. 7,25,480/- which comes Rs. 3,62,740/-** by way of demand draft in favour of Commissioner Employees Compensation within 30 days from receipt of this order.
7. Since in this case liquidator has been appointed by the National Company Law Tribunal Mumbai Branch hence petitioner/claimant can approach for her claim to the liquidator appointed in this case as discussed above.
8. Given under my hand and seal of this Authority on this 5 day of July, 2022.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

