

**BEFORE THE HON'BLE 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.

M/s. Nilkamal Security Services

Appellant

Vs.

RPFC/APFC, Noida

Respondent

**ATA No. D-2/20/2021**

**ORDER DATED:- 13.09.2021**

Present:- Shri Ravi Ranjan & Shri Vikas Singh, Ld. Counsel for the Appellant.  
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the appellants prayer for condonation of delay, admission of appeal and stay on execution of the impugned order pending disposal of the appeal.

The appellant has challenged the order dated 05.04.2021 passed by the APFC, Noida u/s14B and 7Q of the EPF and MP Act wherein the appellant has directed to deposit Rs. 06,96,386/- as damage and Rs, 3,68,777/- as interest for delayed remittance of the EPF dues of its employees for the period 03/2007 to 05/2019. Notice being served on the respondent Shri S.N. Mahanta the Ld. Counsel appeared for the respondent and participated in the hearing held via video conferencing on 26.08.2021.

Perusal of the record and the office note of the registry reveal that the impugned order was passed on 05.04.2021 and the appeal has been filed on 16.08.2021 I.e beyond the period of limitation prescribed under the statute. A separate petition has been filed by the

appellant for condonation of the delay for the reasons explained therein. A prayer has also been made for stay on the execution of the impugned order passed u/s 14B and 7Q of the Act pending disposal of the appeal. The appellant has filed several documents to support the stand taken in the appeal. The Ld. Counsel representing the respondent has not filed any documents but during argument countered the documents filed by the appellant.

With regard to the delay in filing of the appeal the Ld. Counsel for the appellant submitted that the appeal no doubt has been filed beyond the period of prescribed limitation. But the Hon'ble Supreme Court in the suo moto WPC No. 23/20 have directed for extension of the limitation for the prevailing conditions on account of Covid-19. He thereby submitted for condonation of delay and admission of appeal.

The Ld. Counsel for the respondent fairly conceded to the plea taken by the appellant for condonation of delay in view of the order passed by the Hon'ble Supreme Court in suo moto WPC No.23/2020. Hence, considering the difficulty faced by the litigants on account of Covid-19 and the direction issued by the Hon'ble Supreme Court the delay is condoned and the appeal is admitted.

The appellant has stated that the period of inquiry under challenge the establishment was going through acute financial instability and being engaged in the business of supplying manpower often encounters delay in receipt of payments from its clients and at times it remains unpaid for a longtime. The authorized representative of the establishment during course of inquiry had put forth all the difficulties faced by the establishment and rendered all kind of co-operation in production of records and etc. But the commissioner without considering the same passed a non speaking order which is not only unreasonable but based on some theories on criminology leading to certain presumptions. There is no finding on the mensrea which is in clear violation of the law settled by the Apex Court in the case of **McLeod Russel India Limited versus Regional Provident**

**Fund Commissioner, Jalpaiguri and others reported in 2014SCC263 and Assistant Provident Fund Commissioner versus Management of RSL Textiles India Pvt. Ltd, reported in 2017LLR337.** Thus for not rendering finding on the mensrea and for not considering the mitigating circumstances pointed out including the acute financial problem of the appellant, the impugned order is bad in law and cannot sustained. He thereby submitted that the appellant has a strong arguable case in the appeal. Unless the appeal is admitted with a direction of interim stay on the impugned order serious prejudice shall be caused to the appellant. The Ld. Counsel for the appellant also submitted that the commissioner had issued a common notice for inquiry proposing damage and interest separately and also conducted a common proceeding though two separate orders have been passed u/s 14B and 7Q of the Act. Hence, execution of both the orders needs to be stayed in the interest of justice.

The Ld. Counsel for the respondent objected on the ground that no appeal is maintainable against the order passed u/s 7Q of the Act when two separate orders have been passed. He also insisted that the said 2 separate orders cannot be termed as composited orders.

The other argument advanced by the Ld. Counsel Mr. Mahanta representing the respondent is that the very purpose of EPF and MP Act is to safeguard the interest of the employees against the mighty employer. The unconditional stay of the impugned order would defeat the very purpose of the beneficial legislation.

By citing the judgment of the Apex Court in the case of RSL Textile referred supra the Ld. Counsel for the appellant submitted that the commissioner while discharging a quasi judicial function has failed to follow the Principals of Natural Justice as all delayed deposit cannot entail the establishment for payment of damage. To support his contention he placed reliance in the case of H.K Corporation vs. APFC and old village industries vs. APFC decided by the Hon'ble High Court of Delhi and submitted that this a fit case for grant of

unconditional interim stay on the execution of the impugned order pending disposal of the appeal.

Though the appellant strenuously canvassed the grounds of the appeal and pointed out the defects in the impugned order to make this tribunal to believe at this stage about its fair chance of success, the tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal when the respondent is yet to file its objection. It is true that the EPF and MP Act, unlike the provisions for appeal against an order passed u/s 7A of the Act has not provided for the condition of pre deposit contemplated u/s 7O of the Act. In the case of Old Village Industries referred supra the Hon'ble High Court have held that for admission of appeal challenging the order passed u/s 14B of the Act a condition of pre deposit in terms of the provisions of 7O of the Act cannot be ordered.

But here is a case where the respondent is not insisting for a pre deposit as a condition precedent for admission of the appeal but for a condition precedent for an interim stay on the execution of the impugned order passed u/s 14B. Thus, keeping the Principles of Law decided by the Hon'ble High Court and on hearing the argument advanced by counsel for both the parties and order need to be passed on the interim relief of the stay as the appeal has already been ordered to be admitted. The factors which are required to be considered at this stage for the said purpose are the period of default and the amount of damage levied.

In this case the period of default is very long i.e. from 03/2007 to 05/2019 which is more than 10 years. The amount of damage assessed is equally big. Thus, it is felt proper and desirable that pending disposal of appeal is said amount be protected from being recovered from the appellant. Accordingly it is directed that there should be an interim stay on the execution of the impugned order levying damage pending disposal of the appeal. But the said interim order cannot be unconditional as the period of default spans over 12 years. The appellant is directed to deposit 30% of the assessed amount

of damage through challan within 4 weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no interim stay on the order passed u/s 7Q of the Act as the same is not appealable and no opinion can be formed at this stage if the orders challenged in the appeal is a composite order or not. Call on 25.10.2021 for compliance of the direction and filing of the reply by the respondent. The earlier order of stay shall continue till the next date.

Presiding Officer