

**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-1/25/2021**

M/s SMS Paryavaran Limited

Appellant

Vs.

APFC, Delhi (North)

Respondent

**ORDER DATED:- 24.08.2021**

Present:- Shri Sanjeve Deora, Ld. Counsel for the Appellant.  
Shri Rikesh Singh, Ld. Counsel for the Respondent.

This appeal challenges the order passed u/s 14 B of the EPF and MP Act 1952(herein after referred to as The Act)levying damage of Rs 18,19,528/- on the appellant establishment for delay in remittance of the PF dues for the period 04/96 to 08/19.

Notice of the appeal was served on the respondent for hearing on the prayer for condonation of delay, admission of the appeal and interim stay on execution of the impugned order pending disposal of the appeal. The Respondent appeared through it's counsel who participated in the hearing held on 16.8.21 via video conferencing.

The plea of the appellant taken in this appeal, filed through the Resolution Professional is that it is a private Ltd Company in the name and style of SMS Paryavaran Ltd. An inquiryalleging delay in remittance of PF dues of its employees for the above mentioned period was initiated by the Respondent in the year 2019. In the same year i.e in 2019, the Financial Creditors of the company filed a petition u/s 7 of the Insolvency and Bankruptcy Code 2016 before the NCLT, Delhi, for initiation of the Corporate Insolvency Resolution Process. (in short CIRP). The petition being admitted, the Interim Resolution professional was appointed and later on he was confirmed as the Resolution Professional. The NCLT in their order dated 3.1.20, directed commencement of Moratorium in terms of sec 14 of the I B C prohibiting instituting and commencement of any suit, legal proceeding or any action including execution by any court, Tribunal or by any other authority against the appellant establishment.The Resolution Professional thereafter invited the claim if any, from all concerned and a letter dated 28.1.20 was sent to the Respondent intimating that, for appointment of RP, all the powers of the

Board of Directors of the appellant establishment have been suspended and moratorium has been granted in respect of the company by the Hon'ble NCLT. Any kind of claim, if any, against the company be submitted with proof to the RP for settlement. This communication was duly delivered to the Respondent with the address and e mail id of the Resolution Professional. Since no response was received, another communication in the same line was made on 15.09.20. But the respondent did not respond to the said communications. While the matter stood thus, the respondent passed the impugned order, which is an ex parte order. Moreover, the order is bad in the eye of law for denial of opportunity to the establishment for setting up proper defence as the same stands opposed to the principle of natural justice. The appellant thereby prayed for admission of the appeal with an order of stay on the impugned order without any condition.

With regard to the delay in filing of the appeal, as pointed out by the Registry, it has been stated that the impugned order was passed ex parte on 15.3.21 and received by the appellant on 17.3.21. The appeal should have been filed on or before 14.5.21. But for the difficult situation prevailing on account of the outbreak of Covid 19, and for the extension granted to the limitation by the Hon'ble S C in suo motto WPC no 23/20 until further order, the appeal filed on 19.7.21 is not barred by limitation.

The learned counsel representing the Respondent fairly conceded to the submission on extension of limitation by the Hon'ble Apex Court. But he raised serious objection to the prayer of stay on execution of the impugned order.

There being no other defect pointed out, the delay is hereby condoned and appeal is admitted.

The learned counsel for the respondent submitted that notice for the inquiry, and different dates of adjourned of the proceeding were duly communicated to the establishment in it's official mail id. Despite that, the establishment did not choose to participate. Hence it can not be termed as an ex parte inquiry or order. Further more the commissioner, in the impugned order has observed about the habitual default of the establishment in remittance, which amounts to mensrea for the delay. In his reply, the Resolution Professional representing the appellant, by filing copies of the correspondence made to the Respondent submitted that when it was brought to the knowledge of the commissioner that RP has been appointed and power of the Board of Directors has been suspended, the commissioner in all fairness should have noticed the RP for participation in the hearing. That having not been done, the finding of the commissioner is illegal and not binding for the moratorium granted to the establishment.

Documents have been filed on behalf of the appellant to show that the commissioner was intimidated about appointment of RP and suspension of the powers of the Board of Directors of the company. No evidence has been placed on record by the respondent to presume that that the Board of Directors of the company were legally competent to participate in the inquiry even after the company went in to CIRP and Resolution Professional was appointed by the Hon'ble NCLT.

Thus on hearing the submission advanced by both the parties and without forming any opinion at this stage with regard to the effect of the moratorium on the dues payable to EPFO, it is held that serious miscarriage of justice has been caused for the denial of opportunity to the Resolution Professional in participating in the inquiry conducted by a quasi judicial authority, i.e the RPFC, who passed the impugned order. Hence it is felt expedient in the interest of justice to remand the matter to the commissioner for a fresh inquiry after giving opportunity to the Resolution Professional for advancing the stand of the establishment. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed. The order impugned in this appeal is hereby set aside. The matter is remanded to the commissioner for a fresh inquiry after giving opportunity to the Resolution Professional to place all the materials on behalf of the establishment and contest the demand. It is directed that the inquiry shall be completed within three months positively from the first date of hearing. Parties are hereby directed to appear before the commissioner on 13-September-2021. Parties be informed accordingly.

Record be cosigned according to the Rule.

Presiding Officer