

**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-1/71/2019

M/s. Alkarma Industries

Appellant

VS.

APFC/RPFC, Delhi (North)

Respondent

ORDER DATED:- 31.03.2022

Present:- Sh. S.P Arora, and Shri Rajiv Arora, Ld. Counsel for the Appellant.
Shri Judy James, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of both the petitions being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing after filing written objection. Perusal of the record reveals that the impugned order u/s 7 A of EPF & MP Act was passed by the commissioner on 26 .03.2019. Being aggrieved, the appellant filed an application u/s 7B of the Act and the same was disposed of by order dated 28.05.2019 and the appeal was filed on 08.07.2019. Thus the office has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, has been filed within the prescribed period of 60 days from the date of order passed in the 7B proceeding.

The learned counsel for the respondent submitted that for the bar prescribed u/s 7B(5) the appeal against the order passed u/s 7B is not appealable and thus the appeal challenging the order passed u/s 7A is barred by limitation. The petition for condonation of delay is liable to be rejected. This submission of the learned counsel for the Respondent does not sound convincing as the commissioner after

considering the submission of the establishment had passed the order u/s 7B. Hence, it is held that the appeal has been filed within the period of limitation and the petition for condonation of delay is accordingly allowed.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed by the commissioner without considering the submission made and solely basing on the report of the EO. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also submitted that the inquiry was conducted on the basis of some unverified complaints in gross violation of the department circular. Though the authorized representative of the establishment as directed produced all the records before the E O, who after perusing the same prepared a report and produced the same before the commissioner on 25.01.2019, the same was supplied to the complainants and not to the appellant establishment. On the same day the commissioner without giving opportunity to the establishment of confronting the report of the E O, concluded the inquiry. The stand of the establishment that the factory has been closed down since 1/02/2018 was not considered at all. Not only that the commissioner while passing the order had never made any effort of identifying the beneficiaries. Citing various judgments of the Hon'ble S C, including the case of **Food Corporation of India vs. RPFCL, 1990LLR, 64, SC** and **Himachal Pradesh State Forest Corporation VS Assistant PF Commissioner, 2008-III LLJ SC 581**, he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit ,in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time .He there by prayed for waiver of the condition of pre deposit canvassing that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also argued that the matter may be remanded for fresh inquiry after identification of beneficiaries.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He also submitted that the calculation was made on the basis of the wage paid. In the order passed u/s 7B of the Act the commissioner has clearly observed that the wage register produced before the EO showed deduction of PF dues from the salary/wage of the individual employees. Hence the computation was made by the EO and it can not be said that the impugned order suffer from any illegality for non identification of the beneficiaries.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. The appellant has raised various points touching the legality of the order impugned in the appeal including the action of the commissioner in accepting the report of the E O in toto. The appellant has pointed out that the commissioner never made any effort of identifying the beneficiaries.

Without going to the other detail pointed out by the appellant challenging the order as arbitrary and when detail reply to the appeal has already been filed by the Respondent, it is not felt proper to remand the matter for reconsideration by the commissioner. However considering the period for which the inquiry was initiated and the amount assessed, and keeping it's plea of undue hardship likely to be caused the closure of the factory since 2018, it felt proper to reduce the condition of pre deposit contemplated u/s 7O of the Act from 75% to 25% which would serve the interest of justice. in the interest of justice. Accordingly it is directed that the appellant shall deposit 25% of the assessed amount towards compliance of the provisions of sec 7O of the Act by depositing FDR in the name of the Registrar CGIT initially for a period of one year with provision of auto renewal, within six weeks from the date of communication of the order failing which the appeal shall not be admitted. Call on 18.05.2022 for compliance of the direction. Interim order of stay granted earlier shall continue till the next date.

Presiding Officer

**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-2/05/2022

M/s. N. C Cables Ltd.

Appellant

VS.

APFC, EPFO, Noida
Respondent

ORDER DATED:- 31.03.2022

Present:- Ms. Neha Ld. Counsel for the Appellant.
Shri S.N Mahanta, Ld. Counsel for the Respondent.

The appellant has challenged the orders dated 30.11.2021 passed separately u/s14B and 7Q of the EPF & MP Act by the APFC Noida, wherein the appellant establishment has been directed to deposit Rs. 8,75,590/- as damage and Rs 4,44,040/- towards interest for delayed remittance of the EPF dues of its employees for the period 03/2009 to 07/2019. Describing the said orders as composite orders and alleging that the orders have been passed in a mechanical manner behind the back of the establishment, without assigning good reasons and without affording opportunity to the establishment, it is submitted that the same is bad in law and liable to be set aside. The Learned Counsel for the appellant citing the judgment of the Hon'ble SC in the case of APFC vs. Management of RSL Textiles Ltd submitted that the order passed by the commissioner is illegal and not sustainable for not discussing the mensrea on the part of the appellant for the delayed remittance. As such no damage as a punitive measure should have been imposed by the commissioner. The other argument advanced is that the common notice dated 24.08.2021 was served on the appellant. The authorized representative was directed to participate in the hearing, but no link for the virtual hearing was shared. The date adjournment was never notified. The appellant could not get the opportunity of verifying the

computer generated calculation sheet which is the basis of the calculation made in the order. Thus the appellant has submitted that he has a strong case to argue in the appeal and considering the same the appeal in respect of both the orders may be admitted and an interim order of stay pending disposal of the appeal may be allowed. The appellant has place reliance in the case of **Gaurav Enterprises vs. Union of India and others WPC NO. 8485 of 2021** decided by the Ho'ble High Court of Delhi by order dated 25th August 2021 to argue that the orders though separately passed are the outcome of a common proceeding and being a composite order the appeal is maintainable in respect of the order u/s 7Q of the Act.

The learned counsel for the respondent, while supporting the impugned order submitted that the very purpose of EPF &MP Act is to protect and safeguard the interest of the employees against the mighty employer and the provision u/s 14 B of the act has been incorporated to act as a deterrent to the omission and delay caused by the employer in deposit of the dues. In this case though sufficient opportunity was allowed to the appellant establishment to state it's defence, it opted not to participate in the hearing. Hence the impugned order was appropriately passed. He thereby submitted that any order of stay if allowed would defeat the purpose of the Act.

Perusal of the record shows that the impugned orders were passed on 30/11/21 and the appeal has been filed on 4/02/22 i.e beyond the prescribed period of limitation. Thus the Registry has raised objection on the maintainability of the appeal on the point of limitation. But for the period of limitation extended by the Hon'ble S C in respect of all proceedings on account of COVID 19 Pandemic, the delay is condoned the appeal in respect of the composite orders is admitted.

So far as the prayer for stay is concerned, it is found that a cryptic exparte order has been passed by the commissioner and without assigning the reason for imposing damage at the highest rate, he passed the order in respect of a pretty long period where in damage and interest has been calculated and imposed. All these circumstances make out a

strong arguable case in favour of the appellant. It is thus felt desirable that the execution of the impugned orders shall remain stayed till disposal of the appeal as an interim measure. But the order of interim stay cannot be unconditional. The appellant in view of the ex parte order passed against it is directed to deposit 1,50,000/- by way of challan with the respondent as a precondition for interim stay of both the impugned order, which shall be adjusted towards the amount assessed subject to the result of the appeal. This order shall be complied by the appellant within 4 weeks from the date of this order. The interim order passed earlier shall continue till then. Call the matter on 05.05.2022 for compliance of the direction and filing of reply by the Respondent.

Presiding Officer