

**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-1/06/2022**

M/s. Aqdas Maritime Agency

Appellant

VS.

APFC/RPFC, Delhi (East)

Respondent

**ORDER DATED:- 03.03.2022**

Present:- Sh. Rajiv Shukla and Shri Sanjay Kumar , Sanjiv Sagar, Ld.  
Counsel for the Appellant.  
Shri Narender Kumar, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and two separate application filed by the appellant for condonation of delay and an interim order of stay on execution of the impugned orders pending disposal of the appeal. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, a Pvt. Ltd Company, doing business as a labour contractor being duly registered under the Contract Labour (Regulation and Abolition) Act 1970, challenging the order 19<sup>th</sup> March 2021 passed by the APFC, Delhi, u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs. 5,77,282/- as damage and Rs. 5,60,571/- as interest for the period 04/1996 to 03/2014.

It has been stated by the appellant that the commissioner by a common notice dated 15.09, 2020 had called upon the establishment to show cause as to why damage shall not be imposed and interest shall not be calculated for the delay in remittance of the PF contribution of it's employees for the above said period and the direction was for attending the inquiry in virtual mode. A notice dated 11.03.2021 was sent giving intimation about the scheduled date of the inquiry as 12.03.2021 in virtual mode. In response to the same the authorized representative of the establishment intimated that the notice was sent by post on 17.03.21 and received by the establishment on 19.03.21 making it impossible to participate. The reply was sent by e mail seeking some time to represent it's case. But the commissioner did not respond. On the contrary in a hot haste went on to pass the ex parte order dated 19.03.21. The impugned order has been passed without any reason being given by the commissioner on the mensrea behind the delay and as to why the establishment is liable for damage at the maximum rate prescribed. Not only that the inquiry was held in respect of a highly belated period in contravention of the departmental circulars. The learned counsel for the appellant also argued that both the proceedings were held jointly and common notice was earlier issued. Even though two separate orders have been passed the same is a composite order. Citing the judgment of the Hon'ble High court of Delhi in

the case of Gaurav Enterprises, he prayed for admission of the appeal in respect of both the orders.

Two other petitions have been filed by the appellant praying condonation of delay and an interim order of stay on execution of the impugned orders. Perusal of the record shows that the impugned order passed on 19.03.21 was communicated to the appellant on 30.03.2021 and the appeal has been filed on 20.12.21. i.e beyond the period of limitation and the Registry has pointed out the same. In respect of the prayer for interim stay the learned counsel for the appellant submitted that an ex parte non speaking order has been passed against the establishment, which has a strong case to argue in this appeal. If the order would be executed pending disposal of the appeal serious prejudice shall be caused. Notices issued by the respondent as to why warrant of arrest shall not be issued has been placed on record.

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.

The learned counsel for the Respondent fairly submitted that the Hon'ble SC by their order passed in suo moto WPC 3/2020 have extended the period of limitation considering the difficult time faced for the pandemic. In view of the said order the delay is condoned. There being no other defect and the orders passed prima facie appears to be composite orders, the appeal is admitted.

But the learned counsel for the respondent raised serious objection to the prayer of interim stay and argued on the legislative intention behind the welfare legislation.

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. Unless the execution of the orders 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. Since an ex parte order has been passed, the appellant is directed to deposit a nominal amount of 5% of the damage and assessed within 4 weeks from the date of this order as a precondition for 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 orders. Call on 06.04.2022 for compliance of the direction and reply by the respondent. Call for the LCR.

Presiding Officer