

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208,
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/20/2020

M/s. Asian Colour Coated Ispat Limited

Appellant

Through:- Shri Vivek Kaushal & Shri Rajeev Gupta, Ld. Counsel for the
Appellant

Vs.

RPFC Gurugram

Respondent

Through:- Shri Puneet Garg, Ld. Counsel for the Respondent

ORDER DATED 29.12.2020

This order deals with the application filed by the appellant u/s 5 of the Limitation Act praying condonation of delay for admission of the appeal on the grounds stated therein. Copy of the appeal memo and the petition referred above being served on the respondent, Shri Puneet Garg appeared, filed written objection to the petition and the matter was heard being argued by the counsels for both parties through video conferencing.

It has been stated by the appellant that an inquiry was initiated u/s 14B & 7Q of the E P F & MP Act against the establishment by the RPFC Gurugram and the appellant establishment had participated in the same. Materials were placed and submission was made before the said authority explaining the mitigating circumstances leading to delay in remittance. But without considering the same the commissioner passed the impugned order on 29.11.2019, which was dispatched on 28.12.2019 and received by the appellant on 03.01.2020. Since, the company was experiencing huge financial crunch, the matter was before the Hon'ble NCLT and IRP was already appointed the appellant sought legal advice before filing the appeal, which took considerable time. When the establishment was getting ready to file the appeal i.e. within 120 days since the date of order, country wide lock down was declared on account of the outbreak of COVID-19. Soon after the unlock process the appeal has been filed. There was no intentional delay on the part of the appellant but for a situation beyond it's control. The appeal involves substantial and valuable rights of the appellant. Unless the delay would be condoned for admission of the appeal, serious prejudice shall be caused. To

support the argument that the appellant was bonafidely prosecuting the matter in another forum which caused delay in filing the present appeal and that the said period be excluded in computing the period of limitation, the appellant has placed reliance in the judgement delivered by the Hon'ble High Court of Orissa , in the case of Udaynath Autonomous College of Science and Technology vs RPFC,(WPCNo19092/2015).

In his reply the learned counsel for the respondent submitted that the present appeal filed after an inordinate delay is nothing but an abuse of the process of law and designed to defeat the very purpose of the social security legislation. While denying the applicability of section 5 of the Limitation Act to the present appeal, he submitted that the establishment has taken a bald plea of seeking legal advice causing delay , which is not acceptable. He also submitted that Rule 7 of the PF Appellate Tribunal Procedure Rule has specifically provided for filing of the appeal within 60 days, which can be extended by further 60 days on exercise of discretion of the tribunal being satisfied by the cause shown. The appellant in this case has not explained any satisfactory reason. Moreover the plea taken is not supported by any document which can not be accepted. He, thus, urged for dismissal of the appeal for being barred by limitation.

The record reveals that the order was passed and dispatched on 29.11.2019. no material has been placed on record to accept the plea of the appellant that it was dispatched on 28.12.19 and received on 03.01.2020. Similarly , no document has been filed to make this Tribunal believe that considerable time was consumed in seeking legal opinion or any confusion was created for filing the appeal on account of appointment of I R P by NCLT.

The judgement relied upon by the learned counsel for the respondent, the Division Bench of Honb'le Delhi High Court, in case APFC Vs. EPFAT, 2006 (2) LLJ 388, after relying upon the judgment in case of The Commissioner of Sales Tax, UP, LucknowVs. Prason Tools & Plants, Kanpur, (1975) 4 SCC 22 and various other judgments of the Supreme Court have held that under the provisions of EPF & MP Act, the provisions of Section 5 of Limitation Act are excluded and hence, the provision of that Act cannot be called in aid to supplement the provisions of the Act. In the case of Udaynath Autonomous College referred supra, the applicability of sec 14 of the Limitation Act has been dealt for computing the period spent bonafidely in

prosecution before another forum. Facts of the present case is completely distinguishable from that case.

The impugned order, since, was passed on 29.11.2019, the appeal should have been filed on or before 29.01.2020 or within the period another 60 days with valid and reasonable explanation for the delay. Instead, the appeal has been filed on 16.10.2020, citing corona lock down as the reason. The explanation offered seems not acceptable and the direction of the Hon'ble Supreme Court given in suo motto writ petition 3/2020, granting the benefit for condonation of delay on account of COVID-19 is also not applicable to the present case. Hence, the petition for condonation of delay is held without merit and rejected. The appeal is accordingly dismissed as barred by limitation.

Sd/-

Presiding Officer