

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208,  
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

**APPEAL NO. D-2/14/2020**

M/s. Balak Associates

Appellant

Through:- Sh. S.K. Khanna, Ld. Counsel for the Appellant

Vs.

RPF C Gurgaon West

Respondent

Through:- Sh. B.B. Pradhan, Ld. Counsel for the Respondent

**ORDER DATED 21.09.2020**

This order deals with two separate prayers made by the appellant for condonation of delay to admit 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 Sh. B. B. Pradhan appeared and participated in the hearing held through video conferencing on 9<sup>th</sup> Sept, though no written objection was filed by him. However, he has filed a written note of submission along with some documents with the leave of this Tribunal, after making copy of the same available to the learned counsel for the appellant.

Perusal of the office note reveals that the appeal was filed on 31.8.2020 via email and the impugned order was passed by the Respondent on 16.7.2019. Thus the registry has pointed out that the appeal is barred by limitation. The matter was taken up for hearing on the point of limitation first since the learned counsel representing the respondent raised objection on the point of limitation and insisted for a hearing on the same at the first instance.

The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days from the date of order, it is well within the period of limitation when computed from the date of

knowledge. He also drew the attention of the tribunal to the direction of the Hon'ble Supreme Court dated 23.3.2020 with regard to the condonation of delay on account of the outbreak of COVID-19.

Mr Khanna, the learned counsel for the appellant by filing the copies of the orders and daily proceedings of the 7A inquiry under challenge submitted that on 19.06.2019, the commissioner adjourned the matter to 17.07.2019 for passing the order. But behind the back of the establishment foreclosed the hearing and passed the order before one day i.e on 16.07.2019. Not only that, the order was never communicated and the establishment could know about the same when it approached Hisar Municipal Corporation for release of the security deposit, which was denied on account of the direction of attachment by the respondent. The appellant could come to know about of the order on 19.3.2020 after obtaining copy through RTI, but could not file the appeal within 60 days from the date of knowledge as the tribunal suspended it's functioning due to outbreak of COVID 19. Citing the judgment of the Hon'ble Supreme Court passed in suo motto WPC no 3/2020, extending the period of limitation until further orders ,he submitted that the delay occurred for a situation beyond the control of the appellant and for the order passed by the Hon'ble Apex court, the delay should be condoned for admission of the appeal.

Mr. Pradhan, the learned counsel for the respondent while taking serious objection to the submission made by the appellant submitted that the time of limitation extended by the order of the Hon'ble Supreme Court is not available to the appellant since the impugned order was passed on 16.07.2019 and plea regarding want of knowledge is not believable since the appellant was participating in two separate proceedings conducted against it in respect of two separate code numbers and for two separate time period for change of it's address. The orders in both the proceedings were passed on the same day i.e. on 16.07.2019 and in respect of one proceeding the bank account of the appellant was attached and some amount was recovered. He has also filed the copies of the cover letter, postal receipt and

dispatch register to show that the impugned order was communicated to the appellant on 16.07.2019.

A presumption of delivery is available in respect of communication made through post unless and until it is rebutted. On behalf of the appellant no such rebuttal evidence or document has been placed on record except the denial made through affidavit. I find no reason of disbelieving the documents placed on record by the respondent which were maintained during regular course official business by the respondent. It is also difficult to accept that the proceeding was foreclosed since the order was passed one day before. In that case it was the duty of the appellant to inquire about the order on 17<sup>th</sup> instead of waiting for the order to be communicated. It is also difficult to believe that the appellant remained ignorant of the impugned order when in one proceeding going on simultaneously with the present one, the bank account was attached.

The Hon'ble Supreme Court in their order dated 23.03.2020 have no doubt extended the period of limitation until further orders keeping in view the current difficult situation on account of the outbreak of COVID 19. On a careful reading of the said order it is clear that the period of limitation has been extended for the matters in which limitation was to run out during or immediately before the courts and Tribunals suspended functioning for the COVID 19 condition. Matters which could have been filed prior to that can not avail the benefit of the extension of the limitation period. In this matter since the appellant has failed to explain properly about the delay and could not rebut the presumption of postal service of the impugned order, it is held that the appeal is barred by limitation and thus cannot be admitted. Accordingly the appeal is dismissed. Consign the record as per law.

Sd/

Presiding Officer