

**ATA NO. D-2/02/2021**  
**ORDER DATED:-24.02.2021**

Present:- Shri Dilip Kumar Saxena, Ld. Counsel for the Appellant.  
Shri Narendra Kumar Singh, Ld. Counsel for the Respondent.

The appeal challenges the orders dated 19.03.2020 passed by the RPFC-1 wherein the appellant has been directed to deposit Rs. 01,53,899/- and Rs.1,33,073/- as damage and interest respectively for delayed remittance of PFdues of it's employees for the period 05/17 to 08/19.

It has been stated that the appellant is a company registered under the companies Act. It is a National Level Franchise under Free EPABX Scheme of BSNL and engaged in installation and erection of towers etc. The commissioner initiated the inquiry alleging delay in deposit of the PF dues of the employees. The representative of the appellant appeared and requested for a revised calculation and submitted documents to show that the delay in remittance was never intentional but for delay in release of the Bills by the principal employer i.e. BSNL. The authorized representative of the establishment also submitted on the mitigating circumstances leading to delay in remittance and urged that there being no mensrea behind such delay, the establishment is not liable to pay damage and interest. The commissioner without considering the plea advanced passed a non speaking order which is under challenge in this appeal. Learned counsel for the appellant further submitted that a common notice for damage and interest was served on the appellant and a joint proceeding too was held before the commissioner. But to defeat the legal rights of the appellant the commissioner passed two separate orders. Citing the judgment of the Hon'ble S C in the case of Arcot Textiles he submitted that the tribunal has jurisdiction to entertain appeal against the order passed u/s 7Q of the Act, and pass an interim order of stay pending disposal of the appeal when a composite order is passed for levy of damage and interest. Placing reliance on several judgments of the Hon'ble High Courts of Guahati and Rajasthan he submitted that the commissioner exercising quasi judicial power u/s 14B and 7Q of the Act is under obligation to pass a speaking and reasoned order. The commissioner having not done so the appellant has a good and strong case for argument in this appeal. Unless the execution of the order is stayed till final hearing of the appeal serious prejudice to the appellant shall be caused and the appeal would become infructuous.

With regard to the delay it has been submitted that the impugned orders were passed on 19.03.2020 and before expiry of the period of limitation prescribed under the statute, the courts stopped functioning on account of lock down for COVID-19. Soon after e-filing started, the appeal was filed. He also drew the attention to the order passed by the Hon'ble SC

extending the period of limitation until further orders. A separate petition has been filed for condonation of delay.

The learned counsel for the respondent fairly conceded to the grounds taken for condonation of delay and order passed by the Hon'ble SC in this regard. There being no other defect pointed by the registry, the appeal is admitted and delay in filing is hereby condoned.

On behalf of the respondent the learned counsel while supporting the impugned order argued that the order passed u/s 7Q not being appealable, no order of interim stay can be passed against it. He also argued on the legislative intention behind the EPF&MP Act and opposed the prayer for stay made by the appellant.

On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the interim relief of stay as prayed by the appellant. The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt. Ltd vs. Union Of India** reported in **2005SCCpage1** and in the case of **Escorts Limited and another vs. Union Of India** reported in **43(1991)DLT 207** the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

In this case the period of default as seen from the impugned order is from 05/17 to 08/19, and the amount of damage assessed is equally big. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore in the case of **MulchandYadav and Another vs. Raja BulandSugar Company and another** reported in **(1982) 3 SCC 484** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit Rs 46,000/- which is little less than 30% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. The Hon'ble SC in the case of **Arcot Textiles** have expressly held that the order u/s7Q, if separately passed, cannot

be construed as a composite order and appeal against the said separate order would not be maintainable as right to appeal can not be assumed to exist unless expressly provided for under the statute. Furthermore the facts of the present appeal is distinguishable from the facts of Arcot Textile case. Put up after three weeks i.e on 02-03-2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

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Presiding Officer