

**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-2/16/2020

M/s. Durable Doors & Windows

Appellant

Through:- Sh. S.P. Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant.

Vs.

APFC Gurugram (East)

Respondent

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

ORDER DATED 12.10.2020

The appeal challenges the order dated 18.10.2019, passed by the APFC Gurgaon u/s 14B and 7 Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 5,24,224/- as damage and Rs 2,80,344/- as interest for delayed remittance of EPF dues of its employees for the period 1.5.2013 to 24.2.2019. Notice being served on the respondent, learned counsel Shri B.B. Pradhan appeared and participated in the hearing held via video conferencing on 6th Oct 2020.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 18.10.2019 and the appeal has been filed on 15.9.2020, i.e. beyond the period of limitation. No separate petition has been filed by the appellant praying condonation of delay and admission of the appeal for the reasons explained therein. But prayer has been made for stay on the execution of the impugned order passed u/s 14B of the Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal. The learned counsel representing the respondent too filed some documents on 9th October, 2020 along with a short note of submission after serving copy of the same on the appellant, to which appellant has taken objection and by sending an e mail has requested not to consider the said written submission as no liberty was granted for the same. It is true that the respondent was given liberty of filing documents post hearing of the matter on admission and stay. But the counsel representing his client if desires to file a written note of submission to suffice his oral submission no permission for the same is required. Hence, the said note of argument is taken on record.

The appellant has stated that the order dated 18.10.19 was never communicated and the same came to their knowledge when recovery proceeding started. Only on 01.09.2020 a photo copy of the impugned order along with the bank attachment notice was received. Appellant could know on that day that the impugned

order was sent in his old address and never delivered. It is also submitted that the said address was sealed by the town planner and the changed address was duly intimated to the EPFO. Having knowledge of such change in address the order was intentionally sent in a wrong address. A document intimating the EPFO about change in address has been placed on record.

The learned counsel for the respondent by filing the details of the postal dispatch of the order submitted that there is confusion with regard to the change in address. The postal dispatch having not been returned as un served, is presumed to have been served. He, thus, submitted for dismissal of the appeal as barred by limitation.

On hearing the submission it is found that the appellant by its letter dated 28.08.2019 (Annexure A13) had intimated the APFC about change of his address for correspondence, which was received by the commissioner on 28.08.2019. In spite of that, the order was admittedly sent in the old address which was never received by the appellant. The circumstances, thus, lead to a conclusion that appellant got knowledge of the impugned order only on 01.09.2020 and filed the appeal on 20.09.2020 i.e within 60 days from the date of knowledge. Hence the appeal is not barred by limitation. There being no other defect pointed out by the registry, the appeal is admitted.

On behalf of the appellant it was submitted that for the delay in payment by the client, there was delay in remittance of P. F. dues by the appellant. But it was never intentional. However on getting notice about the 7A proceeding an amount of Rs.17,15,633/- was deposited towards contribution on 26.03.2019. By citing several judgments of the Appex Court and Hon'ble High Court of Madras, he submitted that the commissioner, while discharging a quasi judicial function is expected to give a finding on the mensrea of the establishment for delayed remittance, since the Appex court in the case of **RSL Textiles** have held that in absence of a finding on the mensrea, imposition of damage is illegal as all delayed deposit can not entail the establishment for payment of damage. He thereby submitted that the appellant having a strong arguable case, the impugned order be stayed without any condition till disposal of the appeal. To support his argument he has relied upon the case of **H.K. Corporation vs A P F C**, **Old village Industries vs APFC** and several other cases decided by the Hon'ble High Court of Delhi and argued that this is a fit case for grant of unconditional interim stay on the impugned order pending disposal of the appeal.

In his reply the learned counsel for the respondent submitted that the very purpose of EPF&MP Act is to safeguard the interest of the employees against the mighty employer. Unconditional stay of the impugned order would defeat the very purpose of the beneficial legislation.

Of course the appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe at this stage about its fair chance of success. But the Tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal when respondent is yet to file its objection. It is true that the statute, unlike the provision for appeal against an order passed u/s 7A of the Act, has not provided for the condition of pre deposit contemplated u/s 7 O of the Act. In the case of **Old Village Industries** referred supra and relied by the appellant, the Hon'ble High Court have held that for admission of the appeal challenging the order passed u/s 14 B, a condition of pre deposit in terms of the provisions of sec 7 O of the Act can not be ordered.

Keeping in mind the said principle of law decided by the Hon'ble High Court and on hearing the argument advanced by the counsel for both the parties, an order need to be passed on the interim relief of stay as the appeal has already been ordered to be admitted. The factors which are required to be considered at this stage for the purpose of interim stay of the impugned order are the period of default and the amount of damage levied.

In this case the period of default as seen from the impugned order is from 10.05.2013 to 24.02.2019 i.e. for a period of six years, 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 **Mulchand Yadav and Another vs Raja Buland Sugar 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.

In this case it is accordingly directed that there should be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. The learned counsel for the appellant urged for the unconditional stay and placed reliance in the case of H. K. Corporation referred supra decided by the Hon'ble High Court of Delhi. But the said interim order cannot be un conditional as the period of default spans over a period of six years. The appellant is directed to deposit Rs. 1,00,000/- which is 20% of the assessed amount of damage by way of Challan to be deposited with the Respondent 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 prayer for the same has been made. Put up after three weeks i.e. on 05.11.2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer