

**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-1/26/2020

M/s. Empowered Mass Media Pvt. Ltd.

Appellant

Vs.

APFC, Delhi(North)

Respondent

ORDER DATED 20.08.2020

Representing Counsels: Sh. Akhil Hasija and Sh. Yash Mishra, Ld.
Counsel for the Appellant

Shri S.N. Mahanta, Ld. Counsel for the
Respondent

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

The appeal has been filed by the appellant ,a Pvt Ltd Company challenging the order dated 3/12/2018, passed by the APFC, Delhi (North) u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs 10,41,718/ as damage for the period 9/2011 to 7/2017.

It has been contended that the company against which the impugned order has been passed is not in existence since 2015 and discontinued it's operation since 2015 and has been categorized as strike off by ROC and the same has been reflected in the official website of the Ministry of Corporate Affairs. On 3/12/2019, a notice was received by the appellant company in the e mail of it's director ,calling upon to show cause as to why warrant of arrest shall not be issued for not complying the order dated 03/12/2018, passed u/s 14B of the EPF & MP Act. The advocate of the appellant appeared before the recovery officer and collected a copy of the impugned order. Though it was brought to the notice of the recovery officer that the company is not in existence since 2015, the same was not considered. The

request made for supply of relevant documents including the manner and basis of calculation were not supplied to the appellant. Finding no other efficacious remedy the appellant filed the present appeal with a prayer for condonation of delay, admission of the appeal and interim stay on execution of the impugned order. It has been explained that the period of limitation if computed from the date of knowledge, the appeal has been filed within the time stipulated under the Act.

The Registry of this Tribunal has pointed out that the appeal has been filed after a delay of 346 days. The learned counsel for the respondent Mr Mahanta in his written reply has taken serious objection to the inordinate delay and during course of his argument submitted that the impugned order was passed on 29/11/2018 and the same was dispatched on 3/12/2018. He has instruction from the department that the order sent by post was never returned undelivered giving rise to a presumption that it was duly served. He also submitted that the summon dt 25/7/2017 for the 14B inquiry was served in person on 11/12/2017 and there is an endorsement to that effect on the summon. To support his contention he has filed scanned copies of the cover letter dt 3/12/2018, summon dt 25/7/2017, which contains an endorsement of receipt by the present appellant Mr P Maity on 11/12/2017 and the dispatch register of the respondent showing dispatch of the order in the official address of the appellant on 3/12/2018. He also submitted that the fact of change of address or change of director or closure of the company as has been pleaded now was never intimated to the respondent though as per rule the establishment is under obligation to intimate the same. He thereby submitted that the appellant has failed to explain the delay in filing the appeal which has been filed with a delay of 346 days. When the Act provides a time limit of 60 days for filing the appeal, which can be extended for a further period of 60 days in appropriate cases the Tribunal cannot condone the delay beyond that period. He thus argued for dismissal of the appeal.

To support his contention he placed reliance in the case of C/M Angoori Devi Inter College and another VS State of U P & three others

decided by the Hon'ble High Court of Allahabad in writ case no27906/2019, in which it has been held that:-

“when a time limit has been prescribed by the rule making authority for filing an appeal ,and also the extended period having been provided, and no further extension thereof having been envisaged or contemplated, the appellate authority cannot grant any further extension beyond the statutory period of limitation . he has also placed reliance in the case of RPFC VS EPFAT, decided by the HON'BLE Punjab & Haryana High Court in CWP No5201/2000.”

In his reply the learned counsel for the appellant submitted that in fact there has been no delay in filing the appeal but as an abundant caution the application has for condonation of delay has been filed. While pointing out the defects and discrepancies in the impugned order and recovery notice including non mentioning of the mensrea for delayed remittance entailing liability for damage, he submitted that the appellant has a strong arguable case in the appeal and the Tribunal should not act in a hyper technical manner in dealing with the delay condonation application. In this regard he has placed reliance in the case of N Balkrishnan VS M Krishnamurthy(AIR1998 SC3222) to argue that Rule of limitation are not meant to destroy the right of the parties. He also submitted that the impugned order has been passed behind the back of the appellant and the appellant has a fair chance of succeeding in the appeal. Hence the Tribunal should consider the circumstances shown for condonation of delay and admit the appeal.

While fully agreeing with the submission that courts and Tribunals exist to sub serve the cause of justice and not to punish the parties for the fault committed in conduct of the case, it cannot be ignored that EPF &MP Act is a special legislation and the Rule making Authorities under the Act while framing the Rule 7(2) have prescribed 60 days time limit for filing the appeal, which under the statute can be extended for a further period of 60 day on good and reasonable grounds being shown. In this case the

respondent has placed on record some documents to establish prima-facie that notice of inquiry was properly served on the establishment and the report obtained from the official portal of the postal Dept shown by the learned counsel for the Respondent both, establishes the dispatch of the impugned order on 3/12/2018. It also cannot be ignored that the change of address was never intimated to the authorities of EPF.

In the case of C E Chandigarh VS Doaba co operative sugar Mills which has been relied by the Hon ble High Court of Allahabad in the case of C/M Angoori Devi ,the Hon'ble SC have observed that if the proceedings are taken under a particular Act, the provisions of limitation prescribed under the said Act shall prevail. Furthermore, the Hon'ble High Court of Delhi in the case of Saint Soldier Modern Senior Secondary School VS RPFC decided in LPA 533/2014 have held that when the legislature have prescribed limitation under rule 7(2) and the legislative intention is clear in extending the limitation for a further period of 60 days ,the appellate authority cannot extend the time beyond that period.

Hence considering the submission advanced by the learned counsel for both the parties, it is held that the present appeal has been filed after a delay of 346 days and the appellant has not succeeded in explaining the delay, which makes the appeal not maintainable being barred by Limitation. The petition for condonation of delay is held devoid of merit and rejected. The appeal is accordingly dismissed without admission .The interim order of stay on the impugned order granted earlier stands vacated.

Sd/-
(Pranita Mohanty)
Presiding Officer