

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No.D-1/18/2021

M/s G.L. Management Services Pvt. Ltd.

Appellant

Vs.

RPFC, Delhi (East)

Respondent

ORDER DATED:- 27.07.2021

Present:- Shri Manish Malhotra, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and the application filed by the appellant for an interim order of stay on execution of the impugned order. Before the matter could be taken up for admission and consideration of the prayer for interim stay, the appellant filed another application alleging therein that the respondent, though aware of the filing of this appeal along with the prayer for interim stay, in a hurried manner attached the Bank Account of the establishment and recovered the entire amount of Damage and Interest assessed under the impugned orders.

Copy of the appeal and the subsequent petition being served on the respondent the learned counsel Shri S N Mahanta appeared and participated in the hearing held via Video Conferencing without filing any written objection.

The appeal has been filed by the appellant, a Pvt. Ltd Company challenging the order dated 9/3/2021 passed by the RPFC, Delhi East, u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs701702/- as damage and Rs 512353/-as interest for the period 1/7/19 to 29/2/20. It has been stated that the appellant establishment is engaged in the business for supply of man power for the purpose of house keeping and data entry to different establishments and offices and have been provided with a code no for deposit of the PF dues of it's employees. The establishment has been sincere and vigilant in the matter of the PF dues since the date of allotment of the said code no. on 21/12 20 when all business activities had come to a Halt on account of the outbreak of COVID-19 pandemic, the commissioner served notice dated 21/12/20 proposing imposition of damage and interest for delay in remittance of the EPF dues of it's employees. The establishment participated in

the inquiry initially in virtual mode and subsequently in physical mode. The representative of the establishment had also submitted a written reply indicating the mitigating circumstances for the delay in remittance. It was stated that the delay in remittance was never intentional but for the circumstances beyond its control. But the commissioner failed to appreciate the stand taken by the appellant and passed the non-speaking impugned order. The said order is nothing but an acceptance of the calculation made by the EO, which is evident from the order itself.

It has further been pleaded that the order though appears to have been passed on 9/3/21, the same was delivered to the appellant establishment only on 16/6/21, via e-mail, after the representative of the appellant visited the office of the Respondent and requested for a copy of the order. Wasting no further time the appellant on 5/7/21 filed the appeal by on line mode in this tribunal and on the same day served the copy of the appeal on the respondent by e-mail. Copy in proof of the said e-mail communication has been filed with the appeal. Since this Tribunal is functioning in virtual mode matter could not be listed for admission and consideration of the stay petition immediately and taking advantage of the situation, the Respondent in the first week of July 2021, served a demand notice on the appellant in the recovery proceeding initiated pursuant to the impugned order. That proceeding was started having knowledge of the appeal filed. Though in the notice the establishment was asked to deposit the assessed amount within fifteen days from the date of receipt of the notice, surprisingly on 9/7/21 attached the account of the appellant and recovered the entire amount of damage and interest assessed during the inquiry. This action was taken by the Respondent before expiry of the limitation prescribe for filing of the appeal as well as before expiry of 15 days time mentioned in the recovery notice dated 29/6/21. The appellant thereby submitted that it has a strong arguable case in the appeal. Unless the appeal is admitted and execution of the impugned order is stayed, and the respondent be directed to refund the amount recovered, serious prejudice shall be caused to the appellant and the relief sought in the appeal shall become infructuous. Learned counsel for the appellant further submitted that the orders under challenge is a composite order and thus both be stayed pending disposal of the appeal.

In his reply the learned counsel representing the respondent while supporting the impugned order, described the same as a well discussed and reasoned order. He also argued that the mensrea of the appellant is evident from its conduct. Describing the provisions of the EPF Act as a benevolent provision he submitted against the grant of interim stay order. He also submitted that the commissioner has passed two separate orders and the order u/s 7Q not being appealable, no order of stay in respect of the same should be passed.

With regard to the allegation of the appellant on recovery of the assessed amount, he submitted that the establishment was properly communicated about the order and filed the appeal on 5/7/21 when recovery notice was served on 29/6/21.

On hearing the submission of the learned counsels an order need to be passed on admission of the appeal keeping in view the delay pointed out by the respondent. Though the Respondent claims about communication of the order soon after it was passed, no document in support of the same has been placed on record. From the document filed by the appellant it appears that the certified copy was received on 16/6/21 and within 60 days therefrom appeal has been filed on 5/7/21. No rebuttal document filed by the respondent to show communication of the order before 16/6/21. Hence it is held that the appeal is not barred by limitation. There being no other defect pointed by the registry, the appeal is admitted.

The learned counsel for the respondent while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation.

There is no dispute on facts that remittance has been made after considerable delay. But the appellant has offered an explanation of it's bonafides in doing so. 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. But the peculiarity of the situation is that the respondent department ,though was served with the copy of the appeal and even though the period of limitation for filing the appeal was not over nor the 15 days time given in the recovery notice ,in a haste attached the bank account and recovered the damage and interest assessed. This wrong action of the Respondent need to be remedied, failing which the relief sought in the appeal shall become illusory. 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 1/7/19 to 29/2/20 and the amount of damage assessed is Rs. 701702/-. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount of damage be protected from being recovered from the appellant. Furthermore in the case of

MulchandYadav 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.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order passed u/s 14B of the Act, pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit Rs. 70,170 /- which is 10% of the assessed amount of damage, as a precondition for stay pending disposal of the appeal. Since the respondent has recovered the entire amount of damage assessed, it is hereby directed that the respondent shall refund 90% of the damage assessed and recovered to the appellant within 15 days from the date of communication of the order, failing which the amount returnable shall carry interest @9% per annum from the date of this order till the refund is made and shall be payable by the Respondent. 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. Put up after three weeks i.e on 16/08/2021 for compliance of the direction.

Presiding Officer