

**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-1/12/2020

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

Through:- Shri Manish Malhotra, Ld. Counsel for the Appellant.

Vs.

CBT through RPF, Delhi East Respondent

Through:- Shri Balraj Deewan, Ld. Counsel for the Respondent.

ORDER DATED 10.02.2021

This order deals with appellant's prayer for admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges the order dated 06.12.2019, passed by the APFC Delhi u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 6,51,522/- as damage Rs 4,04,462/- as interest for delayed remittance of EPF dues of its employees for the period 01.12.2018 to 30.06.2019. Notice being served on the respondent, learned counsel appeared and participated in the hearing held on 1st Feb 2021, through video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 06.12.2019, forwarded to the appellant on 24.12.2019 and served on the appellant establishment on 27.12.2019. The appeal was filed on 05.02.2020 i.e. within the period of limitation prescribed under the Act. 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 appellant has stated that the inquiry has been conducted ignoring the principles of law, on the subject, pronounced by the Hon'ble Supreme Court and other High courts and the principles of natural justice as well. The mitigating circumstances the appellant represented in writing was never considered by the commissioner which makes the impugned order not sustainable in the eye of law. It is also submitted that the notice for the impugned inquiry was served on the appellant on 17.07.2019 for the period 01.12.2018 to 30.06.2019 along with the calculation sheet. But prior to that, another inquiry was conducted by notice dated 17.12.2018 for the period 05/2017 to 10/2018 and order was passed on 20.02.2018. Thus, there was an overlapping period of assessment. All these aspects, though pointed out were not considered by the commissioner nor has any finding been given on the mensrea of the establishment for

the delay in remittance. He, thereby, submitted that the appellant has an arguable case in the appeal. Unless the appeal is admitted with a direction of interim stay on the impugned order, serious prejudice would be caused to the appellant.

A prayer has been made by the appellant for an order to be passed directing stay on the execution of the impugned order pending disposal of the appeal. The learned counsel for the appellant submitted that the notice dated 17.07.2019 was issued for inquiry u/s 14B and 7Q of the Act for the period 12/2018 to 06/2019. But the establishment pointed out about the earlier proceeding and the overlapping period leading to confusion. It was also pointed out during the hearing that for the earlier assessment u/s 14 B, separate appeal is pending before this Tribunal in which an order of stay on the execution of the impugned order has been passed. But the commissioner ignored written submission of the appellant establishment and observed in the order that no rebuttal was made to the notice. Thus appellant submitted that the respondent be directed not to take any coercive action pending disposal of the appeal as the appellant has a strong prima facie case to argue and there is fair chance of success. If the amount assessed would be recovered pending disposal of the appeal, that would cause undue hardship making the relief sought illusory. To support his argument he relied upon the judgement of Escorts India VS Union of India amongst others.

The learned counsel for the respondent submitted that the appellant has no remedy available before this Tribunal in respect of the interest levied u/s 7Q of the Act as the same is not appealable. He thus submitted that the appellant has to approach the appropriate authority to get relief for the interest levied. In respect of the assessed amount of damage; he submitted that the EPF and M P Act is a beneficial legislation and any order of stay would defeat the very purpose of the Act. He thereby fairly submitted that the Tribunal if feels proper to stay the impugned order, some condition be imposed.

The learned counsel for the appellant in reply submitted that the Act, unlike the provisions of Application under section 70 of the Act, an application for grant of stay on operation of the impugned order. To support his stand reliance has been placed in the cases of Evershine House Keeping vs CBT, Old Village Industries vs. APFC and H.K. Corporation vs APFC, decided by the Hon'ble High Court of Delhi. The impugned order, thus, need to be stayed without any condition.

But a careful reading of the above mentioned judgements lead to show that no condition of pre deposit can be ordered for admission of the appeal challenging the order passed u/s 14 B of the Act, as is done in case of appeal filed challenging the order u/s 7A of the Act., which is in compliance of the mandatory provisions of sec 7A . But here is a case where the learned counsel for the respondent prayed for imposition of condition for stay of the impugned order and not for admission of the appeal.

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 cannot 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 is otherwise in order and 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 01.12.2018 to 30.6.2019 i.e. for a period of six months, 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.

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. But the said interim order cannot be unconditional. The appellant is directed to deposit Rs.1,30,000/- which is approx.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. The appeal being admitted today, put up after three weeks i.e. on 08-March-2021 for compliance of the direction and reply by the respondent to the appeal. Interim stay granted earlier shall continue till then.

Sd/-
(Presiding Officer)