

**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-2/33/2021**

M/s. Kabir Leathers

Appellant

VS.

RPFC, Gurgaon

Respondent

**ORDER DATED :-18/02/2022**

Present:- Shri Saurabh Munjal, Ld. Counsel for the appellant.  
Shri B.B Pradhan, Ld. Counsel for the Respondent.

The appellant has challenged the order dated 30/07/2021 u/s 14B of the EPF & MP Act by the RPFC Gurugram, wherein the appellant establishment has been directed to deposit Rs. 25,95,130/- as damage for delayed remittance of the EPF dues of its employees for the period 14.02.2019 to 24/07/2020. Alleging that the order has been passed in a mechanical manner without assigning good reasons and without affording opportunity to the establishment, is bad in law and liable to be set aside. The learned counsel for the appellant citing the judgment of the Hon'ble SC in the case of APFC vs. Management of RSL Textiles Ltd submitted that the order passed by the commissioner is illegal and not sustainable for not discussing the mensrea on the part of the appellant for the delayed remittance and no damage as a punitive measure should have been imposed by the commissioner. The other argument advanced is that the establishment is a partnership firm engaged mostly in export business. For non release of the incentive granted by Govt. fire accident in the factory and frivolous claims filed by the customers, the establishment had to suffer a major financial set back. It is also the stand taken by the appellant that in the year 2020, for the outbreak of the Pandemic the business activity was slowed down. The establishment never skipped its statutory liability. There is only delay in remittance. He further submitted that the law is now well settled that all delays in remittance can not attract penal liability unless the ill intention behind the delay is proved. To support his contention, he has mainly relied upon the judgment of the Hon'ble SC in the case of **Hindustan Steel Ltd vs. State of Orissa, 1969 Ind Law SC 131** and the judgment of the Hon'ble High Court of Kerala in **Indian Telephone Industries vs. APFC & Others 2006(3)KLJ698**.

With regard to delay in filing of the appeal, it is submitted that for the difficulty faced in approaching the Tribunal for the COVID Restriction, there is delay in filing the appeal. But the Hon'ble Apex Court in suo motto WPC no 23/2020 have passed the direction condoning the delay in filing of all kinds of proceedings. He thus prayed for condonation of delay and admission of the appeal. A separate petition has been filed praying an order of interim stay on execution of the impugned order on the ground that execution of the order leading to recovery during the pendency of the appeal would make the relief sought in the appeal infructuous.

The learned counsel for the respondent, has filed a written objection to the prayer for stay. While supporting the impugned order, he submitted that the very purpose of EPF & MP Act is to protect and safeguard the interest of the employees against the mighty employer and the provision u/s 14 B of the act has been incorporated to Act as a deterrent to the omission and delay caused by the employer in deposit of the dues. In this case though sufficient opportunity was allowed to the appellant establishment to state its defence, it opted not to participate in

the hearing. Hence the impugned order was appropriately passed. He thereby submitted that any order of stay if allowed would defeat the purpose of the Act. Citing the judgments of the Hon'ble HC of Delhi in *Jai Balaji Security Services vs. APFC Delhi* and the case of *Ascot Hotels and Resorts Pvt. Ltd vs. APFC*, he submitted that if at all the Tribunal would pass an order of interim stay on the facts of this case that should be a conditional order. However he fairly conceded on the condonation of delay as allowed by the Hon'ble SC.

Hence the delay is condoned and there being no other defect, the appeal is allowed.

On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the prayer for interim stay made by the appellant who has argued extensively about the undue hardship likely to be caused, if the impugned order is not stayed. The impugned order shows that the commissioner has not assigned any reason for arriving at the conclusion in imposing damage at the highest rate, though a discretionary power has been vested on him for exercise in appropriate cases.

In this case the period of default as seen from the impugned order is from 14/2/2019 to 24/7/2020, and the amount of damage assessed is also equally big to cause undue hardship when it is the specific stand taken by the appellant is that it is facing acute financial difficulty for the fire accident and other business setbacks. 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 as the impugned order would have a serious civil consequence.

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 cannot be unconditional. The appellant is directed to deposit 20 % 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. Put up after three weeks i.e. on 14-march-2021 for compliance of the direction and reply to be filed by the Respondent. Interim stay granted earlier shall continue till then.

Presiding Officer