

**BEFORE THE HON'BLE 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.

M/s. Livedigital Marketing Solution Pvt. Ltd.

Appellant

Vs.

RPFC/APFC, Gurgaon

Respondent

ATA No. D-2/18/2021

ORDER DATED:- 18.08.2021

Present:- Shri Ravi Ranjan & Shri Vikas Singh , Ld. Counsel for the Appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

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

The appeal challenges the order dated 9/4/21, passed by the APFC Noida u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 12,05,089/- as damage and Rs 6,52,245/- as interest for delayed remittance of EPF dues of its employees for the period 03/2017 to 12/2019 . Notice being served on the respondent, learned counsel Shri Narender Kumar appeared and participated in the hearing held via video conferencing on 13/8/21.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 9/4/21 and the appeal has been filed on 30/7/21, i.e beyond the period of limitation prescribed under the statute. A separate petition has been filed by the appellant praying condonation of delay for the reasons explained therein. A prayer has also been made for stay on the execution of the impugned order passed u/s 14B and 7Q 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 has not filed any document but during argument countered the documents of the appellant placed on record.

With regard to the delay in filing the appeal as pointed by the registry, he submitted that the impugned order was passed on 9/4/21 and the appeal was filed on 30/7/21,i.e beyond the period of prescribed limitation. More over the Hon'ble SC have directed for the extension of limitation for the prevailing

condition on account of COVID 19. Hence the delay may be condoned for admission of the appeal.

Learned counsel for the respondent fairly conceded on the plea for condonation of delay in view of the extension granted by the Hon'ble SC in suomoto WPC No 23/2020 considering the difficulty faced by the litigants on account of the COVID19 condition. Hence the delay is condoned and the appeal is admitted.

The appellant has stated that for the period of inquiry under challenge the establishment was going through acute financial instability and being engaged in the business of providing BPO service to it's clients was due to receive payment from those clients which remained unpaid for a long time. The authorized representative of the establishment during course of inquiry had put forth the difficulties faced by the establishment and rendered all kind of co operation in production of records etc, but the commissioner without considering the same passed a non speaking and un reasonable order in which no finding has been given on the mensrea of the appellant for the delayed remittance. Not only that the mitigating circumstances and acute financial problem of the appellant was never considered by the commissioner which makes the impugned order not sustainable in the eye of law. 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.

The learned counsel for the appellant also submitted that the commissioner had issued a common notice for inquiry and also conducted a common proceeding though two separate orders have been passed u/s 14B and 7Q of the Act. Hence execution of both the orders need to be stayed in the interest of justice.

The learned counsel for respondent objected on the ground that no appeal is maintainable against the order passed u/s 7Q of the Act and when two separate orders have been passed those can not be termed as composite orders.

The learned counsel for the respondent also raised serious objection to the prayer of the appellant for interim stay and 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.

By citing several judgments of the Apex Court including the case RSL Textiles, counsel for the appellant 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 Apex 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.

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 it's 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 it's 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, 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.

But here is a case where the respondent is not insisting for a pre deposit as a condition precedent for admission of the appeal, but for a condition precedent for interim stay on the execution of the impugned order passed u/s 14 B only.

Keeping in mind the 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 3/17 to 12/19, i.e for a period of two and half 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. But the said interim order can not be un conditional as the period of default spans over a period of two and half years. The appellant is directed to deposit 20% of the assessed amount of damage through challan four 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 interim stay on the order passed u/s 7Q of the Act, as the same is not appealable and no opinion can be formed at this stage if the orders challenged in the appeal is a composite order or not. Call on 20-September-2021 for compliance of the direction and filing of reply by the respondent. The earlier order of stay shall continue till the next date.

Presiding Officer

