

**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-1/36/2020**

M/s. Nice International Limited

Appellant

Through;- Sh. Amol Dalela, Ld. Counsel for the Appellant

Vs.

APFC Delhi (South)

Respondent

Through:- Sh. Puneet Garg, Ld. Counsel for the Respondent

**ORDER DATED 14.10.2020**

The appeal has been filed by the appellant challenging the order dated 20.01.2020, passed by the APFC, Delhi (South), in exercise of the power u/s 14 B and 7Q of the EPF & MP Act assessing Rs7,33,123/- and Rs 3,90,320/- as damage and interest respectively to be paid by the appellant for delayed remittance of the PF dues of its employees for the period 03/2016 to 06/2019.

This order deals with the prayer for admission of the appeal, condo nation of delay and an interim order of stay on the execution of the impugned order, pending disposal of the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri Puneet Garg representing the respondent participated in the hearing, though no written objection has been filed.

It has been stated in the appeal that the establishment is a company registered under the companies Act. Since the date of coverage it has been depositing the statutory obligations under the Act diligently. But the managing director of the company is suffering from cancer since some years and the employees are somehow managing the affairs and running the company. This has substantially influenced the business activities of the company. Drawing attention to other ongoing litigations, it has been stated that when the company was facing acute deficit in cash flow the commissioner by notice dated 07.08.2019 summoned the company for the impugned inquiry. The representative of the appellant appeared and put forth the facts and figures disputing the calculation of damage proposed in the notice. He also requested for some time to verify and place other details. The mitigating circumstances for delay in remittance were also brought to the notice of the commissioner. But the commissioner without considering the submission made by the AR of the company passed the impugned order which does not contain any finding on the mensrea of the appellant for the delay in remittance. The order since has been passed in complete violation of the settled principle of law is not sustainable in the eye of law. Thereby the learned counsel for the appellant submitted that the appellant has a good and strong case to argue in the appeal. The impugned order if would not be stayed pending disposal of the appeal, serious prejudice shall be caused and relief sought would become infructuous.

It has also been submitted that the impugned order was passed for an overlapping period as there was an earlier inquiry for damage and interest for the period 03/12 to 12/17. Describing the order under challenge as illegal and inappropriate, he prayed for setting aside the same and remand for fresh inquiry by the commissioner. With regard to the delay in filing the appeal, he submitted that the order was passed on 20.01.2020. Due to lockdown for the outbreak of COVID 19, the same could not be appealed within the prescribed period of limitation. The authorities under the Act when initiated recovery proceedings, the appellant could know about the same and filed the appeal. Learned counsel for the appellant by drawing attention

of the tribunal to the order passed by the Hon'ble S C in the suo motto WP(civil) no 3/2020, submitted that for direction given in the order extending the period of limitation the delay be condoned and appeal be admitted.

In his reply the learned counsel for the respondent submitted that the commissioner took into consideration all the submissions made by the establishment which is evident from the impugned order itself. He also submitted that the establishment is a habitual defaulter and other similar proceeding/appeal was pending in which the amount of damage assessed is more than Rs.20,00,000/-. He also pointed out the finding of the commissioner in the order under challenge about the habitual defaults made and the said default and delay at times for more than one year. Mr. Garg also submitted that the appellant as per his own admission was somehow managing to pay the salaries to the employees during the period under inquiry. If that is correct, the establishment is guilty of withholding the employees' share of the EPF contribution deducted from the salary of the individual employee. The other argument advanced by him is on the legislative intention behind the provision which is for the protection of the employees in the hands of the employer. He, thus, argued against the prayer of interim stay.

The argument advanced by the respondent has been countered with a submission that the previous order of the commissioner having been stayed, it is wrong to say at this stage that the establishment is a habitual defaulter. But the counsel for the respondent urged to take on record that the appeal filed by the appellant and registered as D-1-73/2019 has been dismissed by order dated 20<sup>th</sup> November, 2019.

There is no dispute on the position that the Hon'ble SC has extended the period of limitation until further orders for the prevailing COVID 19 pandemic. This appeal, as seen from the record should have been filed on or before 20.3.2020, but could not be filed in time for the lockdown. Hence it is held to be a fit case for condonation of delay. Accordingly the delay is condoned and appeal is admitted.

The Tribunal, at this stage of admission of the appeal is not supposed to make a roving inquiry on the merit of the matter since the reply of the respondent is to be filed. For the same reason it is also not felt proper to remand the appeal as prayed by the appellant. For consideration of the prayer for interim stay, 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 **MorirokuUt 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.

Thus, considering the submission advanced by the learned counsel for both the parties and the factors like the period of default and amount assessed as well as the objection about overlapping period, it is felt proper to stay the impugned order passed under section 14B.

Hence, in this case it is 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 70,000/- which is little less than 10% 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. Put up after three weeks i.e. on 09-11-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-  
Presiding Officer