

**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-2/13/2020

Hearing conducted via Video Conferencing

M/s. Sahara Q Shop Unique Products Range Limited

Appellant

Vs.

RPFC & APFC/ Recovery Officer- Gurgaon(East)

Respondent

ORDER DATED 09.09.2020

Present:- Shri Rishabh Gupta, Ld. Counsel for the Appellant.

Shri Satpal Singh, Ld. Counsel for the Respondent.

The appeal challenges the order dated 24.12.2019, passed by the RPFC u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs. 81,92,002/- towards damage for delayed remittance of EPF dues of it's employees for the period June 2014 to Dec 2017. Notice being served on the respondent, learned counsel Shri Satpal Singh appeared and participated in the hearing on 1st Sept 2020 held via video conferencing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 24.12.2019 and the appeal has been filed on 17.8.20 i.e. beyond the period of limitation. A separate petition has been filed by the appellant praying condonation of delay and admission of the appeal for the reasons explained therein. A prayer has also been made for stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that it is a FMCG Retail Venture which started it's business in the year 2011. It has been very sincere in making deposit of the EPF dues of it's employees until the business suffered a set back for the piled up litigations against Sahara Group of Industries the parent company of the appellant, in different courts including the Apex Court. In contempt petition no 412/2012 Hon'ble Supreme Court directed the company not to part with it's movable and immovable properties which caused immense financial hardship to the appellant. The company was facing the threat of liquidation and the entire focus was to save the company from liquidation. Hence, there was unintentional delay in remittance of the EPF dues. During course of inquiry, though the appellant had explained these mitigating circumstances and produced documents to that effect, the Commissioner failed to appreciate the same and passed the non speaking and whimsical order which is not sustainable.

With regard to delay it has been submitted that soon after receipt of the order the appellant took steps for filing the appeal and he was advised that the period of limitation is 90 days. Soon thereafter his counsel tested positive for Covid 19 and nationwide lockdown started w.e.f. 23rd March, 2020. In view of the order passed by the hon'ble Supreme Court, the Tribunal has power to condone the delay and admit the appeal.

Learned counsel representing the Respondent took serious objection for admission of the appeal on the ground of delay and submitted that the benefit for extension of limitation allowed by the Hon ble SC is not available to the appellant since the limitation had run out against them before the lock down and order of the Hon'ble SC.

While considering the submission, it is pertinent to mention that the courts and Tribunals exist to sub serve the cause of justice and not to punish the parties for the fault committed in conduct of the cases. Being conscious of the difficult time all are going through for the COVID 19, it is felt proper to condone the delay in the interest of justice and admit the appeal. Accordingly the appeal is admitted.

The Ld. Counsel for the appellant strenuously argued that unless there would be an order of stay on execution of the impugned order, the very purpose of filing the appeal would be defeated and the appellant shall be harassed for paying damage for the alleged delay in respect of which recovery action has been initiated by the department. In reply Mr. Singh submitted that the appellant is an established business house and expected to be a model employer. The delay in remittance is intended to deprive the employees of their legitimate rights and financial crunch is not a convincing ground to avoid damage, which acts as a deterrent to the wilful act of omission. The reply submission made by the appellant is that the EPF dues and accrued interest since has been deposited, the establishment should not have been saddled with the penal interest. All these aspects when taken into consideration, makes out a strong arguable case for the appellant. On hearing the submission made by both the counsels, a decision is to be taken on the relief of stay as prayed by the appellant. The factors which are required to be considered for passing the order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held:-

“The order of the tribunal should say that the appellant has a prima-facie strong case as is most likely to exonerate him from payment and still the tribunal insist on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen from the impugned order spreads over 3 years and the damage levied is huge. Moreover, the appellant has disputed the same on the ground that interest and

contributions have already been deposited. All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit a nominal amount i.e. 10% of the assessed damage as a pre condition for grant of stay within 4 weeks from the date of communication of the order failing which there would be no stay on the impugned order. The said amount shall be deposited by the appellant with the Respondent by way of Challan. Call the matter 12-October-2020 for reporting compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made.

Sd/-

Presiding Officer