

**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-1/31/2020

M/s. Parth Engineering Works

Appellant

Vs.

CBT &RPFC/ APFC Delhi-South & another

Respondent

ORDER DATED 14.09.2020

Appearance:- Shri Rajeev Shukla, Ld. Counsel for the Appellant.

Ms. Rashmi Malhotra, Ld. Counsel for the Resp. No.1,2 & 3.

Shri Gulab Chandra Jha, Asst. Manager-Legal, DMRC for

Respondent No. 4.

The appeal challenges the orders dated 19.02.2020, passed by the RPFC -1, wherein, the appellant has been directed to deposit Rs.21,24,632/- and Rs.14,22,197/- as damage and interest respectively for delayed remittance of PF dues of it's employees for the period 11/2014 to 6/2018.

It has been stated that the appellant is a proprietorship firm engaged in supply of man power for house keeping and Industrial cleaning. Respondent no 4 DMRC is the principal employer of the persons employed for the work by the appellant. For delay in payment of bills by DMRC, delay occasioned in remittance of PF dues. The RPFC served a notice calling upon the appellant to deposit the damage and interest calculated for the period 7/2011 to 6/2018. The representative of the appellant appeared and requested for a revised calculation in view of the previous deposits made by the establishment. Accordingly the calculation was revised. The authorized representative of the establishment also submitted on the mitigating circumstances leading to delay in remittance and urged that there being no mens rea behind such delay, the establishment is not liable to pay damage and interest. The commissioner without considering the plea advanced passed a non speaking order which is under challenge in this appeal. Learned counsel for the appellant further submitted that a common notice for damage and interest was served on the appellant and a joint proceeding too was held before the commissioner. But to defeat the legal rights of the appellant the commissioner passed two separate orders. Citing the judgment of the Hon'ble Supreme Court in the case of Arcot Textiles he submitted that the tribunal has jurisdiction to entertain appeal against the order passed u/s 7Q of the Act, and pass an interim order of stay pending disposal of the appeal when a composite order is passed for levy of damage and interest. Placing reliance on several judgments of the Hon'ble High courts of Guahati and Rajasthan, he submitted that the commissioner exercising quasi

judicial power u/s 14B and 7Q of the Act is under obligation to pass a speaking and reasoned order. The commissioner having not done so the appellant has a good and strong case for argument in this appeal. Unless the execution of the order is stayed till then serious prejudice to the appellant shall be caused and the appeal would become infructuous.

With regard to the delay it has been submitted that the impugned orders were passed on 19.02.2020 and before expiry of the period of limitation prescribed under the statute, the courts stopped functioning on account of lock down for COVID-19. Soon after e-filing started, the appeal was filed. He also drew the attention to the order passed by the Hon'ble Supreme Court extending the period of limitation until further orders. A separate petition has been filed for condonation of delay.

The learned counsel for the respondent fairly conceded to the grounds taken for condonation of delay and order passed by the Hon'ble Supreme Court in this regard. There being no other defect pointed by the registry, the appeal is admitted and delay in filing is hereby condoned.

On behalf of the respondent the learned counsel while supporting the impugned order argued that the order passed u/s 7Q not being appellable, no order of interim stay can be passed against it. He also argued on the legislative intention behind the EPF&MP Act and opposed the prayer for stay made by the appellant.

On behalf of Respondent no 4 i.e. DMRC, Shri Gulab Chandra Jha, Asst. Manager-Legal appeared and participated in the hearing and refuted the allegation of delayed clearing of Bills by DMRC resulting in delay for remittance of PF dues.

On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the interim relief of stay as prayed by the appellant. 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 **Moriroku Ut India Pvt Ltd vs Union Of India reported in 2005SCC page 1 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.

In this case the period of default as seen from the impugned order is from 11/2014 to 6/2018 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.

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 can not be unconditional. The appellant is directed to deposit Rs4,00,000/- which is little less than 20% of the assessed amount of damage by way of challan 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 as no opinion can be formed at this stage whether it is a composite order or not. The Hon'ble Supreme Court in the case of Arcot Textiles have expressly held that the order u/s7Q, if separately passed cannot be construed as a composite order and appeal against the said separate order would not be maintainable as right to appeal can not be assumed to exist unless expressly provided for under the statute. Furthermore, the facts of the present appeal is distinguishable from the facts of Arcot Textile case. Put up after three weeks i.e. on 08-October-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer