

**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-1/19/2020**

M/s. M/s. Wear Well India Pvt. Ltd.

Appellant

Through;- Sh. S.K. Khanna, Ld. Counsel for the Appellant

Vs.

RPFC Delhi (East)

Respondent

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

**ORDER DATED 14.10.2020**

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 dt24.12.2019, passed by the RPFC Delhi(East)u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 81,14,037/- as damage for delayed remittance of EPF dues of its employees for the period 09/2013 to 4/2018. Notice being served on the respondent, learned counsel Shri Puneet Garg appeared and participated in the hearing held via video conferencing on 8th October 2020.

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 26.02.2020, i.e. beyond the period of limitation. No separate petition has been filed by the appellant praying for condonation of delay for the reasons explained therein. But prayer has been made for stay on the execution of the impugned order passed u/s 14B 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.

The appellant has stated that for the period of inquiry under challenge, earlier an order dt16.01.2018 was passed by the RPFC. That order was challenged before this tribunal and was set aside by order dt12.07.2019 and the matter was remanded for fresh inquiry. The commissioner conducted a fresh inquiry but passed a non speaking and unreasonable 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 also submitted that the establishment is accompany engaged in export business of readymade garments to U.K. For the Brexit the business suffered a lot and the debtor of the company in England became insolvent as a result of which 29,02,507 G.B.P. of the appellant establishment was written off. The establishment also suffered continuous loss leading to huge bad debts during the relevant period. All these aspects though pointed out were not considered by the commissioner. 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. With regard to the delay in filing the appeal as pointed by the registry, he submitted that the impugned order was passed on 20.1.2020 and the appeal was filed within the period of prescribed limitation. Moreover the Hon'ble S C have directed for the extension of limitation for the prevailing condition on account of COVID 19.



The learned counsel for the respondent in his reply submitted that the appeal should have been filed on or before 24.2.2020, as the order was passed on 24.12.19. The lockdown period started on 15<sup>th</sup> March 2020, and prior to that limitation had run out against the appellant. He thus argued that the extension of limitation allowed by the Hon'ble S C is not available to the appellant.

On hearing the submission it is found that the appellant has filed the appeal on 26.02.2020 i.e. on the 62<sup>nd</sup> day of the date of dispatch of the same. The same having been filed within 120 days the delay is condoned and there being no other defect pointed out by the registry, the appeal is admitted.

The learned counsel for the respondent 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. He also submitted that the establishment is habitual defaulter and other previous proceedings for damage are pending, which was refuted by the appellant.

By citing several judgments of the Apex Court including the case *RSL Textiles*, he 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 its 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 its 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.

Keeping in mind the said 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 9/2013 to 4/2018 i.e. for a period of five 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 cannot be unconditional as the period of default spans over a period of five years. The appellant is directed to deposit Rs16,00,000/- which is little less 20% of the assessed amount of damage by way of challan to be deposited with the Respondent within four weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after four weeks i.e. on 18-11-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-  
Presiding Officer

The learned counsel for the respondent raised serious objection to the grant of the interim stay and submitted that the very purpose of LRA Act is to safeguard the interest of the employer against the wrongful termination. The respondent also submitted that the establishment is a public utility and the grant of interim stay would be prejudicial to the public interest. The learned counsel for the appellant submitted that the grant of interim stay is a precondition for the disposal of the appeal and the grant of interim stay is a precondition for the disposal of the appeal.

In the case of *State of Karnataka v. N. S. Narayana Murthy*, the Hon'ble High Court has held that the grant of interim stay is a precondition for the disposal of the appeal. The learned counsel for the respondent submitted that the grant of interim stay is a precondition for the disposal of the appeal. The learned counsel for the appellant submitted that the grant of interim stay is a precondition for the disposal of the appeal. The learned counsel for the respondent submitted that the grant of interim stay is a precondition for the disposal of the appeal. The learned counsel for the appellant submitted that the grant of interim stay is a precondition for the disposal of the appeal.

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