

**BEFORE THE 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.

ATA No. D-1/06/2021

M/s Planman HR (Pvt.) (Ltd.)

Appellant

VS.

RPFC, Delhi (North)

Respondent

ORDER DATED:-18.03.2021

Present:- Shri B.K. Chhabra, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

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

Notice being served on the respondent, the learned counsel S N Mahanta representing the respondent appeared and participated in the hearing.

On perusal of the office note it is found that the appeal has been filed beyond the prescribed period of limitation and a separate petition for condo nation of delay has been filed. The appellant has stated that the impugned order dated 30.12.19 was never communicated to the establishment despite repeated request. Finding no other way out the establishment had filed WPC10467/20, before the Hon'ble High Court of Delhi, and being directed the Respondent served the copy of the order on 28. 12.20 20 and the appeal was filed on 19.1.21 i.e. within 60 days from the date of communication. There being no delay on the part of the appellant, the appeal be admitted. LCR in this matter was called for which shows that the impugned order was dispatched to the establishment soon after it was passed. But there is no material to conclude, when it was delivered. The e-mail communication filed by the Respondent shows that it was dispatched by mail on 18.12 20, after being directed by the Hon'ble High Court. Since the appeal has been filed within 60 days from the date of communication, the delay is condoned. There being no other defect, the appeal is admitted.

The appellant has challenged the order dated 30.12.19 passed u/s14B of the EPF &MP Act by the RPFC Delhi, wherein the appellant establishment has been directed to

deposit Rs 6,29,179/- as damage for delayed remittance of the EPF dues of its employees for the period 1.7.18 to 30.4.19. Alleging that the order has been passed in a mechanical manner without assigning good reasons and without considering the mitigating circumstances shown by the establishment liable to be set aside. The learned counsel for the appellant citing the judgment of the Hon'ble SC in the case of APFC vs. Management of RSL Textiles Ltd submitted that the order passed by the commissioner is illegal and not sustainable for not discussing the mensrea on the part of the appellant for the delayed remittance. As such no damage as a punitive measure should have been imposed by the commissioner.

The learned counsel for the respondent, while supporting the impugned order submitted that the very purpose of EPF & MP Act is to protect and safeguard the interest of the employees against the mighty employer and the provision u/s 14 B of the act has been incorporated to act as a deterrent to the omission and delay caused by the employer in deposit of the dues. He thereby submitted that any order of stay if allowed would defeat the purpose of the Act.

During course of argument the learned counsel for the appellant submitted that the appellant is a manpower outsourcing agency and most of its clients do not clear the bills in time. Since the appellant often encounters delay in getting its Bills cleared, sometimes delay occurs in remittance of the EPF dues. The same is neither intentional nor attributable to the establishment but for the adverse market condition.

There is no dispute on facts that the remittance has been made after a considerable time. The appellant though has offered an explanation of its bonafides, no document to that effect has been filed, to which the learned counsel Mr. Mahanta took serious objection. On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the prayer for interim stay made by the appellant who has argued extensively about the undue hardship likely to be caused if the impugned order is not stayed. The Hon'ble High Court of Bombay in the case of **Moriroku Ut India Pvt. Ltd vs. Union Of India reported in 2005 SCC page 1** and in the case of **Escorts Limited and another vs. Union Of India reported in 43(1991) DLT 207** have held that 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 7/2018 to 4/2019, and the amount of damage assessed is not so big to big to cause undue hardship. 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 cannot be unconditional. The appellant is directed to deposit 30% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after three weeks i.e. on 28.04.2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Presiding Officer