

**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-1/41/2020**

M/s. Pitambara's Transport Services

Appellant

Through:- Shri Amit Tomar, Ld. Counsel for the Appellant

Vs.

APFC, Delhi(East)

Respondent No.1

Through:- Shri Balraj Deewan, Ld. Counsel for the Respondent No.1

&

ICICI Bank Ltd.

Respondent No.2

Through:- None appeared.

**ORDER DATED 17.12.2020**

This order deals with the prayer of the appellant for condonation of delay, admission of the appeal and an interim order of stay on execution of the impugned order. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant, a transport Company challenging the order dated 20.01.2020, passed by the APFC, Delhi (East) u/s 14B of the EPF & MP Act where under the establishment has been directed to deposit Rs.11,93,375/- as damage for the period 02/2015 to 02/2019. It has been stated that M/S I L & F S, Infrastructure & Services Ltd, entered in to a contract with the South Delhi Municipal Corporation for management and disposal of wastes and the appellant establishment entered into an agreement with M/S ILFS for supply of Trucks, Drivers and Labours to facilitate transport of the waste. The appellant establishment having been allotted a code no. for remittance of the EPF Dues of it's employees has been sincere and vigilant in the matter of the PF dues since the date of allotment of the said code no. In the year 2019, the APFC served a notice calling upon to show cause as to why damage and interest shall not be levied on the establishment for delayed remittance of the EPF Dues. The Authorized Representative of the establishment appeared and submitted a written submission mentioning the mitigating circumstances for the delay in remittance. The said written submission, though was taken on record was never considered and the impugned order was passed ignoring the settled principle of law that unless the mensrea of the establishment for the intentional delay is established, damage and penal interest cannot be imposed. It has also been stated that the delay was never intentional but for non release of the money by M/s. IL&FS, which was before the NCLT for redressal of disputes with it's creditors. Since, moratorium was allowed to the principal company by the NCLT, the appellant could not take any action against them too. More than Rs. 30 Crores been pending with the principal company the appellant is not even able to pay salary to it's employees. The commissioner though apprised of the situation, passed the impugned order which is illegal and liable to be set aside. Thus, it was argued that the appellant has a prima facie case to argue and the impugned order if would not be stayed, pending disposal of the appeal, the appellant would face undue hardship.

With regard to the delay it has been stated that the impugned order was passed on 20.01.20. Before the appellant could file the appeal within the prescribed time limit, the country went into a lock down for the out break of COVID-19. Citing the order passed by the Hon'ble Supreme Court in extending the period of limitation he submitted for condonation of delay and admission of the appeal.

In his reply the learned counsel representing the respondent submitted that the order was communicated on the same day. Since, the establishment failed to deposit the assessed amount, recovery proceeding was initiated. In this appeal the appellant has challenged two separate orders passed u/s 14 B and 8F of the Act, which makes the appeal not maintainable, since the order passed u/s 8F is not appealable and Rule

10 of the EPF Appellate Tribunal Rules clearly provides that one appeal is to be filed for one cause of action. The appeal in which plural remedy has been sought for is liable to be rejected without admission. However, he fairly conceded to the prayer for condonation of delay as has been directed by the Apex court.

While countering the argument of the appellant about the mitigating circumstances leading to delay in remittance he submitted that the commissioner took note of all the submissions made by the establishment and passed a well discussed order. The establishment is still running its business. The financial stringency cited by the appellant is not a convincing ground for interfering in the impugned order. He also argued against the prayer for interim stay on the ground that it will defeat the very purpose of the beneficial legislation. There is no dispute on the position that the Hon'ble Supreme Court 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 yet to be filed. 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 **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** 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, it is felt proper to stay the impugned order passed under section 14B, pending disposal of the appeal.

Hence, in this case it is directed that there would 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 2,50,000/ which is little more than 20% 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. Put up after three weeks i.e. on 11-01-2021 for compliance of the direction.

Sd/-  
(Presiding Officer)