

**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-1/35/2020

M/s. South Delhi Municipal Corporation Appellant

Through:- Shri Arun Birbal, Ld. Counsel for the Appellant

Vs.

RPFC Delhi (East) Respondent

Through:- Shri Narender Kumar, Ld. Counsel for the Respondent.

ORDER DATED 12.10.2020

The appeal has been filed by the appellant challenging the order dated 06.12.2019, passed by the RPFC, Delhi (East), in exercise of the power u/s 14 B and 7Q of the EPF & MP Act assessing Rs19,28,308/- and Rs 12,13,936/- as damage and interest respectively to be paid by the appellant for delayed remittance of the PF dues of it's employees for the period 4/2018 to 8/2019.

This order deals with the admission of the appeal after condonation of delay and the prayer made by the appellant for an interim order of stay on the execution of the impugned order, pending disposal of the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri Narender Kumar representing the respondent participated in the hearing, though no written objection has been filed.

It has been stated in the appeal that the appellant is a statutory body constituted under Delhi Municipal Corporation Act, 1957, entrusted with the function of municipal services within the territorial jurisdiction of Delhi and it has been covered under the EPF Act and Scheme. For executing the work entrusted the appellant hires the services of different contractors. The salary of its own employees as well as the employees of the contractors including the P F contributions are paid out of the grant received from the Govt. of Delhi. Sometimes, due to administrative reasons delay occurs in receipt of the Govt. grant which in turn causes delay in payment of salary and remittance of P F dues.

On 14.10.2019 a notice was received from the respondent authorities threatening prosecution for delayed remittance of P F dues. Appellant submitted reply dated 24.10.2019 intimating that the P F contribution for the relevant period has already been deposited and the less deposit in the month of July 2019 in comparison

to June 2019 is due to less drawl of salary by the employees. But on 22.10.2019 another notice was served calling upon the appellant to show cause as to why damage and interest shall not be levied for delayed remittance of the PF dues for the period 04/18 to 08/19. The authorized representative of the appellant establishment appeared before the commissioner on 01.11.2019, but no proceeding was held on that day the said representative was informed that the next date of hearing shall be notified. But no notice was ever served. when the appellant in the month of July 2020 came to know about the attachment of its bank account for realization of a certain amount, made inquiry and came to know about the orders dated 06.12.2019 passed u/s 14B and 7Q of the EPF Act, behind the back of the appellant. The appellant then obtained certified copies of the orders in the last week of July 2020 and filed the appeal within 60 days from the date of receipt of the order. Hence the appeal is in time.

The learned counsel for the appellant further submitted that the appellant is a corporation engaged in the activities of public interest and without giving proper opportunity of hearing the commissioner passed the impugned order imposing penal damage and interest. While admitting the alleged delay in remittance he submitted that the appellant has been deprived of setting up a proper defence and explaining the mitigating circumstances causing delay in remittance. He thus prayed that the impugned order be set aside and the matter be remanded to the commissioner for hearing fixing a time limit for disposal. In alternate he submitted that the Tribunal feels it proper to admit the appeal for hearing an order be passed to stay the recovery action pending disposal of the appeal.

In his reply the learned counsel for the respondent submitted that the appellant intentionally omitted to participate in the proceeding before the commissioner and the commissioner took into consideration all the available documents before passing the impugned order. Mr. Narender Kumar also submitted that the appellant as per its own admission was somehow managing to pay the salaries to the employees. If that is correct the establishment is guilty of withholding the employee share of the EPF contribution deducted from the salary of the individual employee. He thus argued against the prayer of interim stay and added that any order of stay would act against the interest of the employees and the very purpose of the benevolent legislation would be defeated. He also submitted that the appeal is barred by limitation since as per the records of the respondent the impugned order was communicated to the appellant on 24.12.2019.

The argument advanced by the respondent has been countered with a submission that no document has been placed on record to prove that impugned order was served on the appellant on 24.12.2019 or on any day thereafter.

Perusal of the report of the registry reveals that the impugned order was passed on 06.12.2019 and the appeal has been filed on 07.9.2020 i.e. after the period of limitation prescribed under the Rules. Appellant has explained that the order was never communicated and it was not within its knowledge until its bank accounts were

attached. Thus, the appeal is not barred by limitation being filed within 60 days from the date of knowledge. Though the respondent has contended that the order was communicated on 24.12.2019, no document to prove the same has been placed on record. Hence considering the submission the appellant it is held that the appeal has been filed in time. There being no other defect pointed by the registry, the appeal is admitted. With regard to the submission of the appellant for remanding the matter for fresh hearing of the same after setting aside the impugned order it is not felt proper to do so at this stage in view of the objection taken by Mr Narender Kumar, the learned counsel for the respondent who challenged the merit of the appeal and wanted to file written reply to the grounds taken by the appellant.

The Tribunal at this stage of admission of the appeal is not supposed to make a roving inquiry on the merit of the matter. 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 2005SCCpage1 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. This is the appeal filed by none other than the Municipal Corporation, which thrives and undertakes the work of public interest utilizing the grant received from the Govt.

With regard to the prayer for interim stay on execution of the impugned order it is also found that the establishment has already deposited the interest assessed by the commissioner. 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.

Hence, it is 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. The appellant is directed to deposit 2,00,000/ which is little more than 10% 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. It is made clear that there would be no stay on the interest assessed by the commissioner. Put up after three weeks i.e. on 05.11.2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer