

**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.

Appeal No. D-1/41/2021

M/s Sinhal Metal Industries

Appellant

Vs.

RPFC/APFC, Delhi North

Respondent

ORDER DATED -17/01/2022

Present:- Shri Satender Verma, Ld. Counsel for the Appellant.
Shri Avinash Singh, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal 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.

Registry has pointed out the delay caused in filing the appeal.

Notice of the appeal being served on the respondent, the learned counsel Shri Avinash Singh representing the respondent participated in the hearing and raised objection to the prayer for interim stay.

The appellant has challenged the order dt 2.9.2021, passed by the APFC Delhi u/s 14B of the EPF & MP Act assessing Rs 11,98,891/- payable as damage on account of delayed remittance of PF Dues of its employees for the period 1.1.2019 to 20.3.2020. Describing the same as an illegal order, the appellant has prayed for admission of the appeal and stay on the execution of the order. It has further been alleged that the order of damage has been passed in a mechanical manner, without application of mind in as much as no reason has been assigned for imposition of penal damage @100%. No finding has been given on the mensrea of the establishment for the delayed remittance. No proper opportunity was also afforded to the appellant establishment for setting up a proper defence. Not only that the establishment during the inquiry under challenge, though had deputed its representative to ask for an adjournment, the commissioner, without application of mind and without giving reasonable opportunity of replying the EO's report concluded the inquiry and passed the impugned order holding that the establishment representative admitted the assessed damage. The

learned counsel for the appellant also submitted that damage is leviable only when the establishment is found to have delayed the remittance with some ulterior intention. In this case the representative of the establishment had submitted a written submission along with all supporting documents describing the acute financial difficulty faced by the appellant establishment, a Limited company. Those mitigating circumstances were not considered at all by the commissioner during the inquiry. It is also pleaded that the Respondent had attached its Bank account during the inquiry and recovered about Rs 12 Lakh. Apart from that the establishment had also deposited some additional amount. These amounts were not taken in to consideration for assessment of damage. Copies of letter correspondence between the appellant and Respondent have been placed on record as proof for some payments made before the assessment.

The learned counsel for the appellant thereby submitted that the appellant has strong case to argue having fair chance of success. Unless there would be an interim order of stay on the recovery action of the impugned order serious prejudice shall be caused and the relief sought for in the appeal will become illusory. He thereby argued for admission of the appeal by condoning the period of delay which has been allowed by the Hon'ble SC and an unconditional interim order of stay.

The learned counsel for the respondent while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation. He also pointed out that the delay in remittance as evident from the calculation sheet is for more than a year. More over it is not the case of the appellant that for financial difficulties it had withheld the salary of its employees. When the salary was paid every month, the appellant has to explain as to why the employees' share deducted was not deposited. Since the appellant had omitted to discharge its statutory obligation, the commissioner has rightly passed the order. He also submitted that mensrea being a state of mind need to be inferred from the circumstances of a case and the commissioner in this order has given a finding to that effect.

There is no dispute on facts that remittance has been made after considerable delay. On hearing the argument advanced by the counsel for both the parties it is found that the appeal has been filed after the prescribed period of sixty days but within 120 days up to which the Tribunal has power to extend the period of limitation. The Appeal does not suffer from any other defect. Hence the delay is condoned and the appeal is admitted.

Now a decision is to be taken on the prayer for interim relief of stay made 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 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.

In this case the period of default as seen from the impugned order is for more than one year and the amount of damage assessed is equally big. The amount which the appellant states to have been deposited is in respect of a separate proceeding held in the year 2018. The financial hardship pleaded by the appellant is on account of family disputes and related family arrangement. As observed by the commissioner in the impugned order, during this period no stay was ever granted by any court or other Authorities in respect of statutory dues. More over it is not a case where, for financial difficulties business activity was stopped.

But 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 since 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 of damage pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit 40% of the assessed amount of damage through challan within six weeks from the date of communication this order as a precondition for stay pending disposal of the appeal. Put up after six weeks i.e on 07.03.2022 for compliance of the direction. Interim stay granted earlier shall continue till then.

(Presiding Officer)