

**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-2/29/2021

M/s. Sonakshi Management

Appellant

VS.

CBT through, APFC Noida

Respondent

ORDER DATED:- 18.11.2021

Present:- Shri Ravi Ranjan, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with appellants prayer for condonation of delay, admission of the appeal and stay on the execution of the impugned orders pending disposal of the appeal.

The appeal challenges the orders dated 7.8.2019 passed by the APFC Noida u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 3,59,229/- &Rs 3,15,019/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 3.11.2015 to 13.05.2019. Notice being served on the respondent, learned counsel Shri S. N Mahanta appeared and participated in the hearing held via video conferencing. He has also filed written objection to the application of the appellant for condonation of delay.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 07.08.2019 and the appeal has been filed on 06.10.2021, i.e beyond the period of limitation. A separate petition has been filed by the appellant praying condonation of delay for the reasons explained therein. Another prayer has been made for stay on the execution of the impugned orders passed u/s 14B & 7 Q of The Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal.

Since the registry has pointed out about the inordinate delay in filing of the appeal and Respondent has filed written objection, it is desirable that the prayer for condonation of delay be dealt at the first instance.

It has been contended that the company against which the impugned order has been passed was not aware of the impugned order till service of the recovery notice. The

representative of the establishment on inquiry came to know about the impugned order and on his request, a copy of the order was supplied. Thus the appeal has been filed within 60 days from the date of communication of the order.

The Registry of this Tribunal has pointed out that the appeal has been filed after inordinate delay. The learned counsel for the respondent Mr. Mahanta in his written reply has taken serious objection to the inordinate delay and during course of his argument submitted that the impugned order was passed on 7.8.2019 and on the same day it was dispatched in the address as mentioned at the bottom of the order. He has instruction from the department that the order sent by post returned undelivered with remark that the addressee has left. Since the appellant had never informed the Respondent about it's change of address, it can not be held that any lapse occurred on the part of the Respondent in serving the copy. Hence the appeal is hopelessly barred by limitation and liable to be dismissed, to support his contention he has filed photocopy of the postal envelope. He thereby submitted that the appellant has failed to explain the delay in filing the appeal .he also argued that when the Act provides a time limit of 60 days for filing the appeal, which can be extended for a further period of 60 days in appropriate cases the Tribunal can not condone the delay beyond that period.

To support his contention he placed reliance in the case of **C/M Angoori Devi Inter College and another VS State of U P & three others decided by the Hon'ble High Court of Allahabad in writ case no. 27906/2019**, in which it has been held that:-

“When a time limit has been prescribed by the rule making authority for filing an appeal ,and also the extended period having been provided, and no further extension thereof having been envisaged or contemplated, the appellate authority can not grant any further extension beyond the statutory period of limitation . He has also placed reliance in the case of **RPFC VS EPFAT, decided by the Hon'ble Punjab & Haryana High Court in CWP No5201/2000**.

In his reply the learned counsel for the appellant submitted that in fact there has been no delay in filing the appeal but as an abundant caution the application for condonation of delay has been filed. While pointing out the defects and discrepancies in the impugned order and recovery notice including none mentioning of the mensrea for delayed remittance entailing liability for damage and interest, he submitted that the appellant has a strong arguable case in the appeal and the Tribunal should not act in a hyper technical manner in dealing with the delay condonation application. In this regard he has placed reliance in the case of **N Balkrishnan VS M Krishnamurthy (AIR1998 SC3222)** to argue that Rule

of limitation are not meant to destroy the right of the parties. He also submitted that the impugned order has been passed behind the back of the appellant and the appellant has a fair chance of succeeding in the appeal. Hence the Tribunal should consider the circumstances shown for condonation of delay and admit the appeal.

While fully agreeing with the submission that courts and Tribunals exist to sub serve the cause of justice and not to punish the parties for the fault committed in conduct of the case, in this case the respondent has placed on record some documents to establish prima facie that notice of inquiry was properly served on the establishment .but from the postal envelope filed by the Respondent it is proved that the impugned order never reached the appellant until it was collected on 20.9.2021.

Hence considering the submission advanced by the learned counsel for both the parties, it is held that the present appeal though has been filed after the prescribed period of limitation, the same has been properly explained by the appellant. The delay is thus condoned.

Now it is to be considered if the appeal challenging the order u/s 7 Q can be maintainable.

Recently the Hon,ble High Court of Delhi in the case of M/S Rajib Gandhi Cancer Institute And Research Center vs. APFC ,after relying on the judgment of the Hon'ble SC in the case of Arcot Textiles have held that the appeal against the 7Q order is maintainable if it has been passed after a common inquiry, which makes the orders composite. In this matter the copies of the daily proceedings filed by the appellant clearly exhibits the common procedure adopted by the commissioner though two separate orders have been passed. Hence the separate orders passed being composite in nature the appeal challenging the orders passed u/s 14B and 7Q are admitted.

The appellant has stated that the commissioner conducted the inquiry behind the back of the appellant and passed a none speaking and un reasonable order in which no finding has been given on the mensrea of the appellant for the delayed remittance. Not only that chance to explain the mitigating circumstances and acute financial problem of the appellant was never allowed by the commissioner as on the first and last date of appearance of the AR, the inquiry was closed, which makes the impugned order not sustainable in the eye of law. 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.

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 it's 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 it's objection.

Keeping in mind the said principle of law decided by the Hon'ble 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 3/11/2015 to 13/05/2019 i.e for a period of four 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 orders levying damage and calculating interest pending disposal of the appeal. But the said interim order cannot be un conditional as the period of default spans over a period of four years. The appellant is directed to deposit Rs. 2,00,000 /- which is little less from 30% of the assessed amount of damage and interest through Challan within four weeks from the date of

communication of this order as a precondition for stay pending disposal of the appeal. Call on 11.01.2022 for reply by respondent.

Presiding Officer