

**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-1/33/2020

M/s. SPML Infra Ltd.

Appellant

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

Vs.

RPFC, Delhi(East)

Respondent

Through:- Shri S.N. Mahanta, Ld. Counsel for the Respondent.

ORDER DATED 23.09.2020

The appeal has been filed by the appellant challenging the order dated 25.2.2020, passed by the RPFC, Delhi (East) in exercise of the power u/s 14 B and 7Q of the EPF & MP Act assessing Rs.11,73,941/- and Rs 6,73,311/- as damage and interest respectively to be paid by the appellant for delayed remittance of the PF dues of its employees for the period 3.8.2018 to 30.4.2019.

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.

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

It has been stated in the appeal that the establishment is a company registered under the companies Act engaged in the business of Infrastructure Development. It has been covered under the EPF Act and Scheme w.e.f.1.4.86 and since then depositing the statutory obligations under the Act diligently. But since 1999, the company is facing heavy financial loss and hardly managing to pay salary to the employees. Drawing attention to several ongoing litigations it has been stated that when the company was facing acute deficit in cash flow the commissioner by notice dated 15.07.2019 summoned the company for the impugned inquiry. The representative of the appellant appeared and put forth the facts and figures disputing the calculation of damage proposed in the notice. The mitigating circumstances for delay in remittance were also brought to the notice of the commissioner. But the commissioner without considering the documents placed before him and submission made by the AR of the company passed the impugned order which does not contain any finding on the mensrea of

the appellant for the delay in remittance. The order, since, has been passed in complete violation of the settled principle of law is not sustainable in the eye of law. Thereby the learned counsel for the appellant submitted that the appellant has a good and strong case to argue in the appeal. The impugned order if would not be stayed pending disposal of the appeal, serious prejudice shall be caused and relief sought would become infructuous.

In his reply the learned counsel for the respondent submitted that the commissioner took into consideration all the submissions made by the establishment which is evident in the impugned order itself. He also submitted that the establishment is a habitual defaulter and other similar proceedings/appeal is pending in which the amount of damage assessed is more than Rs. One Crore. He also pointed out the finding of the commissioner in the order under challenge about the habitual defaults made and the said default and delay at times for more than one year. Mr Mahanta also submitted that the appellant as per it's 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.

The argument advanced by the respondent has been countered with a submission that all the previous orders of the commissioner having been stayed it is wrong to say at this stage that the establishment is a habitual defaulter.

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.

The registry has noted that the appeal has been filed within the time prescribed under the statute and does not suffer from any other defect. Hence the appeal is admitted.

With regard to the prayer for interim stay on execution of the order is also found that the establishment has already deposited the interest assessed for the relevant period. 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, in this case 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 Rs 3,50,000/ which is close to 30% 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 further clarified that this condition of stay is over and above the amount already deposited by the Appellant in compliance of the impugned order. 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 12 October-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer