

**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-1/04/2021

M/s. Shaka Electric (India)

Appellant

Through:- Shri Haribansh Manav, Ld. Counsel for the Appellant.

Vs.

CBT through APFC, Delhi East

Respondent

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

ORDER DATED 03.02.2021

This order deals with the prayer for admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges the order dated 27.11.2020, passed by the APFC Delhi East u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs42,48,354/- as damage for delayed remittance of EPF dues of its employees for the period 04/2013 to 07/2019. Notice being served on the respondent, learned counsel Shri Rajesh Kumar appeared and participated in the hearing held through video conferencing on 29th Jan 2021.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 27.11.2020 and the appeal has been filed within the prescribed period of limitation. The appeal, since, found without any other defect, the same is admitted. A separate prayer has been made by the appellant for stay on the execution of the impugned order passed u/s 14B of the Act pending disposal of the appeal. Appellant has filed few documents to support the stand taken in the appeal. The learned counsel representing the respondent has not filed any document but during argument countered the documents of the appellant placed on record.

The appellant has stated that a non-speaking and un reasonable order has been passed in which no finding has been given on the mensrea of the appellant for the delayed remittance. Not only that, the mitigating circumstances and acute financial problem of the appellant pointed out during the inquiry was never considered by the commissioner which makes the impugned order not sustainable in the eye of law. He also submitted that the establishment is a company registered under the Companies Act and runs its business pursuant to execution of business contracts with other establishments. Sometimes undue delay occurs in release of the bills by the clients which affects timely deposit of EPF dues by the establishment. He also submitted that the establishment has been diligent in complying its statutory responsibilities and during the course of hearing before the commissioner, it was pointed out that another inquiry u/s 7A was initiated which continued for a considerable long period. The amount assessed in that proceeding was immediately deposited. The delay in the 7A proceeding is no way attributable to the appellant. These aspects pointed out, were never considered by the Commissioner. 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.

The learned counsel for the Respondent in his reply submitted that the impugned order was passed after giving due consideration to the submission made and documents placed on record. Not only that the establishment is a habitual defaulter and more than one inquiry was conducted in respect of it leading to filing of number of appeals. He, thus, submitted against the prayer of interim stay on the impugned order on the ground that it would defeat the purpose of the statute in safeguarding the interest of the employees in the hands of the employer.

There is no dispute on facts that remittance has been made after considerable delay. But the appellant has offered an explanation of its bonafides in doing so. On hearing the argument advanced by the counsel for both the parties a decision is to be taken on the interim relief of stay as prayed 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 from 07/2018 to 08/2019 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 **MulchandYadav and Another vs Raja BulandSugar 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 pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit Rs.8,50,000/-which is close to 20% of the assessed amount of damage by way of challan to be deposited with the Respondent within four weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after four weeks i.e. on 8-March-2021 for compliance of the direction.

Sd/-
(Presiding Officer)