

**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-1/24/2020

M/s. Shivalik Housekeeping Services

Appellant

Vs.

RPFDC Delhi (East)

Respondent

ORDER DATED 07.08.2020

Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.

Dr. Subhash C Gupta, 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.

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

The appellant has challenged the order dt 5/2/2020 passed by the RPFDC Delhi u/s 14B and 7Q of the EPF &MP Act assessing Rs 17,69,302 as damage and Rs9,88,387 as interest payable on account of delayed remittance of PF Dues of it's employees by the appellant for the period 1/12/2018 to 31/10/2019. Describing the same as a composite order the appellant has prayed for admission of the appeal and stay on the execution of the order. It has also been alleged that the order has been pass damage has been assessed in a mechanical manner, without application of mind in as much as no reason has been assigned for imposition of penal damage. Not only that the order does not reflect the basis of calculation of damage u/s 14B of the Act, though damage has been calculated @100%.

Citing the judgment of the Hon'ble S C in the case of APFC Vs Management R S L Textiles Pvt Ltd, reported in AIR 2017 SC676, he submitted that the impugned order for not discussing the mens-rea of the appellant for the delay in deposit is not sustainable and no damage can be imposed as a punitive measure, for the mere delay in remittance for a brief period. While pleading about the mitigating circumstances, the learned counsel for the appellant also submitted that the appellant is a manpower outsourcing establishment and it's clients are mostly Govt Departments. The charges receivable from the client are often received late which in turn causes delay in remittance of

the contribution required under the Act and Scheme. There is no evil intention behind such delay, which is not attributable to the appellant.

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.

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 it is found that the appeal has been filed within the time stipulated under the statute and does not suffer from any other defect. Hence the appeal is admitted. Now 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 12/2018 to 10/2019 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 **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 pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit Rs 3,50,000/ which is little less than 20% of the assessed amount of damage through challan within three weeks from the date of communication 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 as no opinion can be formed at this stage whether it is a composite order or not. Put up after three weeks i.e on 31st August 2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer