

**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-1/02/2020

M/s. Skyline Infratech Pvt. Ltd.

Appellant

VS.

APFC, Delhi (Central)

Respondent

ORDER DATED:- 16.11.2021

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

This order deals with the application filed by the appellant for condonation of delay, admission of the appeal and an interim order of stay on execution of the impugned order. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant ,a Pvt. Ltd Company challenging the order dated 8.8.2019, passed by the APFC, Delhi u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs. 11,97,464/ as damage and Rs 5,90,522/- as interest for the period 04/1996 to 12/2015.

It has been stated by the appellant that the commissioner by notice dated 8.12.2015 had called upon the establishment as towhy damage shall not be imposed and interest shall not be calculated foe the delay in remittance of the PF contribution of it's employees for the period 1.4.96 to 8.12.2015. In response to the same the authorized representative of the establishment appeared and disputed the calculation on the basis of which a revised calculation was prepared. But the commissioner during the inquiry, without considering the oral submission made and grounds disputing the proposed damage passed the impugned in which no finding on mensrea has been rendered nor any reason in support of imposing maximum rate of interest has been assigned. Citing the judgment of the **Kranti Associates Pvt. Ltd vs. Masood Ahmed Khan and Others (2010) 9, SCC, 496** he submitted that a quasi judicial authority must record the reasons in support of it's conclusion. Absence of reason makes the finding illegal and arbitrary. He also submitted that the commissioner in utter violation of the principle laid down by the Hon'ble SC, in the case of RSL Textiles, has not given any finding on the mensrea of the establishment behind the delay in remittance. He also submitted that despite the circular and provision of the Accounting Manual, the commissioner in this case proceeded to inquire in respect of a very long period which

again makes the impugned order illegal. He thereby submitted that the appellant has a strong case to argue in the appeal and serious prejudice shall be caused if the appeal is not admitted by condoning the delay and preventing execution of the impugned order pending disposal of the appeal.

With regard to the delay it has been submitted that the appeal though has not been filed within 60 days of receipt of the order, it is well within the extended period of limitation and the Tribunal has the discretion of allowing the same for reasons shown by the appellant. In this case the delay slightly occurred on account of leave taken by the responsible official of the establishment.

The Registry of this Tribunal has pointed out that the appeal has been filed after expiry of 60 days from the date of communication of the order. 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 19.7.19 and the same was dispatched on 8.8.2019. He has instruction from the department that the order sent by post was never returned undelivered giving rise to a presumption that it was duly served .He also submitted that the appellant has not taken a plea that it was received late. He thereby submitted that the appellant has failed to explain the delay in filing the appeal. 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 cannot condone the delay on a flimsy ground that the officials of the establishment was on leave. He thus argued for dismissal of the appeal.

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 has for condonation of delay has been filed. While pointing out the defects and discrepancies in the impugned order including none mentioning of the mensrea for delayed remittance entailing liability for damage, 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. Hence the Tribunal should consider the circumstances shown for condonation of delay and admit the appeal.

Considering the submission of both the parties and looking into the fact that the appeal has been filed within 120 days the delay is condoned. There being no other defect pointed out the appeal is admitted.

In respect of the prayer for interim stay, the appellant has described the impugned order as a composite order and prayed for stay of both the findings of the commissioner. In his reply the learned counsel for the Respondent while pointing out the legislative intention behind the Act, argued against the prayer of interim stay.

A bare perusal of the order challenged in the appeal shows that a common notice proposing proceeding u/s 14B and 7Q was served on the appellant and after inquiry common order was passed, which is a composite order. The submission made by the appellant without delving into other details lead to a conclusion that the appellant has a strong case to argue in the appeal. Unless the execution of the order impugned in the appeal assessing damage and interest would be stayed pending disposal of the appeal, the relief sought in the appeal would be illusory. But at the same time it is held that the said interim order of stay cannot be un conditional. Hence the appellant is directed to deposit 40% of the damage assessed within 4 weeks from the date of this order as a precondition on stay of the impugned order assessing damage and interest by depositing challan before the EPFO, failing which there would be no stay on the impugned order. Call on 10.01.2022 for compliance of the direction and rejoinder if any by the appellant since Respondent has already filed it's reply to the appeal.

Presiding Officer