

**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-1/09/2021**

M/s Support Services Pvt. Ltd. Appellant

VS.

RPFC, Delhi (West) Respondent

**ORDER DATED:- 08.04.2021**

Present:- Shri Syed Hasan Isfahani, Ld. Counsel for the Appellant.  
Ms. Rashmi Malhotra, Ld. Counsel for the Respondent.

This order deals with the prayer of the appellant for condonation of delay and admission of the appeal with a further direction of stay on the execution of the impugned order.

The appeal challenges the order order 31.01.2020 passed u/s 14B of the EPF and MP Act by the APFC Delhi (west) where under the appellant establishment has been directed to deposit Rs. 436504/- as penal damage for delayed remittance of the PF dues of its employees for the period January 2014 to October 2019.

The respondent being notice appeared through its counsel and participated in the hearing though no written objection has been filed.

On behalf of the appellant it has been submitted that it is a Pvt. Ltd. company basically engaged in providing consultancy services to different industries engaged in multiple activities. The appellant is a law abiding organization strictly following the Rule and Procedure in payment of statutory dues including provident fund contribution. However, the company encounters inordinate delay in respect of payments receivable from its clients including Government and Public Sector Undertaking. This resulted in delay in remittance of the PF dues by the company. The delay was never intentional but for reasons beyond its control. Initially a notice was served proposing imposition of damage of Rs. 4,36,504/-.The representative of the company appeared and disputed the amount as a result of which the notice was revised. The commissioner without considering the mitigating circumstances shown during the inquiry and without assigning any reason as to why the company is liable for penal damage passed the

impugned order. The said non speaking order was passed on 31.01.2020 and before the expiry of the statutory period of limitation for filing the appeal the country came to a shut down on account of outbreak of covid-19. The appeal thus could not be filed in time and the same was presented on 17.02.2021. Citing the judgment of the Hon'ble Supreme Court in Suomoto WPC No. 3/2020 he prayed for condonation of delay and admission of the appeal. With regard to the prayer for stay on execution of the impugned order he submitted that the appellant has a strong prima facie case and pending disposal of the appeal if the impugned order would not be stayed, the prayer made in the appeal would become illusory.

In his reply the Ld. Counsel for the respondent submitted that all the grounds taken by the appellant can very well be considered at the time of hearing of the appeal. The tribunal at this stage is required to examine the period during which delay in remittance occurred and the amount of damage assessed. She also pointed out that in this case the delay in remittance spans over a period from January 2014 to June 2019 and amount assessed is Rs. 4,36,504/-. The EPF and MP Act being a beneficial legislation any order of stay would be in opposition to the public policy and detrimental to the interest of the beneficiaries. Thereby she insisted for rejection of the petition for stay and the prayer for condonation of the delay.

The Hon'ble Supreme court in the suomoto WPC No. 3/2020 have directed for condonation of the delay on account of the nationwide shutdown for the outbreak of covid-19. This order was passed on 31.01.2020 and before the expiry of the period of limitation the functioning of the tribunal was closed. Hence it is felt to be a fit case for condonation of delay. Accordingly the delay is condoned. There being no other defect pointed out by the registry the appeal is admitted.

There is no dispute on fact that remittance has been made after a 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** it has been held that 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 9/14 to 12/18 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 the appeal is admitted and there should be an interim stay on execution of the impugned order pending disposal of the appeal. But the said interim order cannot be unconditional as the same would have the effect of defeating the very purpose of the beneficial legislation. The appellant is thus directed to deposit Rs. 1,31,000/- which is close to 30% of the assessed amount of damage through challan within 3 weeks from the date of communication of 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 13.05.2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer