

## WEAR WELL INDIA—07/2020

### APPEAL NO. D-1/07/2020

M/s. Wear Well India Pvt. Ltd. Appellant  
Through;- Sh. S.K. Khanna, Ld. Counsel for the Appellant

Vs.

RPFC Delhi (East) Respondent  
Through:- Sh. Puneet Garg, Ld. Counsel for the Respondent

### ORDER DATED 18.11.2020

The appeal has been filed by the appellant challenging the order dated 25.11.2019, passed by the APFC Delhi (East), in exercise of the power u/s 14 B of the EPF & MP Act assessing Rs.6,58,252/- to be paid by the appellant as damage for delayed remittance of the PF dues of it's employees for the period 10/2017 to 05/2018.

This order deals with 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 Puneet Garg 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 exporting ready made garment overseas. It has been covered under the EPF Act and Scheme and since the date of coverage, complying the statutory obligations under the Act diligently. But since 2014-15, the company is facing heavy financial loss and hardly managing to pay salary to the employees. Drawing attention to several factors including bad debt, decline in value of Great Britain Pound and implementation of GST, it has been stated that when the company was facing acute deficit in cash flow the commissioner by notice dated 28.06.2019 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 and the mitigating circumstances for delay in remittance. Documents were also brought to the notice of the commissioner to explain that the delay was never intentional, but for the circumstances beyond the control of the establishment. 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 in the appeal 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 from the impugned order itself. He also submitted that the establishment is a habitual defaulter and other similar proceeding/appeal is pending. He also pointed out the finding of the commissioner in the order under challenge about the habitual defaults made. Mr. Garg also submitted that the appellant, as per it's own admission was managing to pay the salaries to the employees in spite of the financial hardship explained. 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 instances of delay were on account of bad debt, and crunch in cash flow. 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 2005 SCC page 1 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 has already been admitted.

With regard to the prayer for interim stay on execution of the order, it is also found that the establishment had filed documents before the commissioner to exhibit the financial hardship it had faced during relevant period under inquiry. But those were never considered by the commissioner who went on concluding that financial hardship can not absolve the establishment of its statutory obligation of depositing the PF Dues. 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, 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 can not be unconditional. The appellant is directed to deposit Rs. 1,50,000/- which is little less than 30% of the assessed amount of damage by way of challan with the Respondent within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. Put up after three weeks i.e. on 14-December-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-  
(Presiding Officer)