

**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-1/10/2018**

M/s. Collage Culture

Appellant

VS.

APFC, Delhi (S)

Respondent

**ORDER DATED:- 06.01.2022**

Present:- Shri S.P Arora and Shri Rajiv Arora, Ld. Counsel for the Appellant.  
Shri Rajiv Kumar, Ld. Counsel for the Respondent.

This order deals with the prayer of the appellant made in the memo of appeal for condonation of delay and admission of the appeal. Materials were placed by the appellant alongwith the memo of appeal to explain the delay. In view of the stand taken the LCR was called for and the Ld. Counsel for the respondent has also filed his reply to the memo of appeal.

During course of argument it was contended by the appellant that the impugned order was never served on the establishment soon after the same was passed. The partnership firm of the appellant operating from New Delhi stood closed on 31<sup>st</sup> March 2003. On 28.02.2018 the appellant could know about the impugned order only when the NBWs were issued against him and sent in his residential address during the recovery proceeding for realization of the amount assessed in the impugned order. By placing a copy of the order dated 10.10.2016 the appellant has further stated that the same was received on 22.02.2018 which is evident from the seal of the APFC affixed on the order bearing the date 20.02.2018. The copy of the order sheet of the recovery proceeding has also been filed to show that a request was made by the appellant through his counsel for providing him a copy of the impugned order passed u/s 14B of the Act. Thus, the appellant has contended that the period of limitation need to be computed from the date of knowledge i.e. from 20.02.2018 and the appeal having been filed on 16.03.2018, there is no delay. The appeal involves valuable right of the appellant and the recovery proceeding has already been started. With such submission the appellant has prayed for admission of the appeal.

On behalf of the respondent reply has been filed wherein it has been contended that for delay in remittance of the EPF dues for the period 04/1996 to 05/2008 the inquiry was conducted for imposition

of damage and the HR Manager of the establishment had appeared before the commissioner on 22.04.2016 and intimated that the establishment is closed since 10 years and also wanted some time to file reply. Thereafter several adjournments were allowed and on 19.10.2016 the impugned order was passed. Thereby he submitted that the appellant had enough knowledge about the ongoing inquiry u/s 14B. The Ld. Counsel for the respondent has also taken a stand that the appellant establishment was under the obligation of intimating the respondent about the closer of the establishment or change of address. In this case no material has been placed to make the tribunal believe that the respondent having knowledge about the closer of the establishment or having knowledge about the change of address had intentionally sent the impugned order in the address where establishment was no more functional. He thereby submitted that the appellant who had participated during the inquiry held u/s 14B being fully aware of the impugned order omitted to file the appeal in time and the same being barred by limitation is liable to be dismissed.

On hearing the argument and on perusal of the documents filed by the appellant it prima facie appears that on 28.12.2017 a notice to showcause as to why warrant of arrest shall not be issued was sent to the appellant in his address at 56-58 Community Centre Somdutt Builder New Delhi 110065. In response thereto the appellant gave a reply to the recovery officer intimating that the partnership firm having name Collage Culture stands closed since 10 years and the records are not traceable and two months time may be allowed. The appellant has also filed a document which is the photocopy of the order sheet which shows that on 28.02.2018 the appellant establishment had made a request for supply of the copy of the order passed u/s 14B. The appellant has also filed the copy of the impugned order supplied to him pursuant to the said request which is seen affixed with the seal of the APFC dated 28<sup>th</sup> February 2018. On the basis of these documents the appellant has submitted that the establishment for the first time received the copy of the impugned order on 28.02.2018 and the order having been earlier sent in its address which is non functional since 10 years, it cannot be held that the appellant having notice of the order did not file the appeal in time.

A close perusal of the LCR and the daily proceeding shows that on 08<sup>th</sup> April 2016 the AEO was directed to visit the premises of the appellant and the date was fixed to 22.04.2016. On 22.04.2016 one Gyan Prakash the HR of the appellant establishment had appeared before the APFC and took time for production of documents. It is not understood as to how the appellant had received the notice with regard to the visit of the EO in the address 56-58 Community Centre East of Kailash New Delhi 110065 and also received the notice to showcause in the same address as to why warrant of arrest shall not be issued but

did not received the impugned order dispatched in the same address which is evident from the endorsement at the bottom of the impugned order itself.

A mere request made by the appellant for supply of the copy of the impugned order which was acceded to on 28.02.2018 shall not lead to a conclusion that earlier order communicated on 19.10.2016 was not received. The Plea that the establishment had closed its operation from 56-58 Community Centre New Delhi cannot be believed since the correspondence made after 19.10.2016 were duly received in that address. Be it stated here that no material has been placed by the appellant on record to show that the change of address or closer of the establishment was ever intimated to the respondent. Thus, from the submissions made by the counsel for the parties and on perusal of the LCR, alongwith all other documents, it is held that the copy of the impugned order was duly communicated to the appellant in his 56-58 Community Centre East of Kailash New Delhi 110065 address on 19.10.2016 but the appeal was not filed within the time stipulated under the Rule. The appeal having been filed after one and half years thereafter is barred by limitation and in absence of proper explanation of delay, cannot be admitted. Accordingly the appeal is dismissed as barred by limitation.

Presiding Officer