

**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-1/11/2021

M/s. Helpline Facility Management Pvt. Ltd.

Appellant

VS.

1. RPFC Delhi Central
2. South Indian Bank Ltd.

Respondents

ORDER DATED:- 04.01.2022

Present:- None for the Appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate prayer made for an interim order of stay on the execution of the impugned order. The argument was advanced by the appellant as well as the respondent at length.

Perusal of the office note shows that the impugned order u/s 14B was passed on 30.12.2019 and the appeal was filed on 23.02.2021 i.e. beyond the prescribe period of limitation. A separate petition has been filed by the appellant explaining the circumstances justifying condonation of delay. Thus, the Ld. Counsel representing the respondent filed a written submission challenging the maintainability of the appeal on account of the delay. He has also filed written objection to the prayer for unconditional stay prayed by the appellant.

On behalf of the appellant it has been stated that the appellant is a facility management company operating across the country and abroad since 23 years. It is also diligent in depositing the PF dues of the employees. It had never received any communication/notice from the EPFO in respect of any delay in remittance of the PF dues. It was surprised to receive the recovery notice dated 26.10.2020 from the recovery officer and also learn about the impugned order dated 30.12.2019. On collecting and going through the said order the appellant could know about some misconceived observation made by the commissioner stating that CEO of the appellant company was contacted on 04.09.2019 i.e during the pendency of the proceeding before the commissioner. The said CEO responded that he is aware of the proceeding and the proposed damage alongwith the interest shall be deposited at the earliest. Thus, on behalf of the appellant it has been pleaded that the impugned order was passed behind the back of

the establishment and there is no finding rendered on the mensrea of the appellant for such delayed remittance which makes the impugned order illegal and unsustainable. The appellant further submitted that the respondent has already recovered the entire amount assessed and calculated as damage and interest respectively. Thus, a prayer has been for condonation of delay and admission of the appeal.

In his written reply the Ld. Counsel for the respondent has stated that the order u/s 14B was passed on 24.12.2019 and before that several opportunities were granted to the establishment to explain the mitigating circumstances. Since, no one responded to the notice, the Director of the Company was contacted over phone on 04.09.2019, who responded and assured to deposit the damage and interest amount. Moreover, the establishment was duly notified about the adjourned dates of hearing. For the non prosecution on the part of the establishment the hearing was concluded on 14.11.2019 and the final order was passed on 24.12.2019 on the basis of the statement issued on 30.05.2019. The impugned order was forwarded to the appellant by post on 30.12.2019. On behalf of the respondent the Ld. Counsel has filed the copy of the dispatch register and postal consignment and on the basis of the said documents he strenuously argued that the appellant was fully aware of the impugned order and for reasons best known to them, they slept over the matter and filed the appeal after inordinate delay. The order being passed on 30.12.2019 the appeal should have been filed within 60 days i.e. on or before 5th March 2020. He also submitted that the tribunal can at best extend the period of limitation for the further period of 60 days if sufficient explanation is offered. In this case there is delay of about 360 days and the extension of limitation by the order of the Hon'ble Supreme Court in view of the COVID Pandemic is not available to the appellant for the expiry of the limitation before the outbreak of COVID. He thereby insisted for dismissal of the appeal as barred by limitation.

The copies of the dispatch register and postal consignment filed by the respondent shows that the impugned order was sent to the appellant in the same address as has been mentioned in the appeal memo. The Ld. Counsel for the respondent submitted that the postal consignment having not been returned unserved the presumption is that it was delivered and the appellant has not succeeded in explaining the delay.

In the appeal memo it has been stated by the appellant that when they came to know about the recovery proceeding by notice dated 26.10.2020, received by them on 09.11.2020 the impugned order came to their knowledge for the first time. Thus, the period of limitation need to be counted from 09.11.2020. Since the appeal was filed on 23.02.2021 at best, it can be said that there is a delay of 45 days in filing the appeal as the limitation of 60 days got over on

08.01.2021. He also pointed out about the difficult time for the outbreak of COVID and the extension of limitation by the Hon'ble Supreme Court.

On hearing the argument the undisputed facts which emerge is that the impugned order was passed on 30.12.2019 and as such the appeal should have been filed within 60 days i.e. on or before 05.03.2020 when there was no lockdown for COVID 19 Pandemic. Except the lack of knowledge no other ground has been taken by the appellant to explain as to why it was not filed within 60 days. The dispatch register filed by the respondent disproves the stand of the appellant that the impugned order came to their knowledge after initiation of the recovery proceeding. That being the position the extension of limitation as directed by the Hon'ble Supreme Court is not available to the appellant and the appeal is held to be hopelessly barred by limitation and the appellant has failed to explain the cause of delay. For the reasons mentioned above it is held that the appeal is barred by limitation and dismissed.

Presiding Officer