

**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-2/30/2021

M/s. Louis Berger Consulting

Appellant

VS.

RPFC, Gurugram (East)

Respondent

ORDER DATED :-31/1/2022

Present:- Shri Vipin Upadhyay, Ld. Counsel for the Appellant.
Shri. B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the application filed by the appellant praying condonation of delay for admission of the appeal. Copy of the petition being served the Ld. Counsel for the respondent filed a written objection to the said delay condonation petition and the matter was heard being argued on 04.01.2022.

The appellant in the application has stated that the impugned order was passed on 20.07.2019 and was received by the appellant on 02.08.2019. In the 7A proceeding a big amount i.e. Rs. 3,17,86,348/- was assessed against the appellant establishment. Being aggrieved the present appeal has been filed. But there is a delay in filing of the appeal which is never intentional but for certain circumstances beyond the control of the appellant. The Ld. Counsel for the respondent in his written reply has stated that the appeal is hopelessly barred by limitation as the same has been filed after 161 days from the date of order.

During course of argument the Ld. Counsel for the appellant submitted that the appellant is a renowned MNC and a part of Berger Group Holdings, INC, US based company. In December 2018 the Berger Group Holding and the appellant company were acquired by WSP Global INC. The process of transition continued till late 2019. During this period the impugned order was passed and before the appellant could file the appeal the COVID-19 pandemic broke out. The Hon'ble Supreme Court by order dated 23.03.2022 passed in suo moto WPC No. 03/2020 have taken a liberal view condoning the delay for the judicial and quasi judicial proceedings. That order has been continued and extended from time to time. The appellant establishment despite the diligence could not file the appeal which involves some valuable rights of the appellant. In the mean time the

entire assessed amount has been recovered from the account of the appellant. Thus, the admission of the appeal will decide the legality of the action taken against the appellant for which condonation of delay is necessary in the interest of justice.

The Ld. Counsel for the respondent while taking serious objection drew the attention of the tribunal submitted that the provisions of section 5 of the Limitation Act is not applicable in view of the fact that EPF and MP Act is a special statute where under period of limitation has been prescribed. Relying the judgment of the Hon'ble High Court of Delhi in the case of **Saint Soldier Modern Sr. Sec. School vs. RPFC, 2014 (18)SCT609**, he submitted that the tribunal has no jurisdiction to condone the delay beyond the extended period of 60 days.

Rule 7(2) of the Tribunal (Procedure) Rules 1997 provides that any person aggrieved by an order passed by the Central Government or any other authority under the Act May within 60 days from the date of the issue of the notification of the order prefer an appeal provided that the tribunal if satisfied that the appellant was prevented by sufficient cause from preferring the appeal, extend the same for a further period of 60 days. Exception to the rule is available only in the circumstances where the statutory authority has not acted in accordance with law or in defiance of the principles of Natural Justice. Fact reveals that the appellant was functioning and busy in the merger of its business. In the judgment of Saint Soldier referred supra the Hon'ble High Court have clearly held that the tribunal has no power to extend the period beyond 120 days. In this case as admitted by the appellant the company was functioning when the order was passed and it was under the process of merger and acquisition. Appellant has failed to explain as to why appeal was not filed in time. Mere recovery of the assessed amount doesn't make out a circumstance for liberal consideration in condoning the delay. Moreover this is a case before the Outbreak of COVID-19 for which the Hon'ble Supreme Court have extended the period of limitation and that benefit is not available to the appellant. Thus, considering the circumstances the prayer for condonation of delay is held devoid of merit and the appeal is dismissed as barred by limitation. Consign the record as per Rule.

Presiding Officer