

M/s Sanya Hospitality Pvt. Ltd.

Appellant

Vs.

APFC, Gurgaon

Respondent

ATA No. D-2/26/2019

ORDER DATED:-07.04.2021

Present:- Shri Puneet Saini, Ld. Counsel for the Appellant.
Shri S.C Gupta, Ld. Counsel for the Respondent.

The appeal challenges the orders dated 17.10.2014 passed by the APFC Gurgaon wherein the appellant has been directed to deposit Rs. 01,93,687/- as damage for delayed remittance of PF dues of its employees for the period 12/2009 to 12/2013.

It has been stated that the petitioner is a company incorporated under the companies Act dealing in the Hotel industry. The monthly contribution for the month Oct 2009 was duly deposited with the PF authorities' alongwith the employees share and administrative charges in demand draft no. 280038 dated 13.11.2009. Even after the payment within the prescribe time the EPFO after more than 2 years served a notice alleging nonpayment of contribution for Oct 2009 the notice was properly replied by the management. When the representative of the establishment visited the Bank and also obtained confirmation regarding the deposit. That subsequent thereto the respondent issued a summons dated 10.01.2014 for an inquiry u/s 14B of the EPF and MP Act. The representative of the petitioner participated and duly submitted the reasons denying the delay in remittance. But the commissioner without considering the circumstances passed the impugned order u/s 14B alongwith another order u/s 7Q of the Act which has been challenged in this appeal. The said impugned order has been challenged as an unreasonable and non speaking order.

With regard to the delay it has been submitted that the impugned orders were passed on 17.10.2014 and the petitioner filed a review application on 24.11.2014 which remained pending with the commissioner for a long period. Ignoring the fact that the review petition is pending the EPF authorities without prior notice initiated a recovery proceeding and recovered some amount from the Bank. The appellant approach the **High Court of Punjab and Haryana in WPC No. 3692 of 2015** on receipt of the notice from the High Court the respondent decided the respondent review application and dismissed the same on 09.01.2015 which was dispatched on 22.06.2015. Since a writ petition was pending before the Hon'ble High Court of Punjab and Haryana challenging the impugned order no appeal was filed before this tribunal. The Hon'ble High Court disposed of the said writ

petition by order dated 12th September 2019, giving liberty to the appellant for filing the appeal within a period of 15 days from the date of order. The present appeal having been filed within the time permitted is not barred by limitation.

The learned counsel for the respondent fairly conceded to the grounds taken for condonation of delay.

On behalf of the respondent the learned counsel while supporting the impugned order argued that the order passed u/s 7Q not being appealable, no order of interim stay can be passed against it .he also argued on the legislative intention behind the EPF&MP Act and opposed the prayer for stay made by the appellant.

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 **MorirokuUt 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** 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 12/2009 to 12/2013, and the amount of damage assessed is RS. 1,93,687/-. 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 **MulchandYadav and Another vs. Raja BulandSugar 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 there should be an interim stay on the execution of the impugned order pending disposal of the appeal. But the said interim order cannot be unconditional. The appellant is directed to deposit Rs 39,000/- which is little more than 20% of the assessed amount of damage through challan 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 29.04.2021 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-

Presiding Officer