

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/11/2020

M/s. Sweta Estates Pvt. Ltd.

Appellant

Vs.

APFC Gurgaon

Respondent

ORDER DATED 10.09.2020

Present:- Ms. Neetu Mishra, Ld. Counsel for the Appellant

Shri Abhik Mishra, Ld. Counsel for the Respondent

This order deals with the application filed by the appellant for condonation of delay, admission of the appeal and an interim order of stay on execution of the impugned order. Matter was heard being argued by the counsel for both the parties.

The appeal has been filed by the appellant ,a Pvt Ltd Company challenging the order dated 22.1.2020, passed by the APFC, Gurugram u/s 14B and 7Q of the EPF & MP Act where under the establishment has been directed to deposit Rs.4,95,321/- as damage and Rs.3,29,140/- as interest for the period 9/2008 to7/2017. It has been stated that the appellant establishment is engaged in construction business and have been provided with a code no for deposit of the PF dues of it's employees. The establishment has been sincere and vigilant in the matter of the PF dues since the date of allotment of the said code no. In the year 2017, the EPFO launched a campaign for voluntary enrolment of the employees not enrolled by the employer for whatever reason thereof. Some relaxation with regard to damage was declared under the scheme for such voluntary declaration and enrolment. Pursuant thereto, the appellant establishment made voluntary enrolment of 108 employees who were in fact the leftover employees of it's sub contractor. Though after enrolment and declaration, the establishment was required to deposit the contribution of those declared employees within 15 days, could not comply the same for some technical issues relating to the portal in which deposit was to be made. However soon after fixation of those issues deposit was made. The delay in remittance was never intentional but for the technical glitch in the portal. Notice for inquiry u/s 14B & 7Q was received on 19.2.18 and the establishment by filing a representation explained the mitigating circumstances for the delayed remittance. But the commissioner failed to appreciate the stand taken by the appellant and passed the non speaking impugned order. It has further been pleaded that the appellant has strong arguable case in the appeal. Unless the appeal is admitted and execution of the impugned order is stayed, serious prejudice shall be caused to the appellant. Learned counsel for the appellant

further submitted that the orders under challenge is a composite order and thus, both be stayed pending disposal of the appeal. With regard to the delay in filing the appeal as has been pointed by the registry, she submitted that the order though was passed on 22.1.2020, was never communicated until 10.8.20, when appellant received the certified copy. The appeal, since has been filed within 60 days of receipt of the order is not hit by the law of limitation. She has filed the cover letter dated 10.8.2020 received along with the certified copy.

In his reply the learned counsel representing the respondent submitted that the order was communicated on the same day by regd. post. Since the postal cover was not received back as undelivered, the presumption of delivery is attached. The appellant has taken a wrong plea to cover up the delay. He, thereby, argued for dismissal of the appeal. While supporting the impugned order, he described the same as a well discussed and reasoned order. He also argued that the mensrea of the appellant is evident from it's conduct. Describing the provisions of the EPF Act as a benevolent provision he submitted against the grant of interim stay order. He also submitted that the commissioner has passed two separate orders and the order u/s 7Q not being appealable, no order of stay in respect of the same should be passed.

On hearing the submission of the learned counsels an order need to be passed on the alleged delay in filing the appeal and stay on execution of the order. From the document filed by the appellant it appears that the certified copy was received on 10.8.20 and within 60 days therefrom appeal has been filed. No rebuttal document filed by the respondent to show communication of the order on 22.1.20. Hence it is held that the appeal is not barred by limitation. There being no other defect pointed by the registry, the appeal is admitted.

The learned counsel for the respondent while supporting the impugned order argued that the provision aims at safeguarding the interest of the employees in the hands of the mighty employer. The order of stay on the impugned order will negate the very purpose of the legislation.

There is no dispute on facts that remittance has been made after considerable delay. But the appellant has offered an explanation of it's bonafides in doing so. 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 **Moriroku Ut 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 9/2008 to 7/2017, and the amount of damage assessed is equally big. 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 **Mulchand Yadav and Another vs Raja Buland Sugar 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.1,00,000/- which is little more than 20% of the assessed amount of damage by way of Challan to be deposited with the Respondent within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. Put up after three weeks i.e. on 05-October-2020 for compliance of the direction. Interim stay granted earlier shall continue till then.

Sd/-
Presiding Officer