

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208,
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/22/2020

M/s. Wear Well India Pvt. Ltd.

Appellant

Through:- Shri S.K. Khanna, Ld. Counsel for the Appellant

Vs.

RPFC Noida

Respondent

Through:- Shri Narender Kumar, Ld. Counsel for the Respondent

ORDER DATED 11.12.2020

This order deals with the prayer for admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges the order dated 09.10.2020, passed by the RPFC Noida u/s 14B of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 2,48,190/- as damage for delayed remittance of EPF dues of it's employees for the period 06/2018 to 11/2019. Notice being served on the respondent, learned counsel Shri Narender Kumar appeared and participated in the hearing held through video conferencing on 3rd December, 2020.

Perusal of the record and office note of the registry reveals that the impugned order was passed 09.10.2020 and the appeal has been filed within the prescribed period of limitation. The appeal since found without any other defect the same is admitted. But a prayer has been made for stay on the execution of the impugned order passed u/s 14B of the Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal. The learned counsel representing the respondent has not filed any document but during argument countered the documents of the appellant placed on record.

The appellant has stated that a non speaking and unreasonable order has been passed in which no finding has been given on the mensrea of the appellant for the delayed remittance. Not only that the mitigating

circumstances and acute financial problem of the appellant was never considered by the commissioner which makes the impugned order not sustainable in the eye of law. He also submitted that the establishment is a company engaged in export business of ready-made garments to U K. For the Brexit the business suffered a lot . The establishment also suffered continuous loss leading to huge bad debts during the relevant period. All these aspects though pointed out were not considered by the commissioner. He also submitted that the establishment has been diligent in complying it's statutory responsibilities and during the course of hearing before the commissioner, the interest part of the assessed amount as per the notice was deposited .He, thereby, submitted that the appellant has an arguable case in the appeal. Unless the appeal is admitted with a direction of interim stay on the impugned order, serious prejudice would be caused to the appellant.

The learned counsel for the respondent in his reply submitted that the impugned order was passed after giving due consideration to the submission made and documents placed on record. Not only that the establishment is a habitual defaulter and more than one inquiry was conducted in respect of it leading to filing of number of appeals. He, thus, submitted against the prayer of interim stay on the impugned order on the ground that it would defeat the purpose of the statute in safeguarding the interest of the employees in the hands of the employer.

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 6/2018 to 11/2019, 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 can not be unconditional. The appellant is directed to deposit Rs 50,000/- which is close to 20% of the assessed amount of damage by way of challan with the Respondent 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 05-January-2020 for compliance of the direction.

Sd/-

Presiding Officer