

**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-1/27/2021

M/s Impressive Data Services Pvt. Ltd.

Appellant

Vs.

RPFC/APFC, Delhi (East)

Respondent

ORDER DATED:- 27.08.2014

Present:- Ms. Neha Srivastava, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of both the petitions being served on the respondent, learned counsel Shri S N Mahanta participated in the hearing held on 25th August and a written objection has been filed by him.

Perusal of the office note it appears that the impugned order was passed on 29/10/2020 and communicated to the appellant establishment on 5/11/2020 and the appeal was filed on 16/8/21. Thus the registry has pointed out about the delay in filing of the appeal. A separate petition has been filed by the appellant praying condonation of delay for the reasons explained there under. The learned counsel for the appellants submitted that the appeal , should have been filed within the prescribed period of 60 days, since the date of order, and this tribunal can exercise it's discretion for extension of the period of limitation up to 120 days. Citing the shut down of all activities on account of the outbreak of COVID- 19, She submitted that the delay was for a reason beyond the control of

the appellant and the same be condoned for admission of the appeal. She also drew the attention of the tribunal to the direction of the Honb'le S C dated 23.3.2020 and subsequent orders passed in suomoto WPC No 3/2020 with regard to the condonation of delay on account of the outbreak of COVID-19.

The learned counsel for the respondent fairly conceded that in the prevailing situation of COVID 19, it was not possible to file the appeal within the period of limitation. He also conceded to the direction of the Hon'ble SC for condonation of delay. Hence taking all these aspects into consideration it is held that the delay is not intentional but for a reason beyond the control of the appellant and it is found to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble SC. The petition for condonation of delay is accordingly allowed.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without giving due opportunity to the establishment for explaining the demand. More over the dispute relating to the deposit pointed out by the representative of the establishment with reference to the deposits made for the period under inquiry were never considered. The commissioner without giving opportunity to the establishment of explaining the deposition of the EO or giving opportunity of cross examining him passed the impugned order in a haste, which amounts to denial to the principles of natural justice. She also submitted that amount assessed is 45,19,396/- and the establishment is facing acute crunch in cash flow for the loss of business in the prevailing condition. If the Tribunal would insist for compliance of the provisions of sec 7O, of the Act serious prejudice would be caused. Being called by the commissioner all the documents were made available and the establishment had extended all

necessary co-operation. But the commissioner without going through the details passed the order, which is based upon the report of the E O only. Citing various judgments of the Hon'ble S C she submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time. She there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He also submitted that the commissioner has observed in the impugned order that the establishment accepted the deposition of the EO and choose not to file any rebuttal. Compliance of the provision of sec 7O is the mandate of the legislation and a condition precedent for filing of the appeal which can not be waived unless some extraordinary circumstances are set out by the appellant. In support of his submission the learned counsel for the respondent placed reliance in the case of M/S JBM Auto Systems Pvt. Ltd vs. RPFC decided by the Hon'ble High Court of Madras.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 4/17 to 12/19 and the amount assessed is

45,19,396/-.Further ,perusal of the impugned order it is found that the commissioner had directed the EO for submitting their report after examining the records and documents produced by the establishment. In response to the direction the EOs submitted their deposition reports on 29/10/20, and the same day the commissioner passed the impugned order, signed and sealed the same accepting the report of the EO in toto. Though the order contains the observation that the EO Report was supplied to the representative of the establishment who accepted the same there is no endorsement to that effect placed on record by the respondent along with it's written objection to the 7O petition. From the circumstances it appears that the commissioner in order to prevent the establishment from cross examining the Eos or setting up a proper defence, passed the order in a haste on the same day when the report and deposition were filed by the EO. Thus the circumstances clearly indicate the patent illegality in the conduct of the proceeding by the commissioner discharging the quasi judicial function which makes out a strong prima facie case in this appeal in favour of the appellant. Hence it is held that the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 20%. Accordingly the appellant is directed to deposit 20% of the assessed amount within four weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Tribunal with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. List the matter on 27/9/2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Presiding Officer