

**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.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T-cum Labour Court-II,
New Delhi.

M/s Convergys India Services Pvt . Ltd;

Appellant.

Vs.

RPFC, Gurugram.

Respondent.

Appeal No. D-2/26/2021

Order dated 9th November, 2021

Present: Sh. S.K Gupta, Ld. Counsel for the Appellant.
Sh. B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission and a separate petition filed by the appellant praying 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.

A caveat petition was filed by the Respondent in the matter before filing of the appeal. Copy of the appeal being served on the respondent, learned counsel for the respondent Sh. B.B Pradhan appeared and participated in the hearing held on 7.10.21 through video conferencing, though no written objection was filed by him. The record reveals that the impugned order u/s 7A was passed by the commissioner on 10.8.21. Hence the appeal filed on 5.10.21 is within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount provided u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed taking into consideration the special allowances paid to the employees though basic salary of all the employees has been correctly shown in the salary register and appropriate amount has been contributed to the EPF& MP Fund. During the inspection made by the EO, all the documents were made available and the establishment had extended all necessary co-operation . The EO conducted inspection pursuant to a complaint made by an ex- employee named Gaurav Bhanot who had withdrawn all his PF deposits before commencement of the inquiry. It was alleged by him that the appellant establishment has intentionally bifurcated the basic salary to special allowances to avoid Employer's share of PF contribution. The EO submitted his report on 26.3.2018, arbitrarily calculating the contribution payable by the establishment. The copy of the complaint was never supplied to the appellant for rebuttal. On receipt of the report of the EO the establishment had submitted it's reply which was

never considered. On the contrary, the commissioner without serving a show cause notice, served summon for the 7 A inquiry. Citing various judgments of the Hon'ble S C he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the principle of universality. He further explained that the company offers competitive salary to its employees and reserves the right of determining the salary structure with consent of its employees. The special allowances not being paid universally, can not be computed for calculation of payable EPF contribution. While pointing out the discrepancies in the calculation with reference of the impugned order and the report of the EO, he also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. He also submitted that the special allowances paid not being contractually agreed falls outside the definition of basic wage defined u/s 2 (b) of the EPF & MP Act. Not only that the special allowance being a variable payment and comprises non-cash benefits to defray the expenditure, can not fall under the category of basic wage. It is also submitted that many of the employees as per the salary register had already left the service of the establishment when the inquiry was conducted. The beneficiaries not being identified the order is illegal and liable to be set aside. Relying on the judgment of M/S Pawan Hans Ltd vs Aviation Karmachari Sanghatan & Others,(2020 LLR,SC) he submitted that assessment is required to be made in respect of available employees only. All these aspects if would be considered, the appellant has a fair chance of success. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant. He 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. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

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 salaries of the employees have been intentionally bifurcated to avoid PF contribution and defeat the very purpose of the Act. He based his argument on the finding of the commissioner that the establishment, even after revision of the statutory ceiling limit of the basic wage for EPF contribution w.e.f 1.9.14 continued to deposit EPF contribution on the basic salary of R6500/- in respect of some of the employees by bi-furcating the salary to special allowances and house rent allowance. This was done unilaterally to avoid employer's share of the contribution. To support his submission he placed reliance in the case of Surya Roshni and Bridge and Roof decided by the Hon'ble SC.

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. For that

purpose the factors which need to be considered the period of default in respect of which inquiry was initiated and the amount assessed. In this appeal the period of inquiry is from Sept 2014 to Dec 2017 and the amount assessed is 58,76,89,031/-Without going to the other detail as pointed out by the appellant for challenging the order as arbitrary ,and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to extend partial exemption to the appellant against the pre deposit, pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of **MulchandYadav and another**. 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 as has been held by the Appex court in the case of **MulchandYadav and Another vs Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default ,the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 8 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 Registrar 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. There would be an interim stay on the impugned order till the next date. Call the matter on 10.01.2022 for compliance of the direction.

Presiding Officer
CGIT, New Delhi

