

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

Appeal No. D-2/11/2021

M/s. Adobe System India Pvt. Ltd. Appellant
Through:- Sh. Gulshan Chawla, Ld. Counsel for the Appellant.
Vs.

RPFC, Noida Respondent
Through:- Sh. S.N. Mahanta, Ld. Counsel for the Respondent.

Order dated 17.05.2021

This order deals with admission of the appeal and the petition 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.

Copy being served on the respondent, learned counsel Sh S.N. Mahanta appeared and participated in the hearing held on 11.05.2021 through video conferencing , though no written objection was filed. Perusal of the office note reveals that the impugned order was passed on 5.10.2020 u/s 7A and on 18.02.2021 u/s 7B by the RPFC, Noida, and the appeal was filed on 16.04.2021 .The office has pointed out about the filing of the appeal within the time limit prescribed under the Rule.

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 considering the submissions made by the establishment during the inquiry. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The inquiry was with regard to few workers to whom allegedly the benefit of sign on Bonus was paid as an one time payment, which is not computed as basic wage under the definition of sec 2 (b) of the Act. Producing all related documents for verification the Representatives of the establishment had argued before the commissioner that the sign on Bonus is never paid to the employees universally and it is being paid to the in coming employees joining the

establishment on account of various factors like, to compensate the benefits foregone from the previous employment or, to cover the relocation expenses or, as an incentive for the higher qualification acquired by him. This payment is made once at the time of joining and never as a part of the basic wage earned during work in the subsequent months. To support his argument he drew the attention of the tribunal to the monthly salary slip of the employees in respect of whom the impugned order has been passed . On verification of those documents it is found that the sign on bonus seems to have been paid once to the employees at the time of their joining.

The learned counsel for the Respondent on the contrary 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. Learned counsel Mr Mahanta also cited the order passed by the Hon'ble High Court of Madras passed in the case of M/S JBM Auto System Pvt Ltd VS RPFCL, to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act. The other limb of his argument is that the sign on bonus is the different name given to the retaining allowance by the establishment to avoid the statutory subscription.

The learned counsel for the appellant also submitted that the stand taken by the establishment was not considered properly and the commissioner took a wrong view of the matter and concluded that the bonus in general parlance means a sum of money added to a person's wage as a reward for the good performance and the sign on bonus since comes under the category of bonus EPF contribution is payable on the same. Challenging the said finding the learned counsel for the appellant emphatically argued that the sign on bonus does not come under the category of bonus and EPF contribution is not payable on the same.

Perusal of the impugned order it appears that the commissioner has prima facie taken a wrong view of the interpretation of Bonus while passing

the impugned order. The points of law raised by the appellant makes out a strong arguable case in the appeal. Hence at this stage of admission, without making a roving inquiry on the merit of the appeal, it is felt proper to admit the appeal and pass an order on the petition filed u/s 7 O of the Act.

On hearing the submission advanced by the counsel for both the parties it appears 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 when the commercial activities are encountering huge loss. Hence, it is held to be a fit case for exercise the discretion vested in the Tribunal for reduction of the pre deposit in the facts and circumstances of this case as the circumstances do not justify total waiver of the condition of pre deposit. 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 3 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 CGIT' initially for a period of one year along 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 18.06.2021 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.

Sd/-

(Presiding Officer)