

**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-2/23/2020

M/s. Antony Road Transport Solutions Pvt. Ltd.

Appellant

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

Vs.

RPF Noida

Respondent

Through:- Shri S.N. Mahanta, Ld. Counsel for the Respondent.

ORDER DATED 17.12.2020

This order deals with the admission of the appeal 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.

Copy of the petition being served on the respondent, learned counsel Shri S.N.Mahanta appeared and participated in the hearing held through video conferencing on 8th December, 2020, though no written objection was filed. Perusal of the record reveals that the impugned order u/s 7A of EPF &MP Act was passed by the commissioner on 20.10.20 and the appeal was filed on 11.11.20 via email. Thus, there is no delay in filing of the appeal..

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 by the RPF Noida having power to consider the eligibility of the employees for enrollment under the EPF Scheme but without giving opportunity to the employer as well as the employee for advancing their respective stand. Being called by the commissioner, though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order, which is based upon the report of the Enforcement Officer only. The appellant has further contended that it is private limited company engaged in transport business and most of its employees were either drivers or technical assistants, who were drawing

basic salary more than Rs.6,500/- before the notification dated 22.08.2014 effective from 1st September, 2014. As such they were exempted employees. After the notification amending the basic salary limit to Rs.15,000/- those employees continued to be excluded employees. The establishment was diligent in making EPF subscription of it's eligible employees. In 2018 the E O Dinesh Kumar had inspected the registers of the establishment upto 2017 and found the contribution paid correctly up to 03/2018 and advised payment for April 2018, which was complied. Suddenly in October, 2018 notice was served on the establishment alleging evasion of PF dues by splitting up the wage of the employees. Though, in the notice it was mentioned that the alleged evasion was found after the last inspection, surprisingly the commissioner in the impugned order has given a finding about the said evasion during the period 11/15 to 09/19. The notice was never amended during inquiry nor was opportunity on the eligibility given though the statute clearly provides for hearing of the employer and the employees for deciding the eligibility. Citing various judgments of the Hon'ble Supreme Court he 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. 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.

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 inquiry was initiated on receipt of complaint and the commissioner had considered the said complaints before passing the order under challenge. The points raised and grounds taken by the appellant can be considered during hearing of the appeal on merit. But for waiver of the condition of pre deposit the appellant has not spelt out the convincing circumstances.

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 section 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 11/2015 to 09/2019, and the amount assessed is Rs.2,30,72,931/-. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted the eligible employees from being enrolled under the scheme. Before the commissioner the specific plea taken was that the employees getting gross salary more than Rs.15,000/- are exempted employees. All the documents including salary register though produced before the APFC, were never considered by him. Without going to the other detail pointed out by the appellant 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 observe that the appellant has a strong arguable case in this appeal. Hence, considering the period of default, the amount assessed and the prevailing circumstances, 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 20%. Accordingly, the appellant is directed to deposit Rs46,00,000/- which is close to 20% of the assessed amount within 6 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 "Registrar CGIT" 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 01-February-2021 for compliance of the direction failing which the appeal shall stand dismissed.

Sd/-

(Presiding Officer)