

**BEFORE THE HON'BLE 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.

M/S Artemis Medicare Services, Limited

Appellant

Versus

Regional PF Commissioner, Gurugram

Respondent

**Appeal No. D-2/08/2021**  
**ORDER DATED-27.4.2021**

Present:

Shri Vivek Kaushal, Ld. Counsel for the Appellant.  
Shri Chakradhar Panda, Ld. Counsel for the Respondent.

This order deals with the petitions filed by the appellant praying 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 the petition being served on the respondent Shri. Chakradhar Panda learned counsel for the Respondent appeared and participated in the hearing by filing written objection to the petition filed u/s 7O of the Act for waiver of the deposit prescribed under the Act. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the commissioner on 12/1/2021, and the appeal was filed on 20/2/2021 i.e within the period of limitation.

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 commissioner without considering the submission made and solely basing on the report of the E O, who had reported about deficit in the PF contributions of the employees as the

contribution was found not paid on the different allowances paid by the appellant establishment to the employees. Being noticed by the commissioner though the AR appeared during the inquiry, produced all the documents and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also submitted that the establishment has its own wage policy and different allowances are paid to different category of employees which is based upon the nature of work discharged by them. The said allowances having not been paid universally but for the varied nature of their work can not be considered as basic wage for the purpose of EPF contribution. Rather the allowances are paid to the said category of employees to defray the expenditure. On receipt of the summon for inquiry, the AR for the establishment pleaded about the same but the commissioner never considered it. Citing various judgments of the Hon'ble SC including the case of RPFC, West Bengal VS Vivekananda Vidya Mandir, he submitted that the impugned order suffers from patent illegality as it is now settled that the payment made by the employer to the employee, not as per the terms of employment but for the varied nature of work can not be computed for subscription of EPF. He thereby argued that 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 basic wage has been intentionally bifurcated as allowances to evade employer's share of the PF contribution. Referring to the huge amount

assessed he submitted that the appellant has not made out any strong circumstance for waiver or reduction of the pre deposit contemplated under sec 7O of the Act. If there would be waiver or reduction in the deposit the would affect the interest of the employees and the very purpose of the Act would be defeated.

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. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 11/15 to 1/19 i.e for three years and the amount assessed is 3,92,16,005/-The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally bifurcated the basic wage to different allowances. Before the commissioner the specific plea taken was that the said allowances are not universally paid and intended to defray the expenses incurred by them. All the documents including salary register though produced before the commissioner along with a written submission, those 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. More over the Hon'ble Supreme Court in the case of Moriroku Ut India Pvt. Ltd VS Union of India reported in 2005 SCC page 1 have held that the courts and Tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it. 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 30%. Accordingly the appellant is directed to deposit 30% 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 the 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 06-July-2021 For compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Sd/-

Presiding Officer