

**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 Hotel Ashok

Appellant

Vs.

RPFC, Delhi (West)

Respondent

ATA No. D-1/12/2021

ORDER DATED:- 08.04.2021

Present:- Shri Anish Chawla, Ld. Counsel for the Appellant.
Shri Puneet Garg, Ld. Counsel for the Respondent No.1.
None for Respondent no. 2
None for Respondent No. 3

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 7O 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 Sh. S. N. Mahanta appeared and participated in the hearing held on 22.03.2021 though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 13.02.2020 by the RPFC, Delhi(West) and was communicated to the establishment on 17.02.2020. Being aggrieved the establishment had filed an application u/s 7B of the Act praying review of the order dated 13.02.2020 which was rejected on 19.02.2021. There after the appeal was filed on 16.03.2021. The office has pointed out that there is no delay in filing of the appeal. The learned counsel for the respondent submitted that the appeal, though has been filed within the prescribed period of 60 days since the date of the order passed u/s 7 B of the Act, is barred by limitation, for the reason that the petition for review was filed after the prescribed period of limitation i.e 45 days after the order passed u/s 7A of the Act. The argument advanced by the learned counsel does not sound convincing since the appeal challenges the orders

passed u/s 7A as well as u/s 7B of the Act and has been filed within the prescribed 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 without application of mind. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The inquiry was initially for non deposit of PF dues by the manpower supply company i.e. Respondent No.2. The commissioner then converted the inquiry to find out less deposit of PF contribution by the appellant as the principal employer, for the period 04/2012 to 03/2016. Initially acting on the information a squad of Enforcement Officers visited M/s Ashok Hotel and examined all the records produced before it. The team found out that an amount of Rs. 1,26,77,863/- is payable towards deficit remittance and recommended for an inquiry under the Act. While quantifying the dues it was stated by the squad that M/s Mass management system had provided manpower to the appellant hotel and was raising bill towards the salary of the persons deployed. During the inquiry the commissioner found fault with the establishment i.e the Ashok Hotel as the principal employer for making less deposit of the PF dues. The commissioner in making the calculation and quantifying the amount took a view that the appellant has intentionally omitted to make contribution on the basic wage of the employees by describing the part of the same as extra duty wage or overtime dues. The commissioner committed an error in not analyzing the monthly bills of the contractor with reference to the attendance sheet of the workers which show that the extra duty hours performed by each workers being different no PF dues is payable on such extra hour remuneration considering the same as basic wage. Thereby the Ld. Counsel submitted that the respondent failed to distinguish between extra duty overtime allowance and normal working hours. The calculation made during the inquiry is illegal since the extra hour remuneration was not paid universally to all the workers with such submission he submitted that the commissioner while adjudicating the matter took a wrong view of the matter and passed the impugned order.

On behalf of the appellant reliance has also been placed in the case of **APFC vs. M/s Nandalal**, decided by the **Hon'ble High Court of Patna** to submit that the commissioner cannot pass the order on the basis of mathematical calculation

as if Tax is assessed, which is based upon the report of the E O only. He thereby 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 when the commercial activities are encountering huge loss. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that the appellant is a registered Pvt. Ltd Company having least chance of running away from the reach of Law. At the end of the hearing of the appeal, if the amount assessed is found payable it will be paid.

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. Learned counsel for the respondent also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt. Ltd VS RPFC, to submit that the Tribunal cannot grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

The commissioner in this case made the assessment as if tax without paying least consideration to the submissions and ignoring the prayers and submissions made by the establishment. In this regard reliance can be placed in the case of **Small Gauges Ltd &Others VS V P Ramlal APFC** decided by the Hon'ble High Court of Bombay, wherein it has been held that unless the documents ,deposition, and calculation forming basis of the order are made available to the establishment, it cannot be said that the basic tenets of the principle of *audialterampartem* was followed.

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 04/2012 to 03/2016 and the amount assessed is 1,26,77,863/-. Without going to the other details 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 pass an order keeping in view the principle decided in the case of Small Gaudge Ltd as well as considering the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances into consideration. The Hon'ble High Court of Bombay in the case of **Moriroku Ut Pvt. Ltd. vs. Union of India reported in 2005SCC page1 and the Hon'ble High Court of Delhi in the case of Escorts Limited and others vs. Union of India reported in 43(1991)DLT207** 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. The Hon'ble Apex Court in the case of Banaras Valves Ltd. and others vs. Commissioner of Central Excise have defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant. The appellant of this matter is a Hospitality Industry which has encountered severe loss for the prevailing covid condition which can't be lost sight while deciding the compliance of the provision of section 7O of the EPF and MP Act.

But at the same time 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 of 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 27.05.2021 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