

**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-2/15/2021

M/s. Bharosa Technoserve Pvt. Ltd.

Through : Sh. Deepak Grover, Ld. Counsel for the Appellant.

Vs.

RPFC/APFC Gurugram East

Through: Sh. B. B Pradhan, Ld. Counsel for the Respondent.

Order dated 5th August, 2021

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 Mr. B. B Pradhan appeared and participated in the hearing held on 2/8/2021, but no written objection was filed. Perusal of the office note reveals that the impugned order u/s 7A was passed on 5/3/21 by the APFC Gurugram. Being aggrieved the establishment filed the present appeal on 8/7/21. The office has pointed out that 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 Mr. Grover submitted that the inquiry was initiated on the basis of the report submitted by the EO, the copy of which was never made available to the appellant establishment. It has been contended by the appellant that on 23/7/2018, it made a correspondence with the respondent to know about the administrative charges as it was desirous of cancelling it's registration for not having any employee in it's establishment since January 2018. Pursuant there to the EO was deputed for inspection of the establishment. During the visit of the EO, all the relevant records were produced and co operation was extended. The EO submitted his report to the respondent and no copy if the same was made available to the appellant. On 5/2/20 inquiry notice was sent to the establishment and it was directed that the representative of the establishment shall appear for the inquiry on 11/3/20. That being the period when the covid 19 infection rate at it's peak, the

appellant did not appear, but it's AR attended the inquiry on 19/1/20 and demanded copy of the inspection report, which was supplied on 20/1/21. The establishment after perusing the same, submitted a detail objection to the EO report on 5/2/21 via email. (Annexure-6) but the commissioner without considering the objection raised passed the impugned order basing upon the report of the EO only. Further, he observed that the establishment did not take the inquiry seriously. The beneficiaries were not identified before the assessment and the calculation has been made on the special allowances paid to the employees to cope with the rise in the cost of living. With such submission the learned counsel for the appellant submitted that the impugned order is not sustainable in the eye of law and the appellant has a strong prima facie case to argue in the appeal.

With regard to the prayer for waiver of the condition of pre deposit mandated u/s 7O of the Act, he submitted that the establishment has no outstanding EPF dues of it's employees and at present it has no employees. Any direction for compliance of the provision of 7O would cause undue hardship. Hence he submitted for waiver of the condition of pre deposit.

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 can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act. He also submitted that the materials on record prima facie proves that the establishment, though paid the allowances universally, deposited the PF dues on the basic wage only for a prolonged period. More over the commissioner had identified the beneficiaries before passing the order which is evident from the order itself.

The commissioner in this case made the assessment as if tax without paying least consideration to the written submissions. 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 *audi alteram partem* 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 4/2017 to 11/2017 and the amount assessed is Rs 2,75,728/-. Hence 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 Gadge Ltd referred supra, as well as the grounds of the appeal, the period of default, the amount assessed and the prevailing circumstances in to consideration. But it is felt that the circumstances do not justify total waiver of the condition of pre deposit and the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 35%. Accordingly, the appellant is directed to deposit Rs96,000/- which is little less than 35% 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 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. List the matter on 13-September-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.

Presiding Officer
CGIT-cum labour Court, Delhi