

**BEFORE THE 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.

ATA No. D-2/33/2022

M/s. Oyo Hotels & Homes Pvt. Ltd.

Appellant

VS.

RPFC, Gurugram

Respondent

ORDER DATED :-02/11/2022

Present:- Shri Anil Bhatt & Sh. K K Pandey, Ld. Counsel for the Appellant.

Shri B B Pradhan, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay 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 both the petitions being served on the respondent, learned counsel for the respondent Shri B B Pradhan appeared and participated in the hearing the record reveals that the impugned order u/s 7A was passed by the RPFC Gurgaon on 11.05.2022 and the appeal has been filed on 12.09.2022. Thus the Registry has pointed out about the delay in filing of the appeal. The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of 120 days i.e within the extended period of limitation, if the period is computed from the date of receipt of the order i.e 13.05.2022, and this tribunal can exercise it's discretion for extension of the period of limitation. Citing the shut down of all activities on account of the outbreak of COVID- 19, as the reason, he submitted that the delay was for the slow down of all activities during the post COVID period, which are reasons beyond the control of the appellant and the same be condoned in the interest of justice, for admission of the appeal.

The learned counsel for the respondent vehemently opposed the stand taken by the appellant for explaining the delay and he focused his argument to say that the inquiry was conducted in the year 2019 and proper notice was served on the establishment. The order was duly served on the establishment. The establishment since failed to file the appeal within 60 days from communication of the order, the delay can not be condoned. But taking all these submissions into consideration and since the appeal has been filed on the 120th day, it is held that it is a fit case where the period of limitation need to be condoned. The petition for condonation of delay is accordingly allowed.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7O of the Act. The learned

counsel for the appellant submitted that the impugned order has been passed in respect of two years only. The establishment got covered w. e. f. Nov 2016. A notice was received from the enforcement officer on 20.08.2018 for inspection of records. The enforcement officer visited the office of the appellant and all relevant records were produced before him for his inspection. On the recommendation of the said EO, another notice was issued by the respondent proposing inquiry u/s 7A of the Act. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. During the pendency of the inquiry, due to the COVID the country came under the lock down. The appellant requested the commissioner for grant of time for production of more documents. But no time was allowed. After the close down was lifted the EO submitted his report and the establishment submitted the reply to the said report on 25.04.2022 taking a stand that the allowances in respect of which the EO has found deficit in deposit of contribution is not universally paid to all the employees and the establishment had made no effort of bifurcating the wage to avoid the PF contribution. But the commissioner without considering the submission passed the impugned order solely basing upon the report of the EO. While passing the order the commissioner never went through the details of the documents filed and without consideration of the submission made, assessed a huge amount i.e Rs. 1,93,89,759/- Citing various judgments of the Hon'ble S C 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 when the business of the appellant which is a Hotel Industry, has suffered a lot and the appellant is struggling to overcome the loss for the complete closure of the hotels for the outbreak of COVID 19. He there by prayed for waiver of the condition of pre deposit by submitting that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that 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. He also argued that the period of assessment is from October 2016 to November 2018, when the business of the appellant was in full swing. The waiver of the condition of pre deposit will hamper the interest of the workers, who are the beneficiaries.

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 and particularly the Tourism and Hotel Industry. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are the pre COVID period and the amount assessed is Rs 1,93,89,759/-. Without going to the other detail as 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 extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of Mulchand Yadav and another. Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. 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 20%. Accordingly the appellant is directed to deposit 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 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. . Call the matter on 09.01.2023 for compliance of the above said direction. The interim protection granted earlier shall continue till then.

Presiding Officer

Later

Today on behalf of the appellant, an application has been moved, wherein it has been alleged that, the respondent Authority having knowledge about the filing of the appeal have freezed the Bank account of the appellant which has seriously impacted its business, A prayer has been made for direction to de-freeze the bank account, details of which has been mentioned in the peititon.

Copy of the petition being served on the respondent, the Ld. Counsel Shri B B Pradhan appeared and participated in the hearing. He expressed ignorance about the alleged freezing and wanted some time to take instruction in this regard.

But considering the fact that an order has been passed today directing the appellant to deposit 20% of the assessed amount as a pre condition for admission of the appeal, it ordered that the Bank current account No. 9411618477, Kotak Mahindra Bank, Vatika Business Park, Gurgaon of the appellant if freezed shall be defreezed by the respondent forthwith and no other coercive action shall be taken against the appellant till next date of hearing.

Presiding Officer

**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-2/02/2019

M/s. Om Enterprises (Through Satender Nagar, Prop.)
Through:- Sh. S.K. Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

APFC/ RPFC, Noida
Through Sh.Narender Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/11/2022

The Ld. Counsel for the Respondent sought for an opportunity for filing the reply. In the interest of justice granted as a last chance. List the matter on 12.12.2022 for filing reply.

Presiding Officer

**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-2/21/2019

M/s. Mag Filters & Equipments Pvt. Ltd.
Through:- Sh. S.K. Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

APFC/ RPFC, Gurugram
Through Sh.B.B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/11/2022

The matter could not be taken up due to being busy in the matters filed under the Industrial Disputes Act, 1947. List the matter on 07.12.2022 for final arguments.

Presiding Officer

**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-2/10/2020

M/s. Navigant Technologies Pvt. Ltd.
Through:- Sh. S.K. Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

APFC/ RPFC, Gurugram East
Through Sh.B.B. Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/11/2022

The matter could not be taken up due to being busy in the matters filed under the Industrial Disputes Act, 1947. List the matter on 11.01.2023 for final arguments.

Presiding Officer