

**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-2/27/2022

M/s. IL & FS Engineering & Construction Company Ltd.

Appellant

VS.

RPFC, Gurugram East

Respondent

ORDER DATED:- 29/08/2022

Present:-

Shri S.K Gupta, Ld. Counsel for the Appellant.

Ms. Asha Gopalan Nair, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a petition filed by the appellant praying waiver of the condition prescribed u/s 70 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 appeal and the petitions being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing. Perusal of the record reveals that the impugned order u/s 7A of EPF &MP Act was passed by the commissioner on 08/03/2021 and the appeal has been filed on 18/07/2022. Hence the Registry has reported on the delay in filing of the appeal. During course of hearing the learned counsel representing the appellant submitted that being aggrieved by the order dated 08/03/2021 passed u/s 7A of the Act, the appellant filed an application u/s 7B of the Act and the same was disposed of by order dated 06/06/2022 and the appeal was filed on 18/07/2022. Thus the learned counsel for the appellant submitted that the appeal, has been filed within the prescribed period of 60 days from the date of the order passed in the 7B proceeding.

The learned counsel for the respondent submitted that for the bar prescribed u/s 7B(5) the appeal against the order passed u/s 7B is not appealable and thus the appeal challenging the order passed u/s 7A is barred by limitation. The submission of the appellant for condonation of delay is liable to be rejected. This submission of the learned counsel for the Respondent does not sound convincing as the commissioner after considering the submission of the establishment on merit had passed the order u/s 7B which is appealable. Hence it is held that the appeal has been filed within the period of limitation.

The other petition filed by the appellant is for waiver/reduction of the predeposit 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 by the establishment and solely basing on the report of the E O. 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. He also submitted that the inquiry was conducted on the basis of some unverified complaints made by a labour union, in gross violation of the department circular. Though the authorized representative of the establishment, as directed produced all the records before the EO, who perused the same and prepared a report, the commissioner neither called the EO nor any of the complainants to testify. Thereby the opportunity for cross examination was denied to the appellant. The other stand of the establishment is that the establishment is now before the Hon'ble NCLT and for various orders passed no suit, proceeding etc. are maintainable against the establishment. Not only that the commissioner while passing the order had never made any effort of identifying the beneficiaries though the inquiry was initiated for the complaint made by a Labour Union. Citing various judgments of the Hon'ble SC, including the case of Builder Association, Food Corporation and Himachal Forest Corp, 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 when the company is before NCLT, will cause undue hardship to the appellant. He there by prayed for waiver of the condition of pre deposit canvassing 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 calculation was made on the basis of the wage paid. In the order passed u/s 7B of the Act the commissioner has clearly observed that the wage register produced before the EO showed amalgamation of various other allowances of individual employees with the HR. Not only those anomalies were detected with regard to the man days consumed and salary paid as per the salary sheet. Hence the computation was made by the EO correctly and it cannot be said that the EO having no power had made the assessment. He thereby argued that impugned order does not suffer from any illegality for non identification of 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. The appellant has raised various points touching the legality of the order impugned in the appeal including the action of the commissioner in accepting the report of the E O in toto.

Without going to the other detail as pointed out by the appellant challenging the order as arbitrary and when detail reply to the appeal has not yet been filed by the Respondent, it is not felt proper to form any opinion on the merit of the appeal. However considering the period for which the inquiry was initiated and the amount assessed, and keeping it's plea of undue hardship for the matter being pending before NCLT, it felt proper to reduce the condition of pre deposit contemplated u/s 7O of the Act from 75% to 25% which would serve the interest of justice. Accordingly it is directed that the appellant shall deposit 25% of the assessed amount towards compliance of the provisions of sec 7O of the Act by depositing FDR in the name of the Registrar of CGIT, initially for a period of one year with provision of auto renewal, within six weeks from the date of communication of the order failing which the appeal shall not be admitted. Call on 10.10.2022 for compliance of the direction. Interim order of stay granted earlier shall continue till the next date.

Presiding Officer

**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-2/29/2022

M/s. IL & FS Engineering & Construction Company Ltd. Appellant

VS.

RPFC, Gurugram East Respondent

ORDER DATED:- 29/08/2022

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

Ms. Asha Gopalan Nair, Ld. Counsel for the Respondent.

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 for the respondent appeared and participated in the hearing held, though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 08/03/2021 and being aggrieved the establishment had filed an application for review, invoking the provisions of sec 7B of the Act. The said application was disposed of by order dated 06/06/2022 and the appeal has been filed on 25/07/2022 i.e within the period of limitation.

A separate petition has been filed by the appellant for waiver/reduction of the predeposit amount contemplated u/s 7O of the Act. The Learned Counsel for the appellant submitted that the impugned order has been passed without application of mind and without considering the submission of the appellant on facts made during the inquiry. The department circulars and the settled position of law was totally ignored by the commissioner who solely relied upon the report of the EO for passing the impugned orders. The EO in this case having no power of assessment, submitted the report assessing the amount payable by the establishment and the commissioner without even asking the EO to testify and thereby affording the opportunity to the establishment to cross examine him, accepted the report submitted by the EO and passed the impugned order. It is submitted that the appellant establishment is a Company registered under the Companies Act engaged in the business of Infrastructure Development. By the order of the Ministry of Corporate Affairs, Govt. of India, proceeding has been initiated before The Hon'ble NCLT, Mumbai. The Hon'ble NCLAT, by order dated 15th October 2018 have stayed initiation/ continuation of suits and all kind of proceedings against the appellant establishment including recovery action in respect of any amount due. But the commissioner, inspite of being informed about the said order and pending resolution mechanism, proceeded with the inquiry and passed the impugned orders. The commissioner served the notice of 7A inquiry for the period 05/2014 to 04/2019, on the basis of a report submitted by the area

enforcement officer. The area enforcement officer had made the verification with regard to the deposit of PF dues by the appellant establishment and submitted his report stating about deficit deposit on account of non enrollment of some eligible employees, the difference of other allowances mentioned in the salary sheet of the employees, and discrepancies noted from the daily progress report and salary sheet with regard to the man days consumed etc. Though the authorized representative of the establishment had visited the office of the respondent and extended all necessary co-operation and also pointed out that the EO has made a mathematical calculation only, without making effort of identifying the beneficiaries, the Respondent in gross violation of the department circular dated 14/02/2020 directing initiation of inquiry u/s 7A only on existence of prima facie case, conducted the inquiry illegally. Copy of the said circular has been placed on record. All these aspects of the matter were brought to the notice of the commissioner during inquiry by filing a written submission. But to his utter surprise the inquiry was closed without considering the said submission and without calling the enforcement officer to testify. The commissioner while adjudicating the matter took a wrong and misconceived view of the matter and passed the order of assessment. The assessment based upon the report of the EO only is illegal and liable to be set aside. Moreover the commissioner while assessing the liability of the establishment never took in to consideration the orders passed by NCLAT. He thus prayed for admission of the appeal waiving the condition of deposit contemplated u/s 7O of the Act on the ground that the establishment is now before the NCLT and the appellant has a strong arguable case in the appeal. He also 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 whose commercial activity has been stopped. 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 has 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 orders as reasoned orders 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.

The commissioner in this case made the assessment on the basis of the EO only. But the submission made by the establishment, seem was not considered by the commissioner. Besides this the learned counsel for the appellant also argued on the merit of the appeal.

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. For the same, factors which need to be considered are the period of default in respect of which inquiry was initiated and the amount assessed. In this case the period of inquiry as well as the amount assessed are long and big. 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 **M/S Benars Valves Ltd & Others vs. Commissioner of Central Excise**, decided by the Hon'ble Supreme Court wherein it has been held that **“if on a cursory glance, it appears that the demand raised has no leg to stand, it would be undesirable to**

require the assessee to pay the full or a substantial part of the assessed amount.” Hence relying on the said judgment as well as considering the grounds of the appeal, the period of default and the amount assessed etc, it is felt that insistence for deposit of 75% of the assessed amount would amount to undue hardship to the appellant.

But at the same time, considering the submission of the parties, it is held 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 25%. Accordingly, the appellant is directed to deposit 25% of the assessed amount within six 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 CGIT of the tribunal initially for a period of one year 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 orders till disposal of the appeal. List the matter on 10.10.2022 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

**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-2/23/2018

M/s. Valaya Clothing Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

RPFC, Gurugram
Through None for the Respondent

Respondent

ORDER DATED :- 29/08/2022

None appeared on behalf of either of the parties. Accordingly, the application filed by the Appellant for recalling/reviewing of the order dated 28/01/2020 passed by this Tribunal, is dismissed as not pressed. Inform the parties as per rule, thereafter consign the record in the record room.

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-2/04/2020

M/s. BHP Infrastructure Pvt. Ltd. Appellant
Through Sh. J.R Sharma & Sh. Bhupesh Sharma, Ld. Counsels for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. Chakradhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 29/08/2022

The Ld. Counsel for the Appellant filed the rejoinder. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Respondent. List the matter on 07.11.2022 for final arguments in this matter.

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-2/07/2021

M/s. International Hospital Ltd.
Through Sh. Gyan Prakash, Proxy Counsel for the Appellant

Appellant

Vs.

RPFC, Noida
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 29/08/2022

The Ld. Counsel for the Appellant appeared and requested for a short adjournment for filing of the rejoinder. Granted as a last chance. List the matter on 12.09.2022 for filing rejoinder.

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. 243(16)2017

M/s. Apra Auto (India) Pvt. Ltd. Appellant
Through Sh. Raj Singh Phogat, Ld. Counsel for the Appellant

Vs.

APFC, Gurgaon Respondent
Through Sh. Stupal Singh, Ld. Counsel for the Respondent

ORDER DATED :- 29/08/2022

Arguments in this matter could not be heard. List the matter
on 17.10.2022 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-2/12/2019

M/s. Cedence Design Systems (India) Pvt.Ltd.
Through Sh. S.K Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-I, Noida
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 29/08/2022

Final arguments in the matter heard and concluded. List the matter
on 18.10.2022 for pronouncement of order.

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-2/20/2019

M/s. Cadence Design Systems (India) Pvt. Ltd.
Through Sh. S.K Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-I, Noida
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 29/08/2022

Final arguments in the matter heard and concluded. List the matter on 18.10.2022 for pronouncement of order.

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-2/30/2022

M/s. Ecogreen Envirotech Solutions Ltd. Appellant
Through Sh. Bhupesh Sharma & Sh. J.R Sharma, Ld. Counsels for the Appellant

Vs.

APFC II, Gurugram Respondent
Through Sh. Chakradhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 29/08/2022

The matter was mentioned by the Ld. Counsel for the Respondent today citing that the attendance of the counsel for the respondent had been wrongly marked as Sh. B.B Pradhan, in the order dated 24.08.2022 and requested for correction of the same.

Perused the record and in exercise of the powers provided under section 7 L (2), it is ordered that the name Sh. B.B Pradhan, wherever mentioned in the order dated 24.08.2022 be read as Sh. Chakradhar Panda.

Presiding Officer