

**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-2/22/2019**

M/s. Noida Golf Course Society

Appellant

VS.

APFC/RPFC, Noida

Respondent

**ORDER DATED :-30/11/2022**

Present:- Shri Mukesh Kumar Saxena, Ld. Counsel for the Appellant.  
Shri S. N Mahanta, Ld. Counsel for the Respondent.

The appeal challenges the order dated 03.06.2019 passed by the APFC Regional Office Noida u/s 7A of the EPF and MP Act (herein after referred to as The Act) wherein an amount of Rs. 55,85,308/- has been assessed as the unremitted PF Contribution of the employees for the period 08/2001 to 09/2008.

The facts leading to the appeal in short is that the appellant is a society managed by the Elected Office Bearer. It has engaged no. of employees for maintenance of the Golf Course and administration of the related business. The said establishment was allotted Provisional EPF Code No. w.e.f 01.08.2001. On 24.06.2008 and 26.08.2008 the Area Enforcement Officer inspected the establishment and submitted a report recommending initiation of an inquiry u/s 7A of the Act on the ground that the establishment has not enrolled 93 casual employees as PF members since the date of coverage. On the basis of that report an inquiry u/s 7A was held and the APFC passed the order dated 25.03.2014 assessing the unremitted PF Contribution of the said employees. The order dated 25.03.2014 passed by the APFC was challenged before the EPFAT in ATA No. 966(04)2014. After hearing the Tribunal while setting aside the order dated 25.03.2014 remanded the matter back for fresh inquiry after giving due opportunity to the

parties. Accordingly fresh notice was issued and a 7A proceeding was initiated. During the proceeding the 4<sup>th</sup> class Employees Union of Noida Golf Course Society intervened and impleaded as a party. After giving the opportunity of hearing to all the parties, the respondent No.1 APFC passed the impugned order which has been challenged in this appeal. It has been stated that the inquiry had commenced for the period 04/1995 to 07/2001, 08/2001 to 09/2008. After appearance of the A/R for the appellant/establishment and the representative of the 4<sup>th</sup> Class Employees Union the commissioner was apprised that out of the 93 casual employees 72 have already been enrolled as PF members and the PF contribution for the pre discovery period i.e. 04/95 to 07/2001 amounting to Rs. 20,41,442/- and Rs. 975597/- for the period 08/2001 to 09/2008 have already been deposited. The commissioner considered the same and the period of inquiry was restricted to 08/2001 to 09/2008. Though the union office bearers who were impleaded raised no dispute with regard to the PF contribution for the period 04/1995 to 07/2001 and for the period 01/10/2008 onwards as all the employees were enrolled as PF members w.e.f 01.10.2008, the commissioner proceeded with the inquiry and solely basing upon the revised report submitted by the departmental representative in respect of the period to which the inquiry was proposed, concluded that the appellant is liable to deposit outstanding amount of Rs. 6560905/- for the period 08/2001 to 09/2008. But considering the fact that Rs. 975597/- has already been deposited for the said period by the appellant directed the establishment to deposit 55,85,308/- as the unremitted PF contribution of the employees. Since, the order of the commissioner was not supported by any reason but on the basis of the report of the EO, the appellant felt aggrieved and filed the present appeal challenging the impugned order as illegal and liable to be set aside.

Being noticed the respondent No.1 and 2 appeared. The respondent No.1 filed written reply and respondent No.2 participated in the hearing without filing any written reply.

The respondent No.1 while supporting the impugned order as a well reasoned and well discussed order has stated that the

appellant is guilty of suppressing the material fact. The appellant establishment despite repeated direction did not produce the documents relating to the wage paid to the 72 casual workers and the subscription deposited for their wage, though it was the specific stand of the appellant that the said workers were engaged through the contractor during the period 08/2001 to 09/2008. On the contrary the representative of the 4<sup>th</sup> class Employees Union during the inquiry had produced the salary details of the said employees and the attendance register which was the basis for payment of wage. The copy of all those documents were supplied to the A/R of the appellant on demand and one of the A/R Mr. Anil Kumar Yadav also agreed to the submission of the employees union representative. When no dispute was raised during the inquiry to the calculation made by the commissioner on the basis of the said documents the appellant cannot dispute the same in the appeal by filing his own calculation. Thereby the respondent has taken a plea that the contention of the appellant in the appeal is false and misleading and the attendance register supported by the salary sheet when considered duly by the commissioner, the impugned order cannot be challenged as illegal. He thereby argued for dismissal of the appeal.

During course of argument the Ld. Counsel for the appellant submitted that the finding of the commissioner in the impugned order is based upon the report of the EO, the attendance register and salary sheet filed by respondent No.2 and the appellant applied for certified copies of the attendance register but the complete record was never supplied. The salary sheet and the attendance sheet submitted by the union were self serving documents and should not have been relied upon by the commissioner when the appellant could not get proper opportunity of rebutting the same. While drawing the attention to Para 29(3) of the EPF Scheme he submitted that the PF contribution is to be made on the basis of the actually drawn wage and not on the rate of the wage. The document filed by the union was displaying the rate of the wage and not the actual wage paid to the employees and thus, the same should not have been accepted by the commissioner. On behalf of the appellant a calculation chart of PF contribution for the period

August 2001 to September 2008 has been filed in this appeal as annexure- H. The appellant has taken a stand that this chart shows the month wise wage paid to the 93 employees and the amount payable to EPFO towards the contribution as employer share and employees share. If the said amount as calculated under annexure- H is considered after taking into account the amount of Rs. 9,75,597/- already deposited for the default period of 08/2001 to 09/2008, the amount payable is only Rs. 1251139/- and not 55,85,308/- as has been assessed by the commissioner in the impugned order. The Ld. Counsel for the appellant further argued that the attendance register furnished by the respondent No.2 during the inquiry contains the rate of wage which has also been adopted in the calculation annexure-H. But the calculation varies since the same has been done by the appellant on the basis of the actual attendance, whereas the calculation by the union and the commissioner has been made ignoring the actual attendance.

In reply the Ld. Counsel for the respondent submitted that the perusal of the attendance register enclosed with the appeal as annexure-G the same appears to have been prepared by a single Hand for the period March 2002 to October 2008. This is also a self serving document of the appellant and doesn't bear the signature of the employees who had marked their attendance on day to day basis. He also argued that when during the inquiry the appellant had categorically stated that no attendance register and wage register is maintained for the workers employed through the contractor it is not understood as to how and where from this attendance register was procured by the appellant. He thereby argued that when these documents and the calculation were not produced during the inquiry, the same cannot be considered in this appeal.

On hearing the argument advanced by the counsel for both the parties and perusal of the documents filed by the appellant it is clear that the inquiry was conducted for the period 08/2001 to 09/2008. During the course of inquiry the appellant brought to the knowledge on the inquiring authority about deposit of Rs. 975,597/- towards Pf contribution for the said period. The

commissioner took the same into consideration and by deducting the said amount from the assessed amount of the unpaid dues directed the appellant to deposit Rs. 5585308/-. It is not disputed that the inquiry was initially held in respect of 93 casual workers whom the appellant establishment had omitted to enroll as PF members. During the inquiry initially it was stated that they are the persons engaged through the contractor and thus, the appellant has not maintained any record in respect of them. This submission seems not acceptable since, the appellant is the Principal employer in terms of Para 30(3) of the Act and it is obligatory on his part to ensure compliance of the statutory deposits. This stand of the appellant also becomes redundant since, the appellant has produced the attendance register of the said employees alongwith the salary sheet. From the argument advanced it is seen that the appellant is not disputing the identity of the beneficiaries and has admitted that they have been enrolled as the members of the PF. The only objection taken in this appeal is with regard to the calculation made by the commissioner while assessing the dues u/s 7A. The impugned order reveals that on 23.04.2019 the establishment informed about deposit of Rs. 975597/- for the period 8/2001 to 09/2008 and that the establishment has enrolled all the 93 employees w.e.f 01.10.2008 as members of the PF. Thus, the period of inquiry was restricted to 08/2001 to 09/2008. The impugned order further reveals that on 28.05.2019 Shri Anil Kumar Yadav the A/R of the appellant intimated that out of the 93 enrolled employees 72 are working as Malis and 09 are Staff members and remaining 12 have retired/left the employment. Thereby the A/R for the appellant admitted the list of the employees and the documents relating to them produced by the respondent No.2 employees union before the commissioner. At that point of time the appellant establishment neither produced any contrary evidence with regard to the wage paid to the said employees to dispute the documents placed on record by the union. Now for the first time the appellant in this appeal has taken a stand that the documents filed by the union are self serving document and the calculation arrived at by the commissioner is wrong. To support the said argument the appellant has filed the attendance

register alongwith the calculation of the wage and the contribution payable with reference to the said attendance register. The authenticity of the said documents do not look convincing since the attendance register do not contain the signature of the employees and it is not disclosed as to from which source it has been procured. If at all these documents were in possession of the appellant those should have been produced before the commissioner to dispute the calculation proposed by the EO or the claim advanced by the respondent No.2. That having not been done the appellant is also liable of supprasing material documents and evidence which could have thrown light on the dispute. The document and the calculation since has not been produced by the appellant during the inquiry, the one and only conclusion is that the said self serving document have been created by the appellant for use in this appeal only. The said documents cannot be considered to view the assessment made by the commissioner as wrong. The stand taken by the appellant in the appeal thus, fails. Hence, ordered.

### **ORDER**

The appeal be and the same is dismissed on contest.

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.  
Through Sh. Raj Fogat, Ld. Counsel for the Appellant

Appellant

Vs.

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

**ORDER DATED :- 30/11/2022**

Arguments heard in part. The Ld. Counsel for the Respondent is directed to produce the LCR of this matter on the next date of hearing for proper adjudication of the matter. List the matter on 05.01.2022 for after 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-2/26/2019**

M/s. Sanya Hospitality Pvt. Ltd Appellant  
Through Sh. Kapil Hansh, & Sh. Puneet Saini, Ld. Counsels for the Appellant

Vs.

APFC, Gurugram Respondent  
Through Sh. S.C. Gupta, Ld. Counsel for the Respondent

**ORDER DATED :- 30/11/2022**

Final arguments in this matter heard and concluded. List the  
matter on 05.01.2023 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-2/30/2019**

M/s. Greater Noida Industrial Development Authority  
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

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

**ORDER DATED :- 30/11/2022**

As no time left. List the matter on 27.02.2023 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-2/01/2020**

M/s. BIC Logistics Ltd.  
Through Sh. S.K Khanna, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-II, Gurugram  
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 30/11/2022**

As no time left. List the matter on 27.02.2023 for final arguments.

**Presiding Officer**