

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, No. 1 DELHI**

D-1/63/2024

M/s Gracious Express vs. APFC/RPFC Delhi (North).

Present: Sh. S.K Khanna, Ld. Counsel for the Appellant.

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

ORDER: ORAL

Order dated-02.06.2025

1. This order shall dispose of an application filed by the appellant under section 7-O of the **EPF & MP Act, 1952 (hereinafter referred as an "Act")** whereby the appellant had stated that the condition of pre-deposit before entertaining the appeal U/s 7A be waived because prima-facie case exists in its favour. Respondent has committed the illegality in passing the above said order. He further submitted that he had filed the review application U/s 7-B of the Act, however, without affording any reasonable opportunity of being heard, his application was dismissed which is gross violation of the principle and natural justice.
2. Respondent herein had filed the reply of the above said application stating that there is a mandatory provision for pre-deposit in the Employees' Provident Funds and Miscellaneous Provisions Act before entertaining an appeal under section 7-A of the Act. He submitted that every appeal U/s 7-O shall not be admitted unless the appellant deposit the 75% of the assessed amount. Therefore, he submitted that appellant shall be directed to deposit the 75% of the assessed amount.
3. Moreover, he had submitted that enquiry under section 7-A was initiated on account of non-complying the provisions of the Act and also failure to remit the Provident Fund Contribution etc. for the period 08/2022 to 04/2023 as required to be paid in accordance with law in respect of all eligible employees working in the establishment. He has also enclosed the EO report.

4. I have heard the arguments at par and perused the record. Before proceeding further provision of Section 7-O of the Act is required to be reproduced herein:

7-O. Deposit of amount due, on filing appeal. —No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A: Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section

5. This Tribunal had been given vide discretion to reduce or waive the condition for depositing of the amount. Appellant has relied upon the judgment of **Kaushik K. Chatterjee vs. Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Writ Petition No. 1674 of 2016, decided on 23.03.2018** by the Hon'ble High Court of Bombay (Nagpur Bench), where it has been observed by the court, the law laid down by the Apex Court is absolutely clear in respect of three things i.e. (1) that the Provident Fund Commissioner cannot saddle the liability upon the employer for the reason that the employer has failed to produce evidence, (2) the liability can be fixed only upon identifying the workmen or employees and (3) it is the duty of the Provident Fund Commissioner to collect evidence and collate all material before coming to proper conclusion.
6. He had also relied upon the case of **Regional Provident Fund Commissioner vs. Ahluwalia Contracts (India) Ltd., Writ Petition No. 887/2013 and CM No. 1685/2013, decided on 27.08.2019** by the Hon'ble High Court of Delhi, where the high court had upheld the order of the Tribunal, where the waiver have been granted. Similarly, he had also relied upon the case of **Hotel Ashok vs. The Regional Provident**

Fund Commissioner, Delhi (West) & Ors., W.P. (C) 848/2021 on 21.01.2021, where the Hon'ble High Court had stated that before disposing the application under section 7(B) of the Act, oral hearing must be afforded to the appellant.

7. I have heard the argument at par. Appellant has assailed the order dated 21.06.2024, wherein Ld. Regional Provident Fund Commissioner-II had assessed the dues of the amount of Rs. 35,78,085/- for the period of 08/2022 to 04/2023. The said order comprising three tables. Table-A consist of payment dues for the month of April, 2023 i.e. Rs. 3, 37,946/- which has not been deposited by the appellant. Table-B consist that the establishment has debited Rs. 1, 03,156/- as labour charges which has been paid to daily wager for miscellaneous job. As such, he has assessed the EPF dues of 25% amounting to Rs. 25,790/- to that effect. So far so the third column is concerned, it has quantify the dues upon the Head Cartage, Freight and Forwarding Charges and the assessed amount was Rs. 32,14,349/-.
8. So far so the amount of Rs. 3, 37,946/- which according to the appellant has been deposited and in the review petition, he has also mentioned the same but, the same has not been shown to be reduced. According to the appellant, respondent had assessed the dues for independently covered establishment who are the employer of their own and respondent has erred in treating an amount of Rs. 19,28,60,931 as cartage, freight and forwarding charges for calculation of PF dues @ 10% whereas the actual amount is 11,54,94,439/-.
9. It is a matter of fact, that the appellant have not been given the opportunity of being heard before passing the order under section 7(B) of the Act. Amount of Rs. Rs. 3, 37,946/- has been credited by the appellant itself for the month of April, 2023 and the same amount has been included in the order. Further, without identification of the worker, respondent had assessed the amount of Rs. more than 32,14,349/-. In these circumstances, the case of complete waiver is

made out. Therefore, the application in hand is allowed. Operation of the impugned order is stayed till finalisation of the appeal. Put up the matter on 11.07.2025 for filing of reply by the Ld. Counsel of the respondent.

Sd/-

Atul Kumar Garg
(Presiding Officer)