

**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-1/24/2021

M/s. Dewan International

Appellant

Vs.

RPFC/APFC Delhi East

Respondent

ORDER DATED:-29.09.2021

Present:- Shri Rakesh Bhatnagar, Ld. Counsel for the Appellant.
Shri Manish Dhir, 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 Shri Manish Dhir appeared for the respondent and participated in the hearing held on 15/08/2021, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner on 30/3/21 and forwarded to the establishment on 1/4/21. Perusal of the office note shows that the appeal was filed on line on 26/7/21 i.e beyond the period of limitation. Thus the office 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 limitation since the appellant establishment being aggrieved by the impugned order had filed an application/s 7 B of the Act within the stipulated time of 45 days, seeking review of the order passed u/s 7A. But the authority kept the said application pending and initiated recovery proceeding. Being served with the notice dated 28/6/21, appellant filed the appeal on 26/7/21. Citing the order passed by the Hon'ble S C in suo motto WPC No 3/20, he submitted that for the extension of limitation granted by the Apex Court for the prevailing pandemic ,this tribunal can exercise it's discretion for extension of the period of limitationCiting the shut down of all activities on account of the outbreak of COVID- 19,he submitted that the delay was for non

communication of the orders passed on his 7B application and also for the shut down for COVID 19, which are reason beyond the control of the appellant and the delay be condoned for admission of the appeal..

The learned counsel for the respondent fairly conceded that in the prevailing situation of COVID 19, it was not possible to file the appeal within the period of limitation. He also conceded to the direction of the Hon'ble SC for condonation of delay. But 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 dated 30/3/21 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. It is the specific stand of the respondent that fact relating to pendency of 7B application is not within his knowledge. Hence taking all these aspects into consideration it is held that the delay is not intentional but for a reason beyond the control of the appellant. It is thus held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble SC. 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 7 –O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed in respect of the retrenchment compensation only on which PF contribution is not payable. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. It was intimated that the documents have been stored in their office at central circle, CP, New Delhi. The said office since has been sealed by NDMC, pursuant to the order of the Apex court, time may be allowed to produce documents. Correspondence made with NDMC requesting de sealing were also produced, but the commissioner did not allow time and passed the order without going through the details and ignoring the documents filed which contained the list of the employees and the details of the retrenchment compensation paid to them towards full and final settlement during the period under inquiry. The order, passed by him is based upon the report of the EO only. Citing various judgments of the Hon'ble SC 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 has been completely closed. He there by prayed for waiver of the condition of pre deposit 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.

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 for the period of 10 years and the amount assessed is Rs. 96,932/- .Without going to the other detail 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 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 4 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. The interim order of stay granted earlier shall continue till then. Call the matter on 17.11.2021 for compliance of the direction.

Presiding Officer