

**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-1/42/2022

M/s. Eaton Power Quality Pvt. Ltd.

Appellant

VS.

APFC, Delhi (S)

Respondent

ORDER DATED:- 16/08/2022

Present:- Shri Ravi Mishra, Ld. Counsel for the Appellant.

Shri Gurumukh Singh, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal, and separate petitions 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 and interim stay on execution of the impugned order for the reasons stated in the petitions.

Copy being served on the respondent, learned counsel for the Respondent Sh. Gurmukh Singh appeared and participated in the hearing though no written objection was filed. Perusal of the record reveals that the impugned order u/s 7A of EPF &MP Act was passed by the commissioner on 25/08/2021, which the appellant

states to have been received by it on 04/05/2021 and within the prescribed period of 45 days an application for review u/s 7B was filed. The said review application was disposed of by order dated 22/07/2021, and the appeal has been filed on 02/08/2022. Thus the Registry has pointed observed that the appeal is in time.

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 by the commissioner without considering the submission made and solely basing on the report of the E O. The establishment a Pvt. Ltd Company duly registered under the Companies Act was having it's office initially at 4, Community Centre, Panchasheela Park New Delhi. It was allotted code no by the respondent in Delhi in the year 2001 as DL/24226. The establishment had been very sincere and diligent in complying it's statutory obligations under the EPF Act. With effect from 14th March 2016, the establishment changed it's location from Panchasheel Park to TDI centre unit no A1&B1 3rd floor and the said change of address was duly intimated to the Respondent by letter dated 12th April 2016(AnnexurebA-4). In course of business the appellant establishment had to go through the process of Merger and Acquisition and for the order passed by the Hon'ble High Court of Madras, it started making contribution of some employees in relation to a separate code no allotted in Puducherry, i.e PC/1008. However there was no default or delay in remittance and no inspection of records were ever made by the inspector of EPF. But on 31st August 2016 n notice of inquiry was sent to the appellant establishment in his old address, but it was never delivered. From an e mail sent by the respondent on 25th Aug 2017, intimating the date of adjournment, the appellant learnt about the inquiry and immediately appeared through it's AO. Being called by the commissioner though all the available documents were produced 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 initiated

on the basis of the enforcement officer for a very long period i.e from 08/2001 to 07/2016, which cause difficulty for the establishment in tracing out the old records. But ignoring the said submission the commissioner passed the impugned order on 25/8 2021 and supplied to the appellant on 26/04/2022. Being aggrieved though a review was filed the same was rejected arbitrarily without dealing with the objections raised. With this he argued that the establishment has no liability for the assessment period and amount and the appeal be admitted waiving the condition of pre deposit.

The appellant also argued that the appeal has been filed within the prescribed period of limitation, but the respondent in gross violation of the provisions of law and before expiry of the period of limitation for filing appeal attached the Bank accounts of the establishment and recovered the entire amount assessed. With regard to the condition for pre deposit it has been stated that the impugned orders have been passed in a whimsical manner for an imaginary liability. Unless the condition of pre deposit would be waived, serious prejudice shall be caused to the appellant and the purpose of the appeal would be defeated.

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. His further submission is that the argument advanced on the merit of the appeal cannot be considered now as the Respondent has not filed the reply. No convincing circumstances have been set out for total waiver of the condition of pre deposit.

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 commissioner had made the inquiry on the basis of the EO's Report. The basis of the calculation is the report of the EO only. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted remittance for the employee. Thus a review was filed, but the same was rejected without assigning any valid reason.

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 observe that the appellant has a strong arguable case in this appeal. Hence considering the period of default and the amount assessed, 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 25%.

During course of argument the learned counsel for the appellant placed documents and argued that the Respondent before expiry of the period of limitation for filing the appeal, illegally attached the Bank account and recovered the entire amount assessed, as a result of which the business activity has been greatly impacted and the establishment is not even in a position to pay salary to the employees. The appellant has placed the copy of the communication received from the Bank which reveals that as per the direction of the Respondent the entire assessed amount was recovered from it's account maintained with SBI on 29/07/22.

The order u/s 7B of the Act having been passed on 22/07/2022, the appeal should have been filed within 60 days from the date of that order and in fact it has been filed within the

prescribed period of limitation. It is not understood how the Respondent in gross violation of the provision of Law and Rules attached and recovered the amount before expiry of the period of limitation for filing of the appeal. The Hon'ble High Court of Bombay in a recent judgment, which, by the order of the court was circulated to all the Regional Provident Fund Commissioners of the country have given a clear direction that in all matters of 7A assessment, steps u/s 8F shall not be initiated until the appeal period as prescribed under section 7I is exhausted. **(WPC no 4973/2021. Kulgaon Badalpur Nagar Parisad vs. RPFC)**. Not only that the Hon'ble High court of Madras in the case of **G4S Secure Solution of India Pvt. Ltd vs. RPFC, 2020, LLR, 338**, have taken a similar view and held that the EPF authority should wait for initiation of recovery proceeding till statutory limitation for filing of the appeal expires. Otherwise it would defeat the very purpose of filing the appeal.

It seems the Respondent authorities have least regard to the direction of the courts and the statute and exercising an autonomy in respect of the recovery once the order of assessment is passed. Considering the circumstances it is felt appropriate to direct the respondent to refund the amount to the appellant after deducting the amount directed to be deposited towards compliance of the provisions of sec 7O of the Act.

Accordingly the Respondent Authority is directed to deposit 25% of the assessed amount within 2 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, initially for one year with provision for auto renewal and refund the balance 75% of the assessed amount and recovered from the account to the appellant within 2 weeks of this order failing which the amount shall carry interest @ 9% per annum from the date of recovery and till the date of actual refund. 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. Respondent is also directed to issue order forthwith for de freezing

the account of the appellant. List the matter on 06.09.2022 for compliance of the direction.

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-1/41/2022

M/s. Gandhi Nursing Home Appellant
Through:- Sh. Ganesh Kumar & Ms. Shalini, Ld. Counsel for the Respondent

Vs.

APFC- Delhi West Respondent
Through:- Sh. Abhishek, Ld. Counsel for the Respondent no. 1
Respondent no 2,3 & 4 in person

ORDER DATED :- 16/08/2022

Arguments on admission of the appeal heard and concluded.
List the matter on 25.08.2022 for pronouncement of order on the
same. Meanwhile, the respondent authority is directed not to take any
coercive measure for recovery of the amount as mentioned in the
impugned order till next date of hearing. The prayer of Ld. Counsel for
the Appellant to file additional documents is allowed and he is
directed to file such additional documents before the Registry of this
Tribunal on or before 22.08.2022.

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-1/09/2017**

M/s. Prabhat Zarda Factory
Through None for the Appellant

Appellant

Vs.

APFC, Delhi(N)
Through None for the Respondent

Respondent

ORDER DATED :- 16/08/2022

No rejoinder is filed on behalf of the Appellant. Accordingly, the opportunity to file the rejoinder stands ceased. List the matter on 06.12.2022 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-1/07/2017**

M/s. Vibhor Marketing Pvt.Ltd.
Through Ms. Neha Shrivastav, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi(E)
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 16/08/2022

Arguments on the miscellaneous application filed u/s 7 L (2)
of EPF & MP Act heard and concluded. List the matter on 25.08.2022
for pronouncement of order on the same.

Presiding Officer