

CGIT-1/EPFA/49 OF 2022

08.9.2022

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**  
**MUMBAI**

Present  
Smt.Pranita Mohanty  
Presiding Officer

M/s. Fitness Point Health Care Pvt. Ltd. ... Appellant  
Vs

Assistant Provident Fund Commissioner ... Respondent  
Nashik

**Presence:**

For the Appellant : Mr.H.L.Chheda  
Authorized Legal Representative

For the Respondent : Ms. Krunali Satra, Adv

**ORDER**

This order deals with the 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 the appeal and the petitions being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing after filing a written objection. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the

commissioner on 30/03/2022 and the appeal has been filed within the prescribed period of limitation.

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. There was an earlier inquiry and order with regard to the applicability of the Act to the appellant establishment. Being aggrieved the appellant had challenged the said order before this Tribunal. But the Tribunal decided the Appeal upholding the order passed by the commissioner. The appellant challenged the order of this Tribunal before the Hon'ble High Court of Bombay by filing WPC No 471/2011 and the Hon'ble court by order dt 21<sup>st</sup> June 2012, set aside the order passed by the commissioner during inquiry and the order passed by this Tribunal in the appeal. However liberty was granted to the respondent to initiate a fresh inquiry if required. Thereafter the respondent initiated an inquiry to decide the applicability of the Act to the establishment and passed an order on 28/01/2019 holding that the Act is applicable to the establishment under the schedule Society Club Association. Being aggrieved the appeal and has been filed. It is submitted by the appellant that the order with regard to the applicability has been passed without considering the documents placed by the appellant and without proper interpretation of law. On account of the said order deciding applicability, the Respondent proceeded with the impugned inquiry with regard to the PF liability of the establishment to the prejudice of the appellant. Hence it has been prayed that an interim order pending disposal of the appeal be passed

directing the respondent not take any action on the basis of the impugned order.

In her reply the learned counsel for the Respondent submitted that the Hon'ble High Court in the order dt 21/10/12 while setting aside the orders had given liberty to the respondent to initiate fresh inquiry. Accordingly a fresh inquiry was held and the appellant establishment was found covered under the Act. No illegality was committed in the action taken by the Respondent. She also submitted that the appellant has not made out a case for waiver of the condition of pre deposit contemplated u/s 70 of the Act.

The appellant submitted that the Respondent after passing of the order on applicability ,has also decided the liability of the establishment for PF remittance without waiting for the result of the appeal in which the order has been challenged , though the same is within their knowledge. Hence a prayer for waiver of the condition of pre deposit and interim stay has been made. Appellant has relied upon the judgment of the Hon'ble High Court of Patna **Choudhury Colour Company vs State of Bihar & Others ,decided on 09/09/1997**, in which it has been held that that "once a dispute with regard to the applicability of the Act is raised and pending for adjudication, such a dispute is to be decided first and before any order determining the amount due from the employer is passed.

It is also submitted that for the inquiry on applicability, being called by the commissioner though all the documents were made available and

the establishment had extended all necessary co-operation and submitted that the activities undertaken by the establishment are non scheduled activities, the commissioner without considering any of the submissions passed the order deciding the applicability and a consequence there of passed the impugned order. He also submitted that the inquiry was conducted on the basis of some unverified facts in gross violation of the department circular. He there by 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 and 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. He also argued that the matter may be remanded for fresh inquiry after identification of beneficiaries.

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. 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 pointed out by the appellant challenging the order as arbitrary and when detail reply to the appeal has not 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 which is a big amount, and keeping the plea of undue hardship which is likely to be caused to the functioning of the appellant, it is felt proper to reduce the condition of pre deposit contemplated u/s 70 of the Act from 75% to 20% which would serve the ends of justice. Accordingly, it is directed that the appellant shall deposit 20% of the assessed amount towards compliance of the provisions of sec 70 of the Act within six weeks from the date of this order by depositing the amount in form of FDR in the name of the Registrar of the Tribunal initially for a period of one year with provisions of auto renewal. On compliance of the above said direction there would be stay on execution of the impugned order pending disposal of the appeal. Call the matter on-----for compliance of the above said direction. Respondent is directed not to take any recovery action on the impugned order till next the date.

Call on.....9/12/22.....for compliance of the direction and filing of reply by the Respondent.

  
PRESIDING OFFICER

CGIT-1 MUMBAI