

**BEFORE THE HON'BLE 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-1/23/2022

M/S Walter Bushnell Life Care Pvt. Ltd.
Appellant

Versus

APFC- Delhi (C)
Respondent

ORDER DATED-20.07.2022
(Pronounced from Camp Court at Mumbai)

Present: Ms. Eccha Shukla, Ld. Counsel for the Appellant.
Shri Manu Parashar, Ld. Counsel for the Respondent.

This order deals with the petitions filed by the appellant praying 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 the petition being served on the respondent Shri. Manu Parasar learned counsel for the Respondent appeared and participated in the hearing to the petition filed u/s 7O of the Act for waiver of the deposit prescribed under the Act. Perusal of the record reveals that the impugned order u/s 7A of EPF &MP Act was passed by the commissioner on 30.03.2021, and the appeal was filed on 27.07.2021 i.e beyond the period of limitation. Thus, the registry has raised objection with regard to the maintainability of the appeal. In the appeal memo the appellant has stated that the Hon'ble Supreme Court by their order dated 08.03.2021 and 27.04.2021 in suomoto WPC No. 3 of 2020 have extended the period of limitation till 31st March 2022 for the situation created on account of the outbreak of COVID-19. Hence, the appeal is in time. The Ld. Counsel for the respondent fairly conceded the extension of the limitation granted by the Hon'ble Supreme Court. Hence, the delay in filing of the appeal is hereby condoned.

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 EO, who had reported about deficit in the PF contributions of the employees as the contribution was found

not paid on the different allowances paid by the appellant establishment to the employees. Being noticed by the commissioner though the AR appeared during the inquiry, produced all the documents and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order. He also submitted that the establishment has its own wage policy and different allowances are paid to different category of employees which is based upon the nature of work discharged by them. The said allowances having not been paid universally but for the varied nature of their work cannot be considered as basic wage for the purpose of EPF contribution. Rather the allowances are paid to the said category of employees to defray the expenditure. On receipt of the summon for inquiry, the AR for the establishment pleaded about the same but the commissioner never considered it. Citing various judgments of the Hon'ble SC including the case of **RPFC, West Bengal vs. Vivekananda Vidya Mandir and Manipal Academy of Higher Education vs. PF commissioner (2008)5 SCC 428**, he submitted that the impugned order suffers from patent illegality as it is now settled that the payment made by the employer to the employee, not as per the terms of employment but for the varied nature of work cannot be computed for subscription of EPF. He thereby argued that 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. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case.

He also submitted that the commissioner while passing the order took a wrong view of the matter and took into consideration the stipend granted to the trainees during the period 7/2016 to 06/2017. Citing the judgment of **RPFC vs. Central Aercanut Board** he submitted that the trainees/interns who are paid stipend are not eligible for PF benefits or contribution as has been held by the Hon'ble Supreme Court in the above mentioned case.

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. He also submitted that the basic wage has been intentionally bifurcated as allowances to evade employer's share of the PF contribution. Referring to the huge amount assessed he submitted that the appellant has not made out any strong circumstance for waiver or reduction of the pre deposit contemplated under sec 7O of the Act. If there would be waiver or reduction in the deposit the would affect the interest of the employees and the very purpose of the Act would be defeated.

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. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 2010-2011 to 2017-2018 i.e for more than eight years and the amount assessed is Rs. 26,84,624/-. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally bifurcated the basic wage to different allowances. Before the commissioner the specific plea taken was that the said allowances are not universally paid and intended to defray the expenses incurred by them. All the documents including salary register though produced before the commissioner along with a written submission, those were never considered by him. 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. Moreover the Hon'ble Supreme Court in the case of **Moriroku Ut India Pvt. Ltd VS Union of India reported in 2005 SCC page 1** have held that the courts and Tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it. Hence considering the period of default, the amount assessed and the prevailing circumstances, 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 8 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way of FDR in the name of the Registrar CGIT initially for a period of one year 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. On the previous date of hearing on behalf of the appellant it was informed by the appellant that the respondent has created a lien over account No. 586011014990 maintained with Kotak Mahindra Bank New Delhi. The appellant has a deposit of more than Rs. 600,000/- in that account and he has no objection if the said amount is recovered towards compliance of provisions of 7O of the Act. In view of the said submission the respondent is directed to cancel the lien created in order to facilitate compliance of the direction given in this order by the appellant. List the matter on 21.09.2022 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Presiding Officer

**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-1/27/2022

M/s. IRCON International Ltd.

Appellant

VS.

RPFC-I, Delhi- West

Respondent

ORDER DATED :-20/07/2022
(Pronounced from Camp Court at Mumbai)

Present:- Shri Suman K. Doval, Ld. Counsel for the appellant.
Shri Chirag Damwal, Ld. Counsel for the respondent No.1.
Shri Yogender Singh, Ld. Counsel for the respondent No.2 to 5.

This order deals with appellant's prayer for condonation of delay, admission of the appeal and stay on the execution of the impugned order pending disposal of the appeal.

The appeal challenges two separate orders passed on 14/10/2021 and 12/12/2021 u/s 7A and 7B of the Act respectively for the period under inquiry.

Notice being served on the respondent, learned counsel Shri Yogender Singh appeared and participated in the hearing.

Perusal of the record and office note of the registry reveals that the impugned last order was passed on 12/12/2021 and the appeal has been filed on 19/04/2022, i.e. beyond the period of limitation. Thus objection has been raised with regard to the maintainability of the appeal. Separate prayers have been made by the appellant for condonation of delay for the reasons explained therein. Another prayer has also been made for waiver of the condition for pre deposit and stay on the execution of the impugned orders passed u/s 7A of The Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal.

Since the registry has pointed out about the inordinate delay in filing of the appeal and Respondent's counsel took serious objection to the same, it is desirable that the prayer for condonation of delay be dealt at the first instance.

It has been contended that the establishment against which the impugned order has been passed was served with a summons for inquiry and the AR of the establishment appeared and participated. That inquiry was on the basis of some complaints. Being aggrieved by the order passed u/s 7A

the appellant establishment had prayed for review invoking the provision of sec 7B of the Act. Order on that petition was passed on 12/12/2021. Within 120 days since the date of order the appeal has been filed. This Tribunal under the provision of Rule 7(2) of the EPF Appellate Tribunal Rules has the power for granting the limitation up to 120 days. The appellant has also cited the order passed by the Hon'ble HC in WP(civil) 3730/2022 granting 15 days time for filing the appeal. Copy of the order dated 4th April 2022 has been filed along with the appeal.

The learned counsel for the Respondent raised serious objection to the prayer for condonation of delay and insisted for dismissal of the appeal on that ground alone. He pointed out that the Hon'ble High Court by order dt 4/4/2022 had directed for filing of the appeal within 2 weeks and the appeal has been filed beyond that period. But on calculation the appeal filed on 19/04/22 is within limitation granted. Hence the delay is hereby condoned.

No separate petition has been filed u/s 7O of the Act praying waiver of the condition of pre deposit for admission of the appeal. However a prayer for the same has been made in the memo of appeal. While pointing out the defects and discrepancies in the impugned order including non application of mind and improper interpretation of the orders passed by the Hon'ble High Court of Allahabad, he submitted that the appellant has a strong arguable case in the appeal and the Tribunal should not act in a hyper technical manner in dealing with the prayer for waiver of the condition of pre deposit. He thus submitted that the order challenged in this appeal suffer from patent illegality and the appellant has a strong case to argue. The submission on facts is that the appellant is a public sector undertaking and executes time bound projects at different locations. For such execution workers are engaged purely on temporary basis and on completion of the work their service stand terminated. At that time the due payments are made strictly following the provisions of labour law. The respondent no 2 and 3 are in the habit of raising litigations and instigating others for the same. They were engaged in some project and when their service came to an end by instigating other worker managed to file several litigations in different courts including the High court of Allahabad. Several orders were passed in different writ petitions filed. During that period to address the unrest created a settlement was arrived between the management and the workers and the workers as per the settlement received Rs 3,00,000/- each towards full and final settlement the amount included the PF and gratuity payable to the workers. Even then the respondent no 2 to 5 raised the dispute. The written objection filed by the appellant during the inquiry before the commissioner was not considered leading to the passing of the impugned orders. The learned counsel thus

argued for waiver of the pre condition of deposit admission of the appeal and interim stay on execution of the said orders.

In his reply the learned counsel for the Respondent submitted about the legislative intention behind the beneficial legislation and argued that the establishment omitted to deposit the PF contribution of the employees for a pretty long period and the circumstances do not justify total waiver of the pre deposit.

Of course the appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe at this stage about it's fair chance of success . But the Tribunal, at this stage is not expected to make a roving inquiry on the merit of the appeal when respondent is yet to file it's objection.

In this case the period of default as seen from the impugned order is long, and the amount assessed is equally big. Hence on hearing the argument advanced, it is held that the circumstances do not justify total waiver of the condition of pre deposit. But ends of justice would be served by reducing the same to 30% of the assessed amount. Accordingly it is directed that the appellant shall deposit 30% of the amount assessed by order dated 14/10/2021 towards compliance of the provisions of sec 70 of the Act by way of FDR in the name of the Registrar CGIT initially for a period of one year with provision of auto renewal, within six weeks from the date of communication of the order failing which the appeal shall not be admitted. Call on 07.09.2022 for compliance of the direction. Interim order of stay granted earlier shall continue till the next date.

Presiding Officer

**BEFORE THE HON'BLE 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-1/33/2022

M/S Amar Detective & Consultancy Services Pvt. Ltd.

Appellant

Versus

APFC- Delhi (East)

Respondent

ORDER DATED-20.07.2022

(Pronounced from Camp Court at Mumbai)

Present:

Shri J R Sharma, Ld. Counsel for the Appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

The appeal challenges the orders dated 29/01/2022 passed by the APFC Delhi East u/s 14B and 7Q of the EPF&MP Act communicated on the same day, wherein the appellant has been directed to deposit Rs 1,15,106/- as damage for delayed remittance of EPF dues of it's employees for the period 04/1996 to 03/2014.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing resisting the prayer for grant of stay on the execution of the impugned order. He has also filed written objection to the petition for interim stay as filed by the appellant.

Perusal of the record and office note of the registry reveals that the impugned order was passed and communicated to the establishment on 29/01/2022 and the appeal was filed on 29/04/2022, i.e within the period of limitation. There being no other defect the appeal is admitted.

The appellant has stated that the impugned order is illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that the notice of the inquiry was for the period 01/04/1996 to 31/03/2014, but the calculation sheet supplied along with the notice is for the period 02/1994 to 12/2009. Not only that, when the establishment came under the scope of the Act from 1/05/1996, it is astonishing that the commissioner made the assessment for the period 4/1996 to 03/2014. The other argument advanced is that the commissioner without assigning reason for levying damage at the maximum rate passed the impugned order in a fanciful manner. Copy of the coverage letter has been filed to support the argument. The authority of the assistant P F Commissioner for levying damage u/s 14B has also been challenged. Thus it is argued that the appellant has a

strong arguable case in the appeal. Unless the impugned orders would be stayed, the relief sought in the appeal would become illusory. It is also pointed out that the orders though have been separately passed u/s 14B and 7Q, in fact it is a composite order being passed in a common proceeding. while pointing out to the impugned order the learned counsel also submitted that the commissioner a quasi judicial authority was so unmindful while passing the order after assessment of the damage that at the bottom of the order has mentioned that the order is passed u/s 7Q of the Act and directed to deposit the interest calculated in the order within 15 days. He also pointed out that during participation in the inquiry, dispute was raised with regard to multiple entries in the calculation sheet by filing a written objection. Copy of the daily proceeding has been filed along with the memo of appeal to show that the commissioner had directed the EO for verification of the entries. But nowhere in the order the finding of the commissioner in that respect has been mentioned. The appellant thereby submitted that for the patent illegality visible in the impugned order, an interim order of stay be passed against the execution of both the orders.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over more than 15 years depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the impugned order shall be prejudicial to the employees and defeat the purpose of the legislation. Arguing that the orders being separately passed cannot be treated as composite order, he submitted that the appeal cannot be admitted in respect of the 7Q order. He also relied upon the interim stay granted by the Hon'ble SC on the judgment of the Hon'ble High Court of Delhi in the case of Gourav Enterprises, wherein it was held that two separate orders even though passed u/s 14B and 7Q of the Act would be treated as composite orders if the same are the outcome of a composite proceeding. The learned counsel for the respondent thus argued that the appeal challenging the order passed u/s 7Q of the Act being not maintainable be dismissed.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when the orders were passed in a mechanical manner without considering the objection taken in the written submission.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. Only factor which drove the commissioner for passing the impugned order is the report of the EO. At this stage no evidence has been placed on record by the Respondent to believe that for the period under inquiry the establishment had the coverage for compliance and code no was issued for that period

On hearing the submission made by both the counsels the factors which are required to be considered for passing the order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held

“The order of the tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insist on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen from the impugned order spreads over fifteen years and the damage levied is huge. The commissioner has not assigned any reason supporting his finding and how the objection and dispute raised were met.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order passed u/s 14B of the Act, certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit 30 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. It is directed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. . Call the matter 07.09.2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14 B of the Act till the next date.

Presiding Officer