M/s. Frontline (NCR) Business Solutions Pvt. Ltd. ..... Appellant

Vs.

RPFC, Delhi (North) ..... Respondent

ATA No. D-1/99/2019

ORDER DATED:-04/03/2021

Present:- Shri Ajeet Upadhayay and Shri Tathagat, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7O of the Act directing deposit of 75% of the assessed amount as a pre condition of filing the appeal, for the reasons stated in the petition.

Copy of the petition being served on the respondent the Ld. Counsel Mr. S.N Mahanta appeared and participated in the hearing held on 17.10.2019 the appeal has been filed in time.

The appellant by filing a separate petition has prayed for waiver/reduction of the pre-deposit amount and the Ld. Counsel submitted that the appellant/establishment is a company registered under the Companies Act and in the business of providing specialized services for total immovable assets management solution as well as service of housekeeping, pantry etc. It is providing service to more than 90 clients having the engaged staff strength of 3000 to 3500/- on a monthly basis. The commissioner after serving a notice initiated an inquiry alleging default in deposit of PF dues of the employees for the period 04/2014 to 03/2016 and passed an order on 31.07.2019 assessing Rs. 72,92,482/- payable by the appellant for the said period. The appellant was a diligent in deposit of the PF dues of the employees except in respect of one organization having name IRAI, Pusa. During the inquiry the appellant came to know that the pursuant to a complaint received from some employees the inquiry was initiated. The representative of the establishment in form the

commissioner that out of 8 complainants 6 have, finally settled their dues including the PF contribution. In respect of the remaining 2 a dispute is pending before the Labour Court. It was also pointed out that IRAI is the principle employer and should be brought under the scope of the inquiry. But the commissioner without appreciating the fact that the contract between IRAI and the appellant was never for any fixed no. of manpower passed the impugned order relying upon the list of workers furnished by the complainant union without verifying or cross checking the authenticity of the same. With such submission the appellant submitted that the establishment has a strong primafacie case having a fair chance of success in the appeal and the impugned order suffers from patent illegally. Insistence for the deposit in compliance of the provisions of section 7O of the Act will cause undue hardship to the appellant. He thereby prayed for waiver of the condition urging that the tribunal has the discretion to do so in the fact and the circumstances of this case.

In reply the Ld. Counsel for the respondent while supporting the impugned order as the reasoned order pointed out the very purpose of the legislation and insisted for compliance of the provisions of section 7O by depositing 75% of the assessed amount. He also submitted that the commissioner had given due consideration to the complaints received before passing the order under challenge. The points raised and the grounds taken by the appellant can be considered during the hearing of the appeal on merit. But for waiver of the conditions of pre deposit the appellant has not spelt out the convincing circumstances.

Considering the submission in advance by the counsel for both the parties and order need to be passed on the compliance/waiver of the condition laid u/s 7O of the Act for the same the factors which need to be considered are the period of default and the amount defaulted. In this case the period of default ranges from 04/16 to 03/16 and the amount assessed is equally big i.e. 72,92,482/-. Thus, considering all these aspects it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be made by reducing the amount of the said pre-deposit from 75% to 30%. Accordingly the appellant is directed to deposit Rs. 21,88,000/- which is little more than 30% of the assessed amount within 6 weeks from the date of this order towards the compliance of the provision of section 7O of the Act by way of FDR in the name of the tribunal with provisions of auto renewal for compliance of the above said direction. On such compliance the appeal shall be admitted and there would be stay on the execution of the impugned order till disposal of the appeal. List this matter on 23/04/2021 for compliance of the direction failing which the appeal shall stand

dismissed. The interim protection granted earlier shall continue till the next date.

Sd/-

Presiding Officer