

**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.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I. T-cum Labour Court-II,
New Delhi.

M/s Ghibelliness Security Solutions Ltd.,

Appellant.

Vs.

RPFC, Delhi.

Respondent.

Appeal No. D-1/37/2021

Order dated 8th November, 2021

Present: Sh. S.K Gupta, Ld. Counsel for the Appellant.

Sh. Rajesh Kumar, 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 Sh Rajesh Kumar appeared and participated in the hearing held through video conferencing, though no written objection has been filed by the respondent. The

record reveals that the impugned order u/s 7A was passed by the commissioner on 18.12.20 and forwarded to the appellant on 4.1.20.

Perusal of the office note shows that the appeal was filed on 27.9.21. Thus the office has pointed out about the delay in filing of the appeal. The learned counsel for the appellants by filing a separate petition for condonation of delay submitted that the appeal, though has been filed after the prescribed period of 60 days, this tribunal can exercise its discretion for extension of the period of limitation in view of the order passed by the Hon'ble SC in suo motto WPC No 3/2020 extending the period of limitation until further orders. Citing the shutdown of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for a reason beyond the control of the appellant and the same 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. 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 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 basing the report of the E O only. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. But the

commissioner without going through the details passed the order, which is based upon the report of the E O only. He also submitted that the commissioner during the inquiry made no effort of identifying the beneficiaries. Unless he same is done no KYC of the beneficiaries cannot be verified nor the ECS debit be made. He also alleged that the EO submitted his report and submission on 18.12.20 and on the same day the inquiry was concluded which means no opportunity was granted to the establishment to rebut the report of the EO. not only that , on the same day that is on 18.12.20 , the commissioner passed the lengthy order which means he had a pre occupied mind for assessment of the dues. Citing various judgments of the Hon'ble Supreme court 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 business activity is encountering huge loss. 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 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. He also argued citing the judgment of the Hon'ble High Court of Delhi passed in the case of APFCvsAnsal housing construction that the onus of identifying the beneficiaries lies on the appellant establishment.

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. In the case of Builder Association Of India vs Union Of India and Others, The Hon'ble S C in SLP No8035/2018, have held that during the process of inquiry the respondent authority shall take steps to identify the workmen either of the establishment or engaged through the contractor. Needless to say that the organization shall ensure that the contribution taken from the petitioner shall actually go to the benefit of the employees concerned. There is no dispute on the facts that the impugned order nowhere mentions about the beneficiaries who would be benefited by the assessment and recovery.

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 for 7/16 to 6/19 and the amount assessed is 71,79,163/- 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 MulchandYadav and another .Thus on hearing the argument advanced,, it is felt proper and desirable that pending disposal of the appeal, the assessed amount be protected from being recovered from the appellant as has been held by the Appex court in the case of **MulchandYadav and Another vs Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended. But the circumstances do not justify total waiver of the pre deposit provided u/s 7O of The Act. Hence considering the circumstances and submission,

it is directed that deposit of 30% of the assessed amount shall serve the ends of justice.

From the petition filed by the respondent it is revealed that recovery proceeding has been initiated against the appellant and so far Rs 10,00,000/- out of the assessed amount has been recovered. This amount shall be adjusted towards the amount directed in this order towards compliance of 7O. Hence it is directed that the appellant shall deposit balance of the 30% of the assessed amount in form of FDR in the name of the Registrar of this Tribunal with provision of auto renewal within six weeks from the date of this order. On compliance of the direction the appeal shall stand admitted and there would be interim stay on execution of the impugned order till disposal of the appeal. Call on 04.01.2022 for compliance of the above said direction.

Presiding Officer
CGIT, New Delhi