

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-1/23/2021

M/s. Global Hunt India Pvt. Ltd

Appellant

Through:- Sh.S.K. Khanna, Ld. Counsel for the Appellant.

Vs.

RPFC/ APFC Delhi East

Respondent

Through:- Sh.S.N. Mahanta, Ld. Counsel for the Respondent.

Order dated 10th August, 2021

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 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, learned counsel for the respondent appeared and participated in the hearing held on 27.07.2021 through video conferencing by filing written objection to the petition filed u/s 7O of the Act. Perusal of the office note reveals that the impugned order u/s 7A was passed on 31.03.2021 by the APFC, Delhi(East) and was communicated to the establishment 17.4.21. Being aggrieved, the establishment had filed the appeal on 15.7.21. The office has pointed out that there is no delay in filing of the appeal.

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 i.e. the APFC, without having jurisdiction for the same. Drawing attention to the provision of para 26B of the EPF Scheme, he submitted that the RPFC only is empowered under law to decide the eligibility of the employees for enrollment under the scheme if any doubt arises with regard to the same. He also submitted that the inquiry was conducted in complete defiance of the circulars issued by the department for conduct of inquiry u/s 7A of the Act. He also submitted that the APFC, passed the impugned order relying on the report of the EO only which suffers from factual as well as legal errors. Though during his inquiry, the EO basically pointed out about non extension of the benefits to the eligible employees and bifurcation of the basic wage in to different allowances, his report is based upon calculation of the dues of the employees whose salary was more than Rs15000/- he pointed out to several entries of the calculation sheets filed along with the appeal. Though the appellant had filed a review petition pointing out the mistakes in the impugned order, the commissioner has kept the same pending. On the contrary during pendency of the review petition, initiated the recovery proceeding. It has further been stated

that the commissioner without giving effective opportunity to the establishment passed the order in gross violation of the principle decided by the Hon'ble High Court of Delhi. In support of his submission he placed reliance in the case of M/S United News of India vs RPF Delhi in WPC No 8851/2020 and in the case of Civicon Engineering Contracting India Pvt Ltd vs. CBT,WPC No9530/2020. With such submission the learned counsel for the appellant submitted that the impugned order is an outcome of patent illegality and cannot stand the test of legality and natural justice. He, thus, submitted that the condition for pre deposit be waived in the facts of this case for admission of the appeal. The amount assessed being very big the direction of pre deposit shall cause undue hard ship to the appellant who has a strong arguable case in the appeal.

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. Learned counsel Mr. Mahanta also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt. Ltd. VS RPF , to submit that the Tribunal cannot grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

In the case of M/S Benaras Valves Ltd. & Others vs. Commissioner of Central Excise, decided by the Hon'ble Supreme Court wherein it has been held that **"if on a cursory glance it appears that the demand raised has no leg to stand, id would be undesirable to require the assess to pay the full or a substantial part of the assessed amount."**He also submitted that the appellant is a registered Pvt. Ltd. company having least chance of running away from the reach of Law. At the end of the hearing of the appeal, if the amount assessed is found payable it will be paid.

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 and the preventive shut down of commercial activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 9/14 to 12/19 and the amount assessed is Rs.1,12,03,802/-.There is no mention in the order about the basis of the calculation arrived at .Without going to the other details 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 pass an order keeping in view the principle decided in the case of **Benaras Valves** referred supra , as well as considering the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances in to consideration. The Hon'ble High Court of Bombay in the case of **MorirokuUt India Pvt. Ltd. Vs. Union Of India reported in 2005SCCpage1 and in the case of Escorts Limited and another vs Union Of India reported in 43(1991)DLT 207** the courts and tribunals are obliged to

adhere to the question of undue hardship when such a plea is raised before it. The Hon'ble Apex Court in the case of Benaras Valves referred supra have defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant. The appellant of this matter has pleaded about the undue hard ship on the plea that the commercial activities have been slowed down for the COVID condition.

Thus, 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 10%. Accordingly ,the appellant is directed to deposit 10% of the assessed amount within 3 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 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. List the matter on 13-September-2021 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

(Presiding Officer)