

**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-1/30/2018

M/s. The Institute of Chartered Accountants of India

Appellant

VS.

1. APFC, Delhi (South)

2. Prominent Security Services

Respondent

ORDER DATED:- 07.01.2022

Present:- Shri S.K Gupta, Ld. Counsel for the Appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the admission and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 70 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 for the Respondent appeared and participated in the hearing by filing 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 27.07.2018, and the appeal has been filed on 08.10.2018. Thus the office has pointed out that there is no delay in filing of the appeal.

While advancing argument on the petition filed 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. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner took a wrong view of the matter and passed the order solely basing upon the report of the EO. He also submitted that the basis of the inquiry u/s 7A was the complaint received from one of the employees of the contractor.

His further submission is that the appellant is a statutory body set up by an Act of the parliament namely Chartered Accountant Act 1947 and functions under the Ministry of Corporate Affairs, Government of India. The appellant being a statutory body set up under the Central Act is excluded from the purview of EPF and MP act 1952 in terms of section 16(1)(C) of the EPF and MP Act. Pursuant to the said provision the appellant has made provision for its own Provident Fund Rule and Regulation and maintains a provident fund duly recognized under the Income Tax Act. M/s Prominent Security Services is a contractor engaged by the appellant for providing manpower and was required to deposit the PF dues of its employees engaged in the premises of the appellant. Since the said respondent no.2 was not depositing the amount diligently the appellant had once requested the EPFO for verification of the deposits by the contractor and to confirm his registration under the Act. Not only that the appellant had also filed a complaint against respondent no.2 on the basis of which an inquiry was made by the office of NIRC of ICAI with the RPFC Office Dwarka and it was revealed that no PF dues with respect to the manpower provided by the respondent no.2 has been deposited in the office of the RPFC. While the matter stood thus the appellant received a summon u/s 7A for an inquiry on the allegation made by one of its employee of the said contractor i.e respondent no.2. In the summoned it was alleged that the appellant has defaulted deposit of the PF dues of the employees for the period 06/2006 to 11/2014. The appellant filed detailed response taking various objections including non applicability of the Act to it. It was also pleaded that the complainant is an employee of respondent no.2 who has been specifically registered with a separate code No. issued by EPFO. Hence, no liability can be fastened on the appellant. But the commissioner without considering any of the submissions made by the establishment passed the impugned order. The Ld. Counsel for the appellant thereby argued that the order passed by the commissioner suffers from patent illegality and the appellant has a strong prima facie case to argue. Unless the appeal is admitted after waiving the condition of pre deposit, serious prejudice shall be caused to the appellant. He thereby 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.

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 7O by depositing 75% of the assessed amount. He also argued that all the grounds taken by the appellant shall be considered during final argument of the appeal. But the appellant has not made out any ground justifying waiver of pre deposit required u/s 7O of the Act. The Ld. Counsel for the respondent also submitted that the commissioner has passed a well discussed and reasoned order wherein he has observed that the appellant as alleged by the complainant was changing the contractors while the employees employed through different contractors were continuing to work. Thus, for all reasonable purpose the appellant was the Principle employee and under the provisions of section 8A of the Act read with Para 30 and 36B of the EPF Scheme is under the statutory obligation of depositing the PF dues of its employees at the first instance. The appellant having been bestowed with the power to recover the PF and allied contributions from the amount payable to the contractor has defaulted in complying the statutory provision and the order passed by the commissioner cannot be faulted with.

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 in this case has not made out any convincing circumstances for waiver of pre deposit. 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. Hence considering the period of default, and the amount assessed 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 6 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by creating FDR for the said amount in the name of the Registrar CGIT of the tribunal initially for 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. List the matter on 21.02.2022 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Presiding Officer