

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208,
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/10/2020

M/s. Navigant Technologies Pvt. Ltd.

Appellant

Vs.

APFC Gurgaon

Respondent

ORDER DATED 09.09.2020

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.

Shri B.B. Pradhan, 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 Shri B.B. Pradhan appeared and participated in the hearing held through video conferencing on 1st September, though no written objection was filed. Perusal of the record reveals that the impugned order u/s 7A of EPF & MP Act was passed by the commissioner on 30.12.2019 and the appeal was filed on 14.8.20 via email. However, office has pointed out about the delay in filing of the appeal. The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of limitation since the date of communication of the order, and this tribunal can exercise its discretion for extension of the period of limitation in view of the order passed by the Hon'ble Supreme Court in suomoto WP(civil) No 3/2020. Citing the shut down 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 Supreme Court 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. The impugned order was passed by the commissioner on 30.12.2019 and it was received by the appellant on 27.1.2020. The appeal with all probability should have been filed on or before 27.3.2020. But before that lock down started. Hence, it is held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble Supreme Court. 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 70 of the Act. The learned counsel for the appellant submitted that the impugned order has been passed by the APFC having no power to consider the eligibility of the employees for enrollment under the EPF Scheme. It is only the RPFC, who is empowered to decide the same by exercise of the power vested u/s 26 B of The Act. . Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order, which is based upon the report of the Enforcement Officer only. 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 section 70 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.

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.

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 70 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 for 12/2015 to 6/2017, and the amount assessed is 48,72,725. The appellant has pleaded that the Enforcement Officer made a report

recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted the eligible employees from being enrolled under the scheme. Before the commissioner the specific plea taken was that the employees getting gross salary less than Rs.25,000/- are not getting any allowance. Their basic salary being more than Rs.15,000/- are exempted employees. All the documents including salary register though produced before the APFC, were never considered by him. It has also been pleaded that the APFC having no power to decide the eligibility of enrolment went on to pass the impugned order. 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, 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 Rs14,50,000/- which is close to 30% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 70 of the Act by way FDR in the name of the Registrar CGIT initially for a period of one year having 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 19th October 2020 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.

Sd/-

(Presiding Officer)