

**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-1/39/2021

M/s. Olympia Fitness Pvt. Ltd.

Appellant

Vs.

APFC, Delhi (Central)

Respondent

ORDER DATED:-11.11.2021

Present:- Ms. Rashmi B. Singh, Ld. Counsel for the Appellant.
Shri Manish Dheer, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petitions 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 appeal being served on the respondent, learned counsels for the Respondent Shri Manish Dhir appeared and participated in the hearing 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 30.7.21, and the appeal has been filed on 27.09.21. Thus 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 7O 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 without going through the details passed the order while accepting the report of the EO only which contains false statements with regard to the conduct of the establishment and its employees status. He also submitted that authorized representative of the establishment as directed, had produced all the records before the EO, who after perusing the same

prepared a report and produced the same before the commissioner. Not only that the commissioner while passing the order had never made any effort of analyzing the proposition of law and the decisions of the Hon'ble S C, as pointed out by the AR of the establishment. In fact the commissioner took a wrong view of the matter in deciding that PF contribution is payable by the establishment when the establishment had closed down its business for financial difficulties and there were no staff or employee working. The learned counsel for the appellant while drawing attention of this Tribunal to the photo copies of several challans filed along with the appeal submitted that the establishment since had no employee during the relevant period of inquiry, was regularly depositing the administrative charges and filing the returns. The EO made some false observations in his report which was accepted in toto by the commissioner. Though all the registers were produced for the inspection of the EO voluntarily, it has been stated that the premises of the appellant establishment could be inspected with the help of police only which has not been proved on record. Citing various judgments of the Hon'ble S C, 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. He there by 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 7-O by depositing 75% of the assessed amount. He also submitted that the commissioner has assigned detail reasons supporting his finding and the impugned order reflects the names of the employees working in the appellant establishment during the relevant and alleged period of default. This finding was arrived at by the commissioner after verifying the attendance register of different categories of the employees.

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 has not made out any convincing circumstances for waiver of pre deposit. It appears that the EO made a report recommending initiation of inquiry

u/s 7A alleging that the appellant establishment has intentionally omitted remittance for the eligible employees and the commissioner during inquiry after hearing the plea of the establishment,. 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 an 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 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 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 13/01/2022 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

Presiding Officer