

**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-2/19/2022

M/s. Per Square Feet Real Estate Pvt. Ltd.

Appellant

VS.

RPFC-II, Gurgaon

Respondent

ORDER DATED :-11/10/2022

Present:- Shri S K Khanna, Ld. Counsel for the appellant.
Shri B. B Pradhan, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal, and separate petitions filed by the appellant praying condonation of delay, interim stay on execution of the impugned order and waiver of the condition prescribed u/s 7O 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 being served on the respondent, learned counsel for the Respondent Shri B B Pradhan appeared and participated in the hearing. He also filed a written objection to the petition of the appellant seeking waiver of the condition of pre deposit. Perusal of the record reveals that the impugned order u/s 7A of EPF &MP Act was passed by the commissioner on 09.02.2022, and the appeal has been filed on 27.05.2022. Thus the Registry has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, though has been filed after the prescribed period of limitation of sixty days the same is within the period of 120 days up to which the Tribunal has power to grant extension on appropriate circumstances. He further explained that the delay is not intentional but for reasons beyond the control of the

appellant and this tribunal can exercise its discretion for extension of the period of limitation in appropriate cases, in view of the order passed by the Hon'ble S C in suomato WP(civil) No 3/2020. He pointed out that there is no delay as the appeal was filed within 120 days since the passing of the order. Even otherwise for the extension granted by the Hon'ble S C due to the outbreak of COVID -19 the delay may be condoned for admission of the appeal.

The learned counsel for the respondent fairly conceded to the direction of the Hon'ble SC for condonation of delay. But he submitted that when the Hon'ble SC have granted extension of time to a further period of 90 days with effect from 1st March 2022 to such cases in which the limitation was to expire on or before 28th of Feb 2022, notwithstanding the no of days left. But in this case the impugned order having been passed on 09.02.2022, the limitation was not expiring on or before 28th of Feb 2022 and as such the appellant cannot take advantage of the order passed by the Hon'ble SC. And the explanation offered by the appellant is not worthy of acceptance. He also submitted that from the impugned order it is evident that the establishment was participating in the 7A proceeding throughout. In such a situation the explanation offered cannot be accepted. But as seen from the record the appeal was filed within 120 days from the date of order up to which the Tribunal has power to extend the period of limitation. More over the ground taken for explaining the delay appears convincing. Hence the objection of the registry with regard to the delay is not accepted and the delay is condoned.

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 EO. Being called by the commissioner though all the available documents were produced and the establishment had extended all necessary co-operation. It was explained that the judgment of the Hon'ble SC in the case of Vivekanand Vidya Mandir cannot be applied retrospectively. The establishment due to some inadvertent mistake had enrolled some excluded employees

as beneficiaries and continued to deposit the PF remittance on their basic wage only. The establishment was regularly submitting the ECR, but the Respondent department had never objected to the amount of remittance. It was also pointed out that the special allowances in respect of which the assessment has been made were never paid universally and examples of such employees was pointed out. It was also pointed out that the excluded employees and the employer had never submitted the joint consent in compliance of the provision laid in Para 26(6) of the EPF Scheme. The commissioner, instead of considering the stand taken by the establishment during the inquiry passed the impugned order solely accepting the EO's Report. With this he argued that the establishment has no liability for the assessment amount and the appeal be admitted waiving the condition of pre deposit.

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. His further submission is that the argument advanced on the merit of the appeal cannot be considered now as the Respondent has not filed the detail reply to the appeal. Citing the judgments of the Hon'ble SC in the case of H P Forest Corporation vs. RPFC, he submitted that the beneficiaries having been identified in this matter the impugned order cannot be said as a non speaking and unreasoned order. No convincing circumstances have been set out for total waiver of the condition of pre deposit.

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 commissioner had made the inquiry on the basis of the report of the commissioner. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that the appellant establishment has intentionally omitted remittance on the special allowances paid to the employees and the establishment has disputed its liability for the same. Whether or not the

appellant is liable to make contribution on the allowances and whether the said employees are to be treated as excluded employees for the period of inquiry is the point to be adjudicated in this appeal.

Thus 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 30% of the assessed amount within 4 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 CGIT, 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 21.11.2022 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly. The previous order directing the Respondent not to take any coercive measure for recovery of the assessed amount shall continue till the next date fixed for compliance of this order.

Presiding Officer