

**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.

D-2/36/2022

M/s IPSAA Holding Pvt. Ltd.

Appellant

VS.

RPFC, Gurgaon (East)

Respondent

ORDER DATED –16/02/2023

Present:- Shri M.K Pandey, Counsel for the Appellant.

Shri Chakradhar Panda , Ld. Counsel for the Respondent.

The matter came up today pursuant to the notice issued to both the parties for hearing on the non compliance of the order dated 20.12.2022. The Ld. Counsel for both the parties appeared.

The Ld. Counsel representing the appellant by producing the bank draft dated 15.02.2023 submitted that by order dated 20.12.2022 the appellant was directed to deposit 30% of the assessed amount towards compliance of the provision of section 7 O of the Act by 1st feb,2023. But for some acute financial difficulty the appellant could not make deposit of the amount and also has approached the Hon'ble High Court for modification of the order dated 20.12.2022. On receipt of the notice he is now ready with the draft which may be accepted and the appeal may be admitted.

The Ld. Counsel representing the respondent took serious objection and submitted that the appeal by necessary implication of the order dated 20.12.2022 has already been dismissed and the Tribunal has no power to restore the appeal dismissed for non compliance of the provision of Section 7 O.

In reply the Ld. Counsel for the appellant submitted that the appeal has not been dismissed yet. Had it been dismissed, the Tribunal would not have issued a fresh notice for appearance and hearing today. He insisted that the draft may be accepted and the appeal may be admitted.

In the order dated 20.12.2022 the application filed under section 7 O was considered and allowed directing that the appellant shall deposit 30% of the assessed amount on or before 1.2.2023, failing which the appeal shall stand dismissed. The admitted position

is that the appellant didn't comply the direction on or before 1.2.2023 nor approached for extension of time. As reported by the office for some inadvertent mistake the matter was not listed on 01.2.2023 for report on compliance and the office was directed to issue a notice to both the parties to let them know the consequence of the order dated 20.12.2022. It is noticed that the appellant neither complied the order dated 20.12.2022 nor on or before the time stipulated in the order, moved for extension of time. Only after issue of the fresh notice, he is now approaching with the draft.

Section 7 O of the EPF and MP Act clearly provides that no appeal shall be entertained unless the provision of Section 7 O is complied. The word "entertained" as mentioned in the section necessarily means that the appeal filed, on the event of non compliance of the direction given with regard to Section 7 O shall stand dismissed. Rule 15 of the Tribunal Procedure Rules 1997 provides that when the appeal is called for hearing and the appellant doesn't appear, the tribunal, in its discretion dismiss the appeal for default. When the appeal is dismissed for default and the appellant files application within 30 days from the date of dismissal and satisfies the tribunal with sufficient cause for non appearance, the tribunal shall make order setting aside the order of dismissal. But there is no provision under the Act and Rule to set aside the order of dismissal when passed for non compliance of the provision of section 7 O of the Act.

In this case for the clear direction given in the order dated 20.12.2022, the appeal has been dismissed on 1st Feb., 2023 for non compliance. The notice for appearance today is meant to let the parties know the consequence of the non compliance. It cannot be misread as a notice for hearing. The bonafides of the appellant for non compliance is not evident from the circumstances since no prayer for extension of time was made on 1st Feb., 2023 or thereafter. Today, the appellant has directly come with the draft which cannot be accepted in respect of the dismissed appeal which happened by necessary implication of the order dated 20.12.2022.

Presiding Officer,
CGIT-II