

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

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I. T-cum Labour Court-II,  
New Delhi.

M/s Rekhta Foundation

Appellant.

Vs.

APFC, Noida.

Respondent.

Appeal No. D-2/21/2021

**Order dated 8<sup>th</sup> November, 2021**

Present: Sh. S.K Gupta, Ld. Counsel for the Appellant.

Sh. B.B Pradhan, 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 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 petitions being served on the respondent, learned counsel for the respondent Sh B.B Pradhan appeared and participated in the hearing held through video conferencing on 5.10.21. The record reveals that the impugned order u/s 7A was passed by the commissioner on 26.4.21 and the appeal has been filed on 6.8.21. By filing an application separately for condonation of delay, the appellant has stated that the occurred due to the prevailing condition of Covid 19 pandemic. More over the Hon'ble S C considering the situation have passed order condoning the period of limitation in filing all cases, appeals and other proceedings. Since the present appeal though has been filed after the prescribed period of 60 days, the same has been filed within 120 days, up to which this tribunal has power to extend the period of limitation. The learned counsel for the respondent fairly conceded on the extension of limitation granted by the Hon'ble S C for the prevailing circumstances. Hence considering the submission made by the learned counsels, it is held that the appeal has been filed within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed mechanically taking into consideration the report of the EO only .Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. But the commissioner without going through the details passed the order. 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 as the commissioner failed to appreciate the terms and conditions provided under the Enrollment Campaign 2017, a scheme announced for voluntary enrollment.

It has been stated in the appeal memo that to avail the benefits of the scheme the establishment had applied for the code no , which was provided by the EPFO. The establishment then declared the list of eligible employees and deposited the employer’s share of the EPF contribution of the said employees before the due date. Ignoring the same the respondent issued a show cause notice followed by summon for 7A inquiry. In response to that the establishment submitted a written reply to the effect that for the terms of the scheme no administrative charges for the period under inquiry is payable. More over the declaration as required under the scheme has already been submitted. The establishment also urged for examination of the EO, giving opportunity of cross examination. But the commissioner without considering the submission passed the impugned order which has no leg to stand. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. All these aspects if would be considered, the appellant has a fair chance of success. Thus 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 when the business activity is encountering huge loss. 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. He also submitted that the establishment had failed to file the declaration required under the scheme which made it not entitled to the

benefits and appropriately the 7A inquiry was initiated. The declaration furnished during the inquiry has not been accepted by the commissioner for the reasons recorded in the order.

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 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. Without going to the other details as pointed out by the appellant for 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 extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of **MulchandYadav and another** .Thus on hearing the argument advanced,, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as has been held by the Appex court in the case of **MulchandYadav and Another vs Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default ,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 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 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. There would be an interim stay on the impugned order till the next date. Call the matter on 15.12.2021 for compliance of the direction.

Presiding Officer  
CGIT, New Delhi