

**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-1/03/2021**

M/s. Ridings Consulting Engineers India Pvt. Ltd Appellant

Through:- Shri S.P. Arora & Shri Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi(North) Respondent

Through:- Shri S.N. Mahanta, Ld. Counsel for the Respondent.

**ORDER DATED 12.02.2021**

This order deals with the admission of the appeal 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 petition being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held on 02.02.2021 through video conferencing , though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 02.03.2020 by the APFC, Delhi(North) and was communicated to the establishment on 16.03.2020. Being aggrieved the establishment had filed an application u/s 7B of the Act praying review of the order dated 02.03.2020 which was rejected on 06.11.2020. There after the appeal was filed on 08.01.2021. The office has pointed out that there is no delay in filing of the appeal. The learned counsel for the respondent submitted that the appeal, though has been filed within the prescribed period of 60 days since the date of the order passed u/s 7 B of the Act, is barred by limitation, for the reason that the petition for review was filed after the prescribed period of limitation i.e. 45 days after the order passed u/s 7A of the Act. The argument advanced by the learned counsel does not sound convincing since the appeal challenges the orders passed u/s 7A as well as u/s 7B of the Act and 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 without identifying the beneficiaries. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The inquiry was to find out less deposit of PF contribution by the employer for the period 11/2015 to 08/2016. For doing so he solely relied upon the final deposition made by the departmental representative vide her report dated 27.02.2020, without application of mind while discharging a quasi judicial function. Though, the authorized representative of the establishment on 27.02.2020 had made a request for grant of a reasonable time to submit a detail reply to the same, it was refused and the date was fixed to the next day for hearing. Thereby reasonable opportunity of hearing was refused to the appellant. Not only that the commissioner while adjudicating the matter took a wrong and misconceived view in calculating the salary on which EPF Dues are payable. He took into consideration the expenses heads like design expenses, survey expenses etc and the salary paid to some employees in Baharin. The entire determination being illegal is liable to be set aside. The amount so determined is not payable to any one as the beneficiaries have not been identified. He, thus, argued for remand of the matter for fresh adjudication and made an alternate prayer for admission of the appeal waiving the condition of deposit contemplated u/s 7O of the Act. On behalf of the appellant reliance has also been placed in the case of **APFC vs M/S Nandalal**, decided by the Hon'ble High Court of Patna to submit that the commissioner cannot pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the Enforcement Officer only. He, thereby, 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 7O of the Act will cause undue hardship to the appellant during this difficult time when the commercial activities are encountering huge loss. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. To support his submission reliance has been placed in the case of **M/S Benars Valves Ltd & Others vs Commissioner of Central Excise**, decided by the Hon'ble Supreme Court wherein it has been held that **"if on a cursory glance it appears that the demand raised has**

**no leg to stand, it would be undesirable to require the assessee to pay the full or a substantial part of the assessed amount.”** He also submitted that the appellant is a registered pvt Ltd company having least chance of running away from the reach of Law. At the end of the hearing of the appeal, if the amount assessed is found payable it will be paid.

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 section 70 by depositing 75% of the assessed amount. Learned counsel Mr. Mahanta also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt Ltd VS RPFC , to submit that the Tribunal cannot grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

The commissioner in this case made the assessment as if tax without paying least consideration to the submissions and ignoring the prayer for time by the establishment for giving a detail reply to the deposition of the department representative. In this regard reliance can be placed in the case of **Small Gauges Ltd & Others VS V P Ramlal APFC** decided by the Hon'ble High Court of Bombay, wherein it has been held that unless the documents, deposition, and calculation forming basis of the order are made available to the establishment, it cannot be said that the basic tenets of the principle of *audi alteram partem* was followed.

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 are from 11/2015 to 08/2016 and the amount assessed is Rs.1,64,69,901/-. There is no mention in the order about the basis of the calculation arrived at and identification of the beneficiaries. Without going to the other details 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 pass an order keeping in view the principle decided in the case of **Small Gaudge Ltd, Benaras Valves** referred supra ,as well as considering the grounds of the appeal, the period of default, the amount assessed and the prevailing circumstances in to consideration. The Hon'ble High Court of Bombay in the case of **MorirokuUt India Pvt Ltd vs Union Of India reported in 2005SCCpage1 and in the case of Escorts Limited andanother vs Union Of India reported in 43(1991)DLT 207** the courts and tribunals are obliged to

adhere to the question of undue hardship when such a plea is raised before it. But the Hon'ble Apex Court in the case of Benaras Valves referred supra has defined undue hardship as the hardship which adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant. The appellant of this matter has not pleaded or shown any material to presume undue hardship except the plea that the commercial activities have been slowed down for the COVID condition.

Thus, 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 10%. Accordingly, the appellant is directed to deposit 10% of the assessed amount within 3 weeks from the date of this order towards compliance of the provisions of sec 70 of the Act by way FDR favouring Registrar CGIT initially for a period of one year along 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 09-March-2021 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.

(Presiding Officer)