

**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-2/32/2021**

M/s. M/s Surya Infracon India Pvt. Ltd

Appellant

VS.

RPFC/ APFC, Gurugram

Respondent

**ORDER DATED :-04/02/2022**

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

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and 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 both the petitions being served on the respondent, learned counsel for the Respondent Sh B B Pradhan appeared and participated in the hearing though no written objection was filed. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the commissioner on 17.12.20, and the appeal was filed on 24.12.21. 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, it 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. Citing the shut down of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for the delay in receipt of the impugned order. By filing the order of attachment dt 22.11.21 he submitted that the impugned order passed on 17.12.20 was not within their knowledge

until the Bank account of the Director was attached. On the request of the Advocate of the appellant the order was supplied only on 25.11.21. and soon thereafter the appeal was filed and it is well within the period of limitation if computed from the date of knowledge. Even other wise for the extension granted by the Hon'ble S C due to the out break 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 impugned order was passed the Tribunal had already allowed e-filing. 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 through out. In such a situation it is beyond belief that the order came to their knowledge after initiation of the recovery action.

The Hon'ble S C in their order dated 8<sup>th</sup> March 2021 passed in Suo Motu WPC No 3/2020 have issued direction for excluding the period between 15.3.20 to 30.10.21 for computing the period of limitation in suits and appeals and a further period of 90 days thereafter has been allowed for filing of the appeal. Hence taking all these aspects into consideration, it is held that the delay is not intentional but for a reason beyond the control of the appellant. The impugned order was passed by the commissioner on 17.12.20 and it was despatched on the same day. The appeal, with all probability should have been filed on or before 17.02.2021. But for the on going difficult time for the covid lock down, it is held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble SC. The petition for condonation of delay is accordingly allowed.

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 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. He also submitted that establishment is a civil contractor and usually works for M/S API Ansal. To execute the contract the appellant engages petty contractors, who as per the agreement execute the work engaging their own men and machineries. They are paid according to the bill raised. The appellant establishment has no relation with the men engaged by the said petty contractor as employer nor any record to that effect is maintained. One such contractor was Sh Hasim Ali working for the appellant on getting payment on job work basis. He joined hands with a labour union and made complaints to the respondent on the basis of which this inquiry was initiated. The squad constituted for the inquiry submitted a report stating the total amount of payment made to Hasim Ali and calculated 60% of the bill paid as wage and again calculated 25% of the same as payable for EPF contribution. The said report was accepted in toto by the commissioner while passing this arbitrary order. He also pointed out that the period of inquiry was from 09/13 to 06/18, but the bills paid to Hasim Ali during the financial year 2012-2013 and for the months from April 2013 to Aug 2013 were also taken into consideration. He also argued that the order u/s 7A has been passed without identifying the beneficiaries. The list of workers engaged as submitted by the complainant is not acceptable in absence of authentic proof of the same. With this he argued that the establishment has no liability for the assessment period 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 can not be considered now as the Respondent has not filed the reply. 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 complaint received and had examined some of the complainants.

The basis of the calculation is the report of the EO only which is the assumption made by him as no evidence was at all placed by the complainants with regard to the wage paid by the establishment to them. There is no material to believe that the sub contractor is covered under the Act which fastens the liability on the appellant as the principal employer. At the same time it is to be considered that the Hon'ble S C in several cases have deprecated the action of the commissioner in accepting the report of the E O in toto. 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 for the employees.

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 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 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 24-March-2022 for compliance of the direction failing which the appeal shall stand dismissed. Both parties be informed accordingly.

(Presiding Officer)