

**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-1/40/2020

M/s. Shahnaz Ayurvedics Appellant

Through:- Sh. Alok Bhasin, Ld. Counsel for the Appellant.

Vs.

RPFC Delhi (East) Respondent

Through:- Sh. Rajesh Kumar, Ld. Counsel for the Respondent.

ORDER DATED 10.12.2020

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 Shri Rajesh Kumar appeared and participated in the hearing held through video conferencing on 2nd Dec 2020, 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 7th October 2020 wherein the appellant has been directed to deposit Rs58,79,350/- towards the EPF contribution of its employees for the period April 2014 to May 2019.

It has been stated in the memo of Appeal that the appellant is a proprietorship concern dealing with beauty products and advice having 550 employees appointed as beauty advisors. It has been diligent and regular in remittance of the EPF contribution of its employees. Until 1st

Nov 2014 these beauty advisors having basic salary more than Rs 6500/- were the excluded employees. But pursuant to the amendment effective from 1 Nov 2014, the beauty advisors became eligible employees and the establishment by extending the benefits of the Act to them started making contribution. But a notice was served on the establishment for an inquiry u/s 7A of the Act alleging deficit in contribution. The representative of the establishment appeared and explained that the contribution has been appropriately made on the basic wage of the eligible employees and the HRA has not been included in the calculation for contribution. More over an agreement has been signed between the management and the employee agreeing for bifurcation of the total emoluments as basic wage and HRA. Hence, it has been stated that the order passed by the commissioner is illegal and wrong.

The learned counsel for the appellant during course of argument also submitted that the finding of the commissioner with regard to the provisions of sec 12 of the Act is wrong as the said provision applies when the employer takes an unilateral decision for reduction of basic wage by adopting bifurcation. In this case the employees have entered into a mutual agreement and no complain in this regard was ever received. Thus a petition has been filed by the appellant for waiver/reduction of the pre-deposit amount contemplated u/s 7 -O of the Act. 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,. Citing various judgments of the Hon'ble Supreme Court, he 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 7-O of the Act will cause undue hardship to the appellant during this difficult time .He there by prayed for waiver of the condition of pre-deposit

and admission of the appeal, stay on the execution of the impugned order pending disposal of the appeal.

The learned counsel for the Respondent in reply, while supporting the impugned order submitted that the stand of the appellant in bifurcating the basic wage on the basis of mutual agreement it self is illegal in view of the restriction laid u/s 12 of the EPF&MP Act which has been enacted to prevent bifurcation. While referring to the provisions of sec 23 of the Indian Contract Act, he submitted that any contract entered is illegal , if the same opposes or defeats the very purpose of any law or opposed to public policy. Describing EPF & MP Act as a beneficial legislation intended to safeguard the interest of the employee in the hands of the mighty employer, he submitted that the appeal has no merit at all and the same if would be admitted the appellant be directed to comply the provisions of sec 70 by depositing 75% of the assessed amount or at best 50% of the same as was ordered by the Hon'ble Court in the case of G4 Facilities Security Services as the facts of that case is very similar to the present matter.

Having heard the argument advanced by the counsel for both the parties a decision is to be taken on the prayer of the appellant on waiver of the pre condition of deposit. 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 for 4/2014 to 5/2019, and the amount assessed is 58,79,350/-Without going to the other detail pointed out by the appellant in 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 Mulchand Yadav 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 Apex court in the case of **Mulchand Yadav 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 20%. Accordingly, the appellant is directed to deposit Rs.11,00,000/- which is little less than 20% 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 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. Call the matter on 27.01.2021 for compliance of the direction.

Sd/-

Presiding Officer