

**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-1/06/2020

M/s Supreme Securities Limited

Appellant

VS.

RPFC-II, Delhi (North)

Respondent

ORDER DATED:-24.03.2021

Present:- Shri S.K. Khanna, Ld. Counsel for the Appellant.
Shri R.M. Tripathi, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed u/s 7O of the EPF and MP Act praying waiver/reduction of the condition for pre-deposit contemplated there under.

The appeal challenges the order passed by the RPFC-II Delhi on 09.12.2019 u/s 7A of the Act where under the appellant/establishment has been directed to deposit Rs. 15,54,536/- towards the deficit contribution of the PF dues of its employees for the period 01/2018 to 03/2019. Being aggrieved the appellant has challenge the order as arbitrary, non speaking and unreasonable.

Notice being served the respondent appeared through its advocate R.M Tripathi who participated in the hearing of the application filed u/s 7O of the Act. But no written objection was filed by him.

It has been stated by the appellant that it is a company registered under the Companies Act and engaged in the business of buying and selling of all types of foreign currency, travelers cheque and prepaid travelers card, outward remittance and inward remittance for specific purposes. Being covered under the EPF and MP Act it has been regularly remitting PF contribution of its employees on their basic wages except the allowances. On 15.05.2019 the respondent served a notice on the appellant for payment of Pf contribution on wages of persons drawing less than Rs. 15000/- per month for the

period 04/2014 to 03/2019. A very short time was allowed for giving reply. However, the appellant by letter dated 25.05.2019 replied to the showcause notice explaining that the contribution has been paid on the basic wage before the judgment of Vivekanad Vidya Mandir of the Hon'ble Supreme Court came into fore. But the commissioner without considering the reply conducted the inquiry assuming that the appellant/establishment has intentionally evaded remittance of the PF dues of the employees. A second notice in this regard was issued to which the establishment again gave reply. The commissioner without considering the written submission made by the appellant accepted the recommendation of the departmental representative in toto and thereby passed the order which is under challenge. The appellant/establishment had especially submitted before the commissioner that the report of the departmental representative for assessment of Rs. 01,84,775/- towards the dues pertaining to the sweepers for sweeping and security of 25 branches in different different buildings where many offices are located is illegal since those sweepers and security guard are not the employees engaged by the appellant. But none of the representations of the establishment were accepted. The respondent passed a non speaking and cryptic order which is under challenge. The Ld. Counsel for the appellant strenuously argued that the establishment has a strong prima facie case to argue having fair chance of success. If the impugned order would not be stayed pending disposal of the appeal the relief sought for would become illusory. Submitting that the tribunal has been vested with a discretionary power to reduce or waive the statutory deposit u/s 70 he submitted for waiver of the condition for pre deposit. He also pointed out that the impugned order suffers from patent illegality as the commissioner while passing the order has not identified the beneficiaries.

The Ld. Counsel appearing for the respondent submitted that the commissioner had passed a well discussed and reasoned order. All the points raised by the appellant during the inquiry u/s 7A were given due consideration and a speaking order was passed. While arguing on the legislative intention behind the EPF and MP Act he prayed that the circumstances do not justify waiver or reduction of the condition of pre deposit prescribed u/s 70 of the Act.

Perusal of the record shows that the appeal has been filed on 23.01.2020 challenging the order dated 09.12.2019 i.e. within the prescribed period of limitation. The appeal does not suffer from any other defect.

In the case of M/s Banaras Valves limited and others vs. commissioner of Central excise, the Hon'ble Supreme Court have

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.” In this case the appellant has canvassed the point that the beneficiaries have not been identified and there being no finding as to whom the amount if recovered would go, the order appears to be illegal and wrong.

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. For the same, it need to be considered that the period of default in respect of which inquiry was initiated was from 04/14 to 03/2019 and the amount assessed is Rs. 15,54,536/-. 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 **Banaras 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 2005 SCC page1 and in the case of Escorts Limited and another 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. The Hon’ble Apex Court in the case of Banaras Valves referred supra have 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 hard ship except the plea that the commercial activities of the establishment has been slowed down.

Thus considering the submission of the parties, 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 orders till disposal of the appeal. List the matter on 28.04.2021 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