

**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.**

APPEAL NO. D-1/44/2020

M/s. M/s. Wipro Ltd.

Appellant

Through:- Shri Mandeep Singh Vinaik, Ld. Counsel for the Appellant.

Vs.

RPFC, Delhi(East) & another

Respondent

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

ORDER DATED 21.12.2020

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, Shri Rajesh Kumar, Ld. Counsel for the respondent appeared and participated in the hearing held through video conferencing on 16th of December 2020, though no written objection was filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 25th September, 2020 and served on the appellant on 8th October 2020. Hence, 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 taking into consideration the allowances and incentives paid to the employees on performance output. Basic salary of all the

employees has been correctly shown in the salary register and appropriate amount has been contributed to the EPF& MP Fund. 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 of the said records I passed the order, which is based upon the report of the Enforcement Officer only. Citing various judgments of the Hon'ble Supreme Court including the judgments rendered in the case of Bridge & Roof Co (India) Ltd vs UOI and Manipal Academy of Higher Education vs PF Commissioner 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 principle of universality . He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. He also submitted that the special allowances paid not being contractually agreed falls out side the definition of basic wage defined u/s 2 (b) of the EPF & MP Act. 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 IT industry 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. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

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 salaries of the employees have been intentionally bifurcated to avoid PF contribution and defeat the very purpose of the Act.

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 2006 to 2014 and the amount assessed is Rs.17,41,73,990/-. 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 Supreme Court 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 30%. Accordingly the appellant is directed to deposit 5,22,00,000/- which is close to 30% of the assessed amount within 8 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 having provision for auto renewal for a period beyond one year. 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-February-2021 for compliance of the direction.

Sd/-

(Presiding Officer)