

**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-2/06/2020

M/s Zapdor Engineering Pvt. Ltd.

Appellant

VS.

APFC, Noida

Respondent

ORDER DATED:- 08/12/2021

Present:- Shri Rajiv Arora, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

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 petitions being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held through video conferencing on 16/11/21, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner on 30.8.19 and the appellant filed the appeal on 11.2.20. The petition filed for condonation of delay was considered and allowed by order dated 08/10/2021.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7O of the Act. The learned counsel for the appellant submitted that the impugned inquiry was initiated on the basis of the system generated payment position of the establishment which indicated non deposit of PF dues of its employees for the period 4/15 to 12/18. Initially the notice of inquiry was for the period 4/15 to 12/15 and 4/16 to 9/16. But the period was later enlarged from 4/15 to 12/18 without any revised notice being served on the appellant. The company basically works as a contractor for electrification under the railways. For unexpected cancellation of three contracts by railway in the middle of the work, financial position of the company was severely impacted. One summon for inquiry u/s 7A was served on the appellant

and the inquiry was protracted for an unreasonable period i.e from 2016 to 2019 during which proceedings were held on 50 dates. At last the order was passed basing on the report of the EO only which was nothing but an extract from the balance sheet. The report of the EO does not disclose the month wise breakup, for which the appellant was in dark with regard to the basis of calculation. The appellant has further stated that the commissioner for passing the order u/s 7A is required to identify the beneficiaries and as per several pronouncements of the apex court, the order of assessment becomes liable to be set aside for non identification of the beneficiaries. To support the contention, reliance was placed in the case of **H P State Forest Corporation vs. RPFC** decided by the Hon'ble SC, **Sandeep Dwellers Pvt. Ltd vs. UOI, 2007 (3)Bom CR,898** and **Builder Association of India vs. UOI**, decided by the Hon,ble High Court of Delhi to argue that non identification of beneficiaries makes impugned order illegal, making out a strong prima facie case in favour of the appellant and justifies complete waiver of the pre deposit amount. By referring to the amount assessed in the impugned order, the learned counsel argued that any order directing partial deposit would cause undue hardship to the appellant. He thereby argued for an order of complete waiver of pre deposit.

In his reply the learned counsel for the respondent submitted the assessment was never made in respect of un identified employees as argued by the appellant. Drawing attention to the impugned order and report of the EO, filed along with the appeal, he submitted that the order has been passed in respect of special allowances paid to all category of employees as seen from salary, register, labour charges paid to the contractors and payment made to some casual workers. The identification may be necessary in respect of those casual workers, but not the employees in respect of whom special allowances paid across the board as the information regarding their identity is available in the salary Register. He also placed reliance in the case of **Regional Director, ESIC, Trissur vs. Kerala State Drugs &PharmaceuticalsLtd,1999 Supply,(3)SCC,148** to argue that even if the employees are not identified, the employer is liable to make the requisite deposit, which he contends was not made by the employer in this case. Relying on the judgment of **Ansal Housing &Construction Ltd vs. RPFC**, he submitted that when there is default in deposit by the employer, waiver is not justified. With regard to the enlargement of inquiry period without notice to the appellant he submitted that the EO Report was sent to the

establishment by post as well as by e-mail. Hence the allegation is unfounded.

The appellant further submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. 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. 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.

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. 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 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 20% 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 with provision for auto renewal. The amount if any already recovered from the appellant from out of the assessed amount shall be adjusted towards direction for deposit given in this order. 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 16/02/2022 for compliance of the direction.

Presiding Officer