

CGIT-1/EPFA/25 of 2020

01.03.2021

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI

M/S.ADDON RESOURCES PVT. LTD.

THANE

: APPELLANT

VS.

ASSISTANT PROVIDENT FUND COMMISSIONER

VASHI

: RESPONDENT

ORDER

1. Mr.Surendra Kumar Srivastava, advocate filed vakalatnama which is taken on record.
2. None present on behalf of the Respondent in spite of sufficient service to Respondent.
3. The present appeal is filed by the Appellant under Section 7-I of the EPF & MP Act, 1952 (hereinafter referred to as the Act) against the order dated 29.11.2019 passed by the Regional Provident Fund Commissioner, the Respondent under section 7A (1) of the Act.
4. The appellant has filed an application for condonation of delay alongwith the appeal.
5. Alongwith appeal Appellant has filed application for waiver of deposit u/s 7-O of the Act.



6. Heard Ex parte.

7. Heard learned counsel for the Appellant.

8. So far as application for condonation of delay is concerned, the impugned order dated 29.11.2019 and the Appeal has been filed on 29.9.2020 i.e. between the period of pandemic Covid-19. Perusal of the application reveals that sufficient cause has been mentioned in the application and further according to the verdict of Hon'ble Apex Court due to the special circumstances of the pandemic Covid-19, Delay condonation application is to be allowed. Accordingly allowed.

9. With regard to the application for waiver of deposit/reduction of pre-deposit under proviso to section 7-0 of the PF Act, learned counsel for the Appellant submitted that the respondent commissioner has passed an order u/s 7A dated 29.11.2019 and the assessed due amount is Rs.71,42,226/- The period of default is spread over from 06/12 to 2/16 i.e. 4 years It is stated that an amount of Rs.20,00,000/- has already been deposited. Further stated that due to the financial crisis default has occurred which has not been taken into consideration by the Assessing Authority during enquiry. Further stated that due to the lock down for Covid-19 across the country, it was not possible to file the appeal in time. Grave harm and loss will be caused to the appellant if the application for waiver is not allowed. Further stated that appellant was remitting the monthly provident fund contributions to the Fund in terms of the enacted legislation. The Enforcement Officer without examining the complete records in relation to the PF matter made the report that the Appellant was in default of payment of monthly PF contributions in respect of the



employees. Further, stated that reasonable opportunity was not given to explain the matter. The Enforcement Officer while deposing has merely taken the statement of total remuneration paid to employees including overtime and other allowances submitted by the principal employer and even did not verify for the applicability of the EPF Act to the each and every employee. Further, there was total non-application of mind on the part of respondent commissioner while passing the impugned order and passed non-speaking and non-reasoned order.

10. After considering the entire facts and circumstances as well as submissions made by the Appellant and keeping in view of the provisions of the Section 7-O of the EPF&MP act for entertaining the appeal 75% of the assessed amount is required to be made by the appellant but this pre-deposit of 75% of the assessed amount can be reduced or modified to some extent on the basis of prima facie case and balance of convenience.

11. Considering the appellant case, especially financial crisis due to pandemic Covid-19, I am of the view that prima facie case is in favour of the appellant as serious arguable points are involved in this appeal and balance of convenience is also in favour of the appellant. I find it proper to reduce the amount and the appellant can be directed to deposit 50% of the assessed amount and it is also made clear that if any amount has been pre-deposited it should be adjusted in 50% as ordered above. On depositing 50% of the assessed amount as stated above within 6 weeks from the date of order, the impugned order shall be stayed.

14. I hereby pass the following order.



*Delay condonation application is allowed.

*Appeal is admitted.

*Appellant is directed to deposit 50% of the assessed amount with the Respondent within six weeks from the date of order.

*It is made clear that amount which has already been deposited by the appellant be adjusted in 50% as ordered to be pre-deposited.

*On depositing 50% of the assessed amount with the Respondent within 6 weeks from the date of order, the impugned order is stayed.

*The Respondent is directed not to take coercive steps till further orders.

FIX on 30/04/2021



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TRUE COPY

Nabany
Secretary to the Court
Central Government Industrial
Tribunal-cum-Labour Court No. I
Mumbai

sd/-
(JUSTICE R.N.KAKKAR)

PRESIDING OFFICER