

CGIT-1/EPFA/40 OF 2022

06.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present
Smt.Pranita Mohanty
Presiding Officer

Memon Co-op. Bank Ltd.

... Appellant

Vs

Regional Provident Fund Commissioner
Bandra

... Respondent

Presence:

For the Appellant : Mr. Lancy D'Souza, Adv.

For the Respondent : Absent.

ORDER

This order deals with appellant's prayer for condonation of delay, admission of the appeal and stay on the execution of the impugned orders pending disposal of the appeal.

The appeal challenges the orders dt, 31/03/2022, passed by the APFC Bandra u/s 7A of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 25,59,760/-towards the unremitted EPF dues of its employees for the period 04/2000 to 03/2010.

Notice being served the learned counsel for the Respondent appeared and participated in the hearing . Two separate applications have been filed by the appellant for condonation of delay and waiver of the condition of pre deposit contemplated u/s 70 of the Act. Another prayer has been made for stay on the execution of the impugned orders passed u/s 7A of The Act pending disposal of the appeal.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 31/03/2022/ and the appeal has been filed on 19/07/2022, i.e beyond the prescribed period of limitation.

Since the registry has pointed out about the inordinate delay in filing of the appeal and Respondent's counsel took serious objection to the same, it is desirable that the prayer for condonation of delay be dealt at the first instance.

It has been contended that the Bank against which the impugned order has been passed is under liquidation and its Banking License has been cancelled by the Reserve Bank of India by order dt 12th May 2011. The appellant was not aware of the impugned order till service of the recovery notice. By filing the photo copy of the postal envelopes and the postal tracking records for dispatch of the impugned order the appellant submitted that the respondent had intentionally dispatched the order on a delayed date to prevent the appellant from filing the appeal in time. Hence he argued that the delay in filing the appeal is not for any negligence on the part of the appellant.

On perusal of the postal envelope and postal tracking records filed by the appellant it is found that the impugned order was passed on 31/03/2022. But from the stamp of the post office affixed on the envelope and the postal tracking report shows that the same was dispatched in the address of the appellant on 07/06/2022 and delivered on the same day. It is surprising to note that before dispatch of the impugned order on 7/6/2022, the recovery proceeding was initiated on 6/6/2022, which is evident from the recovery notice dt 6/6/2022 placed on record. These circumstances clearly indicate that there was no delay on the part of the appellant in filing the appeal. Hence the delay is hereby condoned as the Rule of limitation are not meant to destroy the right of the parties and the Tribunal should consider the circumstances shown for condonation of delay for admission of the appeal .

Now it is to be considered if the circumstances justify waiver of condition of pre deposit provided under section 70 of The Act.

The appellant has stated that the commissioner conducted the inquiry solely relying on the report of the EO and passed a non-speaking and unreasonably order. Appellant has also argued that the calculation of dues has been made as if Tax in respect of the security guards engaged through contractors. By placing the report of the earlier EO on record the appellant submitted that the said earlier EO had reported that out of twelve contractors engaged by the Bank, seven have their separate code nos. But for reasons best known to the Respondent the said report was not accepted and another EO was asked to submit a fresh report. The impugned order shows that all the contractors though summoned, only one had appeared and he did not produce the records pertaining to the

contract with the appellant Bank on the pretext of loss of old records. Hence the commissioner without proper inquiry saddled the appellant with the liability when the appellant bank is under liquidation. He also argued that no legal action is maintainable against the appellant for the liquidator appointed and the appellant has no asset or means to comply the provisions of sec 70 of the Act. He thereby argued for total waiver of the condition of pre deposit. He thereby submitted that the appellant has a strong case to argue in the appeal. Unless the appeal is admitted waiving the condition of pre deposit, with a direction of interim stay on the impugned order, serious prejudice would be caused to the appellant and the relief sought for would become illusory.

Perusal of the record shows that on 27th July 2022 notice was issued to the respondent and the same was served by hand on 29th JULY 2022. But none appeared on call to represent the respondent.

Of course the appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe at this stage about it's fair chance of success . But the Tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal when respondent is yet to file it's objection.

In this case the period of default as seen from the impugned order is from 4/2000 to 3/2010 i.e for a period of ten years and the amount assessed is equally big. Thus on hearing the argument advanced, it is held that the circumstances do not justify total waiver of the condition

of pre deposit, but ends of justice would be served by reducing the same to 25% of the assessed amount. Accordingly, it is directed that the appellant shall deposit 25% of the assessed amount towards compliance of the provisions of sec 70 of the Act by depositing FDR in the name of the Registrar of the Tribunal, initially for a period of one year with provision of auto renewal, within six weeks from the date of communication of the order failing which the appeal shall not be admitted. Call on...28.11.2022.....

for compliance of the direction. the respondent is directed not to take any recovery action on the appellant till the date fixed for compliance. On the event of compliance of the direction given above and admission of the appeal, there would be an interim order of stay on the execution of the impugned order till disposal of the appeal.

PRESIDING OFFICER
CGIT-1, MUMBAI