

**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-2/07/2021

M/s International Hospital Limited

Appellant

vs.

RPFC, Noida

Respondent

ORDER DATED:- 05.04.2021

Present:- Shri K.K Pandey, Ld. Counsel for the Appellant.

Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and 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 both the petitions being served on the respondent, Learned Counsel Shri. Mahanta appeared and participated in the hearing though no written objection has been filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 9/12/20 and dispatched to the appellant on 17/12/20. Office has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of 120 days and this tribunal can exercise its discretion for extension of the period of limitation in view of the order passed by the Hon'ble SC in suo motto WPC No 3/2020 extending the period of limitation until further orders. Citing the shut down of all activities on account of the outbreak of COVID- 19, he submitted that the delay was for a reason

beyond the control of the appellant and the same be condoned for admission of the appeal.

The learned counsel for the respondent fairly conceded to the direction of the Hon'ble Supreme Court for condonation of delay and the order passed in the suo motto writ petition no 3/20. But he raised serious objection to the stand taken by the appellant for condonation on account of that direction. He advanced the argument that the impugned order was communicated to the establishment on 17/12/20 and thus it was required to file the appeal within 60 days, which had expired prior to the preventive shut down for COVID 19. Hence the safeguard granted by the Hon'ble S C for condonation of delay is not available to the appellant.

LCR of the proceeding received from the office of the respondent shows that the impugned order was communicated on 17/12/20. But there is no proof on record that the same was served or received by the appellant. Hence taking all these aspects into consideration and the direction of the Hon'ble SC for condonation of delay, it is held that the delay is not intentional but for a reason beyond the control of the appellant. It is held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble SC. The petition for condonation of delay is accordingly allowed.

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 in a stereo type manner without considering the objections taken during the enquiry by the representative of the establishment. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. The documents and basis of calculation demanded were never supplied. But the commissioner without going through the details of the documents placed, passed the order, which is based upon the report of the E O only. Citing various

judgments of the Hon'ble S C he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. 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 it's business 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.

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.

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 June 2014 to March 2019 , and the amount assessed is 94,97,198/-. But in the petition filed u/s 7O of the Act the appellant has not explained the circumstances which may cause undue hardship justifying waiver of the condition laid u/s 7O of the Act. Without going to the other detail 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 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 40%. Accordingly the appellant is directed to deposit 37,00,000/-which is close to 40% of the assessed amount within 6 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 order till disposal of the appeal. The interim order of stay granted earlier shall continue till then. Call the matter on 27.05.2021 for compliance of the direction.

Sd/-
Presiding Officer