

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI-1; ROOM NO 208,
ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-1/27/2020

M/s. Ashiana Housing Ltd.

Appellant

Vs.

CBT, RPFDC Delhi (South) & another

Respondent

ORDER DATED 15th July, 2020

Present: Shri Rajiv Shukla, Ld. Counsel for the Appellant

Shri Naresh Gupta, 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 Sh Naresh Gupta appeared and participated in the hearing held through video conferencing on 10th July, though no written objection was filed by him.

Perusal of the office note reveals that the impugned order was passed by the commissioner on 28.2.2020 and the appeal was filed on 15.5.2020 via email. But due to the wrong e-mail id of the tribunal notified in the website, it could not be delivered. On correction of the same, again it was filed through e-mail on 8.6.2020. However office has pointed out about the delay in filing of the appeal. The learned counsel for the appellants submitted that the appeal, though has been filed after the prescribed period of 60 days, it is well within the period of 120 days since the date of order, and this tribunal can exercise its discretion for extension of the period of limitation up to 120 days. 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. He also drew the attention of the tribunal to the direction of the Hon'ble S C dated 23.3.2020 with regard to the condonation of delay on account of the outbreak of COVID-19.

The learned counsel for the respondent fairly conceded that in the prevailing situation of COVID 19 ,it was not possible to file the appeal within the period of limitation. He also conceded to the direction of the Hon'ble SC for condonation of delay. Hence taking all these aspects into consideration it is held that the delay is not intentional but for a reason beyond the control of the appellant. It is 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 without identifying the beneficiaries. 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 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 construction and Real Estate Business are 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 M/S Ashiana Housing Ltd is a listed company having least chance of running away from the reach of Law. 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 for 6/2008 to 3/2016, and the amount assessed is 50,52,716. There is no mention in the order about the identification of the beneficiaries or the efforts made by the respondents to ascertain their identity or if they are in the pay roll of the appellant. 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 refer to the judgments of the Hon'ble SC in the case of Food Corporation Of India VS Provident Fund Commissioner,(1990 SCC,-1-68), wherein it has been held that assessment of unpaid EPF dues without identifying the beneficiaries is not sustainable in the eye of law. Keeping the principle in view and taking the grounds of the appeal, the period of default ,the amount assessed and the prevailing circumstances in to consideration, 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 Rs10,000,00/ which is close to 20% 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- CGIT” initially for a period of one year along with provision of 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. List the matter on 21st August 2020 for compliance of the direction failing which the appeal shall stand dismissed. The interim order of stay granted on the previous date shall continue till then. Both parties be informed accordingly.

Sd/-

(Presiding Officer)