

**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-1/05/2021

M/s Planman HR (Pvt.) (Ltd.)

Appellant

VS.

RPFC, Delhi (North)

Respondent

ORDER DATED:- 18.02.2021

Present:- Shri B.K. Chhabra, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the prayer made by the appellant for condonation of delay, admission of the appeal waiving the precondition of deposit contemplated u/s 7O of the EPF and MP Act and for an interim order of stay on the execution of the impugned order pending disposal of the appeal.

Notice being served on the respondent, the learned counsel S N Mahanta representing the respondent appeared and participated in the hearing.

On perusal of the office note it is found that the appeal has been filed beyond the prescribed period of limitation and a separate petition for condonation of delay has been filed. The appellant has stated that the impugned order dated 31.07.2019 was never communicated to the establishment despite repeated request. Finding no other way out the establishment had filed WPC10467/20, before the Hon'ble High Court of Delhi, and being directed the Respondent served the copy of the order on 28.12.2020 and the appeal was filed on 19.1.21 i.e within 60 days from the date of communication. There being no delay on the part of the appellant, the appeal be admitted. LCR in this matter was called for which shows that the impugned order was dispatched to the establishment soon after it was passed. The e-mail communication filed by the Respondent shows that it was dispatched by mail on 17.12,2020, after being directed by the Hon'ble High Court. Though the respondent has filed a copy of the covering letter under which the order dated 31.07.2019 was forwarded to the establishment on 06th August, 2019 and the same was received by one Subhash Kumar on the same day the appellant has pleaded that it had no employee by name Subhash Kumar on 06.08.2019. The Ld. Counsel for the

respondent pointed out that the person who had received the copy of the order on 06.08.2019 had affixed the seal of the establishment below his signature acknowledging the receipt. In such a situation the plea of the appellant about non receipt of the order is not acceptable and the delay should not be condoned. But considering the submission of the appellant and direction of the Hon'ble High Court for supply of the copy of the order and the fact that the appeal has been filed within 60 days from the date of communication of the order, the delay is condoned.

The appellant has challenged the order dated 31.07.2019 passed u/s 7A of the Act where under it has been directed to deposit Rs. 7,00,18,734/- towards the deficit EPF contribution of its employees for the period from April 2017 to March/2018. The appellant has challenged the said order as a non speaking order contrary to law. It has been alleged that the report of the EO forming basis of the inquiry was never supplied to the establishment. The EO who had furnished his deposition during inquiry was not made available for cross examination by the establishment. The submissions of the appellant during the inquiry was rejected by the commissioner having a predetermined mind to assess the PF dues. The commissioner while discharging the function of quasi judicial authority had evidently omitted to comply the direction of the Hon'ble Supreme Court in several judgments for identifying the beneficiaries before any assessment is made. The commissioner took a wrong view of the matter and concluded that EPF contribution is payable on the special allowances paid to the employees and considered those allowances as part of basic wages and accordingly quantified the EPF and allied dues. With such submissions the appellant argued that it has a strong arguable case having fair chance of success. If the condition contemplated u/s 7O of the Act would not be waived for admission of the appeal and if there would not be an order of interim stay on the execution of the said order serious prejudice shall be caused to the establishment and the relief sought in the appeal would become illusory.

The Ld. Counsel for the respondent describing the impugned order as a well discussed and well reasoned order submitted that the appellant has failed to make out convincing circumstances for waiver of the condition of pre deposit contemplated u/s 7O of the Act. He also submitted that the waiver of the said condition should not be done by the tribunal in a routine manner and the discretion is required to be exercised in appropriate cases only.

In this case the main objection taken by the appellant are that the beneficiaries have not been identified and the allowances given to the employees are being considered as part of the basic wage on which PF contribution are payable. He thereby submitted that the

order challenged in the appeal is patently illegal. It is a settled position of law that while deciding the application u/s 70 relating to pre-deposit, the tribunal should avoid a roving inquiry on the merit of the appeal. Keeping the said principle in mind, it is not felt proper to give any finding at this stage with regard to the merit of the appeal. But at the same time when discretion has been vested with this appellate authority for waiver or reduction of the pre deposit amount, a decision is to be taken on the same on the touchstone of prima facie case and undue hardship. In the case of **Delhi Administration vs. Mohan Lal (2002) 7SCC 222** the Hon'ble Apex Court have held that:

“power vested by statute in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest and no Authority can be permitted to Act in a routine manner”

Thus, the submissions of the Ld. Counsel for the respondent that waiver or reduction is not a rule is not accepted.

In this case the appellant/establishment has argued about a strong prima facie case in its favour. In the case of *Mulchand Yadav and another vs. Raja Buland Sugar Company and another* reported in (1982)3SCC484 the Hon'ble Supreme Court have held that the juridical approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended. Furthermore, in the case of **Shri Krishna vs. Union of India reported in 1998(104)ELT325(DEL)** the Hon'ble High Court of Delhi while dealing with a pari-materia provision i.e. section 129 the Customs Act 1962 have held

“The tribunal is obliged to adhere to the question of undue hardship. The order of the tribunal should show if the plea raised before it, have any merit prima facie or not. If the appellant has a prima facie strong case, as is most likely to exonerate him from payment, and still the tribunal insists on the deposit of the amount it would to undue hardship.”

Thus, on hearing the argument advanced by both the counsels a decision is to be taken on the prayer of the appellant for waiver of the condition of pre-deposit. Considering the fact that the omission in remittance by the appellant is for one year and the amount assessed is huge it is felt that the direction for deposit of 75% of the same would cause undue hardship to the appellant. Considering the matter on the basis of the arguments advanced it is directed that the appellant shall deposit 20% of the amount assessed u/s 7A of the Act as a pre condition for admission of the appeal. Accordingly, the appellant is directed to deposit 20% of the assessed amount within 4 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 orders till disposal of the appeal. List the matter on 28-April- 2021 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.

Presiding Officer