

**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-1/70/2019

M/s Prabhatam Infrastructure

Appellant

VS.

RPFC, Delhi North

Respondent

ORDER DATED:-24.03.2021

Present:- Shri H.D. Sharma, Ld. Counsel for the Appellant.
Shri V.K. Srivastava, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying 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 the petition being served on the respondent, learned counsel V.K. Srivastava appeared and participated in the hearing by filing written objection. Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the commissioner on 10.05.2019 and the appeal was filed on 09.07.2019. Thus there is no delay in filing of the appeal.

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 by the RPFC having power to consider the eligibility of the employees for enrollment under the EPF Scheme but without giving opportunity to the employer as well for as the employee for advancing their respective stand. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation, the commissioner without going through the details passed the order, which is based upon the report of the E O only. The appellant has further contended that the EO in his report has recommended her assessment on the wage paid to

the daily rated workers whose daily wage was Rs. 525/-. The commissioner during the inquiry ignoring all the submissions made in this regard by the establishment came to hold that the daily rate of wage of Rs. 525/- if multiplied by 26 working days comes less than 15000/- per month and thus, remittance should have been made on the salary of those daily rated worker. The submissions of the establishment that the said daily rated workers work for 30 days in a month and their salary is 15750/- making them excluded employees was never considered by the commissioner. Though a written reply to that effect was submitted before the commissioner it was never considered. Pursuant to the inquiry the appellant has been directed to deposit Rs. 1644950/- for the period 04/2016 to 10/2017. Describing the order as illegal and arbitrary the appellant has prayed for waiver of the condition of predeposit laid u/s 7O of the Act. It has further been stated 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. 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.

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. The points raised and grounds taken by the appellant can be considered during hearing of the appeal on merit. But for waiver of the condition of pre deposit the appellant has not spelt out the convincing circumstances.

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. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 04/2016 to 10/2017, and the amount assessed is 1644950/-. The appellant has pleaded that the EO made a report recommending initiation of inquiry u/s 7A alleging that

the appellant establishment has intentionally omitted the eligible employees from being enrolled under the scheme. Before the commissioner the specific plea taken was that the employees getting gross salary more than 15000/ are exempted employees. All the documents including salary register though produced before the APFC, were never considered by him. Without going to the other details 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 observe that the appellant has a strong arguable case in this appeal. Hence considering the period of default, the amount assessed and the prevailing circumstances 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 Rs 06,58,000/- 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 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. List the matter on for compliance of the direction failing which the appeal shall stand dismissed. List the matter on 12.05.2021.

Presiding Officer