

**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-1/43/2021**

M/s. Seven Seas Hospitality Pvt. Ltd.

Appellant

VS.

APFC/RPFC, Delhi (North)

Respondent

**ORDER DATED:- 22.02.2022**

Present:- Shri Manish Malhotra, Ld. Counsel for the Appellant.  
Dr. S.C Gupta, Ld. Counsel for the Respondent.  
Shri K.N Tenzing, RPFC-II.

This order deals with the 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 the appeal and the petition being served on the respondent, learned counsel Shri S. C. Gupta appeared and participated in the hearing and a written objection has been filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 30/09/2021 and the appeal has been filed on 11/11/2021 i.e within the prescribed period of limitation.

A petition has been 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 basis of calculation demanded was never supplied. But the

commissioner without going through the details of the documents placed including the written submission filed twice during the course of inquiry, 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 4/2018 to 11/2019, and the amount assessed is 1,71,55,938/-. The learned counsel for the appellant during course of argument disputed the calculation of the amount assessed and submitted that the commissioner in a whimsical manner arrived at an amount the basis of which was neither made known to the appellant despite demand for the same nor reflected in the order. He also submitted that the challans showing deposit for the inquiry period along with payment confirmation report was produced before the inquiring

authority for perusal. Though in the proceeding dated 19/02/2021, the commissioner acknowledged receipt of the documents and directed the EO for verification, the same was not carried out and the appellant was not served with the revised calculation. The written submission filed was never considered.

For the objection taken by the appellant, the LCR from the office of the Respondent was called and the officer who had passed the impugned order was asked to appear during hearing and explain the basis of calculation. Though the commissioner concerned had appeared as directed failed to explain the basis of the calculation arrived. The impugned order clearly shows non application of mind by the commissioner discharging a quasi judicial function and was wholly led by the report of the EO while passing the order. In one person of the impugned order he, as if the presenting officer on behalf of the respondent has quantified the dues payable by the establishment which does not tally with the total amount assessed in the order. All these circumstances when considered make out a strong arguable case in favour of the establishment for this appeal. Moreover the appellant in the application filed u/s 70 of the Act has explained the hardship, it is likely to face if directed to deposit 75% of the assessed amount. Justifying waiver of the condition laid u/s 70 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 amount assessed 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 15%. Accordingly the appellant is directed to deposit 26,00,000/-which is close to 15% of the assessed amount within 8 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 initially for a period of one year 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 26.04.2022 for compliance of the direction.

Presiding Officer