BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-1/EPFAT, DELHI

D-1/31/2023
M/s Bird Worldwide Flight Services (India) Pvt. Ltd. vs. APFC/ RPFC, Delhi Central.

Present: Sh. Kunal Mehta, Ld. Counsel for the appellant.
Sh. Rajesh Kumar, Ld. Counsel for the Respondent-1.
Sh. Vivek Vidhyarthi, Sh. Sarvagya Vidhyarthi, Sh. NIschay Chaudhary & Ms. Apoorva Singh, for respondent-2.

Order Dated-07.11.2025

1. This order shall dispose off an application filed under section **7-O of the EPF & MP Act, 1952 (hereinafter referred to as "the Act")** with the prayer that condition of pre deposit of the amount be waived. Reason being that impugned order has been passed by the Ld. Respondent authority mechanically without due application of the mind and contrary to the definition of "Basic Wage" as defined u/s 2 (b) of the Act, wherein the allowances i.e. Medical allowances, Conveyance Allowance, and Special Allowance has been excluded from the definition of "Basic Wage". The authority without application of mind has included the aforesaid allowances and calculated the liability of Rs. 8,99,33,949/-. Ld. Commissioner while including the allowance in the impugned order had further ignored the laws laid down by the Hon'ble Supreme Court, various High Courts, circulars issued by the department itself. He further stated that the impugned order also suffers an illegality, wherein the Ld. Commissioner ignored the definition of an "Employee", as defined u/s 2 (f) of the Act and "Apprentice" as defined u/s 2(AA) of the Act and the law laid down by the Apex Court and Hon'ble High Courts on the applicability of the Act on apprentice/trainees and calculated the liability @ Rs. 35,70,573/- towards stipend fees paid to the trainees.

2. It is his case that the appellant company from the date of its inception in the year 2009 has regularly been contributing towards its share of PF as per the provision of the Act without any delay and has deposited an amount amounting to Rs. 43,51,55,377/- (Rupees Forty Three Crores Fifty One Lakh Fifty Five Thousand and Three Hundred Seventy Seven Only)

for the period 2017 to 2022 itself. As such he has stated that he has a good prima facie case and the statutory requirement of deposit of 75% of the assessed amount be waived.

3. Respondent no. 1 & 2 both filed the reply of the application u/s 7-O of the Act. Respondent no. 1 first narrated the definition of 7-O of the Act regarding the mandatory condition of pre deposit. Thereafter, he has stated the objective of the legislation and also mentioned the facts revealed from the impugned order. He has submitted that the Enforcement Officer has stated in his report that the PF Salary on which PF deduction was made by the establishment and mentioned in payment position for the year 2017-18 and 2021-22, do not match with the PF Salary mentioned in reconciliation statements of the said year. As such he has made the difference to the tune of Rs. 6,51,525/- and Rs.13,066/- respectively. Further he has submitted that the establishment failed to produce any supporting evidence as to whether the trainees were engaged as per the Apprentice Act, or any certified standing order of the establishment so he has calculated the dues of Rs.35,70,573/- (Rs. Thirty Five Lakh Seventy Thousand Five Hundred and Seventy Three Only) in respect of his trainees. Thereafter, they had replied that the establishment has bifurcated salary of most of the employees into different heads i.e. Basic, Fixed DA, VDA, HRA, Conveyance allowance, uniform allowance, Entertainment allowance, Medical allowance, LTA, Special allowance, Productivity allowance, Target/ performance incentive, fuel allowance, Mobile allowance, Language proficiency allowance, Attendance allowance, Incentive, CCA & Overtime and remitting PF dues on basic wages including fixed DA & VDA only. However, splitting of wage is nothing but subterfuge for reducing the PF liability. Therefore, they had worked out the amount of Rs. 8,99,33,949/- as EPF dues. As such he has stated that appellant be asked to deposit the amount of 75% of the assessed amount before entertaining the present appeal by this tribunal.

4. Counter reply of the applicant has also been filed by the respondent no. 2 who is the BWFS Airport Karamchari Union. In substance the plea are the same, however, they have mentioned in short.

5. I have heard the arguments and perused the record. Before proceeding further provision of section 7O of the Act is reproduced herein:

> ***7-O. Deposit of amount due, on filing appeal**.—*
> *No appeal by the employer **shall be entertained** by a Tribunal **unless he has deposited with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A**:*
> *Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.*

From the above said provision it is quite clear that it the mandate of the legislation that before entertaining an appeal the appellant is required to deposit the 75% of the assessed amount. However, on the next proviso this tribunal has been empowered to reduce or waive the condition after considering the circumstances mention here.

6. The appellant contention is that the respondent has overlooked the provisions of the Act and assessed the amount based on the difference in salary, including the amount given to the trainee as well as the allowance. These amounts, however, should not have been included in the PF wages, as they are neither universally given nor performance-based.

7. Though, the appellant has raised an important issue regarding the inclusion of the trainee's amount and the allowance yet the case of complete waiver is not made out.

8. Considering the arguable nature of the point, the appellant is directed to deposit an amount of Rs. 1,00,00,000/- (Rs. 1 Crore), by way of **FDR** favouring **'Registrar CGIT'** initially for a period of one year having auto renewal mode, within six weeks from the date of pronouncement of this order. In the meanwhile, interim orders to continue till next date of hearing.

Date: 07.11.2025

ATUL KUMAR GARG
(Presiding Officer)