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-1/34/2020

M/s. Pyramids Restaurant — Appellant

Through:- Shri S.P. Arora & Shri Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Delhi(North) — Respondent

Through:-Shri Rikesh Singh, Ld. Counsel for the Respondent.

ORDER DATED 23.09.2020

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. Satpal Singh appeared and participated in the hearing held through video conferencing on 15th September-2020, though no written objection has been filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 31.01.2020.

Perusal of the office note shows that the appeal was filed on 03.09.2020 via email. 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 limitation and this tribunal can exercise it's discretion for extension of the period of limitation in view of the order passed by the Hon'ble Supreme Court in suo motto WPC No 3/2020 extending the period of limitation until further orders. 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.

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 Supreme Court 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 in respect of excluded employees by the APFC, who lacks power to decide the eligibility of the employees for enrolment under the scheme. It is the RPFC only who can decide the eligibility for the purpose of the scheme. 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 Supreme Court 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 hospitality industry 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 for 4/2013 to 3/2018, and the amount assessed is 7,56,159. 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 Supreme Court 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 said amount be protected from being recovered from the appellant as has been held by the Appex 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 30%. Accordingly the appellant is directed to deposit R2,25,000/ which is close to 30% 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' 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 12-November-2020 for compliance of the direction.

Sd/-

Presiding Officer