

**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-1/41/2022**

M/s. Gandhi Nursing Home

Appellant

VS.

APFC, Delhi (W)

Respondent

**ORDER DATED:- 25/08/2022**

Present:- Shri Ganesh Kumar & Ms. Shalini, Ld. Counsel for the Appellant.

Shri Abhishek, Ld. Counsel for the Respondent No.1.

Respondent No.2,3 and 4 in person.

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 70 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 for the respondent appeared and participated in the hearing held, though no written objection was filed by him. Perusal of the office note reveals that the impugned order u/s 7A was passed on 13/05/2022 by the APFC, Delhi (West) and the appeal has been filed on 14/07/2022. i.e within the period of limitation.

A separate petition has been filed by the appellant 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 without application of mind and without considering the submission of the appellant on facts made during the inquiry. It is submitted that the appellant establishment is an unit of a Pvt. Ltd Company engaged in the business of Health Care. The commissioner served the notice of 7A inquiry for the period March 1995 to August 2015 on the basis of a report submitted by the area enforcement officer. The area enforcement officer had made the verification with regard to the deposit of PF dues by the appellant establishment on account of complaints received from three ex employees of the appellant. In response to the notice the appellant submitted it's reply stating that the said persons had earlier raised complaints for non deposit of their PF contribution and being directed by the respondent, compliance was made by depositing the PF dues. Though the authorized representative of the establishment had visited the office of the respondent and extended all necessary co-operation and also pointed out that the Respondent no 2 has raised the complaint again with the compliance section of the Respondent and the detail reply to the notice was filed the same was not considered at all. On the contrary the Respondent in gross violation of the department circular dated 14/02/2020 directing initiation of inquiry u/s 7A only on existence of prima facie case and on verified complaints only, conducted the inquiry illegally. Copy of the said circular has been placed on record. The other stand taken by the appellant that the Respondent no 4 was never an employee of the appellant establishment a dispute relating to employer employee relationship is pending subjudice. All these aspects of the matter were brought to the notice of the commissioner during inquiry by filing a written submission. But to his utter surprise the inquiry was closed without considering the said submission and the commissioner while adjudicating the matter took a wrong and misconceived view of the matter and passed the order of assessment. The assessment based upon the report of the EO only is illegal and liable to be set aside. The amount so determined is not payable to complainants at all.

Moreover the commissioner while assessing the liability of the establishment never took in to account the deposit made for the earlier complaints made by the respondent no 2,3and 4. He thus prayed for admission of the appeal waiving the condition of deposit contemplated u/s 7O of the Act on the ground that the appellant has a strong arguable case in the appeal. He also 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 whose commercial activity has been impacted by the post COVID slow down. He there by prayed for waiver of the condition of pre deposit pointing out that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that the appellant has least chance of running away from the reach of Law. 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. Learned counsel for the respondent also cited the order passed by the **Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt. Ltd VS RPF**, to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

The commissioner in this case made the assessment on the basis of the complaints made by some employees. He also considered the report of the EO. But the written submission made by the establishment and now placed on record, it seems, was not considered by the commissioner. Besides this the learned counsel for the appellant also argued on the merit of the appeal.

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. For the same, factors which need to be considered are the period of default in respect of which inquiry was

initiated and the amount assessed 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 pass an order keeping in view the principle decided in the case of **M/S Benars Valves Ltd &Others vs. Commissioner of Central Excise**, decided by the Hon'ble Supreme Court wherein it has been held that **“if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay the full or a substantial part of the assessed amount.”** Hence relying on the said judgment as well as considering the grounds of the appeal, the period of default, the amount assessed etc, it is felt that insistence for deposit of 75% of the assessed amount would amount to undue hardship to the appellant.

But at the same time, considering the submission of the parties, it is held 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 40% of the assessed amount within six weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way of FDR in the name of the Registrar CGIT 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 orders till disposal of the appeal. List the matter on 13<sup>th</sup> October 2022 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

**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-1/07/2017**

M/s. Vibhor Marketing Pvt. Ltd.

Appellant

VS.

APFC, Delhi (E)

Respondent

**ORDER DATED:- 25/08/2022**

Present:- Ms. Neha Shrivastav, Ld. Counsel for the Appellant.  
Shri S.N Mahanta, Ld. Counsel for the Respondent.

This order deals with an application filed u/s 7L(2) of the EPF and MP Act read with Rule 21 of the appellate/tribunal (Procedure) Rules 1997 by the appellant seeking modification of the order dated 10.07.2018. Notice of the petition being served on the respondent advocate S.N Mahanta appeared and participated in the hearing. During the course of hearing both the counsels advanced their oral submissions.

The facts leading to the present application in short is that challenging the order dated 29.04.2016 and 09.09.2016 passed u/s 7A and 7B of the EPF and MP Act respectively by the APFC Delhi East the appeal was filed. This tribunal by order dated 14.03.2018 had directed the appellant to deposit 50% of the assessed amount towards compliance of the provisions of section 7O within 4 weeks from the date of the order as a pre condition for admission of the appeal. Being aggrieved the appellant had filed WPC No. 3431 of 2018 and the Hon'ble High Court of Delhi by order dated 09.04.2018 disposed of the writ petition confirming the order passed by this tribunal. However, 4 weeks time was allowed to deposit the 50% of the assessed amount. That 4 week time was again extended on two occasions by the Hon'ble High Court by order dated 02.05.2018 and 18.05.2018. But the appellant could not

comply the direction within the time stipulated by the Hon'ble High Court. When the matter was listed before this tribunal on 10.07.2018 for compliance of the order passed by the tribunal within the time granted by the Hon'ble High Court the appellant showed the mitigating circumstances for non compliance of the direction. But this tribunal by order dated 10.07.2018 dismissed the appeal for non compliance of the order dated 14.03.2018 within the time allowed by the Hon'ble High Court. The appellant received a showcause notice dated 11.11.2021 wherein the appellant was directed to deposit the amount assessed in the order dated 29.04.2017. It has further been stated that another assessment was made by the respondent against the appellant for an all together different period and challenging the same appeal bearing No. D-1/01/2022 has been filed and in the said appeal this tribunal had directed for deposit of 30% of the assessed amount towards compliance of section 70 of the act. But before passing of the order the respondent had recovered the entire amount. Hence, the tribunal has directed for refund of the balance amount after deducting 30% towards compliance of the 70 of the Act. That amount is yet to be refunded. Hence, by filing the present petition the appellant has stated that the order dated 10.07.2018 may be recalled/modified and the entire recovered amount of Rs. 4261473/- may be considered towards compliance of the pre condition as contemplated u/s 70 of the Act.

The Ld. Counsel for the respondent opposed the petition mainly on 2 grounds i.e. the petition filed is not maintainable in as much as no mistake apparent on the face of the record has been pointed out for correction. Furthermore, the petition if allowed would have the effect of modifying the order of the Hon'ble Court, which cannot be and should not be done by this tribunal.

On hearing the argument it is understood that the appellant wants restoration of the appeal and direction to the respondent to make the deposit in compliance of section 70 from out of the amount recovered. The same is not permissible as it would amount to modification of the order passed by the Hon'ble High Court allowing extension of time to the appellant for making the

predeposit. Moreover, the provisions of section 7L(2) is not applicable in the facts of the case in hand which gives power to the tribunal to rectify any mistake apparent from the record within 5 years from the date of its order. Hence, the grounds taken by the appellant in the petition are held devoid of merit and the petition is accordingly rejected.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208  
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.  
Appeal No. D-2/24/2019**

M/s. Hi-Trac Manpower Services Pvt. Ltd. Appellant  
Through Sh. J.R Sharma, Ld. Counsel for the Appellant

Vs.

RPFC, Gurugram Respondent  
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

**ORDER DATED :- 25/08/2022**

Arguments on the miscellaneous application filed for vacation of stay heard and concluded and the following order is passed;-

This order deals with the application filed by the Respondent of the appeal, praying vacation of the interim stay granted by this Tribunal on the execution of the order impugned in the appeal , the objection raised by the appellant to the said application, and the specific argument advanced by the learned counsel for the respective parties.

Perusal of the record shows that the Tribunal, at the time of admission of the appeal had passed a conditional order of interim stay on the execution of the order challenged pending disposal of the appeal. Since, the appeal is pending for a long period and more than six months have passed since the date of the above said interim stay order, the Respondent , by filing the present petition has prayed for vacation of the stay in view of the order passed by the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd & Another vs C B I.

It has been stated in the petition that the Tribunal by order **dt 09.12.2019** has directed that there would be an interim stay on execution of the impugned order on compliance of the condition set out in the order. More than six months have passed since the date of that order and the stay granted has not been extended for a further period by a specific speaking order. The Hon'ble SC in the case of Asian Resurfacing of Road Agency & Anr vs Central Bureau of Investigation(Crl Appeal No1375-1376/2013 )have held that

Para 36- " At times proceedings are adjourned sine die on account of stay. Even after stay is vacated intimations are not received and proceedings are not taken up. In an attempt to remedy the situation we consider it appropriate to direct that in all pending cases where stay in against the proceedings of a civil or criminal trial is operating , the same shall come to an end on expiry of six months from today unless in an exceptional case by



a speaking order the stay is not extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay is more important than having the trial finalized. The trial court where order of stay of civil or criminal proceeding is produced, may fix a date not beyond six months of the order of stay so that on expiry of the period of stay, proceeding can commence unless order of extension of stay is produced.”

In view of the said order and since no extension of stay has been granted by the Tribunal by a speaking order, the stay stands vacated on expiry of six months. Hence an order to that effect needs to be passed for clarity.

Having heard the argument and on a mindful reading of the order passed by the Hon'ble SC in March 2018 in the case of Asian Resurfacing it appears that the directions given in para 35 and 36 will apply when

- i. A civil or criminal case is pending in a court, meaning thereby a trial court or the High Court exercising original civil jurisdiction
- ii. The trial has commenced either by framing of issue in a civil trial and or on framing of charge in a criminal trial
- iii. When the High court or civil or criminal Appellate/Revisional court have granted stay on the said trial proceedings and more than six months have passed since the date of order and no extension of stay has been allowed by a speaking order. The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, where the stay granted has not stayed the trial of any civil or criminal proceeding and the stay is specifically with regard to the recovery proceeding pursuant to a concluded inquiry and decision rendered by a quasi judicial authority, which is under challenge in the appeal.

It is true that the Hon'ble SC, by their order dt 15<sup>th</sup> October 2020 passed in Asian Resurfacing case have reiterated that whatever stay granted by any court, including High Court, the same automatically expires after a period of six months, unless extension is granted for good reasons as per the judgment of March 2018. But this order can not be read in isolation. A conjunctive reading of para 35 and 36 the judgment of March 2018 and order dt 15<sup>th</sup> Oct 2020, leads to the only meaning that “A stay granted by any court” means and refers to a stay granted by the civil and criminal Appellate/ Revisional courts mentioned in para 36 of the judgment and specifically with reference to a pending civil or criminal trial. It is not

applicable to an appeal pending challenging the order passed in an already disposed of proceeding by a quasi judicial authority.

It will not be out of place to mention that the Hon'ble High Court of Bombay in the case of Oracle Financial referred supra have held in clear terms that there being no allegation that the petitioner is responsible for delay , merely relying on the judgment of the Hon'ble SC the stay can not be vacated in an appeal where the stay is in respect of the implementation of an already decided order by a quasi judicial Authority and challenged in the appeal.

In view of the aforesaid discussion, it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on the date already fixed i.e. 24.11.2022 for final arguments.

**Presiding Officer**

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208  
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

**Appeal No. D-2/04/2021**

M/s. R.R. Enterprises  
Through Sh. R.P. Dhawan, A/R for the Appellant

Appellant

Vs.

APFC , Gurgaon  
Through Sh. Charkradhar Panda, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 25/08/2022**

The A/R appearing on behalf of the Appellant sought for an adjournment. List the matter on 19.09.2022 for final arguments.

**Presiding Officer**