

**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-1/32/2020

M/s. Dusseldorf India Pvt. Ltd.

Appellant

VS.

APFC, Delhi (South)

Respondent

ORDER DATED:- 15.11.2021

Present:- Shri Rajesh Jariwal, Ld. Counsel for the Appellant.
None for the Respondent.

This order deals with an application filed by the Respondent of the appeal, praying modification of the order dated 16.09.2020-22.10.2020 passed by this Tribunal granting interim stay on the execution of the order impugned in the appeal.

It has been stated in the petition that the Tribunal by order dated 16.09.2020-22.10.2020 has directed that on compliance of the condition set out in the order, there would be stay on execution of the impugned order pending disposal of the appeal and the respondent shall not take any coercive action with relation to the said order during the pendency of the appeal. But the Hon'ble SC in the case of Asian Resurfacing of Road Agency & Another vs. Central Bureau of Investigation (Crl Appeal No1375-1376/2013) have held that

Para 35-“ 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 non 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 month. Hence an order to that effect needs to be passed for clarity.

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, attention was drawn to the judgment of the Hon'ble High Court of Madhya Pradesh in the case of **Rajmata Vijayraje Sciendia Krishi**

Vishwavidyalaya VS EPFO, wherein the Hon'ble Court, in absence of a specific order extending stay, came to hold that the stay granted by the CGIT Lucknow stands vacated automatically in view of the judgment of Asian Resurfacing. The Respondent thereby insisted for vacation of the interim stay granted.

Argument on the petition was also advanced by the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the tribunal.

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; meaning thereby on framing of issue in a civil trial and on framing of charge in a criminal trial
- iii) When the High court or civil or criminal Appellate/Revisional court have granted stay to the trial

The aforesaid directions will not apply to cases where a quasi judicial body or Tribunal grants stay.

Here is a situation, 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 further by their order dated 15th October 2020 passed in Asian Resurfacing case, have reiterated that whatever stay granted by any court, including High Court, the same automatically expires within a period of six months, unless extension is granted for good reasons as per the judgment of March 2018. but this order cannot be read in isolation. A conjunctive reading of Para 35 and 36 the judgment of March 2018 and order dated 15th 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.

Hence it is held that the petition filed by the Respondent for vacation of stay is without merit and rejected. Call on 08.02.2022 for the purpose already fixed.

Presiding Officer