

**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-1/14/2022

M/s. Ajay Raj Construction

Appellant

VS.

APFC, Delhi East

Respondent

ORDER DATED:-02/05/2022

Present:- Ms. Shivani & Sh. Ravi Ranjan, Ld. Counsel for the Appellant.

Shri Narender Kumar, Ld. Counsel for the Respondent

The appeal challenges two separate orders dated 02/07/2021 passed by the APFC Delhi East u/s 14B and 7Q of the EPF&MP Act communicated on the same day, wherein the appellant has been directed to deposit Rs 3,65,421/- and Rs.1,84,192/- as damage and interest respectively for delayed remittance of EPF dues of it's employees for the period 05/22014 to 02/2020.

Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing resisting the prayer for grant of stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned orders were communicated to the establishment on 02/07/2021 and the appeal was filed on 14/03/2022 i.e beyond the period of limitation. Thus the Registry has pointed out the delay in filing the appeal. But for the extension of limitation granted by the

Hon'ble SC on account of the outbreak of COVID-19, the delay is condoned. There being no other defect the appeal is admitted.

The appellant has stated that the impugned orders are illegal, arbitrary and outcome of a composite proceeding, though two separate orders have been passed mechanically. He also submitted that the notice of the inquiry was never served upon the establishment and the ex parte order was passed under a wrong observation that the establishment failed to participate in the inquiry and did not explain its bonafides for the delay in remittance. They could know about the impugned orders when recovery action was initiated. The other argument advanced is that the commissioner without assigning reason for levying damage at the maximum rate passed the impugned order in a fanciful manner. The authority of the assistant PF Commissioner for levying damage u/s 14B has also been challenged. Thus it is argued that the appellant has a strong arguable case in the appeal. Unless the impugned orders would be stayed, the relief sought in the appeal would become illusory. It is also pointed out that the orders though have been separately passed u/s 14B and 7Q, in fact it is a composite order being passed in a common proceeding. The appellant thereby submitted that the appeal be admitted in respect of the order passed u/ 7Q of the Act and an interim order of stay be passed against the execution of both the orders.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over more than five year depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation. Arguing that the orders being separately passed can not be treated as composite order, he submitted that the appeal can not be admitted in respect of the 7Q order. He also relied upon the interim stay granted by the Hon'ble SC on the judgment of the Hon'ble High Court of Delhi in the case of Gaurav Enterprises, wherein it was held that two separate orders even though passed u/s 14B and 7Q of the Act would be treated as composite orders if the same are the out come of a composite proceeding. The learned counsel for the respondent thus argued that the appeal challenging the order passed u/s 7Q of the Act being not maintainable be dismissed.

The reply submission made by the appellant is that the establishment should not have been saddled with the damage when

notice of inquiry was not served and opportunity to set up a defence was denied and the orders were passed in a mechanical manner without any finding on mensrea.

As seen from the impugned orders no reason has been assigned by the commissioner for imposing damage at the highest rate. Only factor which drove the commissioner for passing the impugned order is the non appearance of the establishment during the inquiry. At this stage no evidence has been placed on record by the Respondent to hold that the notice of inquiry was duly served on the appellant.

On hearing the submission made by both the counsel's the factors which are required to be considered for passing the order of stay, include the period of default and the amount of damage levied in the impugned order. In the case of **Shri Krishna vs. Union of India reported in 1989LLR(104)(Delhi)** the Hon'ble High court of Delhi have held:-

“The order of the tribunal should say that the appellant has a prima facie strong case as is most likely to exonerate him from payment and still the tribunal insist on the deposit of the amount, it would amount to undue hardship.”

In this case the period of default as seen from the impugned order spreads over almost five years and the damage levied is huge. The commissioner has not assigned any reason supporting his finding.

All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order passed u/s 14B of the Act, certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit 30% of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within 6 weeks from the date of communication of the order, failing which there would be no stay on the impugned order passed u/s 14B. The said amount shall be deposited by the appellant by way of Challan. It is directed that there would not be interim stay on the execution of the order calculating interest u/s 7Q since at this stage no opinion can be formed on the composite nature of the orders passed. Call the matter on 19/05/2022 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14B of the Act till the compliance is made.

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-1/04/2022

M/s. Late Alok Kumar(Since Deceased)
Through his Mother Kundan Devi
Through Nonefor the Appellant

Appellant

Vs.

1.RPFC, West
Through Sh. Sandeep Vishnu ,Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/05/2022

Arguments on the maintainability of the appeal heard and concluded. List the matter on 07.07.2022 for pronouncement of order on the same.

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-1/10/2022

M/s. Rajindra Pvt. Ltd.
Through Sh. Kunal Arora, Ld. Counsel for the Appellant

Appellant

Vs.

CBT, RPFC, Delhi (N)
Through Sh. Rikesh Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/05/2022

Arguments on the delay condonation application, application filed u/s 7 O as well as admission of the appeal heard and concluded. List the matter on 11.02.2022 for pronouncement of order on the same. Meanwhile, the Respondent authority is directed not to take any coercive measure for recovery of the amount as mentioned in the impugned order till next date of hearing.

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-1/33/2018

M/s. Delhi State Civil Supplies Corp. Ltd. Appellant
Through Ms. Ravi Birbal, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi North & Others Respondent
Through None for the Respondent no.1
Sh. Bijay Kumar Ld. Counsel for the Respondent No. 2
None for the Respondent no. 3 and 4
Sh. S.N Mahanta Ld. Counsel for the Respondent No.5

ORDER DATED :- 02/05/2022

The Ld. Counsel for the Respondent no. 5 is directed to supply the copy of reply filed by him to the Ld. Counsel for the Appellant. The copy of the reply filed by Ld. Counsel for the Respondent no. 2 stands supplied to the Ld. Counsel for the Appellant. List the matter again on 09.07.2022 for filing reply to the appeal by the remaining Respondents.

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-1/82/2019

M/s. Seven Seas Hospitality Pvt. Ltd.
Through Sh. Manish Malhotra, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC-1, Delhi (N)
Through None for the Respondent

Respondent

ORDER DATED :- 02/05/2022

The Ld. Counsel for the Respondent has requested for an adjournment on account being covid positive. Adjournment granted. List the matter on 06.07.2022 for filing reply to the appeal by the Ld. Counsel for the Respondent.

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-1/108/2019

M/s. Advances Services Pvt. Ltd.
Through Sh. Sanjay Kumar, Ld. Counsel for the Appellant

Appellant

Vs.

CBT, RPFC, APFC, Delhi (E) & 05 Ors.
Through Sh. Anuj Kumar Sharma, Ld. Counsel for the Respondent no. 1 & 2

Respondent

None for Resp. No. 3, 4, 5, 6 & 7

ORDER DATED :- 02/05/2022

Perusal of the record shows that reply to the appeal has been received on behalf of Resp. No. 1, 2 & 7. List the matter on 12.09.2022 for filing reply by the remaining Respondents. The copy of the reply filed on behalf of the EPF Authorities stands supplied to the Ld. Counsel for the Appellant.

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-1/75/2019

M/s. Veer Arjun Newspapers Pvt. Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

RPFC-II, Delhi (N) Respondent
Through None for the Respondent

J.R Sharma for the Impleader.

ORDER DATED :- 02/05/2022

Arguments on the miscellaneous application, filed for impleadment heard in part. List the matter on 05.07.2022 for further 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-1/111/2019

M/s. Houte Couture (India) Appellant
Through Sh. Shwetank Sharma, Proxy Counsel for the Appellant

Vs.

RPFC & APFC, Delhi (S) Respondent
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 02/05/2022

The Appellant has filed copy of challan showing the compliance made in lieu of direction given by this Tribunal. Accordingly, the appeal is admitted and there shall be stay on execution of the impugned order till finalization of the appeal. List the matter on 06.07.2022 for filing reply by the Ld. Counsel for the Respondent.

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-1/02/2019

M/s. Bal Bhawan Public School Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi (E) Respondent
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 02/05/2022

Arguments heard in part. List the matter on 09.05.2022 for
continuation of the arguments.

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-2/14/2019

M/s. Fernas Construction India Pvt. Ltd.

Appellant

VS.

APFC, Gurgaon

Respondent

ORDER DATED :-02/05/2022

Present:- Shri S.K Khanna, Ld. Counsel for the appellant.

Shri S.N Mahanta, Ld. Counsel for the Respondent.

This appeal challenges the orders passed by the APFC Gurgaon on 29/03/2019 u/s 14B of the EPF and MP Act 1952 (herein after referred to as the Act) levying damage of Rs. 88,66,596/- on the appellant/establishment for the period 08/08/2012 to 18/05/2017. The plea of the appellant taken in this appeal is that it is an establishment engaged in the business of construction of Turn Key Projects. Since the date of its coverage, the establishment is diligent in deposit of PF dues of its employees including compliance of different provisions of the Act. The show cause notice dated 01/06/2017 was issued proposing levy of damage and interest for the above said period on account of delayed remittance of PF dues of the employees. In the said show cause notice the appellant was directed to appear before the respondent on 21/06/2017. The appellant responded to the notice by sending the letter dated 10/05/2018, where in the mitigating circumstances leading to delay in remittance was explained. But the respondent without considering the same and without affording proper opportunity to the establishment for setting up its defence, passed the impugned non speaking order. The appellant could know about the impugned order only on 22/05/2019, when the authorized representative of the establishment attended the proceeding initiated u/s 7A of the Act before the Respondent Authority who informed him

about the order imposing penal damage and he immediately obtained a copy of the order.

The appellant has further pleaded that the Appellant establishment was awarded a lump-sum Turn Key Project by M/S OPAL a public sector company and was also awarded the contract by M/S EIL another public sector company to execute the work of construction of south jetty pipe line and related facilities at Paradeep. But both OPAL and EIL defaulted in release of the dues of the appellant establishment in time as a result of which the appellant could not pay the salary of it's employees leading to a strike at the work site. Thus several round of discussions were made to overcome the situation and as per the record notes of discussion dated 17/10/2014, it was agreed that the OPAL shall directly credit to the sub contractors for the equipments to be delivered and all the sub contractors of the appellant shall be paid directly. It was also agreed then that OPAL shall make timely release of the dues of the appellant in order to facilitate payment of salary of the employees. On 29/05/2015 and 09/06/2015 appellant wrote letters to both OPAL and EIL requesting timely release of the payment and in response there to the EIL released 9,21,05,659/- and OPAL released Rs 86,16,267/- for disbursement of salary. But no amount was released for contribution of PF dues. Subsequently an amount of Rs 1,90,50,064/- and Rs 55,50,212/- was released by the principal employer for deposit of PF dues. During this period an application was filed by M/S RVR Projects u/s 9 of the IBC and NCLT appointed IRP. But subsequently the Hon'ble SC stayed the proceeding before the IRP. Thus the appellant has pleaded that for the default caused by the principal employer, the delay occurred and the same is not attributable to the appellant establishment entailing liability of damage. But the commissioner without affording opportunity of effective hearing passed the non speaking order which is liable to be set aside. During course of argument the learned counsel for the appellant argued that the written submission was never considered and the commissioner without considering the mitigating circumstances and without giving proper opportunity to the appellant for proving its bonafides for the default abruptly closed the inquiry and passed the impugned order without application of mind and without giving any finding on the mensrea of the appellant behind the delay in deposit of the PF contribution. The Principle of Natural Justice were flaunted and the inquiry was hurriedly concluded. While pointing out various legal aspects and the position of law settled by the Apex Court and different High Courts, the appellant has pleaded that the impugned order is liable to be set aside on various legal grounds as has been stated in the appeal memo.

The counsel appearing on behalf of the respondent has filed written reply objecting the stand taken by the appellant. Citing various judgments of the Hon'ble High Courts and the Apex Court he submitted that when the EPF Act and the EPF Scheme explicitly provides that the principal employer at the first instance is obliged to make deposit of the PF contribution of it's eligible employees, the plea of the appellant is baseless and cannot be accepted. In this case the appellant having been allotted a separate code no is the principal employer and it can not shift the burden to the public sector companies with whom it had entered in to contract for execution of specific work. He also resisted the stand of the appellant that no chance of effective hearing was allowed to the appellant and submitted that several adjournments were allowed to the appellant during the inquiry and as admitted, the show cause noticed was duly served on the establishment which opted out of the inquiry voluntarily. The appellant establishment did not produce any document to show the mitigating circumstances. Thus, the commissioner had passed a reasoned and speaking order.

The Ld. Counsel for the appellant during course of argument submitted that the mitigating circumstance explained in the written objection was not at all considered and no finding has been rendered on the mensrea of the establishment behind the delayed remittance which in view of the judicial pronouncements makes the order illegal. By placing the office copy of the written submission, stated to have been filed during the inquiry, he also argued that the commissioner has not assigned any reason as to why damage at the maximum rate was imposed when the commissioner has the discretion of reducing the same which is evident from the word "May" used in the section 14B of the Act. He emphasized that the impugned order passed u/s14B suffers patent illegality in as much as not providing the opportunity to the appellant of explaining the mitigating circumstances, for not considering the written objection and for want of finding on the mensrea. The other limb of his argument is that the APFC has no power to levy damage u/s 14 B of the Act. He pointed out that a plain reading of the provision of sec 14 B shows that the Act provides for levy and recovery of Damage from the employer for any default in deposit of contribution. Where as the said provision authorizes the Central Govt. to authorize officers by notification for recovery of damage, the Act is silent about the person authorized to levy. On that score also the impugned order passed by the APFC is illegal and liable to be set aside.

Mr. Mahanta the learned counsel for the respondent while dismissing the argument of the appellant submitted that the appellant has admitted about receipt of the show cause notice but it did not participate in the inquiry to set out the defence or to show the mitigating circumstances. The impugned order shows that OPAL, whom the appellant describes as the principal employer had appeared during the inquiry and denied it's liability for the PF deposit in respect of the employees of the appellant and the stand taken by OPAL was given due consideration. He also submitted that the appellant had not produced any proof of delivery of the written submission to the respondent allegedly sent by post. The other argument advanced is that the APFC derives power from the provisions of sec 7-A of the Act to levy damage u/s 14B. He also argued that under the provisions of Para 30(3) of the EPF Scheme 1952, the principal employer is primarily responsible for compliance of the statutory deposits and in this case the appellant is the principal employer and the burden can not be shifted to others.

The admitted fact is that the show cause notice was duly served on the appellant. But it remained satisfied by filing a written reply only and there is no proof that the same was received by the commissioner during inquiry. The impugned order reveals that the OPAL had appeared during the inquiry and denied it's liability for the compliance under the Act. The other admitted fact is that both the contract partners of the appellant on some occasion had released the money toward the salary and PF contribution of the employees engaged by the appellant. Though the appellant has pleaded about the responsibility of it's contract partners in this regard and also stated about the decision taken in the meetings, no escrow agreement entered between them has been placed on record. More over the provision of Para 30(3) of the scheme clearly fastened the liability for the contribution on the principal employer and the appellant in this case having been allotted the specific code no is the principal employer. In absence of evidence showing the mitigating circumstances and when there is no evidence to prove that the written submission was filed during the inquiry, the finding rendered by the APFC can not be held as incorrect for not considering the mitigating circumstances.

With regard to the power of the APFC for levying damage u/s 14B, it is worth to observe that the provision u/s 7A in general vests power to the authorities notified by the Central Govt. for determination of money due from the employer under any provision of the Act. The provisions of section 14B, deals with the power to levy and recover the damage as penalty. The judgment of the Hon'ble High court of Madras in the case of RPFC vs. Shirine Velankani

Senior Secondary School relied by the appellant is distinguishable on facts and not applicable to the facts of this appeal.

On hearing the argument and on perusal of the impugned order passed u/s 14B of the Act it appears that the commissioner after giving several opportunities to the appellant establishment and after giving due consideration to the submission made by M/S OPAL whom the appellant describes as the principal employer passed the impugned order.

Thus, from the totality of the circumstances and the pleas canvassed in this appeal it clearly appears that the commissioner had passed the impugned order u/s 14B by proper application of mind and by giving due consideration to the various legal provisions. The appellant having no justifiable grounds to delay the remittance had caused delay making itself liable for penal damage. Accordingly it is held that the order passed by the commissioner does not suffer from any illegality calling for interference. Hence, ordered.

ORDER

The appeal be and the same is dismissed as devoid of merit. The impugned order passed u/s 14B of the EPF and MP Act is hereby confirmed.

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-2/02/2021

M/s. Clixxo Broadband Pvt. Ltd. Appellant
Through Sh. Ravi Ranja, Ld. Counsel for the Appellant

Vs.

APFC, Noida Respondent
Through Sh. Narender Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 02/05/2022

The Ld. Counsel for the Respondent pressed his application for vacation of stay. Accordingly, 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.

Sh. Narender Kumar, the learned counsel for the respondent argued on the petition being assisted by Sh Rajesh Kumar, Mr Sidharth, Sh Sivnath Mahanta, Sh Rakesh Singh and others, who are the empaneled counsels of the Respondent department. On the other hand on behalf of the appellant Ms Akanksha Narang advanced her argument opposing the petition being assisted by advocates Sh Rajiv Arora, Sh S K Gupta, Sh Rajiv Shukla, Sh Manish Malhotra Sh Sailesh Kapoor and others who are the counsel in respect of other appeals in which similar petitions have been filed. The counsels, other than the advocate having power in a particular case were allowed to participate and assist since applications of similar nature have been filed in a number of cases involving similar question of fact and law. A common order can not be passed in respect of all the cases as the order to be passed is not likely to finally dispose off the litigation.

It has been stated in the petition that the Tribunal by order dt 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 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 need to be passed for clarity .

During course of argument, besides relying on the judgment of Asian Resurfacing referred supra, Sh Rajesh Kumar Advocate for the Respondent drew the attention 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. On behalf the respondent the learned counsel also submitted that under Rule 21 of the Appellate Tribunal Rules the Tribunal may make such orders which is expedient to give effects to it’s orders or to prevent abuse of process and secure the ends of justice. Citing several other judgments of the Hon’ble SC, he submitted that EPF & MP Act being a social welfare legislation interpretation of the provision and decided principles of law should be made in a manner to extend the benefits of law to the weaker section of the society.

Argument on the petition was advanced by the counsel for the appellant who challenged the applicability of the order passed in Asian Resurfacing judgment to the appeals pending before the Tribunal. The main objection taken is that the order passed by the Hon’ble Apex Court, on a plain reading clearly shows that the said order was with reference to the civil and criminal trial proceedings delayed and pending for long time on account of stay orders passed. The same has no applicability to the appeal pending before this Tribunal. Learned counsel Sh Rajib Arora citing the judgment of the Hon’ble High Court of Bombay in the case of Oracle Financial Services Software Ltd vs Dy Commissioner Income Tax, (WPC 542/2019 –order dt 23rd Feb 2019) submitted that the applicability of Asian Resurfacing Judgment passed in the context of civil and criminal proceedings pending before trial courts, can not be imported to the set of quasi judicial proceedings. He also placed reliance in the case of Commissioner of Central Goods & Services Tax vs Anmol Chlorochem (2019 (367) ELT 584 Guj) to submit that the Hon’ble High Court of Gujarat have held that the observation made by the Hon’ble SC can not be made applicable to a Tax Appeal as the said judgment was exclusively with reference to civil or criminal proceedings arising from a trial.

Sh S K Gupta the learned counsel, by referring to the observation made by the Hon’ble Bombay H C in the case of Oracle Financial services argued that when there is no allegation by the Respondent counsel that the delay in disposal of the appeal is attributable to the appellant, the prayer for vacation of stay is not maintainable. He also submitted that the factors causing delay in disposal of the appeal, which is the main grievance of the Respondent, be taken into consideration while passing order on the present petition.

The learned counsel Sh Sailesh Kapoor added that the appellants are ready to argue the appeals for final disposal and the stay granted was never un conditional. In such a situation any order vacating the stay, when the judgment of Asian Resurfacing is not applicable would be prejudicial to the appellants.

Learned counsel Sh Rajiv Shukla while drawing attention to the opinion expressed by the Ministry of Law and Justice, Dept. of Legal Affairs , on a query made by the Central Board of Indirect Tax& customs , submitted that the said department has issued a clear guideline to the effect that the Asian Resurfacing Judgment is with reference to civil and criminal Trial proceedings. He also submitted that the said judgment can be made applicable to an individual case and it has no general applicability.

Learned counsel Sh Manish Malhotra added that the judgment has been passed by the Hon'ble S C to remedy the position where a trial proceeding is stayed. The interim order passed by this tribunal since does not stay any trial proceeding and specific to the execution of the final order, the petition filed by the Respondent is on a misconception and misinterpretation of the said judgment.

In reply to the submissions made by the counsel for the appellants , the learned counsels Sh Rajesh Kumar and Sh S N Mahanta submitted that different High courts and other courts since interpreted the Judgment of Asian Resurfacing in different manner the Hon'ble SC in another order dt 15th October 2020 (Misc Application No 1577/2020 arising out of Crl Appeal no 1375-1376/2013) have clarified that the judgment of Asian Resurfacing applies to all courts and whatever stay has been granted by any court including the High Court shall automatically expire after six months. Hence the application filed by the respondent be allowed and the order of interim stay be vacated.

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 The Hon'ble SC , by their order dt 15th 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 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 para36 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. List the matter on 14.07.2022 for consideration of the miscellaneous application filed by the Ld. Counsel for the Appellant u/s 151 CPC.

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-1/13/2019

M/s. Prompt Security Services
Through Sh. Rajiv Arora, Proxy Counsel for the Appellant

Appellant

Vs.

RPFC-II, Faridabad
Through Sh. Satpal Singh, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 02/05/2022

The Proxy Counsel appearing for the Appellant submitted that main Counsel in this matter wants an adjournment on account of his illness. However, perusal of the record as well as submissions made by the Ld. Counsel for the Respondent indicate that no compliance of the order dated 26.11.2019 given by this Tribunal while deciding application filed u/s 7 O has been done. Further, no document showing any stay granted by the Hon'ble High Court is placed on record by the Appellant. Accordingly, the appeal is dismissed due to non-compliance of the order dated 26.11.2019. Send the copy of the order to both the parties. Thereafter, consign the record to the record room.

Presiding Officer