

**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. 144(4)2012**

M/s. Shiva House Keeping Services

Appellant

VS.

APFC, Delhi

Respondent

**ORDER DATED :-11/07/2022**

Present:- Shri Trilok Pandit, Ld. Counsel for the appellant.  
Shri Arvind Kumar Verma, Ld. Counsel for the Respondent.

The present appeal is directed against the order dated 30.07.2010 passed by the RPFC Delhi u/s 7A of the EPF and MP Act wherein an amount of Rs. 8,75,242/- has been assessed as the deficit PF dues of the employees by the employer who is the appellant for the period 20.11.2001 to 06.2007.

The grievance of the appellant is that it was an establishment engaged in supply of manpower and was duly covered under the EPF and MP Act 1952 (herein after referred to as the Act). After doing business for two months only it closed down the operation and gave due intimation to the registrar of the company as well as to the EPFO. The business was closed on account of the failure. The employees employed left the job after their full and final settlement. The commissioner having no basis initiated the inquiry u/s 7A and the appellant having come to know about the same appeared and intimated that no business was carried out during period under inquiry. The appellant had also produced documents with regard to the intimation of closure of business. But the commissioner never took into account the stand of the appellant. On the contrary, accepted the report of the EO and without identifying the beneficiaries and without assigning any reason of assessment passed the impugned order. Hence, the appeal.

Notice being served the respondent appeared through its counsel and filed the written reply. In the reply it has been stated that the appellant has deliberately omitted to deposit the

subscription of the eligible employees and even did not cooperate during the inquiry. After lots of efforts the address of the appellant could be ascertained for service of the notice. The EO could not verify the records of the establishment and the commissioner on the basis of available records passed the impugned order. While supporting the impugned order the Ld. Counsel for the respondent has stated that the appellant cannot escape the statutory liability by adopting the method of non cooperation and non production of the documents. Since all steps were taken during the inquiry for verification of the record the commissioner is justified in passing the order on the basis of the available records.

During course of argument the Ld. Counsel for the appellant submitted that assessment of the dues u/s 7A of the Act is not the assessment like tax. In order to assess the amount due the commissioner is duty bound to identify the persons to whom the benefit is to go. To support his argument he has placed reliance in the case of **Himachal Pradesh State Forest Corporation vs. RPFC, 2008-III LLJ SC 581**. On the other hand the Ld Counsel for the respondent placed reliance in the case of **Mohan Brothers vs. RPFC 2003IIILLJ 424 decided by the Hon'ble High Court of Delhi** wherein it has been held that when during an inquiry u/s 7A the employer was given all opportunity to adduce evidence in rebuttal, but failed to do so and did not produce the documents, the report of the inspector which is a part of the commissioner record can be safely relied upon.

Perusal of the record and the impugned order shows that the inquiry was started for the period 20.11.2001 to 06.2007 pursuant to a notice dated 13.08.2007. But the appellant did not appear. The commissioner peruse the file relating to appellant application for coverage and found that the establishment had submitted the work orders from 3 independent establishments alongwith its application for coverage. All the 3 establishments were summoned to appear during the inquiry. One of the establishment having name M/s Sardar Patel Vidyalaya appeared and informed that for the period 13.09.2001 to 02.07.2002 the appellant establishment had supplied only one manpower to them. The proprietor of the other establishment M/s Jawahar Mishra and sons had died before the inquiry and the 3<sup>rd</sup> establishment M/s S Kumar Cargo could not be traced despite police help. After lots of search the address of the

appellant was ascertained and he was noticed to appear in the inquiry. The appellant though appeared and took time for verification of the record, later on did not cooperate. The EO who was directed to verify the records could not do so and by his report dated 02.02.2010 proposed that in absence of record of the establishment the documents filed at the time of its coverage be considered and the dues be assessed for the inquiry period. Thus, the commissioner accepting the report of the EO calculated the salary of 20 employees at the rate of salary declared by the establishment at the time of coverage and calculated Rs. 8,94,375/- as payable by the establishment for the inquiry period. An amount of Rs. 19133/- was deducted as the same was said to be deposited in respect of the manpower supplied to Sardar Patel Vidyala and the liability was quantified at Rs. 8,75,242/-.

The appellant has taken a stand that it was into the business only for 2 months and the business was closed due to failure. Though, it had applied for the coverage, later intimated the Registrar of the companies where it was registered and the EPFO under which it was covered about the closer. The office copy of the intimation alongwith the postal cover affixed with the postal stamp of Delhi GPO dated 18.05.2001 has been filed. Admittedly during the inquiry the commissioner could not access into the documents of the appellant. The plea of the appellant in this regard is that the business since was closed much prior to the inquiry no records are available. In such a situation, it seems the commissioner proceeded in a predetermined manner to assess the liability of the appellant and for doing so he had no other document except the statement of the appellant given alongwith its application for coverage. In the said application since 20 employees were shown as employed and a particular pay scale was disclosed the commissioner took into consideration the same for calculating the dues which appears to be illegal and arbitrary.

The law is now well settled that assessment of PF dues is not like assessment of Tax. The amount assessed and paid by the employer is meant to reach the beneficiary and EPFO is a mere custodian of the money so deposited. Appellant in support of his argument has placed reliance in the case of **Himachal Pradesh State Forest Corporation vs. RPFC** decided by the Hon'ble SC

where in it has been held that the defaulted PF dues can be assessed in respect of those employees who are identifiable only.

It is thus apparent that when the workers not identifiable, the amount, even if realized cannot reach the actual beneficiary and would only serve the purpose of enriching the fund of EPFO unjustifiably. In this case the commissioner has also made assessment on the wage shown against 20 employees by the appellant while making application for coverage solely basing on the report of the EO. There is no mention in the impugned order if deduction was made from the any amount towards employees' share. The commissioner again committed a wrong while passing the impugned order for not giving any finding in this regard. In the case of **Sandeep Dwellers Pvt. Ltd vs. Union Of India ,2006 III CLR 748** The Hon'ble High Court of Bombay have held "as beneficiaries are unknown and department itself has doubt , recovery from any earlier date for which no deduction has been made should not be allowed."

Moreover way back in the year 1990 the Hon'ble SC in the case of **Food Corporation Of India vs. RPFC, 1990(60)FLR15(SC)** had held that:-

"the question , in our opinion is not whether one has failed to produce evidence. The question is whether the commissioner who is a statutory authority has exercised power vested in him to collect the evidence before determining the amount payable by the establishment". In this case the commissioner had made least effort of collecting the evidence for identifying the beneficiaries and finding out if deduction was ever made towards employees' share. But for reasons best known to him, he jumped into a conclusion determining the liability of the establishment solely basing upon the report of the EO being inclined to accept the same against the stand of the establishment. This approach of the commissioner makes the impugned order not sustainable and liable to be set aside. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set

aside. The amount deposited by the appellant in compliance of the provision of sec 7O shall be refunded to the appellant in due procedure. Consign the record as per Rules.

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. 904(4)2012**

M/s. Shri Lakshmi Prasad

Appellant

VS.

APFC, Delhi

Respondent

**ORDER DATED :-11/07/2022**

Present:- Shri Trilok Pandit, Ld. Counsel for the appellant.  
Shri Arvind Kumar Verma, Ld. Counsel for the Respondent.

This appeal challenges the exparte order dated 11.02.2011 passed by the APFC Delhi North u/s 7A of the EPF and Mp Act 1952 (herein after referred to as the Act) assessing Rs. 14,54,361/- payable by the appellant establishment towards deficit PF dues of its employees for the period 01/2002 to 09/2006.

The plea of the appellant taken in this appeal is that in the year 2011 it had started a firm in the name and style of M/s Laxmi Prasad for carrying out the business of landscaping and supply of laboureres. It had obtained an income tax pan number and code no. for PF coverage. But the business did not work as planned and the establishment was forced to be closed. The appellant as the proprietor of the firm took up a job and for ignorance did not intimate the fact of closer to the EPFO. In the month of October 2006 the commissioner issued summoned for intimation of the proceeding which was never served on the appellant as its office address was no more available. But the commissioner went ahead with the inquiry and passed the impugned order on the basis of the report of the EO and the information submitted by the appellant alongwith the application for coverage. The commissioner having knowledge that the firm of the appellant has already been closed, passed the impugned order assessing Rs. 1454361/- payable by the appellant. While doing so the commissioner least bothered to identify the beneficiaries or to verify the actual position. He made the assessment as if it is a tax liability.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the respondent is that the appellant after closer of its business had never intimated the EPFO. He also submitted that it is not an exparte proceeding. The notice was duly served on the appellant but he preferred not to participate. Thereby the Ld. Counsel for the respondent described the impugned order as a reasoned order and argued that the same entails no interference.

During course of argument the learned counsel for the appellant by placing reliance in the case of **Himachal Pradesh State Forest Corporation VS Assistant PF Commissioner, 2008-III LLJ SC 581** and in the case of **Food Corporation of India VS RPFC, 1990 LLR, 64, SC** submitted that the commissioner while discharging the function of a quasi judicial authority has been vested with the power of enforcing attendance of witnesses and production of documents required for adjudication. Since identification of beneficiaries is a pre requisite for assessment u/s 7A of the Act, efforts should have been made for the same. But the commissioner acted illegally while making the assessment for non identification of the beneficiaries.

The A/R of the appellant establishment explicitly disputed the allegation of default or deficit in deposit in his oral submission during his argument. Relying on various judgments of the Hon'ble Supreme Court including the case of **Himachal Pradesh State Forest Corporation vs. RPFC reported in 2008 LLR 980** and the case of **Sandeep Dwellers Pvt. Ltd. vs. Union of India reported in 2007(3) BOMCR 898 on 28<sup>th</sup> February 2006** as decided by the Hon'ble High Court of Bombay the appellant has pleaded that for quantification of the dues u/s 7A the commissioner is legally obliged to identify the beneficiaries. In absence of such identification the assessment is illegal. The appellant has also relied upon the judgment of Hon'ble Supreme Court in the case of **Kranti Associates Pvt. Ltd. and another vs. Masood Ahmed Khan and others (2010) 9 SCC 496** to argue that recording of reason in a judicial or administrative decision is meant to serve the wider principal of justice and operates as a valid restrain on any possible arbitrary exercise of judicial and quasi judicial power. In this case the commissioner has not assigned any reason in support of his finding which makes the order again illegal.

The law is well settled that assessment under EPF &MP Act cannot be made as if the liability is the liability at par with Tax. It is well settled that the EPFO is the custodian and Trustee of the subscribers and is duty bound to return the contribution to the subscribers. The purpose of the legislation is not to levy the amount as Tax. Hence identification of the employees who are the beneficiaries for the subscription is a must before the assessment of the dues is made. Besides the view taken by the Hon'ble SC taken in the case of Himachal Pradesh State Forest Corporation referred supra, a similar view has also been taken by the Hon'ble High Court of Bombay in the case of **CBT, EPFO VS M/S Shakambari Ginning and Pressing Factory, Akola and Another, 2019 LLR,81.**

In this case the impugned order not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment made taking the amount shown as wage paid to the employees while filing the application for coverage. The Hon'ble SC in the case of **Kranti Associates Pvt. Ltd vs. Shri Masood Ahmed Khan and others, (2010)9 SCC 496**, have held that:-

“insistence on reason is a requirement for both judicial accountability and transparency. If a judge or quasi judicial authority is not candid enough about his decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principle of incrementalism. Reason in support of decisions must be cogent, clear and succinct. A pretence of reason or rubber stamp reason is not to be equated with a valid decision making process”

The impugned order besides non identification of beneficiaries also suffers from want of reasons which makes the order not sustainable in the eye of law and entails to be set aside. Hence, ordered.

### **ORDER**

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set aside. The amount deposited by the appellant as a part of the assessed amount



u/s 7O shall be refunded to the appellant in due procedure. Consign the record as per rule.

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-1/10/2022**

M/s. Rajindra Pvt. Ltd.

Appellant

VS.

CBT, RPFC, Delhi(N)

Respondent

**ORDER DATED :-11/07/2022**

Present:- Shri Kunal Arora, Ld. Counsel for the appellant.  
Shri Rikesh Singh, Ld. Counsel for the Respondent.

This order deals with appellant's prayer for condonation of delay, admission of the appeal and stay on the execution of the impugned orders pending disposal of the appeal.

The appellant has challenged the order passed u/s 7A of the Act by the RPFC assessing Rs 8,28,681/-as the deficit PF dues of the employees payable by the appellant.

Notice being served on the respondent, learned counsel Shri Rikesh Singh appeared and participated in the hearing.

Perusal of the record and office note of the registry reveals that the impugned last order was passed on 18.10.2021 and the appeal has been filed on 16.02.2022, i.e beyond the period of limitation. Thus a separate petition has been filed by the appellant

praying condonation of delay for the reasons explained therein. Another prayer has been made for stay on the execution of the impugned orders passed u/s 7A of The Act pending disposal of the appeal. Appellant has filed several documents to support the stand taken in the appeal.

Since the registry has pointed out about the delay in filing of the appeal and Respondent's counsel took serious objection to the same, it is desirable that the prayer for condonation of delay be dealt at the first instance.

It has been contended that the A/R of the establishment against which the impugned order has been passed was suffering from COVID and had other difficulties leading to delay in filing of the appeal. The Hon'ble SC in *suomoto* WPC NO 3/2020 have extended the period of limitation and the appellant is entitled to the benefit of the same.

The learned counsel for the respondent during course of his argument submitted that the impugned order was passed 18.10.2021 and on the same day it was dispatched in the address of the appellant. However he fairly conceded about the extension of limitation granted by the Hon'ble SC. Considering the submission it is held to be a fit case for condonation of delay.

The other petition filed is u/s 70 of the Act praying waiver of the condition of pre deposit for admission of the appeal. While pointing out the defects and discrepancies in the impugned order including non identification of beneficiaries, the counsel for the appellant submitted that the appellant has a strong arguable case in the appeal and the Tribunal should not act in a hyper technical manner in dealing with the application filed u/s 70 of the Act. He also pointed out how the commissioner acted upon the Report of the EO and without taking step for identification of the beneficiaries and without assigning reason for the assessment passed the order. It is also pointed out that the inquiry was

conducted during the period when every body was struggling to avoid the rigor of the pandemic. But the commissioner instead of considering the situation and in gross violation of the direction of the SC proceeded with the inquiry by imposing cost. He also pointed out that the last notice was sent on 24/03/2021 and the date of inquiry was fixed to the same day. He thus submitted that the order challenged in this appeal was passed *ex parte* and suffers from patent illegality and the appellant has a strong case to argue. He thereby prayed for waiver of the condition of pre deposit for admission of the appeal.

In his reply the learned counsel for the Respondent submitted about the legislative intention behind the beneficial legislation and argued that the establishment omitted to deposit the PF contribution of the employees for a pretty long period and the circumstances do not justify total waiver of the pre deposit. He also denied that the order was passed *ex parte*.

The impugned order is silent about the identification of the beneficiaries in respect of whom the establishment defaulted in remittance. Of course the appellant strenuously canvassed the grounds of the appeal and the defects in the impugned order to make this tribunal believe at this stage about it's fair chance of success. But the Tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal when respondent is yet to file it's objection.

In this case the period of default as seen from the impugned order is more than one year and the amount assessed is equally big. No strong grounds have been made out for total waiver of the pre-deposit mandated u/s 70 of the Act. Hence on hearing the argument advanced, it is held that the circumstances do not justify total waiver of the condition of pre deposit, but ends of justice would be served by reducing the same to 30% of the assessed amount. Accordingly it is directed that the appellant shall deposit 30% of the amount assessed by order dt 18.10.2021 towards compliance of the provisions of sec 70 of the Act by way of FDR in the name of the Registrar of the Tribunal initially for a period of one year with

provision of auto renewal, within six weeks from the date of communication of the order failing which the appeal shall not be admitted. Call on 30.08.2022 for compliance of the direction. Interim order of stay granted earlier shall continue till the next date.

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-1/39/2022**

M/s. Janheet Food Safety Foundation  
Through Sh. Parth, Ld. Counsel for the Appellant.  
Vs.

Appellant

RPFC/APFC Delhi (West)  
Through Sh. Sandeep Vishnu, Ld. Counsel for the Respondent.

Respondent

**ORDER DATED :- 11.07.2022**

Arguments on the admission as well as prayer for granting stay on operation of the impugned order heard and concluded. List the matter on 08.09.2022 for pronouncement of order on the same. Meanwhile, the Respondent authority is directed not to take 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-1/08/2021**

M/s. High End Hospitality Pvt. Ltd.

Appellant

Through Ms. Neetu Mishra, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (N)

Respondent

Through Sh. Rikesh Singh, Ld. Counsel for the Respondent

**ORDER DATED :- 11.07.2022**

The Ld. Counsel for the Respondent submitted the reply to the appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Appellant who wants to file rejoinder to this reply. Accordingly, list the matter on 25.08.2022 for filing rejoinder by 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-1/15/2021**

M/s. Metro Waste Handling Pvt. Ltd.  
Through Sh. Sandeep Proxy Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (N) & Smt. Sai Deepa, EO, Delhi (N)  
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 11.07.2022**

List the matter again on 19.07.2022 for filing hard copy of the  
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-1/26/2021**

M/s. Cyber Media (India) Ltd.

Appellant

Through Sh. Haribansh Manav, Ld. Counsel for the Appellant

Vs.

APFC, Delhi (S)

Respondent

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

**ORDER DATED:- 11.07.2022**

The Ld. Counsel for the Appellant requested for some more time for filing the rejoinder. Granted. List the matter on 31.08.2022 for filing the rejoinder.

**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-1/91/2019**

M/s. Teleone Consumers Product Pvt. Ltd. Appellant  
Through Sh. S.P Arora & Rajesh Arora, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi(N) Respondent  
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

**ORDER DATED :- 11.07.2022**

There is one application filed on behalf of the Ld. Counsel for the Respondent for vacation of stay. Arguments heard 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 14.12.2021** 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 .

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 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 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. Call on 01.09.2022 for filing rejoinder by the Ld. Counsel for the Appellant as the reply to this appeal stands already filed and copy of the same is also supplied to 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-1/73/2019**

M/s. Nice International Ltd.  
Through Sh. Amod Kumar Dalela Ld. Counsel for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 11.07.2022**

Issue notice to the Respondent for hearing on 01.09.2022 on the miscellaneous application filed u/s 151 C.P.C by the Ld. Counsel for the Appellant for granting stay on the order passed u/s 7 Q of the Act.

**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-1/44/2021**

M/s. Chander Shekhar  
Through None for the Appellant

Appellant

Vs.

APFC & EPFO, Delhi(S)  
Respondent  
Through Sh. Avnish Singh, Ld. Counsel for the Respondent

**ORDER DATED :- 11.07.2022**

In compliance of the order dated 13.05.2022 in W.P.C no 7512/2022 passed by Hon'ble Delhi High Court, the Ld. Counsel for the Appellant has submitted two FDRs amounting to Rs. 2,00,000/- and Rs. 4,17,400/- with the Registry of this Tribunal. Accordingly, the present appeal stands admitted and there shall be stay on recovery of the amount as mentioned in the impugned order till finalization of the appeal. The reply to the appeal stands already filed by the Ld. Counsel for the Respondent. Accordingly, list the matter 01.09.2022 for filing rejoinder by 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.458(4)2015**

M/s. Kataria Gas Services Appellant  
Through Sh. S.P Arora & Sh. Rajiv Arora Ld. Counsels for the Appellant

Vs.

APFC, Delhi Respondent  
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

**ORDER DATED :- 11.07.2022**

The matter was mentioned by the Ld. Counsel for the Appellant and submitted that en-block next date of hearing has been marked in this matter for arguments on 10.11.2022. However, the matter is a case in which final arguments in part have already been heard and requested for an early date for conclusion of the arguments. Allowed. List the matter on 26.07.2022 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.1042(4)2015**

M/s.Blood Bank Organization Appellant  
Through Sh. S.P Arora & Sh. Rajiv Arora Ld. Counsels for the Appellant

Vs.

APFC, Delhi Respondent  
Through Sh.S.N Mahanta, Ld. Counsel for the Respondent

**ORDER DATED :- 11.07.2022**

The Ld. Counsel for the mentioned this case and asked permission for disposal of his miscellaneous application under rule 21 and rule 14 (2) of appellate Tribunal (Procedure) rule 1997 r/w section 151 C.P.C for vacation of stay. Arguments on the said application heard 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 **09.09.2015** 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 .

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 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 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. Call 10.11.2022 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-2/23/2022**

M/s. Polyplastic Automotive India Pvt. Ltd.  
Through Sh. Sandeep Proxy Counsel for the Appellant.

Appellant

Vs.

RPFC/APFC Gurgugram West  
Through None for the Respondent

Respondent

**ORDER DATED :- 11.07.2022**

List the matter on 28.07.2022 for admission 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-2/18/2021**

M/s. Livedigital Marketing Solution Pvt. Ltd.  
Through None for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 11.07.2022**

As none pressed the application filed on behalf of the Appellant u/s 151 C.P.C r/w section 21 of the EPF Act for granting stay against the impugned order passed u/s 7 Q of the Act. Accordingly, the said application is dismissed-as-not pressed. List the matter on 01.09.2022 for filing reply to the main 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-2/33/2021**

M/s. Kabir Leathers  
Through Sh. Gyan Prakash, Proxy Counsel for the Appellant

Appellant

Vs.

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

Respondent

**ORDER DATED :- 11.07.2022**

The proxy counsel appearing on behalf of the Appellant requested for some more time for filing the rejoinder. Accordingly, list the matter on 27.07.2022 for filing rejoinder by 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-2/07/2021**

M/s. International Hospital Ltd.  
Through Sh. K.K Pandey ,Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Noida  
Through Sh.S.N Mahanta, Ld. Counsel for the Respondent

Respondent

**ORDER DATED :- 11.07.2022**

The Ld. Counsel for the Respondent mentioned this matter and requested for disposal for his application u/s 21 of EPFAT (Procedure) rules 1997 r/w section 151 C.P.C 1908. For recalling/modification of order dated 05.04.2021 passed by this Tribunal as the same was not passed on 07.07.2022 when the matter was listed. Heard 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 **05.04.2021** 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 .

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 2021 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 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 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. Call 29.08.2022 for filing rejoinder.

**Presiding Officer**