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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ W.P.(C) 10580/2015  
ST. MICHAEL'S SCHOOL, DURGAPUR ..... Petitioner  
Through: Mr. S.K. Khanna, Adv.

versus

PRESIDING OFFICER, EPF APPELLATE  
TRIBUNAL & ANR. .... Respondents  
Through: Mr. R.C. Chopra, Standing Counsel  
along with Mr. Inderjeet Sidhu, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

% **ORDER**  
**05.09.2016**

The learned counsel for the petitioner submits that in view of the order passed by a Division Bench of this Court in LPA No. 35 of 2016, dated 23<sup>rd</sup> August, 2016, the issue involved in this petition stands settled that an interim order requiring pre-deposit can be passed by the EPF Appellate Tribunal under Section 14-B & 7-Q of the Employees' Provident Fund & Miscellaneous Provision Act, 1952. The Division Bench, in the said case, observed as under:

“1. xxxxx

2. xxxxx

3 xxxxx

4. xxxxx

5. xxxxx

6. Thus, it has been wrongly observed and held in the impugned order that when an application for stay under

Section 14-B and 7-Q is filed, the Appellate Tribunal cannot pass a conditional order and direct stay of recovery of a part demand under Section 14-B and/or 7-Q of the Act. There is a clear distinction between orders passed under Section 7-O of the Act relating to the question of pre-deposit of the demand under Section 7A and an order passed on an application seeking interim stay of demand raised under Sections 14-B and 7-Q of the Act. This is apparent from the following observations in paragraphs 11 and 15 of the judgment in ***Jai Balaji Security Services (Regd.)*** (supra), which read:-

“11. A perusal of Section 7-O reveals that the embargo on the entertainment of an appeal by the Appellate Tribunal concerning pre-deposit of 75% of the amount due as determined by an officer referred to in Section 7-A is restricted to said Section and does not embrace Section 7-Q or Section 14-B of the Act.

12. XXXXX

13. XXXXX

14. XXXXX

15. But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay. Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, but the pendency of the appeal would not prohibit the Competent Authority to effect the

recovery unless the Appellate Tribunal passes an interim order concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders.”

7. In view of the aforesaid ratio, the impugned order cannot be sustained and is liable to be set aside. However, learned counsel for the respondent-school submits that the respondent-school had raised other grounds and reasons in the Writ Petition as to why there should be absolute stay, and the direction that there would be part stay of the impugned demand under Sections 14-B and 7-Q cannot be sustained. In these circumstances, we pass an order of remand to the Single Judge, who shall decide the writ petition on merits, without being influenced by the reasons given in the order dated 16th November, 2015, which have been set aside.

8. To cut short delay, parties are directed to appear before the single Judge on 5th September, 2016, when a date of hearing will be fixed.

9. It is stated by the counsel for the parties that the next date of hearing before the Appellate Tribunal is 13th October, 2016. We would request the Appellate Tribunal to dispose of the appeal expeditiously and preferably within 2 months from the next date of hearing.

10. The appeal is accordingly disposed of. There will be no order as to costs.”

The learned counsel for the petitioner submits upon instructions that the petitioner would like to secure the pre-deposit by way of a Bank Guarantee. However, since the power of the EPF Appellate Tribunal to pass conditional orders apropos stay of recoveries and/or pre-deposit has been

affirmed, the learned counsel for the petitioner states upon instructions, that he would not like to press the petition and seeks to withdraw it with liberty to move an appropriate application for interim relief before the EPF Appellate Tribunal.

In the circumstances, the petition is dismissed as withdrawn. Liberty granted.

**NAJMI WAZIRI, J**

**SEPTEMBER 05, 2016/acm**