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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 844/2015 & CM No.19050/2015 (for stay).

CENTRAL BOARD OF TRUSTEES ..... Petitioner

Through: Mr. Rajesh Manchanda and Mr. Rajat  
Manchanda, Advs.

versus

INDCON PROJECTS & EQUIPMENTS LTD ..... Respondent

Through: Mr. S.K. Gupta, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**25.10.2017**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 4<sup>th</sup> January, 2008 in ATA No.593(4)/2007 of the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi] passed, in the absence of the petitioner and allowing the appeal preferred by the respondent under Section 7-I of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 against the order dated 6<sup>th</sup> August, 2007 of the Assistant Provident Fund Commissioner (APFC), Delhi passed under Section 14-B of the Act, imposing damages for delayed remittances of PF dues. The Tribunal has, vide the impugned order, reduced the damages imposed to up to 75% as assessed by the APFC in the order dated 6<sup>th</sup> August, 2017.
2. Notice of the petition was ordered to be issued and the counsel for the respondent has been appearing.
3. The counsels have been heard.
4. The counsel for the petitioner has drawn attention to page 69 of the paper book, being a copy of the handwritten order dated 17<sup>th</sup> September,

2007 of Shri R.L. Koli, Presiding Officer of the Tribunal, admitting the appeal aforesaid preferred by the respondent, and directing issuance of notice thereof to the petitioner returnable on 7<sup>th</sup> January, 2008 and subject to the respondent depositing 30% of the amount assessed by the APFC to be payable, staying the operation of the order appealed against.

5. The contention of the counsel for the petitioner is that though notice of the appeal was ordered to be issued for 7<sup>th</sup> January, 2008 but the appeal was taken up for hearing and allowed on 4<sup>th</sup> January, 2008 itself, in the absence of the petitioner.

6. The counsel for the respondent has intervened to contend that this petition filed first on 14<sup>th</sup> August, 2015, has been preferred after more than seven years of the impugned order and is liable to be dismissed on this ground alone. Reliance is placed on para 5 of *Abhinavodhanda Vidya Sankarabharati Vs. Poonapati Ramayogi Reddi* AIR 1986 SC 1511.

7. I have enquired from the counsel for the respondent, what has he to say on the factum of, though the notice of the appeal having been issued for 7<sup>th</sup> January, 2008, the appeal having been taken up and decided on 4<sup>th</sup> January, 2008, in the absence of the petitioner to whom notice of the appeal was issued for 7<sup>th</sup> January, 2008.

8. I have further enquired from the counsel for the respondent as to how the respondent appeared before the Tribunal on 4<sup>th</sup> January, 2008 when in the presence of the respondent, notice had been issued for 7<sup>th</sup> January, 2008. It has further been enquired that even if the respondent appeared for some reason on 4<sup>th</sup> January, 2008, why did the respondent not inform the Tribunal that notice had been issued for 7<sup>th</sup> January, 2008 and the appeal should be taken up and heard on that date.

9. The counsel for the respondent states that he was not the counsel before the Tribunal and is thus unable to answer the aforesaid questions save for stating that the cause list of the Tribunal is available on the internet and the counsel for the respondent must have appeared on 4<sup>th</sup> January, 2008 seeing the matter in the cause list.

10. The counsel for the petitioner on enquiry, whether the cause list is available on the internet, states that he entertains doubt that in the year 2007-08 the cause list of the Tribunal was available on the internet.

11. The counsel for the respondent also, on pointed enquiry, states that he cannot be sure whether in 2007-08 cause list was so available though states that for the last five years, it is available on internet.

12. On further enquiry, whether Mr. R.L. Koli who is the author of the order dated 4<sup>th</sup> January, 2008 is still in service or has retired, the counsel for the respondent states that Mr. R.L. Koli has retired.

13. In the aforesaid scenario, the only inference can be that Mr. R.L. Koli, Presiding Officer of the Tribunal, in collusion with the respondent, took up the appeal before the date for which notice thereof had been issued and in the absence of the petitioner, to whom notice had been issued for a subsequent date, proceeded to decide the appeal in favour of the respondent.

14. Once that is so, no amount of delay on the part of the petitioner, even if not capable of being explained, can entitle the impugned order to stand and / or allow the respondent to avail the benefit thereof. Such fraud and illegality transcends all the said technicalities.

15. The petition is thus allowed. The impugned order dated 4<sup>th</sup> January, 2008 is set aside.

16. The appeal, being ATA No.593(4)/2007 of the Employees' Provident

Fund Appellate Tribunal, is restored to the same position as it was immediately before 4<sup>th</sup> January, 2008 and the parties are directed to appear before the Tribunal.

17. Both counsels inform that now the jurisdiction of the Tribunal is being exercised by the Central Government Industrial Tribunal (CGIT) and the counsel for the respondent states that the appeal would fall in the jurisdiction of CGIT-1.

18. The parties to appear before CGIT-1 on 5<sup>th</sup> December, 2017.

19. The petition is disposed of.

I refrain from imposing costs.

**RAJIV SAHAI ENDLAW, J**

**OCTOBER 25, 2017**

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