

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 189 OF 2024**

- 1) State of Goa, Through the Under Secretary Home, Having office at Secretariat Building, Porvorim, Bardez Goa.
- 2) Under Secretary Home, Having office at Department of Home (General), Secretariat, Porvorim, Bardez Goa.

... PETITIONERS

Versus

- 1) Pacifica Hotels India Pvt. Ltd., Registered under Companies Act, With Registered office at Courtyard by Marriott, 86/2/6, Ramdev Nagar Cross Roads, Near Satellite Police Station, Ahmedabad – 380 015.

Represented by its Authorised Director, Mr. Abhinav Kapoor, Pursuant to Resolution of Board of Directors dated 05/09/2022 of the Company.

- 2) Abhinav Kapoor, Aged 55 years, Indian National, Director of the Respondent no. 1, Residing at 'C' Block, Flat no. 8, Sapana Sagar Maintenance Co-operative Housing Society, Behind Copperleaf Restaurant, Chogam Road, Porvorim, Bardez-Goa.

... RESPONDENTS

Mr. Prashil Arolkar, Additional Government Advocate for the Petitioners.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vinod Korgaonkar, Mr. Pancham Phadte and Mr. Jeet Volvoikar, Advocates for the Respondents.

CORAM: **BHARAT P. DESHPANDE, J.**
RESERVED ON: **13th NOVEMBER 2024**
PRONOUNCED ON: **18th NOVEMBER 2024**

JUDGMENT:

1. Rule. Rule made returnable forthwith.
2. The matter is taken up for final disposal with the consent of the learned Counsel for the parties.
3. The Petition is filed with the following prayers:
 - a) *For a writ of certiorari or another other appropriate writ, order or direction in the nature of certiorari or for any other appropriate order, writ or direction under Article 227 or the Constitution of India, calling for the records underlying the impugned judgment dated 12/04/2023 passed by the Administrative Tribunal, Goa at Panaji in Gambling Appeal No. 01/2023 and for quashing and setting aside the said impugned Judgment dated 12/04/2023 passed by the Administrative Tribunal, Goa at Panaji in Gambling Appeal No. 01/2023, after examining the same for its legality and propriety;*

- b) *For an order of stay on the operation, execution and/or implementation of the impugned Judgment dated 12/04/2023 passed by the Administrative Tribunal, Goa at Panaji in Gambling Appeal No. 01/2023, during the pendency and the disposal of the present Petition;*
- c) *For ad-interim ex-parte reliefs in terms of the prayer clause (b) above;*
- d) *For such further and other reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of this case;*

4. Mr. Arolkar, learned Additional Government Advocate appearing for the Petitioners would submit that the learned Administrative Tribunal committed an error in allowing the Appeal filed by the Respondents and directing refund of the application fees with interest at the rate of 6% per annum.

5. Mr. Arolkar submits that there is no provision under the Act or the notifications issued by the Government from time to time for refund of such application fees. It is submitted that the observations of the learned Administrative Tribunal with regard to the discussion about the fees qua the tax is out of context. He would submit that the Respondents applied for grant of license in

respect of the gambling activities in their Establishment and as per the provisions of the Gambling Act and the notifications issued, the Government is entitled to exempt such activities by recovering the fees from the operator. He would submit that the notifications issued by the Government under Section 13A of the Goa, Daman and Diu Public Gambling Act, 1976 [the Gambling Act, for short] provide that the Application for grant of license shall be accompanied by a fee which is non-refundable as there is no provision under the Act, Rules and no notification is issued for refunding of such fees, in case, the Application is withdrawn.

6. Mr. Arolkar would submit that the Respondents challenged the decision of the Government dated 07.06.2022 before the Administrative Tribunal. He would further submit that in fact, the Petitioners were not properly represented before the Administrative Tribunal, which resulted in passing of the ex-parte order, which is impugned in the present proceedings. It is his contention that the directions given by the Administrative Tribunal are clearly perverse and beyond the powers since there is no provision to refund such application fees.

7. Per contra, Mr. Coelho Pereira, the learned Senior Counsel would submit that the scope of the present Petition that too, under

Article 227 of the Constitution of India is limited and since the impugned order does not suffer from any perversity or illegality, need not be interfered.

8. Mr. Pereira would submit that the Petitioners are not challenging the said order for not giving any opportunity by the Tribunal when in fact, the Petitioners were served and several opportunities were given to the Petitioners to appear and contest the matter.

9. Mr. Pereira would submit that the notifications issued from time to time clearly go to show that such notifications are issued under the delegated legislation and the facts of the matter would clearly go to show that the Application filed by the Respondents was not even processed. He submits that fees as found in the notification of the year 2015 is only for processing of the Application. It is submitted that once the Application is withdrawn before it is fully processed, the Respondents are entitled to get back the amount deposited along with such Application. He submits that the application fee is Rs.50 lakhs and since the Application was not fully processed and the same was withdrawn before the grant or refusal of license, the Petitioners cannot be allowed to forfeit or retain such fees. He submits that the

proposition *quid pro quo* would clearly apply and in these proceedings, no services were provided to the Respondents in lieu of the amount deposited by the Respondents along with the Application.

10. Mr. Pereira would then submit that refusing to refund the amount is clearly arbitrary and in violation of Article 14 and further amounts to unjust enrichment of the Petitioners.

11. Mr. Pereira would submit that the subsequent circulars are not properly worded, however, in the first circular of the year 1995, there was no condition of any application fee to be deposited along with the format for grant of license.

12. Mr. Pereira would submit that clause 6 of the notification of the year 1995 provides that in the event of breach of any of the terms and conditions, the Government after issuing notice and upon giving an opportunity to the licensee, may determine the license and forfeit the security deposit. He submits that there is no such provision in case the Application is withdrawn before it is properly processed. Thus, according to him, the proposition as laid down by the Apex Court while distinguishing the competence of the Government to charge fees or tax would be applicable.

13. The rival contentions fall for determination.

14. Petitioner No. 2 is the Authority for the purpose of grant or renewal of a license under the Gambling Act. The Respondents are the private entity carrying on hotel business including an Establishment in Goa. The Respondents were interested in operation of games of electronic amusement/slot machines in their hotel namely, “The Westin Goa” at Anjuna, Bardez, Goa. Accordingly, the Respondents applied vide their Application dated 15.11.2021 in the format as provided under the notification dated 23.11.1995 issued by the Government of Goa under Section 13A of the Gambling Act. The Petitioners vide letter dated 09.02.2022 informed the Respondents that in order to consider the Application for grant of license to install and operate games and electronic amusement/slot machines, they have to deposit or approach the concerned Department along with the payment of Rs.50 lakhs towards the application fees and was directed to collect the necessary challan from the Department, in order to process the Application.

15. The Respondents vide their letter dated 14.03.2022 informed the Petitioners that they deposited an amount of Rs.50 lakhs in the Government treasury on 16.02.2022 through

e-challan and enclosed the receipt for the purpose of processing their Application.

16. It is a matter of record that only on 07.04.2022, the Under Secretary addressed a letter to the Executive Engineer, PWD, St-Inez, Panaji with a copy to the Respondents, stating that inspection of the gaming area of the hotel, “The Westin Goa” at Anjuna is required to be carried out in order to process their Application for grant of license.

17. It is also a matter of record that the Respondents immediately on 19.04.2022 informed the Under Secretary to defer the inspection through the PWD beyond 15.06.2022 on the ground that the gaming areas and the designs are not yet approved by the Company and the same would be ready for inspection after 15.06.2022. Accordingly, the Under Secretary vide his letter dated 27.04.2022 addressed to the Executive Engineer, PWD, requested that the inspection be postponed by 60 days. Thus, it is clear that no inspection by the PWD was carried out and it was postponed beyond 15.06.2022.

18. The Respondents vide their letter dated 04.05.2022 informed the Under Secretary that they wish to withdraw their

Application for grant of license and requested for renewal of their application fees to the tune of Rs.50 lakhs. The above withdrawal letter was replied to by the Petitioners vide their response dated 07.06.2022. In a short and cryptic way, the Petitioners informed the Respondents that there is no provision to refund the application fees. This communication dated 07.06.2022 was challenged by the Respondents by filing Writ Petition No. 617 of 2022. The Division Bench of this Court vide order dated 23.01.2023 relegated the Respondents to the Appellate Authority as provided under the Act. Accordingly, the Respondents filed an Appeal before the Administrative Tribunal, which was registered as Gambling Appeal No. 01/2023.

19. It is a matter of record that though the Petitioners were duly served before the concerned Tribunal, no one appeared on behalf of them and accordingly, the matter was disposed of by the Tribunal vide order dated 12.04.2023, which is impugned in the present proceedings.

20. The controversy which has been raised in the present Petition revolves around the notifications issued by the Department of Home and published in the official gazette of 23.11.1995. This notification was issued in exercise of the powers

conferred under Section 13A of the Gambling Act. The notification is in respect of regulating electronic amusement/slot machines wherein Clause 1 of the notification deals with definitions. Clause 1(ix) defines a licensee as any person who has been granted a license to install and operate games of electronic amusement/slot machines under clause 5 of this Notification.

21. Clause 2 of the notification provides that any person desirous of obtaining a license for installing and operating games for the operation of electronic amusement/slot machines is required to file an Application to the concerned Authority in Form 'A' appended to Appendix I.

22. Clause 5 of the notification is relevant for the purpose of the present proceedings, which reads thus:

“5.(i) A licence fee of Rs.500/- per machine of electronic amusement/slot machine shall be payable towards grant of licence and such fee shall be paid into the Government treasury. The licence fee for renewal of licence shall be the same as indicated above.

(ii) If the Authority, after making such inquiry as may be necessary, is satisfied that the application conforms to these terms and conditions, shall recommend to the Government to grant a licence in Form 'B' appended hereto as Appendix II in favour of

the applicant on receipt of a copy of challan in proof of payment of Rs. 500/- per machine of electronic amusement/slot machine in in the Government treasury.

(iii) Upon receipt of recommendation of the Authority, the Government may approve the grant of licence in favour of the licensee whereupon the licence in Form 'B' appended hereto as Appendix II shall be issued by the Authority in favour of the licensee.

(iv) A licence granted hereunder shall be for a period of five years and may be renewed after five years on payment of the same fees due before the expiry of the currency of the licence.

(v) The Government may, for reasons, to be recorded in writing, reject an application for grant/ /renewal of licence as the case may be.

(vi) For renewal of licence, the licensee shall follow the same procedure as specified above for the grant of new licence at least 30 days before the expiry of the licence.

(vii) A licensee shall be liable to pay recurring fee at the rate of Rs. 6000/- per year per machine of electronic amusement/slot machine in advance on or before 31st March of every year which amount shall be deposited into Government treasury by means of challan under the Head of Account as specified by the

Authority and shall furnish a copy of challan to the Home Department of the Government.

(viii) Every licensee shall display conspicuously at the licensed premises, the licence granted under sub-clause (iii). The licensee shall operate these machines only through Five Star Hotels taking all necessary steps to keep the premises neat and tidy and shall also ensure that appropriate facilities are made available for proper conduct of the games of electronic amusement/slot machines in the licensed premises.

(ix) The licensee shall deposit in Government treasury a sum of Rs. 5000/- per licence for installation of electronic amusement/slot machines as security deposit for due compliance with the terms and conditions of the licence and the challan in respect thereof, furnished to the Authority.

(x) In case a licence is not renewed, an application for refund of fee paid shall be made to the Authority within one month from the date of such refusal or non-renewal, as the case may be. Whenever, the Authority is satisfied that a refund is due, it shall issue a refund voucher to the applicant/licensee which shall be encashed at the Government treasury.”

23. A perusal of the above clause would go to show that a person desirous of applying for a license was required to deposit a license

fee of Rs.500 per machine apart from the other charges as mentioned in the relevant provisions, which include the security deposit as found in sub-clause (ix).

24. Clause 6 of the said notification empowers the Government that in case of breach of any terms and conditions mentioned in the notification, the security deposit could be forfeited by issuing a show cause notice and by giving an opportunity of hearing.

25. Clause 7 deals with an Appeal to be filed before the Appellate Authority by any aggrieved person.

26. This notification of the year 1995 was then amended by notification dated 02.04.2015. Clause 5(i) of the notification of 1995 was amended by substituting the following amendments:

“Clause 5 (i) An application for license for each of the land based Casino in five star hotel having a five star category certification issued by the Ministry of Tourism, Government of India, or by any other authority of the Government of India, competent to grant such certification, or an application for license of off-shore casino shall be accompanied by an application fee of rupees twenty lakhs, irrespective of the number of the tables and/or machines installed in the licensed premises or size/capacity of the vessel, as the case may be. Such fee shall be deposited into the

Government Treasury and copy of the challan shall be attached to the application. The fee for renewal of license in respect of each of the land based casino in five star hotel or off-shore casino shall be rupees one lakh.”

27. Similarly, Clause 5(vii) and Clause 5(ix) of the notification of 1995 were also amended and substituted by the following amendments:

For clause(vii), the following clause shall be substituted, namely;-

“(vii) The licensee shall be liable to pay the following annual recurring fees-

(A) for a casino license of land based casino in a five star hotel,-

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| <i>(a) In case of a land based casino with an area upto 100 square metres.</i> | <i>Rs. 2.50 crores.</i> |
| <i>(b) In case of a land based casino with an area above 100 square metres but upto 300 square metres.</i> | <i>Rs. 3.00 crores.</i> |
| <i>(c) In case of a land based casino with an area above 300 square metres but upto 500 square metres.</i> | <i>Rs. 3.50 crores.</i> |
| <i>(d) In case of a land based casino with an area above 500 square metres.</i> | <i>Rs. 4.50 crores.</i> |

(B) for a casino license of off-shore casino on board the vessel,-

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| <i>(a) In case of a vessel having passenger capacity upto 100 passengers.</i> | <i>Rs. 7.00 crores.</i> |
| <i>(b) In case of a vessel having passenger capacity above 100 but upto 200 passengers.</i> | <i>Rs. 7.50 crores.</i> |
| <i>(c) In case of a vessel having passenger capacity above 200 but upto 400 passengers.</i> | <i>Rs. 8.00 crores.</i> |
| <i>(d) In case of a vessel having passenger capacity above 400 passengers.</i> | <i>Rs. 9.00 crores.</i> |
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Notes:

(1) For the purpose of determination of annual recurring fees, the passenger capacity of the vessel as certified by the Captain of Ports or Director General

Shipping, as the case may be, inclusive of crew members, shall be taken into consideration.

(2) An uniform period beginning from 1st of April and ending on 31st of March shall be maintained for the purposes of the annual recurring fees.

(3) All licensees shall pay the annual recurring fees as specified above, for the financial year ending 31st March, 2016, within thirty days from the date of commencement of this Notification.

(4) Notwithstanding payment of annual recurring fees in terms of Notifications hitherto in force for a period beyond 31st March, 2015, the licensee shall pay annual recurring fees as specified above after adjusting the proportionate amount paid as annual recurring fees and amount payable towards annual recurring fees for financial year ending 31st March, 2016. For this purpose, the proportionate amount shall be calculated on the basis of number of days for which the license is valid.”;

For clause (ix), the following clause shall be substituted, namely:-

“(ix) The licensee shall, at the time of grant of new license deposit Rs. 20.00 lakhs and at the time of renewal thereof deposit Rs. 10.00 lakhs, in the Government treasury, in all cases, as security deposit, for due compliance with the terms and conditions of the license.”

This Notification shall come into force with immediate effect.

28. At this stage, it is necessary to note that in the notification of 1995, there was no provision for any application fees to be charged, which was introduced for the first time in the notification dated 02.04.2015 by amending Clause No. 5(i). This amended provision would go to show that an Application for a license for land-based casino in a five-star hotel shall be accompanied by an application fee of Rs.20 lakhs, irrespective of number of tables and/or machines installed in the licensed premises or the size/capacity of the vessel, as the case may be. Such fee shall be deposited with the Government and a copy of the challan shall be attached. It further provides that the fee for renewal of the license in respect of each of the land-based casinos or offshore casinos shall be Rs.1 lakh.

29. Clause 5(ix) as amended in the year 2015 would go to show that apart from application fees, the licensee at the time of grant of new license shall deposit Rs.20 lakhs and at the time of renewal deposit Rs.10 lakhs as a security deposit.

30. Further, by notification dated 28.03.2018, the condition/ clause 5 of the original notification was further partially amended and the application fee in Clause 5(i) was enhanced to Rs.50 lakhs and Rs.1 crore respectively. Similarly, Clause 5(ix) was amended by enhancing security deposit of Rs.50 lakhs and Rs.25 lakhs respectively.

31. These notifications are required to be considered since it is the contention of the learned Additional Government Advocate that there is no provision for refunding the application fees.

32. The fact remains that when the first notification was issued in the year 1995, there was no provision for any fee to be deposited along with the Application for grant of license. The condition/ clause 5 only deals with license fees, security deposit and other charges. As far as the security deposit is concerned, there was a provision for forfeiture. However, Clause 5(x) of the notification dated 23.11.1995 is still existing or not amended or varied, which reads thus:

“(x) In case a licence is not renewed, an application for refund of fee paid shall be made to the Authority within one month from the date of such refusal or non-renewal, as the case may be. Whenever, the Authority is satisfied that a refund is due, it shall issue a refund

voucher to the applicant/licensee which shall be encashed at the Government treasury.”

33. A perusal of this clause would go to show that the power to refund the fees paid to the concerned Authority was granted. Thus, it is clear that the notification of 1995 which is silent about the application fee, provides for a refund of the fees paid by the Applicant or licensee as the case may be. The discretion is given to the Authority to either refund the said fee or to reject it. Thus, the intention of the Government would clearly go to show that even the fee paid by the Applicant as found mentioned in Clause 5 of the notification of 1995 would be refundable subject to the satisfaction of the concerned Officer.

34. As discussed earlier, the notification dated 02.04.2015 entrusts another fee to be deposited along with the application fee. Such fee was thereafter enhanced by the notification of the year 2018 to the tune of Rs.50 lakhs. Thus, Clause 5(x) which deals with the refund of fees paid shall *ipso facto* apply to the amended Clause No. 5(i). The application fee introduced for the first time in the year 2015 is in fact part and parcel of Clause 5 of the notification of the year 1995 and thus, the remaining conditions of

Clause 5 and more specifically, Clause 5(x) providing refund of fees shall apply to the refund of the application fee.

35. The record would clearly go to show that the Respondents applied for the license in Form-A vide their Application dated 15.11.2021. On receipt of such Application, the Petitioners called upon the Respondents to deposit an application fee of Rs.50 lakhs vide their letter dated 09.02.2022. The Respondents *inter alia* deposited such amount and informed the Petitioners vide letter dated 14.03.2022. Thereafter, the Petitioners addressed a letter to the Executive Engineer, PWD dated 07.04.2022 to carry out the inspection of the gaming area of the hotel of the Respondents and submit a detailed report. A copy of this letter was addressed to the Respondents. However, vide letter dated 19.04.2022, the Respondents requested the Petitioners to postpone the inspection on the ground that the gaming area and the machines were not installed. Accordingly, the Petitioners addressed a letter to the Executive Engineer, PWD asking the said Authority to postpone the inspection by 60 days, vide their letter dated 27.04.2022. Thus, the proposed inspection was postponed for a period of two months. However, in the meantime i.e. within a week or so after issuance of the letter dated 27.04.2022, the Respondents applied to the Petitioners for withdrawal of their Application for grant of

license and refund of the application fee, vide letter dated 04.05.2022. There was no response from the Petitioners regarding the withdrawal of the Application of the Respondents, however, vide letter dated 07.06.2022, the Petitioners conveyed their inability to refund the application fee on the ground that there is no provision in the notification to refund such fee.

36. It thus shows that the Application for withdrawal of the request for license dated 04.05.2022 was accepted. However, the Petitioners showed its inability to refund the amount only for one single reason that there is no provision under the notification published in the Government gazette for a refund of the application fee.

37. This letter dated 07.06.2022 which amounts to a denial of the refund of the application fee was challenged by the Respondents before the Administrative Tribunal by filing an Appeal as provided in Clause 7 of the notification of 1995.

38. It is an admitted fact that the Petitioners were duly served by notice of such Appeal, however, there was no representation on behalf of the Petitioners before the concerned Tribunal.

39. In the present Petition, there is no ground or grievance raised about the ex-parte decision of the Appeal. The grounds are raised on merits.

40. It is well settled that while considering the present Petition under Article 227 of the Constitution of India, the scope of interference is limited as explained by the Apex Court in the case of **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329**.

41. The impugned order passed by the Administrative Tribunal discloses all the contentions raised in the Appeal including the refusal to refund the application fee on the part of the Petitioners in their letter has been considered.

42. It is admitted from the notification of 2015 that the Applicant who intends to apply for a license is required to deposit the license fee. Thus, it cannot be termed as tax by any stretch of imagination. The fee which is charged for processing the Application must be required to be considered on the principles of *quid pro quo*, which means that the parties who apply for such a license must benefit from such fee. It may not be a direct benefit, however, the nomenclature which is found mentioned in the notification of 2015 would go to show that it is a fee which is

charged for processing an Application for a grant of license. In the present matter, except for writing one letter to the Executive Engineer, PWD to inspect the hotel, there is no other procedure adopted or followed by the Petitioners. On the request of the Respondents, such inspection was postponed and before such inspection could be carried out, the Application was withdrawn. Thus, in sum and substance, there was no processing of the Application filed by the Respondents.

43. Besides, the notification of 1995 clearly provides for refund of fees as provided in Clause 5(x). It means that in case the license is not renewed, an Application for refund shall be made within one month from the date of such refusal or non-renewal as the case may be. It also states that whenever the Authority is satisfied that a refund is due, it shall issue a refund voucher to the licensee, which shall be encashed at the Government treasury.

44. The wording in Clause 5(x) deals with the word “fee”. Thus, such word cannot be narrowly interpreted. It includes all fees payable under Clause 5 or amended Clause 5. The amount which the Respondents deposited is a fee of Rs.50 lakhs. Before the Application could be processed, the same was withdrawn. It is a matter of record that the Application for withdrawal was filed by

the Respondents on 04.05.2022 by giving specific reasons and by specifically seeking refund of the application fee of Rs.50 lakhs. As far as the withdrawal of the Application is concerned, there is no whisper from the Petitioners. The reply dated 07.06.2022 is only with regard to the refund of the application fee claiming that such fee cannot be refunded since there is no provision.

45. Be that as it may, the learned Tribunal in its detailed order observed that retaining such an amount by the Petitioners is clearly arbitrary and it amounts to unjust enrichment. Such observation of the learned Tribunal cannot be faulted with. This observation otherwise, cannot be termed perverse or illegal, since Clause 5 of the original notification of 1995 will have to be interpreted together with Clause (x) which deals with the refund of fees.

46. As discussed earlier, the notification of 1995 is clearly silent about the application fee to be charged and therefore, there is no reference to such an application fee in Clause (x), but it refers to the word “fee” which has to be interpreted by including the application fee, which was introduced by the amendment of 2015. Thus, the contention of the Petitioners that there is no provision under the notification to refund the application fee, itself needs to

be discarded. Even otherwise, when the Application was not at all processed, except for writing one letter, it would not be permissible for the Petitioners to retain/appropriate such a huge amount when in fact the Application was allowed to be withdrawn.

47. For all the above reasons, the impugned order passed by the Tribunal cannot be interfered with. The Petition accordingly deserves to be rejected.

48. While issuing notice to the Respondents on 12.08.2024, this Court had directed the Petitioners to deposit the entire amount along with interest with this Court as the Petitioners were seeking a stay of the order of the Tribunal.

49. The amount was therefore deposited with this Court on 25.09.2024. Since the Petition deserves to be rejected, the amount which is deposited with this Court will have to be paid to Respondent No. 1 along with accrued interest, if any. For that purpose, Respondent No. 1 shall furnish the necessary Bank details to the Registry so that the Registry will be in a position to transfer such amount through electronic mode.

50. The Petition is therefore rejected.

51. The Registry to transfer the amount accordingly to the account of Respondent No. 1.

52. Rule stands discharged in the above terms.

BHARAT P. DESHPANDE, J.

ORDER CONTINUED ON 18.11.2024

53. At this stage, Mr. Arolkar, learned Additional Government Advocate appearing for the Petitioners requests four weeks time to approach the Apex Court and to stay the effect and operation of the order for the said period.

54. The learned Counsel for the Respondents fairly conceded that such request could be considered.

55. Accordingly, the effect and operation of the order passed today shall be stayed for a period of four weeks from today.

BHARAT P. DESHPANDE, J.