

OFFICE OF ESTATE OFFICER, PRAGATI MAIDAN, NEW DELHI

In the matter of:

India Trade Promotion Organisation

....Petitioner

Vs.

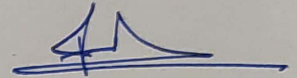
M/s. Gulati Caterers Pvt. Ltd.

...Respondent

Present: Mr. Arun Sanwal, counsel along with Ms. Sunita Kamboj, DM on behalf of petitioner.

None on behalf of respondent.

The final order/award has been pronounced and copy of the same was provided to the petitioner for taking further necessary action by them.



Estate Officer  
22.05.2023

File No.116/EST/2003, 124/EST/2006 and 136/EST/2010

BEFORE THE ESTATE OFFICER, PRAGATI MAIDAN, NEW DELHI

IN THE MATTER OF

India Trade Promotion Organisation

....Petitioner

Vs.

M/s. Gulati Caterers Pvt. Ltd.

...Respondent

**FINAL ORDER/AWARD**

1. Three Recovery Petitions were filed by the petitioner (ITPO) under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter would be referred to as 'PP Act' against the respondent (M/s. Gulati Caterers Pvt. Ltd.) before the Estate Officer. The 1<sup>st</sup> Recovery Petition was filed on 1.5.2003 for recovery of an amount of Rs.47,26,814/-, 2<sup>nd</sup> Recovery Petition was filed on 30.6.2006 claiming an amount of Rs.1,81,32,235/- and 3<sup>rd</sup> Petition was filed on 16.8.2010 claiming an amount of Rs.1,60,29,467/- under various heads. Since all the petitions were filed against the same party for same premises/agreement/issues, it is felt that these may be decided by one common order for all the aforesaid three cases.

2. On 1.5.2003, an application was filed by the petitioner (ITPO) under Section 7 of the PP Act for recovery of outstanding dues, inter alia, mentioning that M/s Gulati Caterers Pvt. Ltd. (Respondent) was

awarded a licence in the year 1999 to operate and run a Food & Beverages outlet in Pragati Maidan for ten years; and that pursuant to the award of the aforesaid licence to operate the aforesaid F&B outlet, a licence agreement dated 08.11.2000 was signed between the petitioner and the respondent which carried the terms & conditions applicable to the aforesaid licence agreement; and that in terms of clauses C.1, F.12 & 13, of the aforesaid agreement the respondents were to pay the Property Tax and other incidental taxes accrued by virtue of running the aforesaid F&B outlet by the respondents as demanded by the MCD and/or conveyed by the petitioner through the aforesaid agreement and from time to time apart from the payment of licence fee, electricity and water charges etc. were also to be paid by the licensee as agreed in terms of agreement dated 08.11.2000; and therefore the petitioner prayed for issuance of a Recovery Certificate for a sum of Rs. 47,26,814/- (Rupees forty seven lakhs twenty six thousand eight hundred fourteen only) along with interest @ 24% per annum from the date of filling this petition till its realisation. The calculation sheet showing head-wise claim of Rs.47,26,814/- reads as under:

Sl. No.	Head	Amount
1.	License fee upto 31.3.2003	Rs.29,98,608/-
2.	Water Charges upto 31.3.2003	Rs.93,336/-
3.	Conservancy charges upto 31.3.2003	Rs.5,500/-
4.	Green Area charges upto 13.11.2002	Rs.4,33,300/-
5.	Electricity charges upto Jan'2003	Rs.10,96,070/-

6.	Penalty on account of additional covered area	Rs.1,00,000/-
	Total	Rs.47,26,814/-

3. That the then Estate Officer vide its order dated 8.5.2003 issued notice to the respondent(Gulati Caterers) under sub-section (3) of Section 7 of the PP Act, calling upon to show-cause why an order requiring them to pay the said amount of Rs. 47,26,814/- together with simple interest should not be made. Vide order dt. 17.6.2003, the Estate Officer issued order in exercise of the powers conferred by sub-section (1) of Section 7 of the PP Act, requiring respondent to pay the sum of Rs.47,26,814/- along with Rs.6,79,197.57/- (Rs. Six Lakhs Seventy Nine Thousand One Hundred Ninty Seven and Fifty Seven Pasia) as interest as provided in the Agreement. Also, in exercise of the powers conferred by sub-section (2A) of Section 7 of the said Act, the then Estate Officer required respondent to pay simple interest @ 12% per annum on the above sum w.e.f. 17/6/2003 till its final payment. It was also ordered by the then Estate Officer that in case, the said sum is not paid within 15 days of the passing of this order, it will be recovered as arrears of land revenue through the Collector.

4. On 17.7.2003, a Certificate under Section 14 of PP Act was issued by the then Estate Officer for recovery of an amount of Rs. 54,06,011.57 (Rupees Fifty Four Lakhs Six Thousand Eleven and Paisa Fifty Seven Only) against M/s. Gulati Caterers Pvt. Ltd., C-175, Lajpat Nagar- New Delhi-110024 upto 31/3/2003 towards

rent/damages/expenses/costs/interest. The respondent was also liable to pay simple interest @ 12 per annum w.e.f. 17/6/2003 till its final payment.

5. On 17.6.2003, the then Estate Officer also decided to pass an ex-parte order as reply was not filed by the respondent. Against this, an appeal under Section 9 of PP Act was preferred by the respondent before the court of Add. District Judge, Tis Hazari Courts, Delhi. A notice to this effect was issued by the Ld. ADJ and the case was remanded back for fresh hearing in October, 2003.

6. On 5.11.2003, the reply on behalf of respondent to the application of petitioner under section 7 of PP Act was filed. They mentioned in the preliminary objections of their reply that recovery of outstanding dues towards alleged construction exceeding 26% of the permissible limit are beyond the scope of Presiding Officer. They denied that the construction exceeds the sanctioned limit. They further submitted while replying on merits that there was no extra construction carried out by them, as alleged. They further submitted that they carried out the construction within the covered area of 226.59 sq. mtrs. They constructed the basement/ground floor and first floor in accordance with the design and denied any encroachment of any area beyond what was allotted to them and consequently prayed that since there is no excess coverage of the area allotted to the respondent and further since the proceedings under PP Act are not maintainable in as much as there is no unauthorized occupation of public land.

7. Rejoinder was also filed by the petitioner on 31.12.2003 denying the reply of the respondent and reaffirming the claim filed by the petitioner.

8. The parties were directed vide order dt. 3.2.2004 for reconciliation of accounts. In July, 2004, respondent went in Arbitration. In August, 2004, respondent filed a copy of Statement of Claim before the then Estate Officer. Vide order dt. 5.11.2004, the then EO decided to go ahead with the claim of the petitioner before the EO in spite of arbitration proceedings and ordered for cross-examination of the witnesses. Respondent again preferred an appeal before Distt. Court against order dt. 13.12.2004 and Ld. ADJ directed that the respondent may be given a last and final opportunity.

9. Recovery-II petition was filed by the petitioner on 30.6.2006 under section 7 of the PP Act claiming an amount of Rs.1,81,32,235/- which, as per Ld. Counsel for the petitioner, during final arguments, includes the amount of Rs.47, 26,814/-. The break up is as under:

Sl. No.	Heads	Amount
1.	Licence fee	1,15,09,818/-
2.	Water charges	10,075/-
3.	Electricity charges	2,78,160/-
4.	Conservancy charges	13,310/-
5.	Green Area	14,15,520/-
6.	Damage charges	49,05,352/-
	Total	Rs.1,81,32,235/-

While proceedings were going on in the Recovery-II case, in the meantime, Recovery-III petition was filed by the petitioner under section 7 of PP Act on 16.8.2010 claiming an amount of 1,60,29,467/-.

10. The respondent paid through post-dated cheques for a total amount of Rs.1.53 crores. The last cheque was encashed on 27.12.2006 and the case was adjourned to 3.1.2007. It was decided in May, 2007 that Recovery I and Recovery-II cases will be heard together.

11. As per Ordersheet dt. 21.7.2014, respondent sought clarification from the petitioners with regard to (i) period of unauthorized occupation (ii) date of surrender of premises, i.e., 25.5.2009 and (iii) the rate of licence fee as there was a difference in licence fee. Both parties agreed for reconciliation of accounts. It has been observed from the order-sheets from 2014 to February, 2016 that ample opportunities were given to the respondent to reply on the outcome of the reconciliation/compilation of accounts and vide Order dt. 12.2.2016, the then EO ceased this opportunity and both the parties were directed to file their written submissions. As per order-sheet dt. 10.8.2017, respondent requested that they wanted to clear some doubts relating to reconciliation made with the petitioner, which request was allowed. In March, 2018, the respondent requested for some more time to submit their proposal of settlement. The request was allowed.

12. On 10.4.2018, respondent submitted a proposal for Rs.24,71,983/- to settle all the three pending cases Nos. 116/EST/ of 2003, 124/EST/of

2006 and 134 EST/ of 2010 before the Estate Officer. In 2020, both parties were directed to come up with the outcome of the settlement. In November, 2021, the petitioner informed that out of court settlement could not reach out and requested for settlement of dispute on merit basis. In 2021, the matter was got adjourned and the then EO retired in April, 2021.

13. I, as Estate Officer, was nominated by a Gazette Notification in March, 2022 and all the cases, i.e., Recovery-I, Recovery-II and Recovery-III were posted for hearing on 10<sup>th</sup> June, 2022. The petitioner appeared, but no one from respondent's side appeared. On 29.7.2022, no one appeared on behalf of respondent and also the last order-sheet, which was sent by speed post, returned un-served. Since respondent was continuously not appearing before this Forum in spite of service of notice, it was ordered to paste/publish the notice in the newspapers. In November, 2022, the notice was pasted at the last known premises/address of the respondent. On 2.1.2023, the petitioner informed that notice dt. 9.12.22 in the two newspapers (The Indian Express(English) and Jansatta(Hindi)) have also been published notifying the respondent to appear before the Ld. Estate Officer on 2.1.2023 in this matter.

14. It was noted that in spite of pasting of notice at the last known address and publishing in newspapers, the respondent did not appear on the next date of hearing. It was observed that the respondent was not appearing before this Forum deliberately, as the respondent was earlier



very much appearing before the EO. Accordingly, the petitioner was advised to submit its case for final hearing on 31.1.2023. On 31.1.2023, hearing could not be held and the case was fixed on 27.2.2023. On 27.2.2023, in spite of all the modes of serving the notice, the respondent did not appear, the case proceeded further where the Ld. counsel for the petitioner submitted their arguments and justification for Recovery-I case. Ld. Counsel for the petitioner submitted that as per agreement dt. 8.11.2000, the covered area allotted was 226.59 sq. mtrs and open area was 170 sq. mtrs. He further submitted that respondent was allotted further space, etc. subsequently and the respondent failed to pay various dues and accordingly the recovery petition was filed before the EO. Ld. Counsel mentioned that the amount of the Recovery-I case is Rs.47,26,814/-, Recovery-II case is Rs.1,81,32,235/- and for Recovery case-III is Rs.1,60,29,467/-. Ld. Counsel also submitted that on 27.12.2006, respondent deposited Rs.1.53 cr. subject to the outcome of Recovery-I and Recovery-II cases.

15. The petitioner filed its written submissions on 20.9.2022 only in Recovery-I case, inter alia, mentioning, that respondent was awarded a license in the year 1999 to operate and run a Food and Beverages outlet in Pragati Maidan. However, pursuant to the award of the license, a license agreement dated 08.11.2000 was signed between the petitioner and the respondent. It is a matter of record that the allotment was for an area and/or structure (premises) ad-measuring approximately 226.59 sq.mts. of covered area (two hundred and twenty six point fifty nine sq. mts.) known as the licensed premises.

16. Some relevant clauses of the agreement dated 08.11.2000 for the purpose of the disputes were reproduced, i.e., Clauses, C.1, C.2, C.3 A.1 B.15, D, F.2, F.6, F.10, F.11, F.12, F.13, L.2, and K.2. The petitioner further mentioned in the written submissions that the respondent herein was from the beginning a habitual offender and in constant breach of the terms and conditions of the License Agreement; the respondent had initially in the year 2000 renovated its F&B outlet and the plan was approved on 07.09.1999. However, the respondent again requested for reconstruction/renovation of its F&B outlet in the year 2002 vide its letter dated 15.03.2002 and sent the plans for the same; the petitioner responded to the aforesaid letter vide letter dated 24.04.2002 and categorically stated that the plans that have been submitted were scrutinized and it was found that the covered area is more than the existing one and therefore the petitioner requested the respondent to modify the plan to keep the area as per the existing structure on the ground floor. The respondent was also informed that the basement proposed can be permitted if same is for non-commercial use; vide letter dated 30.05.2002 the respondent sent revised drawings for approvals. The petitioner again vide letter dated 28.06.2002 informed the respondent that the area shown is more than the actual area; in complete disregard of the terms of the agreement between the parties and the aforesaid letters of the petitioner, the respondent carried out renovation/fresh construction on the F&B Outlet allotted to it without permission and without adhering to the restrictions of covered area and open area specified by the Petitioner; that as per clause D of the agreement the petitioner could inspect the premises of the respondent licensor. An inspection was carried out on 25.09.2002 by a team comprising of Shri H.S.Madan, GM(Arch.), Shri U. Malik,

GM(Engg) and Shri P.K. Bhandari, GM(Marketing) who duly took the measurement of the premises of the Respondent; various violations were detected in the construction carried out by the Respondent. It was found out that the total area that was approved was 512 sq. mtr, and therefore the petitioner issued a letter dated 26.09.2002 and levied a penalty of Rs.1 lakh on the Respondent besides enhancing the License fee on pro rata basis keeping in consideration the extra construction and the space occupied by the respondent; apart from the above, the Respondent also failed to pay the electricity and water charges as per the terms of the agreement and in lieu of the above, a show cause notice was issued to the respondent on 24.02.2004 to clear the outstanding amounts. The total outstanding amount Rs. 47,26,814. However, this amount was exclusive of the interest. The petitioner further mentioned in their written submissions that the factum of the illegal and unauthorized construction is clearly deducible from the fact that the witness of the Respondent i.e Satish Kumar admitted at various places that they had failed to file any sanctioned plan in these proceedings and went to the extent of an categorical admission that permission to construct was granted orally and that there no written evidence for the same. Further, Mr. Sandeep Gullah also admitted that inspecting officers used to take measurements of the scheduled premises and therefore there is not an iota of doubt that the inspection was conducted by the petitioners.

17. By summing up the submissions, the petitioner submitted that they were well within its rights to impose the penalty on the respondent and for other charges as stipulated above.

18. Hence, the petitioner was directed to file their detailed written submissions in all the three recovery cases specifically mentioning the period, area and rate and the calculations how they arrived at a figure on each head, which they are claiming through respective petitions before this Forum and the matter was fixed for 12.4.2023 in all the three cases.

19. On 12.4.2023, the final arguments were again heard. Ld. Counsel for the petitioner submitted that Rs.47,26,814/-, claimed under Recovery-I case, which was filed on 1.5.2003, were included in the Recovery-II case by which total amount claimed was Rs.1,81,32,235/- and Recovery-III case is separate which was filed on 16.8.2010 claiming an amount of Rs.1.60,29,467/-. Ld. Counsel further argued that Recovery-I case includes penalty and Recovery-II and Recovery-III cases include damages. During arguments, penal interest could not be ascertained.

20. Considering that it is an ex-parte case, it was directed to the petitioner to provide final figure of claim with reference to EO's order of 2014 where the petitioner has already claimed an amount of Rs.2.09 crore upto May, 2014 taking into account all the 3 Recovery cases which includes the penal interest and damages, licence fee, electricity charges, water charges, etc. and also taking into the account payment received from the respondent of Rs.1.53 crore and matter was fixed for final arguments on 19.04.2023.

21. The matter was finally heard on 24.4.2023 in all the three recovery cases. Ld. counsel for the petitioner mentioned that the rate, period,

area and calculations have been arrived while filing the Recovery Petitions filed on 1.5.2003, 30.6.2006 and 16.8.2010. Ld. counsel for the petitioner also mentioned that in EO's hearing dt. 29.5.2014, the total amount claimed for all the 3 recovery cases works out to Rs.2.09 crores after taking into account the payment received of Rs.1.53 crore from respondent. The break-up is as under:-

Sl. No.	Heads	Amount
1.	Licence fee	Rs.26,35,717/-
2.	Electricity charges	Rs.1,84,481/-
3.	Water charges	Rs.88,894/-
4.	Conservancy charges	Rs.61,957/-
5.	Green Area charges	Rs.6,67,760/-
6.	Penal interest	Rs.78,78,167/-
7.	Damage charges	Rs.94,08,843/-

22. The amount Rs.2.09 crores claimed includes the penal interest @ 24% amounting to Rs.78,78,167/- for the total period 1.4.2003 to 31.5.2010 and unpaid damage charges of the recovery petitions which amounted to Rs.94 lacs. Ld. Counsel for the petitioner submitted that Rs.49 lakhs towards damages charges were included in 2010 petition (Recovery-III case). Ld. Counsel for the petitioner further mentioned that damage charges which are double the licence fee is as per the Agreement. Ld. Counsel for the petitioner further submitted that penal interest has not been mentioned specifically in the Agreement.

23. After perusing/examining all the records/documents/evidences/written submissions placed on record and considering the arguments adduced by the Ld. Counsel for the petitioner on various dates, I have decided to pass an ex-parte order, in view of the facts and circumstances set out above, particularly, the continuous non-appearance of the respondent for about a year.

24. ITPO terminated licence of the respondent on 22.06.2005 as the respondent had not been remitting the huge outstanding payment. Since the respondent was an unauthorised occupant since 22.06.2005 damages @ the double rate of license fee as per clause K 3 of the License Agreement calculated on per day basis for every day of default was also imposed. The license was restored on 17.05.2007 vide EO's order dated 17.05.2007. Therefore, ITPO claimed an amount of Rs 94.08 lakhs for the period from 22.06.2005 to 17.05.2007 towards damage charges.

25. An amount of Rs 157.42 Lakhs was outstanding against the respondent as on 31.03.2006 towards license fee, electricity water, conservancy, green area and damages. Further, as the respondent was un-authorised occupant and was not remitting the payment towards electricity, water services, their electricity and water was disconnected on 04.07.2006. The connections were restored vide the then EO's order dated 09.08.2006 after the respondent had paid Rs.1.53 crores vide post-dated cheques with last cheque encashed on 27.12.2006.

26. As regards the amount of damages(double licence fee) charged from 22.06.2005 to 17.05.2007 is Rs 94.08 Lakhs as per clause K 3 of

the License Agreement, as the respondent was un-authorized occupant w.e.f. 22.06.2005 from the date of revocation of the license by petitioner till 17.5.2007. However, the water and electricity were restored by the petitioner on 09.08.2006 according to the then EO's order in this regard, it is held that 09.08.2006 as date of restoration of the license reasonably and the respondent is liable to pay damages of being unauthorized for the period 22.06.2005 to 09.08.2006 which is amounting to Rs 54.50 Lakhs. The respondent is considered as authorized occupant w.e.f. 10.08.2006 to 17.05.2007.

27. The penal interest @24% pa on all the delayed payments from 01.04.2003 to 31.05.2010 amounting to Rs 78.78 Lakhs was claimed in the recovery petitions before EO. It was observed that there is no specific clause in the Agreement for claiming the interest @ 24% pa. However, the respondent was served a notice dated 29.09.2003 whereby it was well informed that delayed payment are subject to the levy of penal interest @24% p.a.

28. Levying of interest on delayed payment @ 24% pa is considered higher and it is decided that interest @ 9% p.a may be levied. Accordingly, the outstanding amount on penal interest can be reduced to that extent.

29. The respondent vacated the premises without any intimation to ITPO and left a letter dated 21.05.2009 along with keys of the scheduled premises to R&I section of ITPO. Subsequently, on ITPO's request dated 26.06.2009, the respondent handed over the peaceful vacant possession

of the licensed premises on 30.06.2009. It is viewed that the license term of the allottee was till 11.08.2009, even though they had vacated and handed over the premises to ITPO on 30.06.2009. It is held that the licence fee upto 11.8.2009, as claimed by the petitioner, is justified.

30. In view of the above and the arguments and submissions made by the petitioner and to the best of my understanding, I find it reasonable to order the following to conclude and in the interest of justice to this case which is being contested before this forum since 2003, the following amount(s) mentioned against each head are allowed:

- i. Licence Fee: Rs.26,35,717/-.
- ii. Electricity charges: Rs. 1,84,481/-.
- iii. Water charges: Rs. 88,894/-.
- iv. Conservancy charges: Rs. 61,957/-.
- v. Green area charges: Rs. 6,76,760/-.
- vi. Penal interest: Rs. 29,54,313/-.
- vii. Damages: Rs. 54,50,192/-.

for the recovery from the respondent with cumulative interest @ 9% pa w.e.f. 1<sup>st</sup> June, 2014 on the above-said amounts to be charged till the date of its realization. The respondent is directed to pay the same to the petitioner within 4 weeks from the date of this Final Order.

Copy of the Award is given to the parties.

Date: 22<sup>nd</sup> May, 2023

Files No.116/EST/2003, 124/EST/2006 and 134/EST/2010

  
(S.R. Sahoo)  
Estate Officer  
