

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPEAL NO. CGIT- 2 /EPFA/40/2020

APPEAL NO. CGIT- 2 /EPFA/41/2020

APPEAL NO. CGIT- 2 /EPFA/42/2020

APPEAL NO. CGIT- 2 /EPFA/43/2020

APPEAL NO. CGIT- 2 /EPFA/44/2020

APPEAL NO. CGIT- 2 /EPFA/45/2020

APPEAL NO. CGIT- 2 /EPFA/46/2020

APPEAL NO. CGIT- 2 /EPFA/47/2020

M/s. Clear Secured Services Pvt. Ltd.,

Punwal & Omkar E-Square,
201-D, 2nd Floor, Sion (East),
Mumbai – 401 022.

– Appellant

V/s.

The Regional Provident Fund Commissioner,

EPFO, Regional Office, Mumbai-I,
No. 341, Bhavishya Nidhi Bhavan,
Bandra (E). Mumbai 400 051.

- Respondent

COMMON ORDER
(Delivered on 24-03-2025)

An identical question of facts and law is involved in all the above referred appeals therefore those appeals are disposed off by common order.

2. M/s. Clear Secured Services Pvt. Ltd./appellant has challenged the legality of order dated 09.01.2020 passed u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions

Act, 1952, (for-short, “EPF Act”) by RPFC, Mumbai/respondent, in appeals u/s. 7-I of the EPF Act.

3. According to the appellant, its establishment is a private limited company classified as non-government company engaged in providing services such as facilities management, E-surveillance, Security, ATM cash, FLM management etc., and the strength of more than 5000 employees and the company is covered under the EPF Act and rendering compliances in respect of employees employed. Due to new business activities, he was unguided, therefore occurred delay in remittance of contribution of Provident Fund, therefore the respondent issued the various show cause notices for enquiry u/s. 14-B and 7-Q of the EPF Act for various periods and after conducting enquiries differently passed the various orders on 09.01.2020 separately u/s. 14-B & 7-Q of the EPF Act. Those orders are under challenged in these appeals.

4. The appellant contends that, being a service provider to its clients, solely depends upon the bill payments made by its clients, not only to pay the earned salaries and also remit the statutory dues of employees belatedly. Similarly due to Global Recession, many multinational companies have vanished. The appellant further contends that, initially he could not participate in the enquiry proceedings and later participated through authorised representative and requested to provide copies of remitted challan received from State Bank of India, however without producing the same enquiries were completed. During enquiries reasonable opportunities were not given. While passing the order, maximum damages are imposed without proper reasons and without using discretion. The appellant also contends that, the Authority failed to consider

that, there was no intention to delay remittance nor mens-rea which is determinative factor. The Commissioner is not justified in functioning dual capacity. This is non application of mind as such the orders under challenge are ex-facie, bad in law, illogical, against the settled position of law as well as various decisions by the Superior court and illegal thus, the appellant prays for set aside the order under appeal with equitable relief.

5. The respondent resisted all these appeals by separate counter reply and denied all the contentions of the appellant in totality. The respondent submits that, the ground has taken regarding financial difficulty are not at all sustainable. No documents submitted for financial difficulty faced by the appellant. The Authority has not been functioning in dual capacity but he acted as per the provisions of Act. The mens-rea or its absence is immaterial especially when the liability to comply is statutory. The Respondent further submits that, on the basis of show cause notice, enquiries were conducted separately and in the enquiry sufficient opportunity were given to the appellant as such the orders under appeal do not suffers from illegality or invalidity or impropriety and prays for dismissal of the appeals.

6. I have heard Mr. Chheda representative for the appellants & Mr. Rattesar Advocate for the respondents. The following points arise for my determination, my findings and reasons to them are as below-

<u>Points</u>	<u>Findings</u>
1. Whether the orders under appeal suffered from illegality?	Yes.

2. Whether appellants are entitled
for relief as prayed?

Yes Partly.

REASONS

7. Point No.1 It will not be out of place to mention here that, it reveals that in **EPF40/2020** the summons dated 09.08.2016 came to be issued for the period from May 2013 to December 2013, after enquiry the order passed u/s. 14-B & 7-Q of the EPF Act on 09.01.2020 and thereby determined the amount of Rs.03,87,875/- towards Damages and Rs.05,11,005/- towards Interest and the appellant deposited the amount of Interest determined in the order passed u/s. 7-Q of the EPF Act. In **EPF41/2020** the summons was issued on 09.09.2016 for the period from January 2014 to April 2014, after enquiry the order u/s. 14-B & 7-Q of the EPF Act came to be passed on 09.01.2020 and thereby determined the amount of Rs.03,07,162/- towards Damages and Rs.04,78,854/- towards Interest and the appellant has deposited the amount of Interest determined in the order passed u/s. 7-Q of the EPF Act. In **EPF42/2020**, the summons was issued on 29.08.2016 for the period from July 2012 to December 2012, after enquiry the order u/s. 14-B & 7-Q of the EPF Act came to be passed on 09.01.2020 and thereby determined the amount of Rs.01,40,927/- towards Damages and Rs.02,14,694/- towards Interest and the appellant has deposited the amount of Interest as determined in the order u/s. 7-Q of the EPF Act.

In **EPF43/2020**, the summons was issued on 11.04.2017, for the period from January 2015 to December 2016, after enquiry the order came to be passed on 09.01.2020 for Rs. 21,68,475/- towards

Damages and Rs.17,50,990/- towards Interest. In **EPF44/2020**, the summons was issued on 09.08.2016, after enquiry the order came to be passed u/s. 14-B & 7-Q of the EPF Act on 09.01.2020 for Rs.02,07,998/- towards Damages and Rs.03,21,301/- towards Interest and the appellant has deposited the amount of Interest determined u/s. 7-Q of the EPF Act. In **EPF45/2020**, the summons was issued on 30.08.2016 for the period from June 2010 to December 2012 and after enquiry the order came to be passed on 09.01.2020 for Rs.01,06,941/- towards Damages and Rs.01,61,040/- towards Interest. In **EPF46/2020**, the summons was issued on 09.09.2016 for the period from April 2014 to January 2015, after enquiry the order came to be passed u/s. 14-B & 7-Q of the EPF Act on 09.01.2020 for Rs.01,44,797/- towards Damages and Rs.01,98,309/- towards Interest and the appellant has deposited the amount of Interest determined in order u/s.7-Q of the EPF Act. In **EPF47/2020**, the summons came to be issued on 09.09.2016 for the period from April 2014 to October 2014, after enquiry the order came to be passed u/s. 14-B & 7-Q of the EPF Act on 09.01.2020 for Rs.02,65,724/- towards Damages and Rs.04,38,131/- towards Interest. The appellant has deposited the amount of Interest as determined in the order passed u/s. 7-Q of the EPF Act.

8. Mr. Chheda representative strongly contended that, while passing the orders under appeals, the Authority imposed maximum damages without using any discretion. The Authority ought to have considered that, necessary data required to be collected from various places, therefore delay was occurred in remitting the contribution. The payment was made

suo-moto and while passing various orders, the Authority failed to consider the mitigating circumstances such as delay in getting the amount from various clients therefore the employees were paid their wages late and there was no deliberate intention in delay remitting the contribution nor any mens-rea as such the orders under appeal are illegal.

He put his reliance on the various decisions in **M/s. Hindustan Steel Ltd. v/s. The State of Orissa (AIR 1970 SC 253)**, **Regional Director ESIC v/s. Sakshi Tiles (1998 (2) KLT 280)**, **South Indian Floor Mills v/s. RPFC (1978 LIC 1187)**, **Fernandes v/s. State of Mysore (1969 (2) LLJ 442)**, **Popular Saw Mills v/s. RPFC (1995 LAB. I.C. 2624)**, **Niky Tasha Pvt. Ltd. v/s. RPFC (1995 I LLJ 282)**, **Prestolite of India Limited v/s. Regional Director (1995 SCC (L&S) 396)**, **Harrisons Malayalam Ltd., v/s. RPFC (MANU/KE/0250 /2012)**, **Jamshedpur General Consumers Central Co-operative Stores Ltd. v/s. RPFC [1979 Lab. IC 317 (Pat) (DB)]**, **The Management of Industrial Rubber Products v/s. RPFC (1996 II LLJ 1202)**, **APFC v/s. The Management of RSL Textiles India Pvt. Ltd., APFC v/s. The Management of RSL Textiles India Pvt. Ltd. REVIEW PETITION (C) No. 1761-1762/2017**, **Arcot Textiles Mills Ltd. v/s. RPFC, W.P. No. 21635/2010 and M.P. No.2/2010.**, **Organo Chemical Industries v/s. Union of India 1979 LIC 1261.**, **Terrace Estate, Unit of United Plantation Ltd. v/s. APFC [2010 (1) LLJ 381 (Mad)]**, **Atlantic Engineering Services Pvt. Ltd. v/s. Union of India [(1979 LIC 695 (Del. DB)]**.

9. As against this, Mr. Rattesar learned advocate for respondent submitted during enquiry that, the representative of the appellant

accepted the delay in remitting the contribution and once the delay in remittance of contribution is accepted, then damages and interest follows. The reason mentioned in written submission such as Global Recession, financial cash flow crises and late receipt of payments from clients were not able to pay salary and P.F. contribution in stipulated time cannot be the reason for late remittance of contribution and the same has been considered by the Authority as such the orders under appeals are legal and proper.

My reliance has been invited to the various decisions in **State v/s. Girdharlal Bajaj and Anr. AIR 1926 BOM 130, M/s. Hindustan Times Limited v/s. Union of India & Ors. AIR 1998 Supreme Court 688, Horticulture Experiment Station Gonikoppal Coorg v/s. Regional Provident Fund Organisation Civil Appeal No.2136 of 2012, Organo Chemical Industries & Anr. v/s. Union of India & Ors. 1979 AIR 1803, 1980 SCR (1) 61.**

10. I have given anxious consideration to the oral submissions advanced on behalf of the parties in the light of settled position of law.

In the various decisions relied on behalf of the appellant, it has been appreciated that, the corporation (ESI) was empowered to recover damages did not mean that corporation could act mechanically and without taking into account facts and circumstances of each case if there exists bonafide circumstances which would point out that, there was no deliberate omission on the part of the employer, limit the percentage of damages from 12% to 10% was well justified. Damages must have some

correlation with loss suffered as a result of delayed payments. The word “may recover” occurring in the concluding part of the section demonstrate that, in a given case Government have the power, if the circumstances justify the conclusion, to decide against the recovery of any damages.

11. It has been further appreciated that, a non speaking order shall also be regarded as bad order of levying damages. There is clear line of distinction between imposition of penalty which is penal in nature and imposition of damages which is compensatory in nature. Where an authority makes an order in exercise of a quasi judicial function, it must record its reason in support of that order it makes, clause 32-A of Scheme is a purely in the nature of guideline and not a rigid formula to be applied uniformly in all cases of delay in payment of contribution. The reasons for the delay pleaded by the defaulter has to be objectively considered and the original authority has the discretion or even to impose lesser punishment than what has been prescribed under Clause 32-A of the Scheme in appropriate cases. If the respondent had already made up his mind at the time when the notice was issued to show cause as to why maximum amount of penalty be not awarded against them such a mechanical adjudication, if at all that can be called adjudication is absolutely unwarranted and uncalled for any proceeding of the nature envisaged under Section 14-B of the Act.

It is also appreciated that, even if the regulations have prescribed general guidelines and upper limits at which the imposition of damages can be made, it cannot be contended

that in no case, the mitigating circumstances can be taken into consideration by the adjudicating authority in finally deciding the matter and it is bound to act mechanically in applying the uppermost limit of the table. The existence of mens-rea or actus-reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and quantum of thereof.

12. In the various decisions relied on behalf of respondent **State v/s. Girdharlal and Anr.** is the criminal matter, in which it has been appreciated by the Apex court of the land that, construing the material provisions of the Act in two views are reasonably possible, then the court should prefer the view which helps the achievement and furtherance of the object. In another decision it has been appreciated that, the acute and convincing ground to escape the liability to remit the EPF dues. Any default or delay in payment of EPF contribution by the employer is a sine qua non for imposition of levy of damages. The imposition of damages under section 14-B serves dual function. It not only compensate for harm but also acts as deterrent. The primary objective is to penalize defaulting employer to discourage them from making further defaults in the future.

13. I may mention here that, though the various summons were issued for different periods separately and all enquiries were conducted separately. The representative of the appellant was present in the enquiry on 15.01.2019 and submitted common representations on 11.07.2019, however there is no whisper in the orders about the date as well as representation submitted on behalf of the appellant. Mr. Rajesh Kumar Regional Provident Fund

Commissioner Mumbai, passed orders in all enquiries separately, however contents of all the orders except figures are similar and same. There is no proper discussion in the order about not accepting the defence raised by the appellant in the enquiries, more particularly in the representations made by employer. Not only this but, the amount of damages & interest which were mentioned in the various summons are confirmed in the order under appeal. In such circumstances, it can be safely said that, there is non application of mind by the authority while passing the orders in the separate enquiries.

14. Mr. Chheda learned representative appeared on behalf of the appellant submitted that, the appellant required to collect data from various places, therefore the appellant could not received bills in time and due to that, salary to the employees were paid late and there was delay in remitting the P.F. contribution. Similarly while passing the order, the maximum damages were leveled against the respondent. Whereas the counsel for the respondent supported the order on the ground that it is obligatory on the part of the opponent to levy damages as prescribed under Clause 32-A of the Scheme.

Admittedly, the damages are leveled as prescribed under Clause 32-A of the scheme alleging that, it is mandatory on the part of respondent, however in **Harrison Malayalam Ltd.**, referred above the Hon'ble lordship of Kerala High Court appreciated that, Clause 32-A of the scheme is purely in the nature of guidelines and not a rigid formula to be applied uniformly in all case of delay in payment of contribution. Not only this but, it has been further appreciated that, the reasons for the delay pleaded by the defaulter

has to be objectively considered and the original authority has the discretion even to impose lesser amounts than what has been prescribed under clause 32-A of the scheme.

Similarly, it also seems that while passing the order under appeal the calculations mentioned in the summons are almost confirmed in the order under appeal. It goes to show that, there is no adjudication or mechanical adjudication and uncalled for proceedings.

It is clear from the above discussion that, the adjudication is mechanical, the authority failed to use discretion while imposing damages and considering stereo type orders in all the matters except figures it can be safely said that, there is non application of mind by the authority and the orders under challenge is non speaking orders as such the orders under appeal suffers from illegality. Hence, I answer this point in **affirmative**.

Point No.2 - I have observed that, the orders under appeal are suffers from illegality therefore illegal and those are liable to be set aside. The matters are remanded back to the respondent with direction to decide the matters in respect of damages only, in the light of various authorities discussed in the matter and after giving reasonable opportunities to the appellants, passed orders within a period of six months from the date of this order.

It appears that, in almost of all matters except EPFA 43/2020 & EPFA 45/ 2020, the appellant has not deposited the amount of interest, thus I am directing the appellant to deposit the amount of Rs.17,50,990/- and Rs.1,61,040/- respectively with the respondent

within a period of six weeks from the date of order, hence I answer this point **partly** in the **affirmative**.

In the result I pass the following order-

ORDER

1. The Appeal No.CGIT-2/EPFA/40/2020, Appeal No. CGIT-2 /EPFA/41/2020, Appeal No. CGIT-2/EPFA/42/2020, Appeal No. CGIT-2/EPFA/43/2020, Appeal No. CGIT-2/EPFA/44/2020, Appeal No. CGIT-2/EPFA/45/2020, Appeal No. CGIT-2/EPFA/46/2020, Appeal No. CGIT- 2/EPFA/47/2020 are partly allowed.
2. The matters are remanded back to the respondent with direction to decide the matters in respect of damages only in the light of various authorities discussed in the matter and after giving reasonable opportunities to the appellants passed necessary order in respect of damages within a period of six months from the date of this order.
3. The appellants are directed to deposit the amount of interest in EPFA 43/2020 as well as EPFA 45/2020 i.e., Rs.17,50,990/- & Rs.1,61,040/- respectively with the respondent within a period of six weeks from the date of this order.
4. Parties to bear their own cost.
5. A copy of order be kept in each case.
6. The copies of orders be sent to the parties.

Date: 24-03-2025

Sd/-
(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai