BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NEW DELHI

Appeal no. D-1/36/2025

M/s. Anand and Company vs. APFC/RPFC, Delhi Central.

Counsels:

For Appellant:- Sh. S.K. Gupta, ld. counsel.

For Respondent:- Sh. S.N. Mahanta, ld. counsel.

Order Dated:-12.09.2025

ORAL

1. Appellant has pressed his prayer for the stay of the execution of the order dated 28.07.2025 under section **14 B & 7 Q of the EPF & MP Act, 1952 (hereinafter referred as 'the Act')** wherein the respondent has assessed an amount of Rs.47,09,426/- as damages as well as Rs.40,79,979/- as interest. Appellant has stated that the orders passed by the respondent suffer from serious infirmity, illegality and excess of jurisdiction and the same are passed without considering all the points raised/ verbal submissions during the course of enquiry. He further stated that the order passed by the respondent is not a speaking order which is perverse, arbitrary and contrary to the provision of the Act because respondent has not provided the basis of calculation of damages along with the period of alleged default.

2. The respondent has passed the order in derogation of the law settled by the **Madhya Pradesh High court in APFC Vs. Ashram Madhyamik (2007 LLR 1249)** where it has been held that full damages are not compulsory and that levy of damages is discretionary as the word **'may'** has been used in Section 14 B of the Act. This contention has not been considered. No finding regarding the existence of mens rea or actus reus is present in the impugned order. It is further stated on behalf of the appellant that the impugned order suffers from delay and laches as the enquiry stood closed on 23.12.2024 by Sh. Raj Kumar Meena yet the final order was issued only on 28.07.2025 by Sh. Kumar Shiladitya. The impugned order has been passed after incorrect recording of admission of the dues by the AR of the appellant establishment

because no such admissions was ever made by the AR, on the contrary, AR had raised serious objection regarding belated notice, non-compliance with the provisions, manuals and circulars issued by the department. It is the argument of the ld. counsel for appellant that the damages u/s 14 B of the Act are penal in nature whereas interest u/s 7Q of the Act is compensatory and therefore, both cannot be mechanically clubbed without proper justification as has been done in the present case.

3. Respondent counsel has opposed the prayer stating that the order passed under Section 7Q of the Act is not appealable, hence, the respondent be asked to deposit the amount assessed u/s 7 Q of the Act. The amount of interest has to be deposited in the account of the subscribers. The respondent organization is under obligation to deposit the interest. So far so, order passed u/s 14 B is concerned, respondent counsel has left the same to the discretion of this tribunal.

4. I have heard the arguments and perused the record. Before parting any opinion on the issue, it is necessary to reproduce the section 14 B as well as Section 7 Q of 'the Act':-

> ***Section 14B Power to recover Damages-Where an employer makes default in the payment of any contribution to the Fund [, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5 [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover 7 [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:] [Provided that before levying and***

recovering such damages, the employer shall be given a reasonable opportunity of being heard]:

[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985,subject to such terms and conditions as may be specified in the Scheme.]

7 Q Interest Payable by the Employer-The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

5. Rate of levy of damages is given in para 32 A of the Employees' Provident Funds Scheme, 1952 and subsequent para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 and Para 5 of the Employees' Pension Scheme, 1995 which have empowered the CPFC or any such authorised officer to recover from the employer by way of penalty, damages at the rate given below:-

S.No.	*Period Of default*	*Rate of damages (percentage of arrears per annum)*
(1)	*(2)*	*(3)*
(a)	*Less than 2 months*	*Five*
(b)	*Two months and above*	*Ten*

	but less than four months	
(c)	*Four months and above but less than six months*	*Fifteen*
(d)	*Six months and above*	*Twenty five*

6. Now, coming to the present appeal, so far so the contents of Section 14 B of the Act, is concerned, the word 'may' has been used in the Act. It is the respondent who had often take the view that he has no discretion to reduce the damages from the rate prescribed in the scheme, is of little value. If that is considered to be true, the legislation would have never used the word **'may'**. This proposition is also fortified with the facts that when the department during the **Covid-19 had exempted the establishments from levy of damages** imposed due to belated remittances or introduction of **'Para 82A – Special provision in respect of Employees' Enrollment Campaign' when the damages is levied @One Rupee Per Annum.** If the discretion is not vested with the respondent department, the department could not do so.

7. So far so, the plea of appellant counsel that the order passed by the respondent is not passed strictly in accordance with the provision of the Act and suffers from various irregularities, it has to be seen at the time of final disposal when the respondent has submitted his reply to this appeal and after examination of the trial court record. In the circumstances discussed above, the appellant is directed to deposit at least the interest component which is to be deposited in the subscribers account. In case, this tribunal reaches to an otherwise conclusion at the time of final disposal of this appeal, then, whole amount shall be directed to refund.

8. With this the prayer of the appellant to grant stay is allowed to such an extent that there is a stay on recovery subject to deposit of Rs.40,79,979/- by way of **FDR** favoring **'Registrar CGIT'** initially for a period of one year having auto renewal mode, within four weeks from today. It is made clear that if the appellant fails to comply with the condition laid down by this tribunal within the stipulated time frame, the stay shall not be in operation

and the respondent shall have the liberty to execute the order as per rules. Put up for reporting compliance by appellant as well as filing of reply to the appeal by ld. Counsel for the respondent on 04.11.2025. In the meanwhile, interim orders to continue till next date of hearing.

Sd/-
Atul Kumar Garg
(Presiding Officer)