BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. D-1/54/2024

M/s.Sagar Ratna Restaurant Pvt. Ltd ……Appellant

Through:- Ms. Snigdha Dash, Ld. counsel for the appellant.

Vs.

APFC/RPFC, Delhi South. …..Respondent

Through:- Sh. B.B. Pradhan, Ld. Counsel, and Sh. Prateek Tyagi, A/R, for the respondent.

Order Dated:-15.10.2025

1. The appellant, which is engaged in the restaurant business, is a covered establishment under the provisions of the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act'),** has assailed the orders dated 08.07.2024 passed under section 14-B and 7-Q of the Act, whereby the respondent assessed the dues to the tune of Rs. 23,70,811/- and Rs. 19,99,071/- respectively, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

2. The appellant has assailed the said orders on several grounds, *inter alia*, that the impugned orders are prima facie illegal, illogical and bad in law; the respondent failed to consider and appreciate that the period forming the subject matter of present proceedings is predominantly pandemic Covid-19 affected period wherein the entire economy of the nation including the appellant's establishment suffered severe setbacks. Considering the unprecedented situation, both the State government and Central Government granted various relief packages and relaxations to industries; the respondent department vide circular/office order no. **C-I/Misc./2020-21/Vol.I/1112** dated **15.05.2020** had specifically directed that no damages shall be levied for the period of lockdown

announced by the competent authority under Disaster Management Act, 2005; however, the said directions were not complied with by the respondent APFC; the respondent lost sight of the fact that the business of the appellant had completely come to a standstill; the respondent further overlooked that Hon'ble Supreme Court of India vide its order dated 10.02.2022 in *Suo-Motu Writ Petition (Civil) no. 03 of 2020* had been pleased to exclude the period **from 15.03.2020 till 28.02.2022** for the purposes of limitation as prescribed under any general or special law in respect of all judicial and quasi-judicial proceedings. The appellant, therefore, submitted that its appeal be allowed, and the impugned orders be set aside and recalled.

3. In response, the respondent filed a reply stating that the appellant is a habitual defaulter in terms of delayed remittance of statutory dues and is therefore not eligible for leniency. It is asserted that the appellant was duly afforded opportunities of representation against the proposed damages under section 14B of the Act and also the corrections as suggested by establishment were taken into account. The respondent relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Organo Chemical Industries and Anr. Vs. Union of India and Ors. (1979-(002)-LLJ 0416-SC; 1979-(004)-SSC-0573-SC),*** habitual defaulters such as the appellant cannot claim any benefit of leniency. It is also submitted that the establishment had deducted contribution the employees' contribution but failed to remit the same in time to the respondent, which amounts to breach of trust and therefore no leniency ought to be shown for the appellant establishment.

4. It further submitted that the appeal under section 7Q of the Act is not maintainable, as the appellant has admitted to have committed default in remittance of the PF dues, therefore, no relaxation can be granted. The respondent thus prayed that the appeal be dismissed with costs.

5. A rejoinder had been filed by the appellant herein reiterating the averments made in the appeal and denying the contentions raised by the respondent.

6. Before proceeding further Section 14B and 7Q of the Act and relevant Para of the EPF Scheme are reproduced herein for ready reference:

> ***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 [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 authorized by the Central Government, by notification in the Official Gazette, in this behalf] may recover [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.]

7Q. 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.]

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

7. I have heard the arguments at bar and gone through the record of the appeal and the orders under challenge. In the present case, notice was issued to the appellant on 19.07.2022 by the respondent stating that on scrutiny of record maintained by this office for the remittances made by the appellant during the period from 27.06.2019 to 30.06.2022 shows that payment of PF contributions have been made belatedly and calculated the dues of Rs.31,79,245/- and Rs.19,99,071/-. Along with the notice an enclosure of calculations showing dues has also been attached wherein the payment were belatedly made for the wage months 05/2019 to 04/2022

8. Perusal of the order passed by the RPFC-I shows that it has revised the damages after deducting the same for the period 03/2020 to 05/2020 by Rs.8,08,434/- thus asked the appellant to pay the damages of Rs.23,70,811/- u/s 14B of the Act. However, respondent has mentioned in the impugned order that no discretion is vested with the authority u/s 14B of the Act read with the **Para 32(A) of the EPF Scheme** where the rate of damages has been prescribed to waive or mitigate the damages.

9. The appellant has mainly emphasised that that it is part of the restaurant industry, and its business suffered heavy losses due to the Covid-19 pandemic. Its entire operation had come to a standstill, resulting in non-deposit of the PF dues in time. The contention of the appellant has weightage, because it is in the common knowledge that entire restaurant industry has badly suffered heavy losses during that period. covid-19 pandemic not only runs for few months but runs for more than one year. Second wave of the covid-19 which started from January, 2021 was more dangerous then the first wave. The damages and interest prior to the Covid-19 period in the present case has been determined as Rs.1,246/- and Rs.1,065/-. So far so the entire damages and interest is concerned, that amounts to Rs.23,70,811/- and

Rs.19,99,071/- which includes the damages and interest for the post Covid period also.

10. Respondent's contention that it has no discretion to either waive or reduce the damages u/s 14B of the Act is mis-placed. If the department has by his own circular waived the amount then certainly the respondent authority while assessing the damages can waive or reduce the rate of damages after considering overall circumstances, nature of business, suffered losses etc.

11. In the light of above discussion, the appeal stands allowed partly. The demand notice issued by the respondent department for the period of 03/2020 to 06/2021 is set-aside. Appellant is directed to deposit the amount of damages levied in the demand notice starting from the wage month of 06/2019 up to 02/2020 and 07/2021 to 04/2022 along with the interest amount of Rs.19,99,071/- u/s 7Q of the Act within one month from the receipt of this order. Office is directed to send the copy of this order to both the parties through email. The record of this appeal is consigned to record room.

Sd/-

(Atul Kumar Garg)
Presiding Officer