

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT NEW DELHI**

D-1/26/2025

M/s. Prehari Cyber Security and Facilities Pvt. Ltd. vs. APFC/RPFC, Delhi North.

Present: Sh. S.K. Gupta, Ld. Counsel for the appellant.
Sh. B.B. Pradhan, Ld. Counsel for the Respondent.

Order dated- 18.09.2025

ORAL

1. Appellant has pressed his misc. application for the stay of the execution of the order dated 06.03.2025 forwarded on 11.03.2025 passed 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.7,00,427/- as damages as well as Rs.10,90,507/- as interest for the belated payment of EPF dues during the period 01/07/2018 to 13/06/2024.

2. In the said application, appellant has stated that vide these impugned orders the appellant has been burdened with the liability in which the interest is more than the damages. He further prays for interim order along with a request that the appeal be decided as early as possible to avoid any further liability.

3. Respondent counsel has opposed the application for granting stay 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 as compensation. He further stated that the appellant is a chronic defaulter and hence, no leniency be taken against the appellant. The respondent authority has passed a speaking and well-reasoned order after giving sufficient opportunities to the appellant establishment and the appeal is devoid of any merits. Submitting these averments, Id. counsel for the

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respondent has prayed to issue directions for deposit of the assessed amount by the respondent authority.

4. During the course of oral arguments, Id. counsel for the appellant stated that the impugned order suffers from legal infirmities and has been passed without considering the verbal submission and citations relied upon by the appellant. The respondent authority has been functioning in the dual capacity of a prosecutor as well as a judge which amounts to misuse of jurisdiction, power and authority. The impugned order suffer from non-application of mind because the respondent has passed the order in derogation of the law settled in various cases by several High Courts 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 is present in the impugned order.

5. Per contra, opposing the submission of Id. counsel for the appellant, counsel for the respondent submitted that the order is passed in the light of section 14B of the Act read with 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 where a table has been prescribed by the legislature making it mandatory on part of the respondent to impose damages as per the directions given in the scheme.

6. 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

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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.]

7. 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:-

<i>S.No.</i>	<i>Period Of default</i>	<i>Rate of damages (percentage of arrears per annum)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(a)</i>	<i>Less than 2 months</i>	<i>Five</i>
<i>(b)</i>	<i>Two months and above but less than four months</i>	<i>Ten</i>
<i>(c)</i>	<i>Four months and above but less than six months</i>	<i>Fifteen</i>
<i>(d)</i>	<i>Six months and above</i>	<i>Twenty five</i>

8. 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.

9. 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

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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.

10. 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.10,90,507/- 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 Id. Counsel for the respondent on 20.11.2025. In the meanwhile, interim orders to continue till next date of hearing.

Sd/-
Atul Kumar Garg
(Presiding Officer)