BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. D-2/36/2024

M/s. Rathi Steel and Power Ltd. ……Appellant

Through:- Sh. Kumar Vikram , Ld. counsel for the appellant.

Vs.

APFC, Meerut. …..Respondent

Through:- Sh. Kanhaiya Singhal, Ld. counsel for the respondent.

Order:-oral

Order Dated:- 12.09.2025

The appellant, 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 08.05.2024 passed under section 14-B and 7-Q of the Act, whereby the respondent assessed the dues to the tune of Rs. 1,18,354/- and Rs. 1,10,032/- respectively, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

The appellant has assailed the orders on several grounds, *inter alia*, the orders were passed without application of mind; there was no deliberate delay or *mens rea* on the part of the appellant in depositing the PF dues belatedly and the orders were passed in a mechanical manner. It has further submitted that during the period of dispute, the business conditions were adverse and the industries were suffering losses, and subsequently, the Covid-19 pandemic spread across the nation, and the Government of India declared closure of industries from 23.03.2020 to June 2020. On these grounds, the appellant prayed that the orders be set-aside and recalled.

In response, the respondent herein filed its reply opposing the plea of the appellant. It submitted that, under the Act, if the employer fails to deposit the contributions within the stipulated period, including the grace period of 5 days, the employer becomes liable to pay the penal damages under section 14-B of the Act read with Para-32A of the EPF Scheme. At the time of verification of records of the appellant, having the P.F. Code No. MR/MRT/0004916000 M/S RATHI STEEL AND POWER LTD., it was observed that considerable delay had been made in depositing the PF dues for various wage months during the period from 19.09.2019 to 31.03.2020. Hence, a statement dated 20.04.2023 quantifying the delayed days was drawn, and the amount of penal damages were forwarded to the establishment with direction to deposit the same and furnish evidence of the payment. A number of opportunities were given for participation in the enquiry, however, the establishment failed to do so.

It further submitted that the *mens rea* or *actus reus* is not an essential element for imposing of penalty or damages for breach of civil obligations or liabilities. On these grounds, the respondent prayed that the appeal is liable to be dismissed.

I have heard the arguments advanced by both parties and perused the record of the case. Before proceeding further, section 14-B and 7-Q of the Act are required to be reproduced herein:

> ***14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund 3[, the 2[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 4[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,***

> ***6[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:] 8 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]: 9 [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.]***
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> ***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.]***

Along with the notice issued on 20.04.2023, a damage calculation sheet was served upon the appellant. As per the calculation sheet, the payment for the Provident Fund contributions for the wage month of March, June, July, August, September, October, November, December 2019 had been deposited after delays of 169, 165, 138, 127, 101, 70, 51 and 50 days respectively. Consequently, interest was also accrued in respect of these delays.

The appellant has mainly relied upon a letter addressed to him by **the Registar**, **Department of Financial Services, Board for Industrial and Financial Reconstruction (BIFR)** dated 29.09.2016, whereby its application under section 15(1) of **Sick Industrial Companies (Special Provisions) Act, 1985** was accepted for consideration. Further, it has based its case on the plea of financial difficulty, relying upon balance sheets showing losses in the coming years. However, both pleas are not tenable. Firstly, the appellant didn't pursue its application before the **Board for Industrial and Financial Reconstruction (BIFR)**. The plea that the BIFR was abolished doesn't mean that it cannot seek remedies under the Insolvency and Bankruptcy Code (IBC), 2016.

Further, the plea of financial difficulty doesn't have any basis because the balance sheets for 01.04.2018 to 31.03.2019 and 01.04.2017 to 31.03.2018 demonstrate revenue from operations of about Rs. 3,50,27,21838/- (Three hundred fifty crore twenty-seven lakh twenty-one thousand eight hundred thirty-eight only), which is a huge revenue and the appellant cannot said to have any financial difficulty in depositing the Provident Fund dues in time. Moreover, the appellant's plea of Covid-19 pandemic is also not tenable, as the disputed period pertains to the time prior to the outbreak of the pandemic.

In view of above discussion in hand, the appeal being devoid of merit, stands dismissed. The orders passed by the respondent authority are hereby confirmed. The appellant is directed to deposit the dues assessed under section 14 B and 7Q of the Act within one month from the date of this order. If any deposit has been made during the course of proceedings, the same shall be adjusted while seeking payment of the assessed amounts. A copy of this order be sent to both the parties via e-mail. Consign the record to the record room.

Sd/-

(Atul Kumar Garg)
Presiding Officer