

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, NEW DELHI
Appeal no. D-2/16/2024**

M/s. Brij Laxmi Paper Products Pvt. Ltd. vs. APFC/RPFC, Faridabad.

Counsels:

For Appellant:- Sh. Abhishek Arora, Id. counsel.

For Respondent:- Sh. Sandeep Mishra, Ms. Vidhi Batra & Sh. Devesh Garg A/R.

Order Dated:-18.11.2025

ORAL

1. Appellant has assailed the order dated 15th June, 2022 passed by the Ld. RPFC-II, Faridabad **under section 14B & 7Q of the EPF & MP Act, 1952 (hereinafter referred as the Act)**, whereby respondent has assessed the dues of Rs. 12,76,032/- and Rs.7,39,017/- for the belated payment of PF dues from 09/2013 to 07/2018. He has assailed the said order on various grounds *inter alia* the respondent has failed to appreciate the settled principle of law that the levy of damages for delayed contribution of EPF on an establishment is not imperative or mandatory but discretionary in nature depending upon the facts and circumstances of each case looking at the reason and justification for delay in making the contribution of EPF beyond the stipulated time. Respondent failed to appreciate that the word “**may**” used in section 14B of the Act. Respondent has failed to appreciate and consider the facts and circumstances of the case including the appellant made payment not only towards the principal amount i.e. contribution of EPF but also interest accrued thereon of its own without any controversy or even contesting the same, which shows the bonafides on its part and cannot be levied damages as would be levied to an account holder/ employer who does not wish to be compliant or who have never contested the demands raised by the EPFO. Respondent while passing the ex-parte order dated 15.06.2022 failed to appreciate that the appellant has not been provided with a fair chance to represent/ defend its case in the proceedings u/s 14B of the Act as the notices/ summons were deliberately sent to the factory address of appellant at ‘14/3, Mathura Road, Faridabad, 121001. As such he has made prayer that this tribunal either reduce or waive the damages by exercising its power.

2. Respondent has filed the counter reply of the appeal. He took the preliminary objection stating that the answering respondent disputes and denies as false, frivolous, and vexatious, all the contentions, allegations, claims and averments which are contrary to anything stated or submitted in this reply. He further submitted that the appeal ought to be dismissed because the appellant has long history of making EPF payments belatedly and the establishment has failed to provide any cogent reason for reduction or waiver of damages. At the best establishment tried to portray the business losses, which the establishment sustained due to faulty business model or wrong business decisions which clearly is not the situation as the petitioner has presented in the present appeal. He submitted that the appeal is liable to be dismissed. Rejoinder has also been filed in this appeal.
3. I have heard the appellant as well as the respondent. Before parting any opinion on the issue, it is necessary to reproduce the Section 14 B of the Act and Para 32A of the EPF Scheme:-

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.]

32A. Recovery of damages for default in payment of any contribution:

(1) Where an employer makes default in the payment of any contribution to the 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 of the Act or in the payment of any charges payable under any other provisions of the Act or Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below: —

S.No.	Period of Default	Rate of Damages (% per annum on arrears)
(a)	Less than two months	5%
(b)	Two months and above but less than four months	10%
(c)	Four months and above but less than six months	15%
(d)	Six months and above	25%

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

4. The appellant has placed reliance on the judgment of the Hon'ble Kerala High Court in the matter of Regional Provident Fund Commissioner vs. Harrison's Malayalam Ltd., **2013 SCC Online Ker 24412**, wherein it was held:

"One has to necessarily notice that the section definitely retains the discretion on the adjudicating officer to either impose penalty or order complete waiver. The amended section 14B also stipulated that Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government "may recover from the employer by way of penalty."

5. The respondent has countered his submission by relying upon the judgment of Horticulture Experiment Station vs. RPFC (Civil Appeal No. 2136 of 2012) wherein Hon'ble Supreme Court held that *"financial difficulty is not the plea to consider in case of imposing the damages and interest"*.
6. The entire argument of the appellant centers around the fact that Ld. RPFC had not taken into consideration his plea of financial difficulty. He submitted that in the year 2023, he closed down its factory at 14/5, Goel Industrial Corporation, Main Mathura Road, Faridabad, Haryana, and at present appellant has no presence in Faridabad at all. It is further his case that respondent, while passing the impugned order, failed to assign any reason as to why the damage at the maximum rate was imposed.
7. In this regard, the damage sheet shown as Annexure A to the notice indicates that the appellant had deposited PF dues belatedly from 09/2013 to 12/2018. Delay has been occurred from hundred days to thousand days in depositing the PF dues. It is not on one or two occasions but occurred more than 15 times.
8. In support of his contention, appellant has placed on record the balance sheets of the financial years 2016-17 & 2017-18. The income shown in the financial year 2016-17 was around Rs. 19,37,98,273/- (Nineteen Crore thirty-seven lacs ninety-eight thousand two hundred

and seventy three only), and for 2017-18, it was around Rs. 29,17,65,555/- (Twenty-nine crore seventeen lacs sixty-five thousand five hundred and fifty-five only). While the damage and interest have been assessed in lacs, therefore, the ground of financial difficulty in depositing the delay in provident fund contribution cannot be considered as a ground. There was a sufficient income of the appellant establishment and by not depositing the PF contribution of the employees and its share in time indicates an intentional act, therefore, no leniency can be granted to the appellant.

9. In view of the above discussion, I find no merit in the appeal. Hence, appeal stands dismissed.

Sd/-

Atul Kumar Garg
(Presiding Officer)