

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL**

**PRESENT:** Justice Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol

**EPFA No. 06 of 2016 [ATA No. 863(15) of 2016]  
&  
EPFA No. 07 of 2016 [ATA No. 864(15) of 2016]**

**M/s. Birbhum District Central Co-operative Bank Ltd.** ..... Appellant

Vs.

**Assistant Provident Fund Commissioner, Durgapur** ..... Respondent No.1  
**Central Board of Trustees** ..... Respondent No.2

**ORDER**

**Dated: 16<sup>th</sup> March, 2023**

**Representatives:**

For the Appellant : None.  
For the Respondent No. 1 : Smt. Mousumi Ganguli, learned advocate.  
For the Respondent No. 2 : None.

**1.** Both these appeals under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as the EPF Act) are taken up together for avoiding the risk of unnecessary repetitions. The Appellant and Respondents being same, it would be appropriate and convenient to consider them analogously. In Appeal No. 06 of 2016 the period of delayed remittance of Provident Fund dues to the Employees' Provident Fund Authority (hereinafter

**Contd. Page - 2**

referred as EPF Authority) was from December, 2007 to February, 2012, as a result the damages assessed under Section 14-B was Rs.19,98,571/- (Rupees nineteen lakh ninety-eight thousand five hundred and seventy-one only) and the interest assessed under Section 7-Q was Rs.10,54,316/- (Rupees ten lakh fifty-four thousand three hundred and sixteen only). In Appeal No. 07 of 2016 the period of delayed remittance of Provident Fund dues by Bank to the EPF Authority was from May, 1998 to October, 2004, and damages assessed under Section 14-B was Rs.2,42,320/- (Rupees two lakh forty-two thousand three hundred and twenty only) and interest assessed under Section 7-Q was Rs.2,24,282/- (Rupees two lakh twenty-four thousand two hundred and eighty-two only).

**2.** The appeals have been preferred by the Appellant Bank challenging the impugned orders dated 27.04.2016, passed by the Assistant Provident Fund Commissioner, Sub-Regional Office, Durgapur (hereinafter referred to as Respondent No. 1) and the Central Board of Trustees (hereinafter referred to as Respondent No. 2).

**3.** The case of the Appellant Bank is that it is covered under the provisions of Co-operative Societies Act and the EPF Act, having Provident Fund code No. WB/12339 and have been complying the provisions of the Act.

**4.** The Appellant Bank stopped its business as per the direction of the Reserve Bank of India (hereinafter referred as RBI) vide Notice No. RPCD.CO.RCB No. 2262/07.51.030/2013/14 dated 09.05.2014 and No. RBI.RPCD.Kol No. 2945/02.25.001/2013-14 dated 15.05.2014. Rural Planning and Credit Department, Reserve Bank of India ( hereinafter referred as RPCD, RBI ) also

directed the Appellant Bank not to change its assets and liability. Accordingly, the Appellant could not incur any expenditure and was not in a position to deposit Employees' Provident Fund contribution of both the Employer and employee. The Appellant could not accept any fresh deposit as per notification of RBI notice dated 09.05.2012.

**5.** It is contended by the Appellant that proceedings were initiated by Respondent No. 1 for the period from December, 2007 to February, 2012 vide Notification bearing no. WB/DGP/0012399/000/Enf503/Damages/569 dated 31.12.2013 and from May, 1998 to October, 2004 vide Notification bearing no. WB/DGP/0012399/000/Enf503/ Damages/1661 dated 14.03.2014, more than ten years after the alleged period of lapse as a result the Appellant was not in a position to collect its old records and the proceeding caused prejudice to the Appellant. No breakup of damages and interest were provided to the Appellant. The amounts due under Section 7-A of the EPF Act was assessed vide order dated 11.09.2015 and the Appellant under the guidance and assurance of Respondent No. 1, that no damages or interest would be levied for delayed payment of dues, deposited the amounts assessed under Section 7-A of the Act for the employees and also for contingent staff.

**6.** Representative of the Appellant also attended the proceeding held by Respondent No. 1 and apprised him about the embargo imposed by the RBI and that the Appellant Bank was declared a sick institution and was facing difficulties in refunding the deposits of the customers.

**7.** According to the Appellant, on 29.08.2014 the Respondent Authority made correspondence with the Assistant General Manager of RCPD, RBI, Kolkata

Region and in response RCPD, RBI rejected the application for license of the Appellant Bank. It is contended by the Appellant that non-speaking orders dated 27.04.2016 were passed by Respondent No. 1, whereby an exorbitant amount of Rs.19,98,571/- (Rupees nineteen lakh ninety-eight thousand five hundred and seventy-one only) and Rs.2,42,320/- (Rupees two lakh forty-two thousand three hundred and twenty only) were assessed as damages against the Appellant under Section 14-B of the Act and Rs.10,54,316/- (Rupees ten lakh fifty-four thousand three hundred and sixteen only) and Rs.2,24,282/- (Rupees two lakh twenty-four thousand two hundred and eighty-two only) were assessed as interest under Section 7-Q of the Act for delayed remittance from December, 2007 to February, 2012 and May, 1998 to October, 2004 respectively. It is urged that the impugned orders are bad in law as none of the submissions of the Appellant were considered and no judicial mind was applied for arriving at such conclusion.

**8.** After passing of the impugned orders dated 27.04.2016 the Appellant requested Respondent No. 1 not to adopt any coercive action till disposal of the appeal, but orders of attachment under Section 8-F were passed by Respondent No. 1 and attached the assessed amount of damages and interest. Subsequently, the Bank Account of the Appellant was attached by Respondent No. 1 and Rs.35,19,489/- (Rupees Thirty-five lakh nineteen thousand four hundred and eighty-nine only) was recovered without any intimation to the Appellant. It is alleged that the action of Respondent No. 1 was arbitrary in nature. The Provident Fund Authority / Respondent No. 1 failed to consider that due to an order of embargo passed by RBI the Appellant was unable to deposit the Provident Fund dues in time.

9. In their Memorandum of Appeal the Appellant Bank relied upon a decision of Hon'ble Supreme Court, passed in the case of **Employees' State Insurance Corporation vs H.M.T. Limited and Another (2008 (1) LLJ 814)** and a decision passed by Hon'ble High Court at Madras, passed in the case of **Terrace Estate Unit of United Plantation Limited vs. Assistant Provident Fund Commissioner, Coimbatore (2010 (12) FLR 367)** wherein it was held that :

*“ the existence of mens rea or actus-reus to contravene a statutory provisions must also to be a necessary ingredient for levy of damages/ or the quantum thereof and in the absence of mens rea no damages could levied.”*

10. The applicant further placed reliance upon a decision of Hon'ble High Court at Guwahati, passed in the case of **Popular Saw Mills vs Regional Provident Fund Commissioner and Another (1996 (I) LLJ 201)** wherein it was held that:

*“ while imposing damages the Court has to take into consideration of various aspects including the reason for failure. ”*

11. The Appellant has urged that the impugned orders are non-speaking orders and without considering the period of default and reason of default the punitive power cannot be exercised under Section 14-B of the Act. Reliance is also placed upon a decision of the Hon'ble Apex Court, passed in the case of **Kranti Associates Private Limited and Another vs Sh. Masood Ahmed Khan and Others (2010 (9) SCALE 199)** wherein it was held that :

*“ (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

*(b) A quasi-judicial authority must record reasons in support of its conclusions.*

- (c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

.....

- (i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- (j) *Insistence on reason is a requirement for both judicial accountability and transparency.*

.....

- (l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. ”*

The Appellant further contended that there was violation of Natural Justice by EPF Authority in assessing the damages and interest under the Act and reliance was placed on a decision of Hon'ble High Court at Kerala, passed in the case of **Sivaramakrishna Iyer vs Regional Provident Fund Commissioner (1995 (III) LLJ 701)**; where under Section 14-B of the Act the assessing Authority is obliged to write a speaking order of his assessment setting out the reasons of it so that it was readily exposed to the scrutiny of a court exercising writ jurisdiction.

**12.** The Appellant urged that the impugned orders dated 27.04.2016 are not sustainable and are liable to be set aside and the Tribunal may pass any order as it deemed fit and proper under the circumstances.

**13.** Respondent No. 1, the Assistant Provident Fund Commissioner contested the appeal by filing a reply wherein all the allegations made by the Appellant have been denied. It is contended that the appeals have been filed in violation of the provisions under Section 11 of the EPF Act and the same are liable to be dismissed. Contesting Respondent asserted that the enquiry periods of the cases were from May, 1998 to October, 2004 and from December, 2007 to February, 2012, for which the establishment made belated remittance towards the Provident Fund dues on the ground that the Appellant Bank was directed by the RBI vide their Notification dated 09.05.2014 and 15.05.2014 not to change its assets and liabilities position. According to Respondent the Appellant's priority was to satisfy the statutory obligation and deposit the dues within fifteen (15) days of the next month for which wages were paid and during such period there was no embargo of RBI. Hence, the averment made by the Appellant that they were prevented from contributing the Provident Fund on account of the RBI's instruction is misleading and is liable to be rejected.

**14.** Further case of the contesting Respondent is due to delayed payment of dues for the relevant period, Notices dated 31.12.2013 and 14.03.2014 under Section 14-B of the Act and order for payment of interest under Section 7-Q for belated remittance were issued and served upon the establishment with a direction to appear before the Inquiry Officer on 23.01.2014 and 20.05.2014. The Notice were duly served upon the establishment which was represented by the advocate on different dates of the hearing/proceeding. It has been urged that the establishment submitted a letter dated 04.03.2014 with a prayer for exemption / waiver of damages as well interest along with a Show Cause Notice issued by the RBI.

**15.** In course of proceeding before the Inquiry Officer the establishment failed to submit any material to show that it was prohibited from depositing the dues within the statutory period. On 04.03.2016 the advocate and representative of the establishment expressed their willingness to pay the interest amount determined under Section 7-Q of the Act and sought waiver of the damages determined under Section 14-B of the Act. The Appellant made belated payment of Provident Fund dues without any valid reasons. It is urged on behalf of Respondent No. 1 that the Enquiry Officer had no power to waive the damages. Therefore, the prayer of the establishment could not be allowed.

**16.** According to Respondent No. 1 the impugned order has been passed within the purview of the EPF Act. As the establishment did not make payment of the Provident Fund dues as per Section 6 of the Act read with paragraph- 29 and 38 of Employees' Provident Fund Scheme, paragraph- 3(1) of Employees' Pension Scheme (EPS) and paragraph 8 of Employees' Deposit Linked Insurance (EDLI) Scheme within 15 (fifteen) days of close of the month, the Respondent Authority in exercise of jurisdiction vested under Section 14-B read with paragraph- 32(A) of Employees' Provident Fund Scheme and paragraph 5 of EPS and paragraph 8A of EDLI Scheme is empowered to recover by way of damages and penalty from the Employer at the stipulated rates. Furthermore, under Section 7-Q of the Act the Employer is required to pay simple interest at the rate specified on the defaulted due amount from the dated on which the amount has become so due till the date of actual payment and the Commissioner is required to levy simple interest at the rate of 12% or at a higher rate under powers conferred on him vide GSR dated 30.09.1997.

**17.** After filing the appeal before Employees' Provident Funds Appellate



Tribunal (EPFAT) at Delhi under Section 7-I of the EPF Act the record was transferred to Central Government Industrial Tribunal -cum- Labour Court (CGIT) at Kolkata and then to CGIT at Asansol for disposal.

**18.** Mr. Kajal Kumar Chatterjee, advocate and Mr. Gokul Roy, Manager of the Bank appeared for the Appellant, thereafter no step was taken on behalf of the Appellant. Fresh Notice under Registered post were issued to the Appellant on 21.10.2022 in compliance with order dated 29.09.2022 in both the appeals but none appeared for the Appellant Bank.

**19.** Mrs. Mousumi Ganguli, learned advocate for Respondent No. 1 argued that appeals are against impugned orders by which damages payable by the Appellant under Section 14-B and interest under Section 7-Q of the Act were assessed. It is submitted that the Appellant Bank is responsible for delayed payment of the Provident Fund dues payable under Section 7-A of the Act and the Appellant Bank tried to justify its delayed Provident Fund remittance on the ground that an embargo imposed on it by the RBI and the Bank was declared as Sick Institution.

**20.** According to the learned advocate the Respondent Authority does not have the statutory right to waive the damages. The Central Board is vested with the discretion to waive the damages in relation to an establishment under Section 5-A of the Act only when the establishment is a Sick Industrial Company and in respect of which a scheme for rehabilitation by the Board for Industrial and Financial Reconstruction (BIFR) under the provision of Sick Industrial Companies Act (SICA), 1985, has been framed subject to the terms and conditions of the Scheme. Relying upon a decision of the Hon'ble High Court at

Madras, passed in the case of **TTG Industries Limited vs Regional Provident Fund Commissioner and two others (W.A. No. 1577 of 2011)** it is argued that for application of the second proviso under Section 14-B of the EPF Act, it is necessary that “ *(i) the establishment must be a Sick Industrial Company, (ii) that in respect of the Sick Industrial Company a scheme should have been sanctioned by the BIFR, under the SICA, 1985 for its rehabilitation and (iii) the reduction or waiver of damages would be subject to the terms and conditions as may be specified in the scheme framed under the SICA, 1985.* ”

It is argued that in the present case no scheme was framed under SICA, 1985 in respect of the Appellant Bank and therefore, the Bank is not entitled to any waiver of damages imposed against it under paragraph 32A of Employees' Provident Fund Scheme and in the provision under Section 14-B of the Act, recoverable as penalty.

**21.** Referring to another decision of the Hon'ble High Court at Madras in the case of **M/s. Gowri Spinning Mills (P) Ltd. vs Assistant Provident Fund Commissioner and another (W.A. No. 173 of 2006)**, learned advocate for the Respondent further argued that so far as damages under Section 14-B is concerned, it would be open for a sick industrial company to request the authorities under the EPF Act, to postpone the determination of damages till the reference is finally decided by the BIFR and or the Appellate Authority, as the case may be. In case such a request is made, the concerned authority shall pass appropriate orders in the light of the provision of Section 14-B of the EPF Act. In the cited case it was held by the Hon'ble High Court that:

*“ For all the aforesaid reasons, we are of the considered view that the provident fund dues under the EPF Act are not covered by Section 22(1) of the SICA and the provident fund benefits which the employees are entitled to cannot be placed on*

*the same footing as taxes of the Government or dues of other Commercial Venture or dues to Corporate or like others. ”*

**22.** Learned advocate for the Respondent further relied upon a decision in the case of **Maharashtra State Co-operative Bank Limited vs Assistant Provident Fund Commissioner and others (Civil Appeal No. 6893 of 2009)** wherein the Hon’ble Supreme Court of India held that:

*“ Section 11 gives statutory priority to the amount due from the employer vis-à-vis all other debts. ”*

It was further held that :

*“ If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages. It is observed that sub-Section (2) was inserted in Section 11 by Amendment Act of 1973 with a view to ensure that payment of Provident Fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-Section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an Employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14-B and accumulations required to be transferred under Section 15(2). ”*

**23.** Learned advocate for Respondent No. 1 submitted that the assessed amount under Section 14-B and 7-Q of the EPF Act as mentioned in the impugned orders have been deposited by the Appellant and the same has been recovered, as such the Appeals are liable to be dismissed.

**24.** Perused the Memorandums of Appeals, the impugned orders and the replies submitted by the Respondent No. 1. Considered the argument advanced and decisions relied upon on behalf of the Provident Fund Authority. After granting several opportunities to the Appellant and sending Notice to the Bank none appeared for the Appellant. The appeals were then taken up for disposal on merit. It appears from the impugned orders dated 27.04.2016 that the Appellant Bank admitted belated remittance of Provident Fund dues in respect of its employees for the period from December, 2007 to February, 2012 and Notice was issued to the Appellant Bank bearing letter No. WB/DGP/0012339/000/Enf503/Damages/569 dated 31.12.2013 for appearance and hearing on 23.01.2014. On 04.03.2016 Mr. Apurba Das and Mr. Kajal Kumar Chatterjee, learned advocates appeared on behalf of the Appellant establishment and expressed their willingness to remit interest under Section 7-Q and prayed for waiving of damages. It appears from the impugned order that the Appellant had placed documents to show that the RBI had notified an embargo regarding accepting fresh deposit and a Show Cause Notice to the Bank was issued as to why the Bank would not be subjected to liquidation. In relation to belated remittance for the period from May, 1998 to October, 2004 Notice was issued to the Appellant Bank bearing no. WB/DGP/0012399/000/Enf503/Damages/1661 dated 14.03.2014, fixing 20.05.2014 for hearing. In course of hearing the Bank forwarded a letter dated 01.08.2014 stating that RBI has directed it to stop its banking business and directed it not to change its assets and liabilities. On this communication Assistant Provident Fund Commissioner, Durgapur corresponded with Assistant General Manager, RPCD, RBI, Kolkata Region and in response RBI rejected the license application of the Bank. On 04.03.2016 the representative of the Bank expressed their decision to pay the

interest under Section 7-Q and prayed for waiver of damages under Section 14-B. It was reiterated by the Provident Fund Authority that they had no power to waive damages and asked them to apply before the appropriate authority. There is nothing on record to show that the Appellant Bank had been declared a sick institution or any scheme for rehabilitation was sanctioned by BIFR under SICA, 1985. There was no representation by the Appellant Bank before the Respondent Authority that any application submitted by it was pending before BIFR for approval of any rehabilitation scheme.

**25.** Section 14-B of the EPF Act lays down :

*“ 14-B : 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. ”*

**26.** Mrs. Ganguli, learned advocate for Respondent No. 1 referred to the amended provision of Section 14-B of the EPF Act and paragraph 32(A) of the Employees' Provident Fund Scheme, 1952 which came into effect from 26<sup>th</sup> September, 2008. It appears from the contents of the amended provision of Section 14-B that so far as the discretionary power to determine the rate at which the damages would be levied was curtailed and the Provident Fund Authority was required to follow the Scheme in paragraph 32(A) for the purpose of determining the rates of interest to levy the damages. The amendment did not provide any express saving clause in respect of the earlier scheme, as such the levy of damages is governed by the amended provision of Section 14-B and paragraph 32(A) of the Employees' Provident Fund Scheme, 1952 in relation to any subsequent proceeding or enquiry for any period of default prior to the amendment.

**27.** It appears from the record that no difference or discord was raised over the rates of damages applied upon the Appellant establishment for assessment, which range between 5% to 25%, depending upon the period of default. In the case under consideration the Appellant had made default in payment from May, 1998 to October, 2004 and December, 2007 to February, 2012. Therefore, in all the cases the period of default is more than six months and the rate of damages of 25% would apply. For legal compliance of Section 14-B the Provident Fund Authority before levying and recovering damages has to give a reasonable opportunity to the Employer. From the impugned orders dated 27.04.2016 it appears that Notice of summons were issued in both the cases, bearing no. WB/DGP/0012339/000/Enf503/Damages/1661 dated 14.03.2014 for the default period from May, 1998 to October, 2004, fixing 20.05.2014 for hearing. Similarly, for the default period from December, 2007 to February, 2012 the Provident Fund Authority had issued Notice of summon to the Appellant Bank

bearing no. WB/DGP/0012339/000/Enf503/Damages/569 dated 31.12.2013, fixing 23.01.2014 for hearing. The cases were taken up by Respondent No. 1 on respective dates. The establishment forwarded a letter dated 04.03.2014 and prayed for exemption / waiving of damages as well as interest and submitted enclosures A, B, and C. It is the case of the Appellant that the RBI imposed an embargo regarding acceptance of fresh deposits and issued Show Cause Notice as to why the Bank would not be subjected to liquidation. The establishment further filed a letter dated 01.08.2014 stating that that the Bank had stopped conducting banking business as RPCD, RBI had directed the Bank not to change its asset and liability position. It appears from the impugned order that Mr. Apurba Das and Mr. Kajal Kr. Chatterjee, learned advocates appeared before the Assistant Provident Fund Commissioner on 04.03.2016 and submitted that the establishment was willing to remit the interest under Section 7-Q and prayed for waiving damages under Section 14-B of the Act. Reasoned orders were passed by the Authority stating that Employees' Provident Fund Organization was not vested with power to wave damages and advised them to apply before the appropriate Authority. It is gathered that no objection was raised regarding mode of assessment of damages under Section 14-B and interest under Section 7-Q in course of any of the hearing. It transpires that reasonable opportunity was given by the Provident Fund Authority and damages was assessed in consonance with the scheme.

**28.** On traversing the second proviso to Section 14-B, it is found that the Central Board had power to reduce or waive the damages levied under Section 14-B in relation to an establishment which is a Sick Industrial Company and in respect of which a scheme for rehabilitation had been sanctioned by the BIFR under Section 4 of SICA, 1985, subject to the terms and conditions as may be specified in the scheme.

**29.** The Appellant has simply claimed that the Banking establishment has become Sick Industrial Company and the damages under Section 14-B, due to delayed remittance of the amount may be waived. In this regard the position of law has been set to rest in a case of **M/s. Gowri Spinning Mills (P) Ltd. vs Assistant Provident Fund Commissioner and another (W.A. No. 173 of 2006)**, where the Hon'ble High Court at Madras in paragraph- 36 (thirty-six) of the judgment held that:

*“ The levy of interest for delayed payment as well as the administrative charges are very much part of provident fund under the scheme framed under the EPF Act. As far as damages under Section 14-B is concerned, it would be open for a sick industrial company to request the authorities under the EPF Act, to postpone the determination of damages till the reference is finally decided by the BIFR and or the Appellate Authority, as the case may be. In case such a request is made, the concerned authority shall pass appropriate orders in the light of the provision of Section 14-B of the EPF Act.*

*The provident fund dues under the EPF Act are not covered by Section 22(1) of the SICA and the provident fund benefits which the employees are entitled to cannot be placed on the same footing as taxes of the Government or dues of other Commercial Venture or dues to Corporate or like others. ”*

**30.** The Appellant company in the above cases claimed itself to be sick, having accumulated losses exceeding its entire net worth and a Reference was made before BIFR. However, no scheme for revival was framed. In the meantime, Assistant Provident Fund Commissioner determined the Provident Fund contribution by the Appellant under Section 7-A of the EPF Act. The Appellant contended inter alia that as its Reference was pending before the BIFR the Responded No. 1 was not empowered to take any coercive step in view of the



Section 22 of SICA. The grievance of the Appellant was that even Respondent No. 1 had been informed about pending BIFR proceeding but they have initiated recovery proceeding without the consent from BIFR and therefore, the said proceed is liable to be quashed and set aside. The contention of the learned advocate for Respondent No. 1 is that merely because the Appellant claimed to be a Sick Company and even if it had been referred to BIFR there was no impediment in recovering the dues on account of Provident Fund. A Reference was made to the amended Section 14-B of the Act which empowered the Central Provident Fund Commissioner to recover damages where default had been committed in payment of any contribution to the fund and such damages could be reduced or waived in respect of a Sick Industrial Company for which a scheme for rehabilitation has been sanctioned by the BIFR, but no protection has been provided thereunder as regards the contribution of the employees or the Employer.

**31.** The ratio of the decision in the case of **M/s. Gowri Spinning Mills (P) Ltd. vs Assistant Provident Fund Commissioner and another (W.A. No. 173 of 2006)** makes it clear that even if an establishment becomes a Sick Industrial Company, the Provident Fund Authority cannot exempt or waive the penalty and damages under the Employees' Provident Fund Scheme or the EPF Act unless a scheme for rehabilitation of the Sick Industrial Company has been sanctioned by the BIFR under SICA. No document was produced by Appellant Bank to show that reference was made to BIFR. Respondent No. 1, the Provident Fund Authority, therefore, committed no illegality by assessing damages and penalty as well as interest against the Appellant Bank in accordance with the scheme in paragraph 32(A) of the Employees' Provident Fund Scheme. In this context it would appear that the ratio of the decision relied on behalf of Respondent No. 1 fortifies their case.

**32.** In the case of **TTG Industries Limited vs Regional Provident Fund Commissioner and two others (W.A. No. 1577 of 2011)** the Hon'ble High Court at Madras in paragraph 19 held :

*“ By the Amendment of 1988, the second proviso came to be inserted in Section 14-B as a result of which the Central Board constituted under Section 5A of the Act was empowered to reduce or waive damages 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 under the provisions of the S.I.C.A., 1985 subject to the terms and conditions of the scheme. In order to render the second proviso applicable, it is thus necessary that (i) the establishment must be of a Sick Industrial Company, (ii) that in respect of the Sick Industrial Company a scheme should have been sanctioned by the B.I.F.R., under the S.I.C.A., 1985 for its rehabilitation and (iii) the reduction or waiver of damages would be subject to the terms and conditions as may be specified in the scheme framed under the S.I.C.A., 1985. Para 32 of the Employee's Provident Fund Scheme, 1952 expounds upon the second proviso to Section 14-B. Clause (b) of para 32-B postulates that the Central Board may allow a waiver of damages up to 100 per cent in cases where the B.I.F.R., for the reasons to be recorded in the scheme recommends such waiver. ”*

Therefore, by amending the provision of Section 14-B, the Central Board has been empowered to reduce the quantum of damages that may be required to be paid under the same sub-Section. It has been emphasized that there has been no provision by which liability of Employer to pay the contribution of the Employer or contribution of the employee has been excused or exempted. Even in the case of a Sick Industrial Undertaking, the obligation of the Employer to deduct and pay the employee's contribution together with its own contribution continues.

**33.** In view of such findings, I hold that immunity or exemption cannot extend beyond what has been allowed in terms of amendment of the EPF Act. Apart from this the Appellant did not approach the Central Board to reduce or waive the damages levied under the Scheme. It is also a discerning fact that by depositing the Provident Fund dues under Section 7-A of the EPF Act it establishes that the Appellant has admitted its default and delayed payment.

**34.** Learned advocate for Respondent No. 1 in support of its case relied upon another decision, in case of **Maharashtra State Co-operative Bank Limited vs Assistant Provident Fund Commissioner and others (Civil Appeal No. 6893 of 2009)**, wherein the Hon'ble Supreme Court of India held that :

*“Section 11 gives statutory priority to the amount due from the employer vis-a-vis all other debts. Clause (a) of sub-section (1) of Section 11 is applicable to cases where an employer is adjudicated insolvent or, being a company, an order of its winding up is made. In that situation, the amount due from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any other charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme. Clause (b) is applicable to cases where the amount is due from the employer in relation to exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far it relates to exempted employees under the rules of provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under Section 17(6), damages recoverable under Section 14B or any charges payable by him to the appropriate Government under the Act or under any of the conditions specified in Section 17. This sub-section*

*then lays down that such amount shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. sub-section (2) lays down that any amount due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution shall be deemed to be the first charge on the assets of the establishment, and shall be paid in priority to all other debts. ”*

The ratio of the judgement lends support to the argument of Respondent No. 1 that even if the Appellant Bank is a Sick Establishment the assessed damages and interest payable under the impugned order shall hold priority in respect of appropriation of the other dues of the establishment. In these appeals there is no dispute regarding priority of payment between different dues. The cited decision only lays down the principle that payment of Provident Fund dues would have priority over other dues.

**35.** The main thrust of the Appellant's case is that remittance of the Provident Fund dues was delayed as the Bank was suffering financial loss and its banking business was stopped under the direction of RBI through its Notices dated 09.05.2014 and 15.05.2014. According to the Appellant the default was not intentional and there was no mens rea on its part.

**36.** From the facts and circumstances disclosed by the Appellant it is evident and admitted that the default made by the Bank was from May, 1998 to October, 2004 and from December, 2007 to February, 2012. No material was produced by the Appellant Bank to establish that it had been declared as Sick Institution during the period from May, 1998 to February, 2012. Section 11 of the EPF Act has laid down the priority of payment of Provident Fund contribution over other

debts and provided that where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount towards Provident Fund dues are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be. It further appears that if any Provident Fund amount is due from the Employer in respect of employees' contribution or Employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts.

**37.** The Management of the Appellant Bank is aware and duty bound to fulfill the legal provisions. Therefore, non-payment of Provident Fund contribution or delayed remittance signifies that such default was intentional and there was mens rea in committing such default. Under such facts and circumstances there was ample reasons for levying damages and interest against the default Bank. The legal principle laid down by the Hon'ble Supreme Court in the case of **Employees' State Insurance Corporation vs H.M.T. Limited and Another (2008 (1) LLJ 814)** and decision of the Hon'ble High Court at Madras, passed in the case of **Terrace Estate Unit of United Plantation Limited vs. Assistant Provident Fund Commissioner, Coimbatore (2010 (12) FLR 367)** therefore, do not have application to the facts of these appeals.

**38.** On traversing the impugned orders dated 27.04.2016, it appears that during hearing under Section 14-B of the EPF Act and in connection with payment of interest under Section 7-Q of the EPF Act, the Appellant Bank had emphasised upon the fact that RBI had imposed embargo upon the Bank regarding acceptance of fresh deposits and also issued Show Cause Notice to the

Bank as to why the Bank would not be subjected to liquidation. In course of hearing on 04.03.2016 the EPF Authority after considering different aspects passed an order that it had no power to waive damages and the default Bank could apply to the appropriate Authority. This finding indicates that the Respondent No. 1 / Provident Fund Authority had applied its mind to the fact that it could not salvage the wants of the Bank and did not have any statutory jurisdiction to waive the damages or interest when it provided a specific scheme. A quasi-judicial body has to consider the factual situation laid before it in its legal milieu before assessing reasons for accepting or rejecting a plea.

**39.** Form the forgoing discussion it emerges that, the Respondent Authority after considering the reasons cited for delay in contributing Provident Fund dues has passed the impugned orders citing reasons why damages could not be waived. Therefore, I do not find any infirmities in the impugned order for want of any reason. I therefore, hold that the principle laid down by the Hon'ble Supreme Court in the case of **Kranti Associates Private Limited and Another vs Sh. Masood Ahmed Khan and Others (2010 (9) SCALE 199)** that: "*A quasi-judicial authority must record reasons in support of its conclusions*" has been well complied. The impugned orders also appear to be speaking orders in as much as the subject matter of the case, amply justifies its assessment of damages and interest.

**40.** The amounts assessed appears to have been recovered from the Appellant Bank through Demand Draft No. 895049 dated 03.08.2016.

**41.** In the light of my above discussion, I hold that there is no illegality or impropriety in the impugned orders passed by the Respondent Authority and the

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same calls for no interference. Accordingly, both the appeals are dismissed on contest.

**43.** Let copy of the judgment be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

Sd/-

**(JUSTICE ANANDA KUMAR MUKHERJEE)**

Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.