CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 212/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s Essarjee Constructions Pvt. Ltd.,
Z-10, Zone 1,
M.P. Nagar,
Bhopal - 462042

Appellant

V/s

Asstt. Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
Sub-Regional Office, 59, Arera Hills
Bhopal - 462011

Respondent

Shri Pranay Choubey	**:**	**Learned Counsel for Appellant.**
Dr. Rashmi Pathak	**:**	**Learned Counsel for Respondents.**

JUDGMENT

(Passed on 15th day of July, 2026)

Being aggrieved by the order passed by the Respondent Authority dated 05.12.2016, under ***Section 14B*** and ***7Q*** of the ***Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short the 'Act')***, the Appellant Establishment has preferred this appeal.

Case of the Appellant Establishment, in short, is that, they are a private Engineering Construction Company, having registered office in Bhopal, Madhya Pradesh, they are covered the Act and have been allotted a PF Code in this respect. They were assessed earlier also, details given in the memo of appeal and paid the amount assessed. They were issued notice by the Respondent Authority requiring them to show cause, why interest under Section 7Q and penal damages under Section 14B not be recovered from them for the period 01/2008 to 09/2013, in which they have failed to deposit the PF dues within time. They appeared and filed their reply to the show cause but, the Respondent Authority passed two impugned orders under Section 14B and 7Q of the Act dated 15.12.2016 with the findings that, the Appellant Establishment has defaulted in deposit of PF dues of its employees for the period 01/2008 to 09/2013 beyond time prescribed and have assessed the amount of penal damages at Rs. 5,58,300/- and interest under Section 7Q at Rs. 2,95,783/-, requiring the Appellant Establishment to deposit the amount, hence this Appeal.

Grounds of appeal, taken in the memo of appeal are mainly that, the impugned order is contrary to law and facts passed by the Respondent Authority by way of not giving the Appellant Establishment an adequate and proper opportunity of representing their case, hence in violation of principles of natural justice, the Respondent Authority has committed error in law in acting in dual capacity as a Prosecutor and Judge both. The Respondent Authority further committed error in law, in ignoring the fact that the penal damages may be imposed only if it is found that the Appellant Establishment knowingly and intentionally deposited the PF dues after lapse of time period, this limitation of law of *mens rea* has not been considered by the Respondent Authority and the Respondent Authority has committed error in law on this point. The Respondent Authority has acted mechanically in recording the findings and assessment solely based on the report of Enforcement Officer, which is against law.

In their counter to the Appeal, the Respondent Authority has taken a case that, the Act is of social security legislation, it is applicable on establishment engaging 20 or more persons on any day, which do not have adopted any other PF scheme equally beneficial. The dues are to be deposited by the Employer, by the 15th of the next month only of the employees who have worked in the establishment and has earned the wages. In failure to deposit the legitimate dues of the workers, the Authority initiates assessment and recovery proceeding under Section 7A, 8B and 8G of the Act. After deposit of principle amount, action is initiated for levy of interest under Section 7Q and 14B of the Act on the amount which was not paid within time recovered by the Appellant Establishment. Since, it is a beneficial legislation, any provision capable of two interpretation, one favoring the beneficiary shall be accepted. It is further the case of Respondent Authority that, the Appeal against order under Section 7Q is not maintainable, as it is a separate order. Also that, the impugned finding under Section 14B of the Act as well Assessment has been recorded by the Respondent Authority after an enquiry, in which the Appellant Establishment participated. He never raised any objection during the enquiry. He was granted full opportunity to have his say. Hence, the impugned order is correct in law and fact and does not warrant any interference.

I have heard argument of Learned Counsel Mr. Pranay Choubey for Appellant Establishment and Dr. Rashmi Pathak, Counsel for the Respondent Authority, assisted by Learned Counsel Mr. Pranay Pathak. I have gone through the record as well.

On perusal of record in the light of rival arguments, following point comes up for determination.

1. ***Whether the appeal is maintainable with respect to impugned findings and assessment under Section 7Q of the Act?***
2. ***Whether the findings of the Respondent Authority that the Appellant Establishment has defaulted in timely deposit of PF of its employees for the period 01/2008 to 09/2013 and is then liable to pay Rs. 5,58,300/- as penal damages under Section 14B of the Act has been recorded correctly in law?***

<u>Point for determination No.1-</u>

Section 7Q of the Act is being reproduced as follows –

<u>7Q. Interest payable by the employer</u>.—

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.

The Act does not provide any appeal against order under Section 7Q. The order under Section 7Q is a consequential order under Section 7(A) of the Act, which determines the responsibility to deposit PF dues till the order under Section 7(A) of the Act is binding on the parties, and consequential order regarding levy of interest for late deposits cannot be challenged, hence accepting the submissions from the side of Respondent Authority that, the appeal is not maintainable so far as it relates to impugned order under Section 7Q of the Act, the appeal against finding and assessment under Section 7Q of the Act is held not maintainable. The Appellant Establishment, however, is at liberty to pursue remedy before proper forum in this respect.

Point for determination No.1 is answered accordingly.

<u>Point for determination No.2 –</u>

The main submission from the side of Appellant Establishment is that, they cannot deposit the PF dues within time because of their bad financial condition and that there was no intention or *mens rea* on its part in committing the default in this respect.

Learned Counsel for the Respondent Authority has submitted that, in cases of civil responsibility, *mens rea* loses its significance. She has relied on the Judgment of Hon'ble Supreme Court of India in the case of ***Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516.***

It has been submitted by the Learned Counsel for the Respondent Authority that this Act is a beneficial legislation, hence any provision, which is capable of two interpretations, the interpretation in favor of the beneficiary, will be accepted. The Appellant Establishment is covered under the Act, hence it is under obligation to deposit PF dues of its employees within a period as provided under Para 38.1 of the Provident Fund and Pension Scheme, 1952 (in short the '*scheme*'). It failed to pay PF dues of its employees for the period 01.07.2017 to 31.03.2021, hence proceeding under Section 14B and 7Q of the Act were initiated, the department passes interest to the beneficiaries. The sole ground taken by the Appellant Establishment is late remittance to funds by the Government department and bad financial condition. Which cannot be held sufficient to deny legal obligation. Hence, the impugned finding as well assessment are recorded correctly. They did not warrant nay interference.

Section 14B of the Act is being reproduced as follows –

<u>14B. Power to recover damages</u>.—

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 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.

Learned Counsel for the Respondent Authority has submitted that the Act is statute for welfare of its employees hence any provision which may be capable of two interpretations, the one which favors the employee, will be preferred. It is further submitted that in case of civil liability, *mens rea* looses its significance.

Para 32-A and Para 38 (1) of The Employees' Provident Fund (EPF) Scheme, 1952 (in short the ***Scheme***) are also being reproduced as follows-

"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: —

TABLE

S.No. (1)	Period of default (2)	Rates of Damages (percentage of arrears per annum) (3)
(a)	Less than two 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

(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.

38 <u>Mode of payment of contributions</u>

(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the pay basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon for the time being payable to the employees other than excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund electronic through internet banking of the State Bank of India or any other Nationalized Bank or through PayGov platform or through scheduled banks in India including private sector banks authorized for collection on account of contributions and administrative charge."

Learned Counsel for the Appellant Establishment has further submitted that the opening words of section 14-B, show that imposition of damages is not mandatory rather it is discretionary and in spite of the principles of law laid down by ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability, the mitigating and aggravating circumstances with respect to late deposit were required to consider by the Respondent Authority by not considering these factors, the Respondent Authority has committed error in law in recording the finding and assessment.

As regards, impugned finding and assessment with respect to order under section 14-B of the Act, Learned Counsel for the Appellant Establishment has referred to judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., (2022), SCC Online CHH 635,*** in this case, the Single Bench of Hon'ble High Court of Chhattishgarh has after considering the legal effect of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, and Judgment of ***Hon'ble High Court of Kerala in the case of Regional Provident Fund Commissioner v/s Bake 'N' Joy Hot Bakery & Anr., (2024) SCC online Ker 11,*** in this respect, in these two cases the order of this Tribunal reduced the amount of damages was upheld.

In another judgment ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221,*** following principles of law have been laid down with respect to 14-B after considering the judgment of ***Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516,*** relevant paragraphs are being reproduced as under:-

19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."

In other judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-

"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :

(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?

(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?

(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has authorised to reduce or waive

damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of seizable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the

quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there

are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum.

Thus, in light of judgments, it is established that this Tribunal as well the Authority will be within their powers to look into the mitigating and aggravating circumstances while considering the penal damages under section 14-B of the Act.

Now coming on the facts in the case in hand, in the light of proposition of law as referred to above, the perusal of impugned order reveals that, no such defense with respect to bad financial condition was taken by Appellant Establishment before the Authority. They have taken this defense of bad financial condition for the first time before this Tribunal, but there is nothing on record to substantiate their defense. **Hence, their defense regarding bad financial condition of the Appellant Establishment is held not proved**. Since the failure in deposit is for five years, it cannot be said that the Appellant Establishment lacked the requisite *mens rea* in making the delayed deposits of PF dues.

Hence, in the light of above discussion and findings, the findings of the Respondent Authority that the Appellant Establishment has defaulted in deposit of PF dues of its employees for the period 01/2008 to 09/2013 and is liable to

pay penal damages under Section 14B of the Act assessed at Rs. 5,58,300/- is held to have been recorded correctly in fact and law and is affirmed.

No other point was pressed.

On the basis of above discussion and findings, the appeal lacks merit.

ORDER

Appeal against order under Section 7Q of the Act is held not maintainable. The Appellant Establishment is at liberty to pursue remedy before proper forum.

Appeal so far relates to order under Section 14B of the Act is dismissed.

No order as to cost.

Date:- 15/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 15/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)