CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 1, DELHI

Mr. Justice Vikas Kunvar Srivastav, Presiding Officer,
Retired Judge of Hon'ble High Court of judicature at Allahabad

Appeal No. D-1/30/2024

M/s. Indian Coffee Workers Co-operative Society Ltd. Appellant

Vs.

APFC/ RPFC, Delhi (North) Respondent

1. Sh. Ashok Kr. Goyal, Advocate for the Appellant
2. Sh. B.B. Pradhan, Advocate for the Respondent.

Order

PROLOGUE

1. The present appeal is filed on behalf of the appellant 'M/s. Indian Coffee Workers Co-operative Society Ltd.' under Section 7 I of the "Employees' Provident Funds & Miscellaneous Provisions Act, 1952" (which shall hereinafter be referred for brevity and convenience as "the Act" only).

2. The appeal is preferred against the order dated 22.03.2024 issued on 27.03.2024 (which shall hereinafter be referred for brevity and convenience as "the impugned order" only) passed u/s 14B & 7Q of "the Act" by which the Assistant P.F. Commissioner (EPFO, Delhi South), the Respondent has assessed an amount of Rs.21,45,560/- as damages and Rs.13,27,991/- as interest for the delayed payment of PF dues to be paid by the Appellant towards P.F. Contributions for the period 19/12/2016 to 31/10/2022.

3. In the context emerging out of above factual matrix, it would be pertinent and relevant for the Appellate Tribunal to look into and consider the impugned order under appeal so as to appreciate the arguments submitted by the parties to the appeal

and to consider their contentions for and against the judgement in appeal. The order under appeal reveals that there has been a default by the establishment appellant who failed to pay within the prescribed time the contributions and other allied dues and stated for the period from 01/04/2015 to 31/10/2022. Prior to the inquiry under Section 14B & 7 Q, it is also revealed from the order that a summon was issued to the establishment by the competent authority vide letter no. DL/CPM/570/000/Enf530/damages/comp-II/4534 dated 25.01.2023 along with a direction to show cause as to why damages and interest under section 14 B & 7 Q of 'the Act' be not recovered from the appellant establishment. This summon was issued for the belated payments made by and on behalf of the appellant establishment between the period 01/04/2015 to 31/10/2022. An opportunity of personal hearing was also afforded to the establishment on 10.02.2023. .

4. Perusal of the impugned order reveals that the appellant establishment submitted a letter on 25.08.2023 in reply to the summon dated 25.01.2023 wherein it was stated by and on behalf of the appellant that the establishment had already deposited damage and interest for period 10/2009 to 31/03/2014 vide summon dated 10.07.2014 and for a period 29.03.2014 to 19.01.2017 vide summon dated 19.01.2017.

5. The respondent authority after scrutinizing the record, issued revised summon for the period 19/12/2016 to 31/10/2022 vide dated 12.09.2023 and after considering the averments of the appellant establishment, calculation sheet and deposition of the departmental representative, it was found that the establishment is a worker's co-operative society having main object to open 'Indian Coffee House' where there is no single owner of the establishment and the employees of the society are the share-holders. It is further mentioned in the impugned order that the establishment is a regular defaulter and therefore, the impugned orders were passed by the respondent authority levying an amount of Rs.21,45,560/- as damages and Rs.13,27,991/- as interest for the delayed payment of PF dues.

6. The ld. counsel for the appellant has challenged the impugned orders on several grounds of which the main are that the appellant establishment is a poor co-operative society formed by the retrenched class IV employees of the 'Coffee Board' , a government of India body and is a registered society registered with the registrar of Co-operative Societies, New Delhi having the

main object of opening eating houses in the name of 'Indian Coffee House'. The appellant has no other business or source of income to meet out it's statutory dues and expenses and the functioning of the appellant establishment was badly hurt due to the declaration of total lockdown on account of Covid-19 pandemic. It is further stated by ld. counsel for the appellant that the delay caused in depositing the EPF dues was not intentional or deliberate and prayed to set aside the impugned orders.

7. The ld. counsel for appellant also stated that the respondent authority has not considered the directions issued by the respondent department vide communication No. C-I/Misc./ 2020-21/ Vol I/1112 dated 15.05.2020 and has failed to give relief from levy of penal damages for delay in deposit of dues during the lockdown period to prevent Covid-19. The ld. counsel for the appellant demanded the waiver from levy of damages for the month of March, 2020, April, 2020 and May, 2020.

8. Ld. Counsel for the respondent has filed a written response to the appeal preferred by the appellant wherein the respondent has denied all and singular allegations, averments and submissions of the appellant. The ld. counsel for respondent further states that 'the impugned order' is passed by the competent authority and is a legal, reasonable and lawful order and therefore, prayed to dismiss the appeal as the appellant is a regular defaulter. Reliance is further placed upon following judgments by ld. counsel for the respondent:-

A. ***Maharashtra Cooperative Bank Limited Vs. APFC & ors. (2009)10 SCC123.***
B. ***Hindustan Times Ltd. Vs. Union of India (1998)2 SCC 242.***
C. ***Employees' State Insurance Corporation Vs. Hotel kalpaka International (1993)2 SCC 9.***
D. ***APFC Vs. Hi-Tech Vovational Training Centre (2015)147 FLR 798***
E. ***M/s. Laxmi Machine Works Vs. Union of India and other [2011 (131) FLR, 899 MAD]***
F. ***M/s. Gouri Spinning Mills (p) Ltd. Vs. Assistant Provident Fund Commissioner and another [2007 (1)LIC 84]***
G. ***Ernakulam District Cooperative Bank Vs. Regional Provident Fund Commissioner [2000(001)LLJ, 1962, KER]***

H. *Horticulture Experiment* Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organisation (2022) 4 SCC 516

9. After a brief observation over the order, the tribunal further proceed to hear the argument of respective parties as below:-

ARGUMENTS

10. On the point of mens rea, ld. Counsel for the appellant submitted that the delay in making the payment of statutory contributions was occasioned on account of unforeseen/ accidental circumstances on account of lockdown imposed due to Covid-19 resulting into temporary closing of it's eating houses/ restaurants. Further, the respondent authority has failed to extend the benefit of it's own circular No. C-I/Misc./ 2020-21/ Vol I/1112 dated 15.05.2020 by imposing damages for the months of March-2020, April-2020 and May-2020.

11. Ld. counsel for the appellant in his brief arguments admitted the delay however, he attributed the same to the fact that the appellant establishment is a poor co-operative society formed by the retrenched class IV employees of the 'Coffee Board' and is a registered society having the main object of opening eating houses in the name of 'Indian Coffee House'. He further stated that the appellant has no other business or source of income to meet out it's statutory dues and expenses and the functioning of the appellant establishment was badly hurt due to the declaration of total lockdown on account of Covid-19 pandemic. It is also stated by ld. counsel for the appellant that the delay caused in depositing the EPF dues was not intentional or deliberate and prayed at-least to waive the damages for the period of March-2020, April-2020 and May-2020.

12. Ld. counsel for the respondent has placed a chart along with his written response showing the delayed remittances made by the appellant and he conceded that no relief has been given to the appellant for the month of March-2020, April-2020 and May-2020 as directed vide communication No. C-I/Misc./ 2020-21/ Vol I/1112 dated 15.05.2020. He further prayed that the impugned order be modified by waiving the damages for these three months and rest of the order be confirmed.

DISCUSSIONS

13. On going through the impugned order under appeal, it can easily be carved out that the inquiry under section 14 B was conducted by the respondent authorities and the period of enquiry was revised considering the submission dated 25.08.2023 made by the appellant establishment. Initially the notice was issued for a period ranging from 01/04/2015 to 31/10/2022, however, the same was revised for the period from 19/12/2016 to 31/10/2022.

14. At the very outset it is germane to the issue involved in the instant appeal to address the statement of object for the legislation of the EPF & MP Act, 1952 under which section 7 I makes the order passed by the government (here the Assistant Provident Fund Commissioner) appealable in exercise of the power provided in section 14 B. The object behind the enactment of this Act as stated therein is**, " to provide for the institution of provident fund, pension fund and deposit linked insurance fund for employees in factories and other establishments."** The legislators contemplated for some years while intending in the year 1950, the idea of making some provisions for the future of the industrial worker after he retires or for his dependents in case of his early death. Taking into account the various factors relating to difficulties, financial and administrative, the most appropriate course found to be institution of compulsorily contributory provident fund in which both the worker and the employer would contribute. The advantage is obviously of cultivating among the workers, a spirit of saving something regularly. 'The Act 19 of 1952' (namely EPF & MP Act, 1952), thus, enacted as a legislation of social benevolence.

15. 'The Act' of 1952 is a legislation for providing social security to the employee working in any establishment which engages 20 or more persons on any day and casts an obligation upon the employer to make compulsory deduction for provident fund from wages of employee covered under the Act and to deposit along with the employer's contribution in the account of employee in EPF office. An establishment once covered by 'the Act, 1952' continues to be governed by it and failure to pay contribution flows a consequential liability of the employer. Section 7 A of 'the Act, 1952' in it's subsection 1 clause (a) bestows responsibility

upon the Central Provident Fund Commissioner and his equivalent authorities under the Act to decide dispute, if any, raised regarding the applicability of this Act over the establishment providing due opportunity of hearing in an enquiry. Section 7 of the Act read with para 29 of "the Scheme" fix liability of the employer to make contribution towards provident fund which is directly linked with the services rendered by the employee in the establishment. Section 7A subsection 1 clause (b) provides for the determination of amount payable and due on account of contribution to the provident fund after an duly conducted enquiry which is subject to review by the authority concerned in 'the Act, 1952'. Delayed payment of the contribution by the employer envisages notice to the defaulter with demand note and recovery of damages under section 14 B after a duly conducted enquiry to be concluded through a speaking order assigning reasons. Section 7 I make all such orders referred here above appealable. Section 7 I of the Act is reproduced hereunder for easy reference:-

> ***7-I. Appeals to Tribunal****.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B*
> *[except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.*
> *(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.*

16. Hon'ble the Apex court in the case titled as **Horticulture Experiment Station Gonikoppal, Coorg V. Regional Provident fund Organization (2022) 4 SCC 516** has observed, " similar is the provision which is in Pari Materia with recover damages under section 85 B of The Employees' State Insurance Act, 1948 providing insurance and pensionary benefits to the employees." Section 14 B of the Act is reproduced here below:-

> ***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:]
[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.]

17. The instant appeal is not directed against an order under section 7 A (1) (a) deciding dispute as to the coverage and application of 'the Act, 1952' or against an order under section 7 A (1) (b) relating to the determination of amount of contribution payable on account of the provident fund, that means the appellant had not been in disagreement with and confusion as to the applicability of 'the Act, 1952' or in dispute as to the amount of the contribution payable on account of the provident fund from the very inception of the institution of fund for employees working in the establishment. There is no objection as to the opportunity of hearing afforded to and availed by the appellant establishment envisaged under subsection 3 of the Section 7 A on noticing the default of payment of contribution by the employer prior to conduct of the enquiry under section 14 B. The appeal is simply against the order of the respondent authority recording finding of delayed payments of contribution on account of the provident fund ensuing consequential action of demand and recovery of damages. The appellant establishment appeared through it's authorized representative throughout the proceeding of enquiry before the respondent authority where the dispute is admittedly confined to the issue of delay whether caused in payment and if caused, was involuntarily and due to the circumstances beyond

the control of the appellant. In view of the grounds of objection set forth in the memo of appeal on facts and law and those set forth by the respondent in countering the appeal to defend their action, I settle and formulate the following points for determination:-

> *(1) Whether the alleged default of delay in timely payment of the contribution on account of the PF is not attributable to the appellant establishment for initiating an action under section 14 B of the Act?*
> *(2) Whether this tribunal is competent to pass any order with regard to the impugned order passed under Section 7 Q of 'the Act'?*
> *(3) Whether the appellant qualifies to get relief in the light of circular no. C-I/Misc./ 2020-21/ Vol I/ 1112 dated 15.05.2020 and the impugned order passed under Section 14 B deserves to be modified?*

Point of determination no. 1.

18. Admittedly the instant matter before this appellate tribunal is not a case of total omission to make the contributions. There had been only delayed contributions. The dispute in the instant matter is confined by the appellant in enquiry proceeding under section 14 B to the extent of delay in payment of contributions and not anything else. A glance at the statement of damages annexed to the written response of the respondent shows that the days of delay range from a minimum of 30 days to a maximum of 628 days. In the above context let the contribution as defined in section 2(c) of the Act must be read with para 29 of 'the Scheme' They are being reproduced here under for the purpose of easy reference:-

> ***Section 2 (c)"contribution"*** *means a contribution payable in respect of a member under a Scheme 4[or the contribution payable in respect of an employee to whom the Insurance Scheme applies];*

> ***Para 29 of 'The Scheme'Contributions***
> *(1) The contributions payable by the employer under the Scheme shall be at the rate of [ten per cent] of the [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] payable to each employee to whom the Scheme applies:*

Provided that the above rate of contribution shall be [twelve] per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.
(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding [ten per cent] or [twelve per cent], as the case may be, of his basic wages, dearness allowance and retaining allowance (if any) subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act;
(3) The contributions shall be calculated on the basis of [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

(4) Each contribution shall be calculated to [the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise to be ignored.

19. When the appellant establishment is found well acquainted with the coverage and application of 'the Act of 1952' over the establishment and the 'scheme of 1952' there under, admittedly committed default in payment of contribution then since, no reasonable explanation of delay is submitted, it cannot be just and proper to attribute the delay on the part of any one else than the appellant themselves. The first point of determination is decided on the basis of discussions made here in above against the appellant.

Point of determination no. 2:-

20. On perusal of the record, it appears that assessment order of damages in term of Section 14 B of 'the Act' and another order passed by the respondent authority under Section 7 Q of 'the Act' imposing interest thereon is quite a different order. Both the orders may easily be severed from each other basically, as such it cannot be treated as consolidated order, the essence of which cannot be distinctly examined. The order made distinctly under

Section 14B is made appealable by the legislation under section 7I of 'the Act' whereas separate order passed under Section 7 Q is not made appealable. However, this appellate tribunal is of the considered opinion that the fate of order passed under Section 7Q depends upon the fate of the order passed under Section 14B and challenged in terms of the provisions of Section 7 I of 'the Act'. To be more explicit this may be said that if order under Section 14 B is wholly or partly set aside, struck off, modified or varied, that automatically affects the order under Section 7 Q accordingly. Thus, exercising the power under Section 7 L of 'the Act', the tribunal will proceed accordingly while disposing the appeal under Section 7 I on merit.

Point of determination no. 3:-

21. To decide the issue that whether the appellant qualifies to get relief in the light of circular no. C-I/Misc./ 2020-21/ Vol I/1112 dated 15.05.2020 and the impugned order passed under Section 14 B deserves to be modified, the perusal of said circular dated 15.05.2020 is necessary and therefore, the same is copied for ready reference:-

To

be

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page

कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली-110 066.
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi – 110 066.

No. C-I/Misc./2020-21/Vol.I/1112 Date: 15.05.2020

To,

All Addl. CPFCs in charge of Zones
All RPFCs in charge of Regional Offices
All OICs in charge of District Offices

Sub: Relief to establishments and factories covered under EPF and MP Act, 1952 from levy of penal damages for delay in deposit of dues during Lockdown to prevent COVID-19.

Sir,

In view of the prolong lockdown announced by the Government to control the spread of COVID-19 pandemic and other disruptions due to Pandemic situation, the establishments covered under EPF & MP Act, 1952 are distressed and not able to function normally.

The Hon'ble Apex Court of India in **McLeod Russel India Limited Vs RPFC** (2014)15 SCC 263 has underlined the broad contours and essential elements of section 14B of the Act and held that *mens rea, or* culpable state of mind of the employer, is a *sine-qua-non* for inviting damages under section 14B. In other words, the provisions of section 14B would get attracted only when there is a positive evidence of *mens rea* on the part of the employer while committing default in timely remittances. This legal position has later been reaffirmed in **Assistant Provident Fund Commissioner vs. Management of RSL Textiles**. (CA 96-97 of 2017)

Considering the difficulty faced by the establishments in timely deposit of contributions during the period of lockdown due to operational and economic reasons, it is evident that such delays are without *mens rea* of the employer. Thus, the delay in deposit of contributions during the period of lockdown announced in terms of the Disasters Management Act, 2005 cannot be attributed to any culpable state of mind of the employer and will not, therefore, attract the provisions of section 14B of the EPF Act.

Therefore, for any delay in payment of any contributions or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases.

(This issues with the approval of the Central P F Commissioner)

Yours faithfully,

(Jag Mohan)
Addl. CPFC (Hqrs.) Compliance & Legal

Copy to: FA & CAO, CVO, All Addl. CPFC (Hqrs) at HO, Director, PDNASS, Addl. CPFC (IS)

22. A bare reading of the circular makes it clear that the establishments covered under the provisions of 'the Act' were given a relief from the provisions of Section 14 B of 'the Act' for the period of lockdown. Accordingly, the period of lockdown runs from the month of March, 2020 to May, 2020 and any establishment depositing the dues for these months qualifies to get relief from the provisions of section 14 B of the Act. Therefore, any dues under Section 14 B of 'the Act' for the month of March-2020, April-2020 and May-2020 are not leviable and hence, an order shall be passed by this tribunal keeping in view the powers vested in this tribunal under Section 7 L which is reproduced herein:-

> ***7L. Orders of Tribunal****.—(1) A Tribunal may after giving the parties to the appeal, an opportunity of being heard,* ***pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit****, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.*
> *(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:*
> *Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of* its intention to do so and has allowed him a reasonable opportunity of being heard.
>
> *(3) A Tribunal shall send a copy of every order assed under this section to the parties to the appeal.*
> *(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.*

23. Section 14 B of 'the Act, 1952' must always be read with

Para 32 A which would be relevant to reproduce here under:-

> ***Section 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:]*
>
> *[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:*

To be continued on next page....

TABLE

S.No.	*Period Of Default*	*Rates of Damages (percentage of arrears per annum)*
(1)	*(2)*	*(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*

24. Before that, I discuss which kind of default the section 14 B read with Para 32 A of the Act, 1952 is contemplating the obligation put in 'the Act, 1952' upon an employer under Para 29 (supra) must be kept into consideration according to which the contribution on account of the PF is made deductible and payable at the rate of 10 % of the employee's basic wages etc. The rate of deduction prescribed in the Act is effective from 27.09. 1997. This obligation further combines another duty assigned in 'the Act, 1952' to the employer under Para 30 to pay the contribution of the employee with employers contribution also. Para 31 of 'the Scheme' forbids the employer not to deduct the employer's contribution from the wages etc. of the employee. Para 30 & 31 are being reproduced here under from 'the Scheme':-

> ***Para30. Payment of contributions***
> *(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).*
>
> *(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as*

the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.
(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Explanation: For the purposes of this paragraph the expression
"administrative charges" means 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 an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

Para 31. Employer's share not to be deducted from the members

Notwithstanding any contract to the contrary the employer shall not be entitled to deduct the employer's contribution from the wage of a member or otherwise to recover it from him.

25. The mode is also prescribed how to discharge the duty and obligation of the payment of contribution by the employer that is in Para 38 of 'the scheme' which is reproduced here under:-

Para 38. Mode of payment of contributions

(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:
Provided that the Central Provident Fund Commissioner may for reasons to be recorded in writing, allow any employer or class of employer to deposit the contributions by any other mode other than internet banking.
(2) The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly abstract in such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month:

Provided that an employer shall send a Nil return, if no such recoveries have been made from the employees :
Provided further that in the case of any such employee who has become a member of the pension fund under the Employees' Pension Scheme, 1995, the aforesaid form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.
(3) The employer shall send to the Commissioner within one month of the close of the period of currency, a consolidated annual Contribution Statement in Form 6-A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the Inspector.

[Provided that the employer shall send to the Commissioner returns or details as required under sub-paragraph (2) and (3) above, in electronic format also, in such form and manner as may be specified by the Commissioner].

26. It is therefore amply clear from the use of the word 'shall' in the above provisions of 'the Act, 1952' and that of 'the Scheme' of 1952 in relation to imposition of duty and obligation of the payment of contribution imposed upon the employer is mandatory in nature. There is a corelative duty imposed on the employer in para 36 of 'the Scheme' to account for the statement in due discharge of the above mandatory duties and to submit return within 15 days of the closure of every month. Para 36 of the Scheme runs as under:-

Para 36. Duties of employers

(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employees:

Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NiL' return.
(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return-

(a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees, and

(b) [in such form as the Commissioner may specify], of the employees leaving service of the employer during the preceding month:

Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.
(c) Provided further that a copy of the forms as mentioned in clauses (a) & (b) above shall be provided by the employer to concerned employees immediately after joining the service or at the time of leaving the service, as the case may be.

(3) [Omitted]

(4) Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observation on his visit to the establishment.

(5) Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board from time to time, direct, and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board.

(6) Notwithstanding anything hereinbefore contained in this paragraph, the Central Board may issue such directions to employers generally as it may consider necessary or proper for the purpose of implementing the Scheme, and it shall be the duty of every employer to carry out such directions.

27. In view of the above provisions there remains no doubt that the law casts a legal duty and obligation upon the employer of an establishment covered under the EPF & MP Act, 1952 to pay contribution on account of the PF both deducted from the wages of employee along with that on it's own part which is mandatory.

28. After traversing through the above provisions of 'the Act, 1952' and 'the Scheme' there under referred here above let come to the word 'default' used in the section 14 B read with para 32 A (supra). As defined in **" Words and Phrases"** " the word **default** means **anything wrongful- some omission to do which ought to have been done by one of the parties…… default also means nonpayment of an obligation by the party bound to pay. In other words, specifically the omission or failure to perform a legal or contractual duty and it may also embrace an idea of dishonesty and which omission in law, discreditable.** The cumulative effect of the section 14 B with para 32 A in case of delayed payment of contribution that is to say in default of payment as mandatorily required under the law by an employer, empowered the Government to make an order assessing the damages after objectively taking into consideration the facts and circumstances of each case. That would require in consonance with the principle of natural justice because section 14 B involves the imposition of penalty which amounts depriving the employer of his property in the shape of money. It, therefore, involves serious civil consequence. The principle of natural justice is implicit in the section 14B read with section 7A(3) of 'the Act, 1952' itself. The proceeding prescribed for enquiry is quasi-judicial in nature.

29. In the instant appeal the appellant has not denied the issuance and service of the notice prior to conduct enquiry under the section 14 B. It is admitted by the appellant and obvious in the impugned order under the appeal that the appellant establishment is represented through it's authorised representative throughout the enquiry. The only question raised before the original adjudicating authority (the Ld. RPFC) was that

the delay was not intentional. A chart showing the delay in consecutive months since 19/12/2016 till 31/10/2022 is not rebutted and remained un explained. Even the grounds of appeal lack the same before this tribunal. Irregularity or illegality of enquiry proceedings is not alleged except the demand of damages for the period of of March-2020, April-2020 and May-2020. What is involved therein is the legal dues of the employees deducted from their wages on account of the PF and also the employer's share in the contribution in provident fund which are also payable to the employee as post retirement benefit to him.

30. In a case before Bombay High Court titled as CaronaLimited Vs. Sitaram AtmaramChag: 2000 (86) FLR 391 (Bom) Justice F. I. Rebello held that the payment of wages and terminal benefits is a part of right to life under the Article 21 of the Constitution of India.

31. The provident fund and other dues payable under 'the Act of 1952' are part of the legitimate statutory entitlements of the employees. The appellant employer was obligated to pay the contribution of the employees as well as his own contribution to the fund. The deduction which was in fact deducted from the wages of the employee is to be deposited in the fund by the employer, and belongs to the employees. The employees were entitled to draw those contribution even while they were in service for meeting the unforeseen eventualities and exigencies that may arise in the life of an employee. They constitute an important measure of social security. The payment of PF dues to the fund, therefore, stands on the same footing as the payment of wages which was due to the employees. Delay in payment of contribution on the part of employer amounts to breach of obligation and legal duty causing divesting property vested in the employee, entitling them to damages in terms of money.

32. The assessment and determination of damages is not arbitrary but guided by well-defined rules in the section and scheme. In a case before apex court, **Organo Chemical Industries And Another Vs Union Of INDIA ; (1979) 4 SCC 573** para 13 & 14 are relevant on the issue and being quoted here under:-

> ***13.****The contention that section 14B confers unguided and uncontrolled discretion upon the Regional*

Provident Fund Commissioner to impose such damages 'as he may think fit' is, therefore, violative of Article 14 of the Constitution, cannot be accepted. Nor can it be accepted that there are no guide-lines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages under s. 14B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable under s. 14B and the consequences that ensue therefrom, an order under s. 14B must be a 'speaking order' containing the reasons in support of it. The guide-lines are provided in the Act and its various provisions, particularly in the word 'damages' the liability for which under s. 14B arises on the 'making of default'. While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz. the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word 'damages' in s. 14B lays down sufficient guidelines for him to levy damages.

14.*Learned counsel for the petitioners, however, contends that in the instant case, the period of arrears varies from less than one month to more than 12 months and, therefore, the imposition of damages at the flat rate of hundred per cent for all the defaults irrespective of their duration, is not only capricious but arbitrary. The submission is that if the intention of the legislature was to make good the loss caused by default of an employer, there could be no rational basis to quantify the damages at hundred per cent in case of default for a period less than one month and those for a period more than 12 months. It is urged that the fixation of upper limit at hundred per cent is no guide-line. If the object of the Legislation is to be achieved, the guide-lines must specify a uniform method to quantify damages after considering all essentials like loss or injury sustained, the circumstances under which the default occurred, negligence, if any, etc. It is said that the damages*

under s. 14B which is the pecuniary reparation due must be correlated to all these factors. In support of his contention, he drew our attention to s. 10F of the Coal Mines Provident Fund and Bonus Schemes Act, 1958, which uses the words 'damages not exceeding twenty-five per cent' like section 14B of the Act, and also to a tabular chart provided under that Act itself showing that the amount of damages was correlated to the period of arrears. We regret, we cannot appreciate this line of reasoning. Section 10F of the Act of 1958 came up for consideration before this Court in Commissioner of Coal Mines Provident Fund, Dhanbad v. J. Lalla& Sons.(1) This Court observed, firstly, that the determination of damages is not 'an in flexible application of a rigid formula', and secondly, the words 'as it may think fit to impose' show that the authority is required to apply its mind to the facts and circumstances of the case. The contention that in the absence of any guide-lines for the quantification of damages, s. 14B is violative of Article 14 of the Constitution, must, therefore, fail.

33. Let the appellate tribunal now refer the amendment in section 14 B vide amending Act of 1988 and insertion of para 32 A vide GSR dated 16 August 1991 w.e.f. 1. 09. 1991 and further insertion and corrigendum in sub para graph (1) vide GSR w.e.f. 26 September 2008.. Both before and after the amendment it has been optional with the RPFC to levy and recover the damages by way of penalty. Prior to the amendment he had the power to levy the damages at the rate, the maximum of which was fixed at 100%. It did not, however, prescribed any minimum rate. After the amendment this discretionary power to levy damages to a maximum of 100 % appears to have been curtailed. He is now to follow the sliding table incorporated in para 32 A. This tribunal is of the view that the table framed by the Government under para 32 A for damages is a salutary measure for the guidance of the officers of the Government who are entrusted to act under section 14 B. Under the table the amount of damages is related to the delay in payment of the contribution. In the instant matter admittedly, the contribution fell due in the year 1997 for which notice is issued in the year 2012. Till the date default is committed in the year 1997 and the date of notice in the year 2012 both the amendments referred above had been given effect

to. The chart which is made part of the impugned order on perusal reveals explicitly that the number of days of delay in payment of contribution month to month are considered proportionately according to the slided table in para 32 A . Frequency of delay and amount involved in each default is taken into consideration. The actual decision as to the determination of damages only after a hearing and assessing the particular case of the appellant. The appellant has not carved in the appeal and argument submitted before the tribunal any instance of arbitrariness in assessment and determination of damages. This tribunal does not find illegality and arbitrariness in the impugned order the appeal.

34. It is held in the case titled as **Hindustan Times Ltd. Vs. Union Of India (1998) 2 SCC 242** the apex court has held that mere delay on the part of department could not be treated as amounting to waiver. It has been also held that delay in passing order levying damages and even initiating the action under section 14 B cannot amount to prejudice in as much as the delay on the part of department, would have only employer to use the monies for his own purposes or for his business especially for there is no additional provision for charging interest. Such a plea can be taken by the employer firstly before the department in cases irretrievable prejudice pleaded and proved there. If the department after considering has rejected the same should not be interfered in further course of remedy. In the present appeal any such plea has not been taken and proved before the department.

35. It is thus amply clear from the language of the section 14 B and para 32 A of 'the Act, 1952' and 'the scheme'. The argument of the appellant to the effect that he did not committed delay in payment of contribution voluntarily and willingly is of no avail. In the case before the apex court titled as **Horticulture Experiment Station, Gonikoppal, Coorg Vs. Regional Provident Fund Organization (2022) 4 SCC 516,** it is held , any default or delay in payment of EPF contribution is sine qua non and sufficient for imposition of damages under section 14 B. Mens rea or actus reas is not essential for imposing penalty / damages for breach of civil obligations / liabilities. The facts of the above case are somehow akin to that of the present matter before this tribunal. Para 11 and 14 of the judgement is relevant to be reproduced here under: -

11. *Undisputedly, the establishment of the appellant(s) was covered under the provisions of the 1952 Act, but still failed to comply with the same and for such non-compliance of the mandate of the 1952 Act, initially the proceedings were initiated under Section 7-A and after adjudication was made in reference to contribution of the EPF which the appellant was under an obligation to pay and for the contravention of the provisions of the 1952 Act, the appellant(s) indeed committed a breach of civil obligations/liabilities and after compliance of the procedure prescribed under the 1952 Act and for the delayed payment of EPF contribution for the period January 1975 to October 1988, after affording due opportunity of hearing as contemplated, order was passed by the competent authority directing the appellant(s) to pay damages as assessed in accordance with Section 14-B of the 1952 Act.*

14. *The three-Judge Bench of this Court in Union of India v. Dharamendra Textile Processors [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369] while examining the scope and ambit of Section 271(1)(c) of the Income Tax Act, 1961 held that as far as the penalty inflicted under the provisions is a civil liability is concerned, mens rea or actus reus is not an essential element for imposing civil penalties and overruled the two-Judge Bench judgment in Dilip N. Shroff v. CIT [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] and approved the view expressed by a two-Judge Bench of this Court in Shriram Mutual Fund case [SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361] and held in paras 18 and 20 as under : (Dharamendra Textile Processors case [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369] , SCC p. 394)*

"18. The Explanations appended to Section 271(1)(c) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in Dilip N. Shroff case [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(c) read with Explanations

indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276-C of the IT Act.

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20. Above being the position, the plea that Rules 96-ZQ and 96-ZO have a concept of discretion inbuilt cannot be sustained. Dilip N. Shroff case [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] was not correctly decided but SEBI case [SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361] has analysed the legal position in the correct perspectives. The reference is answered. The matter shall now be placed before the Division Bench to deal with the matter in the light of what has been stated above, only so far as the cases where challenge to vires of Rule 967-Q(5) are concerned. In all other cases the orders of the High Court or the Tribunal, as the case may be, are quashed and the matter remitted to it for disposal in the light of present judgments. Appeals except Civil Appeals Nos. 3397 & 3398-99 of 2003, 4096 of 2004, 3388 & 5277 of 2006, 4316, 4317, 675 and 1420 of 2007 and appeal relating to SLP (C) No. 21751 of 2007 are allowed and the excepted appeals shall now be placed before the Division Bench for disposal."

36. To make more clear for appreciating why a liberal interpretation would not be proper in the instant matter under the EPF& MP Act, 1952 the following para 43 of the judgement of the Apex Court in the case Employees Provident Fund Commissioner V. Official Liquidator reported in (2011) 10 SCC 727 is reproduced here under:-

43. *It is a well-recognised rule of interpretation that every part of the statute must be interpreted keeping in view the context in which it appears and the purpose of the legislation. In RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] ,Chinnappa Reddy, J. highlighted the importance of the rule of contextual interpretation in the following words : (SCC p. 450, para 33)*

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the

colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

37. The purpose of enactment behind the Act of 1952 is explained in the case **EPF Commissioner (supra)** is worth to read. Paras 22, 23 and 24 are quoted here under: -

22. *The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the directive principles of State policy contained in Articles 38 and 43 of the Constitution.*

23. *In Organo Chemical Industries v. Union of India [(1979) 4 SCC 573 : 1980 SCC (L&S) 92] this Court negatived the challenge to the constitutionality of Section 14-B of the EPF Act. In the main judgment delivered by him, A.P. Sen, J. referred to the Statement of Objects and Reasons contained in the Bill presented before Parliament, which led to the enactment of Amendment Act 40 of 1973 and observed : (SCC p. 586, para 23)*

"23. … Each word, phrase or sentence is to be considered in the light of general purpose of the Act

itself. A bare mechanical interpretation of the words 'devoid of concept or purpose' will reduce most of the legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole."

24. *In his concurring judgment, Krishna Iyer, J. observed : (Organo Chemical Industries case [(1979) 4 SCC 573 : 1980 SCC (L&S) 92] , SCC pp. 591-92, paras 40-41)*

"40. The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the fund. If the employer neglects to remit or diverts the monies for alien purposes the fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour the concept of 'damages' when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in Sunday Times case [Sunday Times v. United Kingdom, Application No. 6538/74 decided on 26-4-1974 (ECHR), para 48] , observed:

'The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty.'

41. A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages' a larger, fulfilling meaning."

38. Further, the argument of parity with judgments of various

honorable courts, the issue finds explained in the Horticulture Experiment Station (supra) in paras 14,16,17 and 19 given hereunder:-

> ***14.*** *The three-Judge Bench of this Court in Union of India v. Dharamendra Textile Processors [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369] while examining the scope and ambit of Section 271(1)(c) of the Income Tax Act, 1961 held that as far as the penalty inflicted under the provisions is a civil liability is concerned, mens rea or actus reus is not an essential element for imposing civil penalties and overruled the two-Judge Bench judgment in Dilip N. Shroff v. CIT [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] and approved the view expressed by a two-Judge Bench of this Court in Shriram Mutual Fund case [SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361] and held in paras 18 and 20 as under : (Dharamendra Textile Processors case [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369] , SCC p. 394)*
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> *"18. The Explanations appended to Section 271(1)(c) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in Dilip N. Shroff case [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(c) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276-C of the IT Act.*
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> *20. Above being the position, the plea that Rules 96-ZQ and 96-ZO have a concept of discretion inbuilt cannot be sustained. Dilip N. Shroff case [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] was not correctly decided but SEBI case [SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361] has analysed the legal position in the correct perspectives. The reference is answered. The matter shall now be placed before the Division Bench to deal with the matter in the light of what has*

been stated above, only so far as the cases where challenge to vires of Rule 967-Q(5) are concerned. In all other cases the orders of the High Court or the Tribunal, as the case may be, are quashed and the matter remitted to it for disposal in the light of present judgments. Appeals except Civil Appeals Nos. 3397 & 3398-99 of 2003, 4096 of 2004, 3388 & 5277 of 2006, 4316, 4317, 675 and 1420 of 2007 and appeal relating to SLP (C) No. 21751 of 2007 are allowed and the excepted appeals shall now be placed before the Division Bench for disposal."

16. *The judgment on which the learned counsel for the appellant(s) has placed reliance i.e. ESI Corpn. [ESI Corpn. v. HMT Ltd., (2008) 3 SCC 35 : (2008) 1 SCC (L&S) 558] , the Division Bench in ignorance of the settled judicial binding precedent of which a detailed reference has been made, while examining the scope and ambit of Section 85-B of the Employees State Insurance Corporation Act, 1948 which is in parimateria with Section 14-B of the 1952 Act placing reliance on the judgment of Division Bench of this Court in Dilip N. Shroff [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] held that for the breach of civil obligations/liabilities, existence of mens rea or actus reus to be a necessary ingredient for levy of damages and/or the quantum thereof.*

17. *It may be noticed that Dilip N. Shroff [Dilip N. Shroff v. CIT, (2007) 6 SCC 329] on which reliance was placed has been overruled by this Court in Union of India v. Dharamendra Textile Processors [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369] . For the aforesaid reasons, the view expressed by this Court in ESI Corpn. [ESI Corpn. v. HMT Ltd., (2008) 3 SCC 35 : (2008) 1 SCC (L&S) 558] may not be of binding precedent on the subject and of no assistance to the appellant(s).*

19. *Taking note of the three-Judge Bench judgment of this Court in Union of India v. Dharamendra Textile Processors [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369] , which is indeed binding on us, we are of the considered view that any*

default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.

39. On the basis of discussion made hereinabove, the appeal deserves to be partly allowed.

ORDER

The appeal is partly allowed. The impugned order is partly struck off with regard to the damages assessed under Section 14 B of 'the Act' and consequential interest thereupon relating to assessment made for the month of March-2020, April-2020 and May-2020.

The respondent is directed to amend and modify the impugned order accordingly.

The appellant is directed to deposit the amount assessed under Section 14 B of 'the Act' within one month from passing of this order except for the month of March-2020, April-2020 and May-2020.

Sd/-

Justice Vikas Kunvar Srivastav
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.
Retired Judge of Hon'ble High Court of judicature at Allahabad

Date: 23/October/2024_
rds