CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 1, DELHI

Appeal No. D-1/18/2018

M/s. Mynah Designs **Appellant**

Vs.

APFC/ RPFC, Delhi (South) **Respondent**

1. Sh.Rajiv Arora, Advocate for the Appellant
2. Sh. Naresh Gupta, Advocate for the Respondent.

Order

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

PROLOGUE

1. The present appeal is filed on behalf of the appellant 'M/s. Mynah Designs' 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 10.03.2017 (which shall hereinafter be referred for brevity and convenience as "the impugned order" only) passed u/s 14B of "the Act" by which the Assistant P.F. Commissioner (EPFO, Delhi South), the Respondent has assessed an amount of ₹ 14,76,052/- as damages for the delayed payment of PF dues to be paid by the Appellant towards P.F. Contributions for the period 09/2005 to 06/2015.

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 09/2005 to 06/2015. Prior to the inquiry under Section 14B, it is also revealed from the order that a notice was issued to the establishment by the competent authority vide letter no. DS/NHP/DAMAGES-II/33604/2013-14/172/2302 dated 10.07.2013 along with a direction to show cause within fifteen days as to why damages of Rs. 4,30,240/- by way of penalty as envisaged under Section 14 B of 'the Act' be not recovered from the appellant establishment. This notice was issued for the belated payments made by and on behalf of the appellant establishment between the period 09/2005 to 03/2010.An opportunity of personal hearing was also afforded to the establishment on 25.07.2013.

4. Perusal of the impugned order reveals that a revised notice to show cause was issued to the establishment vide communicationNo. DS/NHP/0033604/000 /Enf.504 /Damages /1371dated 18.12.2014. The period covered under this notice was from 01/04/1996 to 11/12/2014 whereby the establishment was asked to pay a sum of Rs. 13,47,326/- as damages payable under section 14B of 'the Act' and Rs. 6,62,530/- as interest payable under Section 7Q of 'the Act'. It is further clarified by the respondent authority in the impugned order that the period of first notice dated 10.07.2013 is also covered in this notice. An opportunity of personal hearing was afforded to the appellant establishment in respect of this show cause notice on 12.01.2015. Ld. counsel for the appellant has stated that this notice dated 18.12.2014 pertains to the period from 01.04.1996 to 11.12.2014, whereas the establishment came within the purview of 'the Act' only in September, 2005 and the legality of this notice is questioned by and on behalf of the appellant on the ground that it is issued without conducting mandatory inquiry under Section 7 A of 'the Act' and in the light of judgement dated 03.04.2008 of Hon'ble Delhi High Court in the case of **Saroj Hospital and Heart Institute Vs. EPFO-WP(C) No. 2264 of 2008.**

5. It is also mentioned in the impugned order passed by the respondent authority that another show cause notice dated 08.12.2015 for an amount of Rs. 1,13,344 as penal damages was issued vide communication No. DS/NHP/0033604/000/Enf.504/Damages/30169 dated 08.12.2015. Further, it is stated by the respondent authority in the impugned order that this show cause notice had no overlapping delayed wage month remittances as in the case of first and second notice. Appellant establishment was afforded

an opportunity of hearing on 28.12.2015 in respect of this notice.However, neither the appellant nor the respondent has filed the copy of this notice in the memo of appeal or along with the reply of respondent.

6. Ld. Counsel for the respondent further states that 'the impugned order' is based on a defective show cause notice and therefore, is vitiated and liable to be set aside as the show cause notice dated 18.12.2014 mentions period 01/04/1996 to 11/12/2014 whereas the statement annexed covers a lesser period I.e. 04/2007 to 09/2014. this makes the show cause notice defective and prays that 'the impugned order' be set-aside on this ground alone. The establishment was represented by several authorized representatives on the scheduled dates and finally on 13.09.12016, one Sh. Parminder Singh, authorized representative appeared and insisted on non-levy of damages under section 14B of 'the Act' for period prior to September, 2008, on the basis of judgement passed by ***Hon'ble Delhi High Court in the matter of M/s. Roma Henny Security Services Pvt. ltd. Vs. Central Board of Trustees, EPF Organisation through Assistant P.F. Commissioner, Delhi North- MANU/DE/4328/2012.***

7. In view of the above, this appellate tribunal has gone through the statement showing the amounts due under section 14B and 7 Q of 'the Act, 1952'of the notice dated 18.12.2014, mentioned in Para 4 above, **which reveals throughout the coverage period in second column the due date of remittance of contribution and the date of deposit is mentioned. Most of the time, the date of deposit mentioned in the fourth column of the statement chart, it is found that the contribution was remitted at late stage right from 04/2007 up to 09/2014, the minimum no. of 'delay days' is fourteen days and peculiarly enough the said delay has gone extra ordinarily up to 655 days. These delay prima facie show the establishment, habitual in committing the delay with regard to remittance of contribution in the Funds constituted under 'the Act, 1952'.**

8. After a brief observation over the order, the tribunal further proceed to hear the argument and perused the written notes of argument submitted by the respective parties as below:-

ARGUMENTS

9. It is also mentioned in the appeal that the appellant was informed by the respondent authority that Show cause notice dated 11.12.2014 (issued for the period 09/2005 to 02/2007) and show cause notice dated 18.12.2014(issued for the period 04/2007 to 09/2014) which together cover the consolidated period from 09/2005 to 09/2014 are the final revised notices and the establishment was directed to file written objections/ response with regard to the same. In response to this direction, the appellant establishment submitted it's representation dated 22.01.2016 stating that the demand notices which purport to be for the period from 09/2005 to 09/2014 have been issued in a highly belated manner after a period of substantial passage of time, only on 11.12.2014 and 18.12.2014 respectively. Ld. counsel for the appellant relying upon the judgement passed by Hon'ble Madras High Court in ***Presidency Kid Leathers Pvt. ltd. Vs. Regional P.F. Commissioner-Manu /TN/00694/1997*** wherein the long period of delay in issuance of notices is itself a ground for waiver of damages.

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 severe financial constraints brought about by unforeseen/ accidental circumstances including but not limited to fire in the factory of the appellant, demolition of the retail outlet of the appellant establishment, total losses of Rs. 1,58,20,915/- suffered by the appellant over the period of 2007-08 and 2009-10. Placing reliance upon the judgement passed by ***Hon'ble Karnataka High Court in the case of RatnaPolypack India Ltd. Vs. Union of India-Writ Appeal No. 135-136 of 20089decided on 14.08.2008), APFC(South) Vs. Shalom Restaurant-W.P.(C) No. 5937 of 2013 passed by Hon'ble Delhi High Court decided on 06.02.2015, RPFC vs. Kaytee Switchgear Ltd.-W.P. No. 588 of 2012(L-PF) passed by Hon'ble Karnataka High Court (decided on 21.08.2012), Kirloskar Electric Co.Ltd. Vs. RPFC-W.P. No. 16304 of 2012(L-PF) passed by Hon'ble Karnataka High Court (decided on 18.09.2013),*** the appellant prays for rescinding the impugned order under the present appeal.

11. Ld. counsel for the appellant submitted that the Hon'ble Supreme Court in the matter of APFC, EPFO &Anr. V. Management of RSL Textiles India Pvt. Ltd. (2017) 3 SCC 110, has categorically held that in the absence of a finding regarding actus reus and/or mens rea on the part of the establishment action u/s 14B of the EPF & MP Act, 1952 cannot be sustained.

He further stated that a Review Petition No.1761-1762 of 2017 preferred by the PF department in the said matter was also dismissed by Hon'ble Supreme Court vide order dated 22.08.17. The Hon'ble SC after considering the same dismissed the Review Petition of the respondent department. All the grounds and submissions agitated/ considered by the Hon'ble Supreme Court in the matter of Civil Appeal No 2136/2012 bearing title "Horticulture Experiment Station Gonikoppal , Coorg Vs. The Regional P.F. Commissioner' were raised earlier in the Review Petition. However, this fact of dismissal of the review petition was not brought to the notice of the Hon'ble Supreme Court while deciding the matter of Horticulture (supra).

12. Ld. Counsel for the appellant stated that no finding regarding actus-reus or mens rea has been recorded by the respondent authority in' the impugned order' and relying upon the judgements passed by division bench of Hon'ble Madras High Court in RPFC v. SreeVisalam Chit Fund Ltd. And further by Hon'ble Supreme Court in RPFC v. SreeVisalam Chit Fund Ltd. It is stated that requirement of mens rea/actus reus on the part of the establishment as an essential ingredient for levying damages. Appellant also relied upon the judgement passed by division bench of Hon'ble Madras High Court in the matter of DCW Employees Co-operative Canteen v. P.O.EPFAT&ors. 2018 LLR 672 wherein it is held that *unless existence of 'mens rea' is pleaded and established against the employer, the levy of damages under Section 14-B of the Act, cannot be done automatically. It is not that every delay is wilful and intentional. It depends on the facts and circumstances of each case, more particularly, based on the reasons stated for making such belated payments…..".* It isfurther stated through written submissions by ld. Counsel for the appellant that the law laid down in the case of Horticulture (supra) cannot be considered an authority on the subject of mens rea and should not be followed as it does not state the law correctly. The decision is based on demonstrably wrong reasoning, which is contrary to legislative intent as well as the purpose behind Section 14B of the Act.

13. Opposing the Appellant's appeal, the respondent submitted written objection and argued that the appellant has distorted facts to gain sympathy from this Hon'ble Tribunal taking a hide behind the arguments that there was delay in invocation of proceedings, there was duplication/multiplicity and overlapping of the inquiry period, Grace period for making the payment was not considered, delay occurred due to financial losses, non-application of mind by the respondent authority and

absence of mens-rea. All these grounds taken in defense by the appellant are moonshine and to avoid payment of legitimate dues There was no delay in initiation of the proceedings against the appellant. Moreover, 'the Act' itself does not provide any limitation for invocation of proceedings. He further stated that the appellant is duty bound to deposit provident fund and other contributions by the 15th of the next month in which the employee has worked in the establishment and the dues become payable to him because the worker has already performed the employment up to last day of the previous month. The contributions have to be deposited by the employer establishment only after beneficiary worker has already worked and thus, earned this amount in terms of the contract of employment and the provisions of the act. As such, any effort by the appellant to deny employees the legitimate dues which they have rightfully earned in terms of the provisions of 'the Act', need to be looked upon with suspicion.

14. It is further stated by ld. Counsel for the respondent that non-deposit of the statutory dues by the appellant raises the doubt upon the intent of appellant to willfully fulfill the statutory obligation. Moreover, during the enquiry the appellant could not substantiate why the amount were remitted lately and why the damages/interest at notified rate should not be imposed. The plea of appellant is without any substance since the documents accompanying the show cause notice itself provides the particulars of default committed by the appellant. The appellant was given opportunity of being heard vide notice us 14B of EPF & MP Act 1952. The said notice clearly mentions delay in number of dates with respect to due dates in respect of the challans concerned, and the dues proposed to be levied with respect to the prescribed rates notified under the Schemes framed.

15. In response to the multiplicity and overlapping of period shown in the show cause notices issued under section 14 B of 'the Act' , it is submitted by ld. Counsel for the respondent that in total, three notice under section 14B of the Act were served upon the appellant viz dated: 10.07.2013. 18.12.2014 and 08.12.2015. the assessing authority while passing the order has clearly mentioned that show cause notice dated 18.12.2014 includes all the delayed wage month remittance which were part of show cause notice dated 10.07.2013 and at point No 3 of the said order the assessing officer has clearly mentioned about another show cause notice dated 08.12.2015 without any

overlapping delayed wage month but the appellant has deliberately concealed the said fact. It is further submitted that revised calculation sheet covers the period 10/2014 to 06/2015 and after subsequent hearings the appellant never raised the objection that the show cause notice for the period 10/2014 to 06/2015 was not received. Regarding the grace period given to the establishments complying with the provisions of 'the Act' it is stated by ld. Counsel for the respondent that such grace period was only available to those establishment who deposits the contribution within grace period and not to those who make the remittance beyond the grace period. Therefore, this grace period is not available to the appellant which remitted the contribution far beyond the period of grace period. The plea taken by the appellant while justifying the admitted delay in deposit of the PF dues is the financial hardship/losses/ financial crunch but in the matters of **Hindustan Times vs Union of India, AIR 1998 SC 688** and **RPFC vs. SD College, (1997) (2)LLJ 69** Hon'ble Supreme Court has observed that financial losses cannot be a ground for non-paying PF dues. He further prayed that the delay caused by the appellant in depositing the dues was intentional and the order was passed by the respondent authority after due consideration and deliberation as the criteria of levy of damages is an objective criteria with rates of levy of damages specifically defined under para 32 of the EPF & MP scheme 1952. the delay in monthly dues is regular, frequent and the employer in the present case is a habitual defaulter even knowing the consequences. Reliance is further placed upon following judgements by ld. counsel for the respondent:-

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

B. EPFO v. Bilaspur Spinning Mills & Industries Ltd., 2022 SCC OnLineChh 635

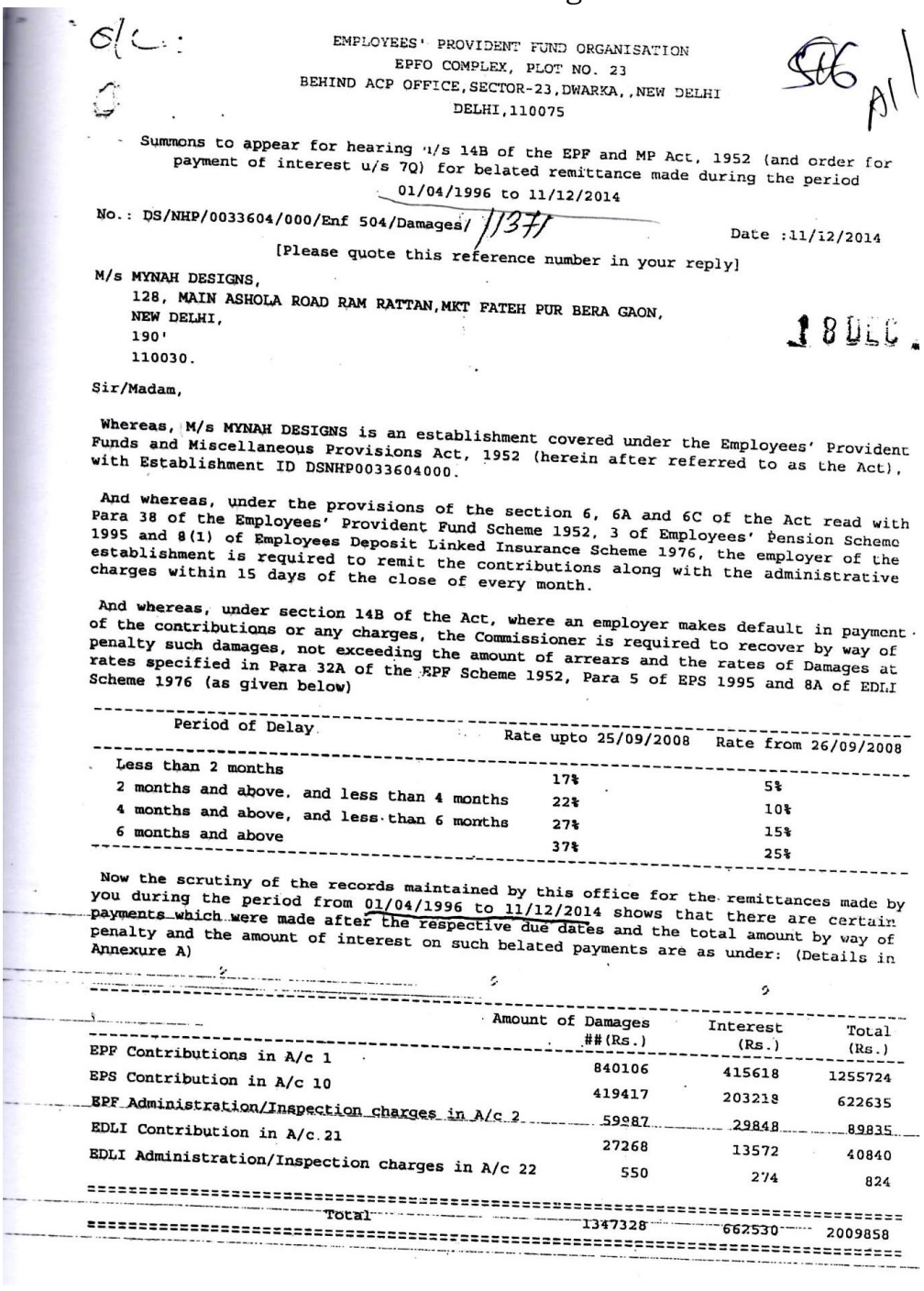
C. Sundeep Kumar Bafna vs State Of Maharashtra &Anr, (2014) 16 SCC 623

D. Manpreet Kaur v. Harjyot Singh, 2020 SCC OnLine Del 2487

DISCUSSIONS

16. 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 pursuant to the

third and last notice dated 18.12.2014 with a view to concentrate over the impugnity, if any of the order under appeal, it should be pertinent to refer material portion of the notice detailing and describing the period of default covered under the notice for the purpose of inquiry and the calculation chart annexed with the notice which is given as under:-



EMPLOYEES' PROVIDENT FUND ORGANISATION
EPFO COMPLEX, PLOT NO. 23
BEHIND ACP OFFICE,SECTOR-23,DWARKA,,NEW DELHI
DELHI,110075

Summons to appear for hearing u/s 14B of the EPF and MP Act, 1952 (and order for payment of interest u/s 7Q) for belated remittance made during the period 01/04/1996 to 11/12/2014

No.: DS/NHP/0033604/000/Enf 504/Damages/ 11371 Date :11/12/2014

[Please quote this reference number in your reply]

M/s MYNAH DESIGNS,
128, MAIN ASHOLA ROAD RAM RATTAN,MKT FATEH PUR BERA GAON,
NEW DELHI,
190'
110030.

18 DEC.

Sir/Madam,

Whereas, M/s MYNAH DESIGNS is an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (herein after referred to as the Act), with Establishment ID DSNHP0033604000.

And whereas, under the provisions of the section 6, 6A and 6C of the Act read with Para 38 of the Employees' Provident Fund Scheme 1952, 3 of Employees' Pension Scheme 1995 and 8(1) of Employees Deposit Linked Insurance Scheme 1976, the employer of the establishment is required to remit the contributions along with the administrative charges within 15 days of the close of every month.

And whereas, under section 14B of the Act, where an employer makes default in payment of the contributions or any charges, the Commissioner is required to recover by way of penalty such damages, not exceeding the amount of arrears and the rates of Damages at rates specified in Para 32A of the EPF Scheme 1952, Para 5 of EPS 1995 and 8A of EDLI Scheme 1976 (as given below)

Period of Delay	Rate upto 25/09/2008	Rate from 26/09/2008
Less than 2 months	17%	5%
2 months and above, and less than 4 months	22%	10%
4 months and above, and less than 6 months	27%	15%
6 months and above	37%	25%

Now the scrutiny of the records maintained by this office for the remittances made by you during the period from 01/04/1996 to 11/12/2014 shows that there are certain payments which were made after the respective due dates and the total amount by way of penalty and the amount of interest on such belated payments are as under: (Details in Annexure A)

	Amount of Damages ##(Rs.)	Interest (Rs.)	Total (Rs.)
EPF Contributions in A/c 1	840106	415618	1255724
EPS Contribution in A/c 10	419417	203218	622635
EPF Administration/Inspection charges in A/c 2	59987	29848	89835
EDLI Contribution in A/c.21	27268	13572	40840
EDLI Administration/Inspection charges in A/c 22	550	274	824
Total	1347328	662530	2009858

17. In the light of above materials carved out from the record

of the Notice, inquiry and impugned order, the tribunal finds that the two earlier notices are not concerned with the third and final notice and inquiry under section 14 B done by the authorities pursuant to thereto. The arguments in this regard impressing the tribunal that there is serious overlapping between the coverage period and as also the invalidity of period of default considered in the inquiry under section 14 B in which ultimately the impugned order under appeal is passed, is not tenable. This is to be made clear that the authorities have already explained and amended themselves in following words:

INITIATION OF ENQUIRY:

1. A notice was issued to the establishment by the Assistant Provident Fund Commissioner vide Show Cause Notice (hereinafter referred to as "the SCN") No. DS/NHP/DAMAGES-11/33604/2013-14/172/2302 dated 10.07.2013 to show cause within fifteen days as to why Damages of Rs. 4,30,240/ by way of penalty as envisaged under Section 14B of the Act be not recovered from the establishment/employer in relation to the establishment and an opportunity of personal hearing was also afforded on 25.07.2013

2. Again Show Cause Notice for an amount of Rs.13,62,808/- as Penal Damages was issued vide No. DS/NHP/0033604/000/Enf. 504/Damages/1371 dated 18.12.2014 to show cause within fifteen days as to why Damages as erivisaged under Section 148 of the Act be not recovered from the establishment/employer in relation to the establishment and an opportunity of personal hearing was also afforded on 12.01.2015

➤ *This Show Cause Notice included all the delayed wage month remittances which were part of the SCN issued in 2013 numbered DS/NHP/DAMAGES-11/33604/2013-14/172/2302 dated 10.07 2013.*

3. Once again another Show Cause Notice dated08.12.2015 for an amount of Rs. 1,13,244/ as

penal damages was issued vide No. DS/NHP/0033604/000/Enf 504/Damages/30169 dated 08.12.2015 to show cause within fifteen days as to why Damages as envisaged under Section 14B of the Act be not recovered from the establishment/employer in relation to the establishment and an opportunity of personal hearing was also afforded on 28.12.2015.

- *This Show Cause Notice has no overlapping delayed wage month remittances vis-à-vis the SCN issued in 2014 numbered DS/NHP/0033604/000/Enf. 504/Damages/1371 dated 18.12.2014.*

18. 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.

19. '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.*

20. 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.]*

21. 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. Ground of attack is also made estoppel against the respondent as they allegedly assured not to charge damages and interest over the amount fell due by reason of delayed payment, if deposited in compliance of the notice of enquiry under section 14 B. Further, it is also a ground of attack in the appeal that since the respondents despite had been getting statement regularly they never pointed out deficiency in payment, no default is attributable to 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 action of the respondent against the appellant in taking note of the default in timely payment of contribution on the account of the provident fund in the year 2013, 2014and 2015 for the period far back commencing from the year 09/2005 and in imposing penal damages with interest there upon for recovery is bad in law, unjust and improper for the reason of unreasonable delay?

Point of determination no. 1.

22. 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 impugned order, shows that the days of delay range from a minimum of 6 days to a maximum of years. 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.*

23. When the appellant establishment is found well acquainted with the coverage and application of the Act 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.

Second point of determination:-

24. This would be relevant also at this juncture to state that the general principle of law relating to appeals and the appellate court is that the appellant shall not except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal but the appellate court in deciding the appeal, shall not be confined to those grounds or taken by leave of the court. This rule as enshrined in Order XLI Rule 2 of the CPC which is meant for efficacious and complete adjudication of Lis between the parties. Though CPC is general law of procedure but since the special Act of 1952 and the special procedure provided in The Tribunal(Procedure) Rules 1997 do not in express or implied terms provisions anything in derogation of above stated general principle of law, the appellate tribunal shall emanates it's discretion and power accordingly while disposing of the appeal confirming , modifying or annulling the order appealed against or may refer the case back to the authority for fresh adjudication. Section 7 J of 'the Act, 1952' is importantly to be kept into mind while an appellate court sit in, hear and adjudicate the appeal. Section 7 J of 'the Act, 1952' runs as under-

> ***7J. Procedure of Tribunals****.—(1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.*
> *(2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in section 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the all purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*

In the above context , the tribunal finds it relevant to say that the argument submitted by the ld. counsel for appellant that a circular letter was issued by the respondent authority with regard to

how far back the period under default in depositing the contribution on account of PF and confined the same to three years is also considered by this tribunal, though , the same is not made ground of attack either before the respondent authority conduction the inquiry or before this tribunal in appeal also.The decisions of Hon'ble High Courts and our Apex Court relating to absence of provision as to limitation period for taking into consideration the default in terms of Section 14 B shall be discussed in forthcoming paras. The appellant to fortify his arguments in this regard has submitted the minutes of the **124th meeting** of the Central Board of Trustees (CBT) but the same whether notified in accordance with law relating to circular issued by the CBT in it's rule making powers is yet to be seen, as the same is not produced before the tribunal. However, the established principle of law is that no courts or tribunal are competent to do violence with the language of the statutory provisions either by adding anything which is not legislated or subtracting what is legislated, in words on it's own. Secondly, no circular or administrative order passed by the authorities can override the statutory provision enacted by the legislation. In the absence of any notification of implementation/ promulgation made by the government or by the authorities under "the Act' and even absence of any case law in this regard, the appellate tribunal finds itself incompetent to carry on and implement the resolution of CBT in this individual appeal.

25. 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:

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*

26. Before to proceed with the further discussion, it would be pertinent to state on the cost of reiteration that dispute as to the determination of contribution payable by the employee with prescribed share of the employer had never been raised and

sought to be determined and decided by the respondent. Entire provision of section 7C is exclusively applicable to the reopening of matters on disclosure of escaped amount already decided under section 7A and reviewed under section 7 B. Section 7 C is being reproduced here under for the purpose of easy reference and explanation of the application of it's baring period of limitation:-

> ***Section 7C. Determination of escaped amount***.— *Where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who passed the order—*
> *(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;*
> *(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A or section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer,*
> *he may, within a period of five years from the date of communication of the order passed under section 7A or section 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act:*
> *Provided that no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.*

27. 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.*

28. 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].

29. 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.

30. 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.

31. 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.

32. 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'sauthorised representative throughout the enquiry. The only question raised before the original adjudicating authority (the Ld. RPFC) was that the delay was not intentional and the imposition of penalty of damages and charging of interest is unlawful and arbitrary. A chart showing the delay in consecutive months since a long far back in 2005 till the date of notice of enquiry 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 and recovery notice which is alleged illegal by reason of the unreasonable delay. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. The present matter where no sufficient causes shown in the proceeding before the original adjudicating authority rather the legal objection as to the belated demand of damages on account of the delayed payment of contribution, the appellant even has not tendered reasonable and believable factual explanation in the appeal also. The proceeding would, therefore, have to be set at naught for the reason of much unexplained delay.

38. 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.

39. 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.

***

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."

40. The objection as to the lack of provision of limitation period in the section 14 B is also made with vigor and tried to impulse the court with liberal interpretation of the provisions of section 14 B in parity with several case law propounded by our constitutional courts in other criminal and fiscal statutes. This appellate tribunal gone deeply through those decisions referred by the appellant, with due regards the issue is set at rest as the same has been considered and addressed by the apex court in the case of Hindustan Times Ltd. (supra) in the relevant paragraphs 18, 19 and 20 of the judgement of the apex court are being reproduced here under:-

18. *The first contention on behalf of the appellant in the context of Section 14-B is that a period of limitation must be implied under law for, according to the appellant, it will be wholly unreasonable to allow the power to be exercised after the lapse of a large number of years.*

19. *Now the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. The monies payable into the Fund are for the ultimate benefit of the employees but there is no provision by which the employees can directly recover these amounts. The power of computation and recovery are both vested in the Regional Provident Fund Commissioner or other officer as provided in Section 14-B. Recovery is not by way of suit. Initially, it was provided that the arrears could be recovered in the same manner as arrears of land revenue. But by Act 37 of 1953 Section 14-B was amended providing for a special procedure under Sections 8-B to 8-G. By Act 40 of 1973 Section 11 was amended by making the amount a first charge on the assets of the establishment if the arrears of employee's contribution were for a period of more than 6 months. By Act 33 of 1988, the charge was extended to the employee's share of contribution as well.*

20. *In spite of all these amendments, over a period of more than thirty years, the legislature did not think fit to*

make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not by suit, the provisions of the Indian Limitation Act, 1963 are not attracted. In Nityananda M. Joshi v. LIC of India [(1969) 2 SCC 199 : (1970) 1 SCR 396] , it has been held that the Limitation Act, 1963 has no application to Labour Courts and, in our view, that principle is equally applicable to recovery by the authority concerned under Section 14-B. Further in Bombay Gas Co. Ltd. v. Gopal Bhiva [AIR 1964 SC 752 : (1964) 3 SCR 709 : (1963) 2 LLJ 608] it has been held that in respect of an application under Section 33(c)(2) of the Industrial Disputes Act, 1947, there is no period of limitation. In that context, it was stated that the courts could not imply a period of limitation. It was observed:

"It seems to us that where the legislature has made no provision for limitation, it would not be open to the courts to introduce any such limitation on the grounds of fairness or justice."

(emphasis supplied)

The above decisions have been recently accepted in Mukri Gopalan v. CheppilatPuthanpurayilAboobackar [(1995) 5 SCC 5] (SCC at pp. 20-22) to which one of us (Majmudar, J.) was a party while dealing with the applicability of Section 29(2) of the Limitation Act, 1963 to Courts or Tribunals. We may also point out in this connection that several High Courts have rightly taken the view that there is no period of limitation for exercise of the power under Section 14-B of the Act.

41. From going through the above principle of the interpretation of a statutory provision regarding the lack of the period of limitation, it is to state firmly that the court should not impose a limitation on it's own. The word "may" used in 'the Act, 1952' and in 'the Scheme' indicates permissible sense and not strictly obligatory. In **Mangilal V. State of MP (2004) 2 SCC447** the Apex Court has held:-

10. *Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied*

interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664 : AIR 1981 SC 818] .) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are : notice of the case to be met, and opportunity to explain.

42. 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."

43. 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."

44. This appellate tribunal therefore will be just and proper in rejection of the plea of construing the period of limitation in compatibility with section 7C of 'the Act, 1952' in the section 14 B on it's own against the legislative intent reflecting from the context of the Act itself. The reason is very simple, there is no room for construction where the language of the statute is plain and unambiguous. Departure from plain language in search of intention not suggested by words of statute is not justified.

45. Further, the argument of parity with judgements 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."*
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> ***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.*

ORDER

The appeal has no force, therefore, liable to be rejected on the basis of reasons discussed here in above.

The appeal is rejected.

Sd/-

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

Date: 13/September/2024_
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