

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM  
LABOUR COURT 2, NEW DELHI**

**Appeal no. D-2/20/2024**

**M/s. Pine Tree Hospitality**

**Vs.**

**APFC/RPFC, Gurugram West**

**Counsels:**

For Appellant:- Ms. Neetu Mishra, ld. counsel.

For Respondent:- Sh. Chakradhar Panda, ld. counsel.

**Order Dated:-24.06.2025**

1. The appellant has preferred the present appeal assailing the order dated 28.02.2024 passed by the Assistant P.F. Commissioner, Gurugram West **under section 14 B & Section 7 Q of the EPF & MP Act (herein after referred as 'the Act')** whereby, the appellant establishment is asked to deposit the damages u/s 14B of 'the Act' to the tune of Rs. 10,01,567/-for belated payments made by the appellant establishment for the period 05/10/2011 to 26/09/2023. Further, the appellant establishment is also directed to deposit the interest on belated payments under section 7Q of 'the Act' for the same period to the tune of Rs.5,54,379/-.

2. Appellant has assailed the order on several grounds inter-alia that it is a proprietor firm engaged in the business of providing restaurant/ rest room to the customers which suffered very heavy loss due to non-availability of the work resulting into bad debt and financial constraints which subsequently resulted into non-deposition of the PF contributions within time. The major part of the delay pertains to the period of 2020 to 2023, during which the hotel work had been badly suffered and establishment could not meet out the minimum expenses for running the business due to Covid-19. It is further stated on behalf of the appellant that despite of submitting its reply before the ld. respondent mentioning all the mitigating circumstances and reasons for delay, the impugned orders were passed which is totally perverse, arbitrary, unfounded and not sustainable in the eyes of law. The proceedings before the respondent authority were conducted virtually without providing opportunity of hearing and giving chance for verification of the challans of deposition of the PF dues, therefore, the delay days as

mentioned in the notice has not been corroborated from the copy of the challans.

3. It is also stated on behalf of the appellant that the ld. respondent initiated the proceedings after thirteen years and the delay is on the part of the ld. respondent in conducting the quasi-judicial enquiry which is in total violation of the respondent's own circular issued on **20.08.1990**. Further, the respondent also violated its own circular dated **30.12.2021** which provides exemption from damages and interest keeping in view the Covid-19 situation. Relying upon the judgments passed in **Organo Chemicals Industries Vs. Union of India cited as AIR 1976 SC 1803, RPFC Vs. SD College Hosiarpur, 1997 (1) SCC 241 & Mcleod Russel India Ltd. Vs. RPFC, (2014) 15 SCC 263**, it is stated on behalf of the appellant that while passing the order, mitigating circumstances are to be seen by the respondent and a speaking order is required to be passed ascertaining the presence of mens rea or actus reus before imposing the damages.

4. Per contra, the counsel for the respondent has rebutted the argument submitting his written reply followed by written arguments wherein it is stated that the Act is a social welfare legislation under which the employer is duty bound to make the PF contribution on time and in case of any delay, the employer is liable to pay damages. The appellant has delayed in depositing PF dues for several months ranging from 06 days to 1427 days and the delay was repeated for around 144 occasions. It is also stated on behalf of the respondent that the appellant was issued a **demand notice dated 29.09.2023** enclosing a month wise and account wise statement of belated remittances of PF contributions affixing a date of hearing before the ld. respondent on 27.10.2023, but no one appeared on behalf of the establishment on the said date. However, one Mr. Anup appeared on behalf of the establishment on 09.01.2024 stating that the demand notice has been received by the establishment and requesting to drop the proceedings without any merit.

5. Ld. Counsel for the respondent argued that the impugned orders passed u/s 14B and u/s 7Q of the Act are two separate orders bearing distinguished numbers having different pagination and thus, both the orders can't be termed as composite orders. Therefore, the order u/s 7Q is not appealable before this tribunal. Relying upon the judgment passed in the matter of **M/s Hindustan Times Ltd. Vs. Union of India and Ors./ SCI/07 January, 1998**

**& Horticulture Experiment station , Coorg Vs. The RPFC, Ld.** counsel stated that financial problems relating to other indebtedness or the delay in realization of the amounts cannot be justified grounds for the employer to escape liability. Ld. counsel for the respondent also submitted that there is no limitation set out in 'the Act' for taking the inquiry period. The circular dated 20.08.1990 is an internal matter and cannot bypass the law. His further contention is that the appellant himself had admitted the delay of PF contribution and repetition on account of the appellant for around 144 occasion shows the mens rea on part of the appellant. Appellant herein has failed to present any mitigating factors before the assessing authority and all the oral & written contention of the establishment are considered by the competent authority while passing the orders on merits of the case. Reliance is also placed by the respondent on the judgment passed in the matter of **M/s Birla cotton Spinning Weaving Vs. Union of India And Anr.** wherein it is observed that:-

***“The maximum that is equivalent to the amount in default is to be applied when number of default exceeds twelve”***

6. Ld. counsel for the respondent reiterated that the impugned order is passed as per provision of the Act after considering all the facts and submission of the parties hence, it is a speaking order and therefore, prayed to dismiss the appeal.

7. I have heard the arguments and perused the record. Before parting any opinion on the issue, it is necessary to reproduce the section 14 B as well as Section 7 Q of 'the Act':-

***Section 14B Power to recover Damages-Where an employer makes default in the payment of any contribution to the Fund [, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5 [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover 7 [from the employer by way of penalty such damages,***

***not exceeding the amount of arrears, as may be specified in the Scheme:] [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:***

***[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.]***

***7 Q Interest Payable by the Employer-The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:***

***Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]***

Rate of levy of damages is given in para 32 A of the Employees' Provident Funds Scheme, 1952 and subsequent para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 and Para 5 of the Employees' Pension Scheme, 1995 which have empowered the CPFC or any such authorised officer to recover from the employer by way of penalty, damages at the rate given below:-

<i>S.No.</i>	<i>Period Of default</i>	<i>Rate of damages (percentage of arrears per annum)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(a)</i>	<i>Less than 2 months</i>	<i>Five</i>
<i>(b)</i>	<i>Two months and above but less than four months</i>	<i>Ten</i>
<i>(c)</i>	<i>Four months and above but less than six months</i>	<i>Fifteen</i>
<i>(d)</i>	<i>Six months and above</i>	<i>Twenty five</i>

8. Now coming to the present appeal, notice has been issued to the appellant establishment on 29.09.2023 asking to pay the damages and interest for the period from 05/10/2011 to

26/09/2023. Further, the respondent has failed to provide any reasoning that as to why department has issued the demand notice after a delay of thirteen years.

9. First of all, the contention of the appellant has to be dealt with respect of the fact that the authority has violated of his own circular issued on 20.08.1990. There is no quarrel that the said circular has been issued. In the said circular, it has been emphasized that all cases under section 14 B have to be finalised within a period of three years. It is further stated that the cases in which the damages are yet to be levied as on 30.06.1990, RPFC should ensure that all such cases are disposed of within a period of three years from now and in case of fresh default, damages shall be levied within the close of three financial years. Said advisory has been issued after considering of all the aspects that limitation has not been set out in 'the Act' and division bench of Hon'ble Allahabad High Court where it is held that where the damages are not levied within a reasonable time, employer is justified in presuming that he is not liable to pay any damages. Though, the matter was reversed by the division bench but held that "the Act' was silent on the question of time limit within which the damages are required to be imposed but it should be reasonably good. Therefore, the argument of the counsel of respondent that the circular is not binding and has no legal aspect is not tenable. The circular issued therein is furtherance of the power exercised by the Central Government under Section 20 of 'the Act'. Where the time limit is not set out, the department was naturally constrained to issue the circular keeping in view the fact that after several years ranging from 10 to 13 years department had used to impose damages for late payment.

10. Therefore, the notice issued for levying the damages and interest for thirteen years is unreasonable and is liable to be set aside for the period from **05.10.2011 to 29.08.2020**. The demand notice starting from the month of 09/2020 up to 03/2023 is found to be as per law.

11. Second aspect of plea of the appellant is that the appellant has been in financial difficulty as such she could not deposit the dues in time. For this, appellant has enclosed copy of the balance sheet for the year ending 31.03.2022. Except this, she has not brought anything such as whether any payment has been stopped. Delay in remittances is apparent which is on not only one or two occasions, but it is on 144 occasions ranging from a delay of 06 days to 1427 days. Even the delay for the period starting from 09/2020

to 03/2023 ranges from 153 days to 954 days. Therefore, the respondent rightly has not considered the financial difficulty, considering the length of delay in remittances as well as non-production of documents.

12. In the light of above discussion, the appeal stands allowed partly. The appellant is directed to deposit the amount of damages levied in the demand notice starting from the wage month 09/2020 up to 03/2023 along with the interest amount of Rs.5,54,379/- u/s 7Q of the Act within one month from the receipt of this order. Office is directed to send the copy of this order to both the parties through email. The record of this appeal is consigned to record room.

Sd/-

(Atul Kumar Garg)  
Presiding Officer