BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. D-2/13/2025

M/s. Sona Koyo Steering System Ltd. ….Appellant

Through:- Sh. Gaurav Kumar, Sh. S.K. Gupta, Sh. Yajat Kumar, Sh. Raj Kumar, Ld. Counsels for the appellant.

Vs.

RPFC, Gurugram …Respondent

Through:- Sh. Chakradhar Panda, Ld. Counsel for the respondent.

<u>Order Dated:- 12.06.2026</u>

A very short question arises in the present appeal as to whether at the time of surrendering the trust, the appellant can utilise the reserves and surplus of previous years for offset the losses incurred during the period in question for investment made by the trust.

The appellant, an establishment covered under the provisions of the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act'),** has assailed the order passed under section 7A of the Act dated 30.05.2025, whereby the respondent determined an amount of Rs. 16,29,662/- as dues upon the appellant, for the wage month of March 2011 to March 2016. The appellant submits that it was maintaining an exempted provident fund trust under the provisions of section 17 of 'the Act'. The appropriate government had granted exemption to the appellant establishment vide order no**. S-35015/93/2009-SS-II** dated 28.07.2009, with retrospective effect from 01.04.2007. The appellant and the trustees of the EPF Trust diligently and in good faith complied with all provisions of law, including Para 27AA of the Employees' Provident Fund

Scheme, 1952, and consistently invested the EPF corpus strictly in accordance with the Investment pattern prescribed by the Central Government from time to time. The EPFO had submitted a compliance audit of the Trust on the basis of the records for the period from March-2011 to October-2015 vide report 12.01.2016, in which no defaults were recorded by the respondent department. After due deliberation in this regard, the trustees of the appellant decided to close the aforesaid EPF trust and communicated their intention to the respondent vide letters dated 07.10.2015 and 08.01.2016 to surrender the EPF trust forthwith. Following this, the respondent stated that the appellant may be granted permission to report compliance as an unexempted establishment with effect from 01.02.2016 vide communication dated 15.02.2016.

It is the case of the appellant that the respondent directed the appellant to conduct an audit through **M/s R. Mahajan & Co.** In compliance with such directions, the appellant provided all account books and related records to **g**, who conducted the audit of the EPF Trust. However, **M/s R. Mahajan & Co.**, without holding any discussion with the appellant's authorised signatory or any competent authority, submitted the audit report dated 07.05.2022 for the financial year 2015-16 directly to the respondent office, making certain observations purely on a presumption basis. The relevant observations are reproduced below:

> *"we draw your attention to deficit in the financial statements during the FY 2015-16 amounting to Rs.49,54,662.00 but the recovery made amounted to Rs.33,25,000/- on 27th December 2016 after adjusting surplus of Rs.18,81,522/- carried forwarded from the previous financial years. As per EPFO Circular dated 04.05.2010 (point 7); losses to the Trust should be made good by the employer and cannot be adjusted against previous years reserves and surplus of the Trust. In view of the same, amount of Rs.16,29,662/- stands*

> *recoverable from the company as the end of the period".*

On the basis of the reporting of Rs. 16,29,662/- by **M/s R. Mahajan & Co.**, the respondent issued a letter dated 19.07.2022 directing the appellant to deposit the said amount immediately with the respondent office so that further necessary action in the matter of surrender of exemption could be taken. It is further the case of the appellant that it submitted a written reply dated 27.07.2022, wherein it was categorically explained that the appellant had adjusted the shortfall by contributing Rs. 33,25,000/- directly from the company's own funds and Rs. 16,29,663/- from the reserves and surplus of the Provident Fund Trust, as reflected in the Trust's balance sheet for FY 2015-16.

Further, the appellant has assailed the impugned order on various grounds, inter alia, that while passing the impugned order, the respondent was required to apply its judicial mind and consider and analyse all the legal circumstances of the case, which has not been done in the present matter; that the impugned order is perverse and contrary to the provisions of the Act; that the appellant was justified in adjusting the shortfall in the interest declared for FY 2015-16 from the reserves and surplus of **Sona Koyo Steering Systems Limited Employees' Provident Fund Trust;** that such adjustment from the Trust's reserves and surplus is permissible under the applicable EPFO departmental circulars; and that the impugned order is illegal, arbitrary and violative of the principles of natural justice, having been passed solely on the basis of the audit report of **M/s R. Mahajan & Co.** The appellant, therefore, prays that the said order be set aside and recalled.

Per contra, the respondent filed a reply to the appeal. At the outset, it was submitted that the appeal deserves dismissal as the same has been filed against a well-reasoned order. The respondent further narrated the objective of the Act. It was also submitted that the appellant, being an exempted trust, was found to be in default in depositing dues pertaining to the period from March 2011 to March 2016, thereby violating the circular dated 04.05.2010. A comprehensive audit conducted by **M/s R. Mahajan & Co.** vide report dated 07.05.2022 revealed a substantial deficit of Rs. 49,54,662/-. Notwithstanding the recovery of Rs.

33,25,000/- on 27.12.2016, an amount of Rs. 16,29,662/- still remained recoverable. As per Rule 17 of the Provident Fund Trust Rules of the appellant, the appellant was required to distribute the profits of the funds on or as soon as possible after 31st March of each year. Lastly, the respondent prayed for dismissal of the appeal.

I have heard the arguments advanced at the Bar, perused the record as well as the impugned order. The entire case of the appellant rests upon the premise that it was an exempted trust under the provisions of Section 17 of the Act, having been granted exemption vide order No. S-35015/93/2009-SS-II dated 28.07.2009. When it decided to surrender the trust and communicated its intention to the respondent vide letters dated 07.10.2015 and 08.01.2016, the respondent initiated the present proceedings and assigned **M/s R. Mahajan & Co.** to audit the books of account. **M/s R. Mahajan & Co.**, without seeking any explanation from the appellant, opined that the appellant was liable to make good the payment of Rs. 16,29,662/- in terms of Clause 7 of the EPFO Circular dated 04.05.2010. It is the case of the appellant that the Trust had earned income by investing the funds in accordance with the directions issued by the Government of India and had created Reserves and Surplus after declaring the statutory rate of interest to its members. However, in the year 2016, after earning an amount of Rs. 17,26,811/- from investment, it adjusted a sum of Rs. 16,29,662/- from the Reserves and Surplus and additionally contributed Rs. 33,25,000/- for maintaining the declared rate of interest. Therefore, its contention is that it is well within its rights to utilize the Reserves and Surplus in accordance with the circulars issued by the department.

The appellant further drew attention of this Tribunal to the circulars of the respondent dated 21.10.2010 and 17.11.2011. The above said circulars are reproduced herein as it is:

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

No Ex/Misc/Comp. Audit/2009/ 104919 Dated: 17 मार्च MAR 2011

To

All Additional Central PF Commissioners (Zones)
All Regional PF Commissioners – In charge of ROs/SROs

Sub: Compliance Audit of Exempted Establishments- reg

Sir,

Please refer to this office letter of even number dated 21.10.10 on the above subject.

2. Head office has been receiving references regarding the utilization of the amount available in the reserves & surplus account of the exempted PF trusts for payment of statutory rate of interest. In this context it is clarified that, the amount lying in the reserves can be used for the purpose of declaring interest at statutory rates or even higher than statutory rates only.

(This issues with the approval of CPFC)

Yours Faithfully,

17/3/10

(K C Pandey)
Additional Central PF Commissioner (Compliance)

TRUE COPY
S.K. GUPTA
Advocate

कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
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Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi – 110 066.

No.C-Ex./Misc./Comp./Audit/2009/ 95775 Dated: 20.10.2010

21 OCT 2010

To

All Addl. Central Provident Fund Commissioners (Zones)
All Regional Provident Fund Commissioner-I (Regions)
All Officer-in-Charge (SROs)

Sub: Compliance Audit of Exempted Establishments – Reg.

Sir,

Please refer to Head Office letter of even number dated 04.05.2010 on the above subject.

2 A reference has been received in Head Office regarding the utilization of reserves and surplus lying with the Exempted Provident Fund Trusts. In this context it is clarified that the Reserves and Surplus are created over a period of time out of the yield on the investments of the contributions of the members. Hence, the same has to be utilised for extending benefits to the members in the form of enhanced interest payments.

3 The Board of Trustees & the Employer may accordingly be advised to make judicious utilization of the funds lying in the Reserves & Surplus of the Trust for the overall benefits of the members keeping in view the provisions of the Act & Scheme.

This issues with the approval of the CPFC

Yours faithfully,

जारी किया
ISSUED

(Dr. A. K. Dubey)
RPFC - I (Compliance)

TRUE COPY
S.K. GUPTA
Advocate

The appellant submits that the circular dated 17.03.2011 has clarified that the amount lying in the Reserves can be used for the purpose of declaring interest at the statutory rate or even at a rate higher than the statutory rate. It is further submitted that the circular dated 21.10.2010 is even more explicit, wherein the Board of Trustees and employers were advised to make judicious utilization of the funds lying in the Reserves and Surplus of the Trust for the overall benefit of the members, keeping in view of the provisions of the Act and the Scheme.

On the other hand, the respondent has defended its impugned order by contending that the conditions no. 06, 07 and 28 of the Revised conditions of the circular dated 04.05.2010 which refers to the head office letter of even no. dt. 15/10/2009 on the subject of the compliance audit report of exempted establishment, specify that in the event of any loss to the trust on account of fraud, defalcation, wrongful investment, decision etc. or any deficiency in the interest rate as compared to statutory rate, the employer shall be liable to make good such deficiency.

Before proceeding further, the purpose of creating of Reserves and Surplus Fund is required to be mentioned here:

> *Reserves and Surplus represent the accumulated balances arising from undistributed earnings, retained interest, or prior-year surpluses of the Trust. Reserves are funds set aside to meet contingencies or future liabilities, while Surplus denotes excess income carried forward when receipts exceed expenditure in a financial year. These amounts belong collectively to the beneficiaries of the Trust and cannot be appropriated to offset employer-related losses, which must be made good by the employer as per EPFO directions.*

On the careful consideration of both the circulars relied upon by the appellant, it appears that the respondent has overlooked the fact that the circular dated 04.05.2010 was an earlier circular, and the clarification in respect thereof was subsequently issued by the respondent itself vide circulars dated 21.10.2010 and 17.03.2011. These circulars specifically provide that Reserves and Surplus may be utilized for the purpose of declaring interest at the statutory rate.

In the present case, the trust had declared the statutory rate of interest to its members amounting to Rs. 66,81,474/-. The amount lying in the Reserves and Surplus of the previous years was utilized by the appellant for the purpose of giving benefit of the statutory rate of interest to its members. Reserves and Surplus are created only for the purpose of meeting contingencies and ensuring financial stability of the Provident Fund Trust. Therefore, when the trust decided to surrender its exemption, then, the respondent appointed a third-party auditor to conduct an audit, and the auditor relied upon the circular dated 04.05.2010 and fasten liability upon the appellant for a sum of Rs. 16,29,662/-, which had been adjusted by the appellant for declaring interest to its members. The respondent authority, while passing the impugned order, also discussed the way of investment with reference to the economic survey of India and observed that there was no economic slowdown in the country and that observation was not needed. The respondent was required to consider the facts and circumstances placed before it and decide the matter in accordance with law.

Considering the aforesaid facts on record, this Tribunal is of the view that Reserves and Surplus are created only for the purpose of meeting contingencies and ensuring financial stability of the Provident Fund Trust created by the appellant. For the sake of the plea, it is assumed that the trust has to give all the earnings made by the investments to its members at the end of every year, then this Tribunal fails to understand why the Reserves and Surplus was allowed to be created by the exempted trust. Reserves and Surplus are created only to offset the losses of any year, but it should not be detrimental to the members of the Trust. Here in the present case, statutory interest had been declared by the Trust, which comes to the tune of Rs. 66,81,474/- for FY 2015-16 at the time of surrendering the trust, reserves and surplus of the exempted trust had been utilized by the appellant only for the purpose of offsetting of equalizing the amount of interest paid to its members. The members of the trust are in no way at their loss. Additionally, the appellant has also paid with its own pocket an amount of Rs. 33,25,000/- for equalizing the amount declared for the payment of interest at statutory rates to its members. The appellant acted in accordance with the circulars issued by the respondent by utilizing the amount lying in Reserves and Surplus for the purpose of maintaining the statutory rate of interest to its members.

In view of the discussion above, it is held that the appellant was well within its right to utilize the Reserves and Surplus for labelling the interest declared. Consequently, the order passed by the Ld. RPFC under section 7-A of the Act is hereby set aside and recalled. The appeal stands allowed. The file be consigned to the record room.

Atul Kumar Garg
(Presiding Officer)