BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, No. 1 DELHI

D-01//16/2025

M/s Tirupati Fibres & Industries Ltd. vs. RPFC, Head Office.

Present: Ms. Purti Gupta, Ms. Heena George & Ms. Pooja Aggarwal, Ld. Counsels for the Appellant. Sh. Ajay Vikram Singh, Ld. Counsel for the Respondent.

Order dated-24.06.2025

- 1. This is an exceptional case where maze has been created around the appellant and it had taken out almost 14 years for coming out from the maze, inspite of the various order passed in his favour by the statutory authorities.
- 2. Appellant has assailed the order/ communication dated 25.04.2017 issued by the Respondent, rejecting the request of the appellant company for waiver of damages under 2nd proviso to the Section 14B and directed the appellant company to deposit outstanding dues immediately. Appellant had stated that direction issued by the respondent runs contrary to the binding orders of Board for Industrial Finance & Reconstruction (BIFR) and had to be mandatorily adhered to by the respondent. Non-compliance of the direct mandate of the orders of the BIFR by the respondent despite the statutory provisions contained in the Sick Industrial Companies (Special Provisions) Act and the orders contained therein and the statutory provisions contained in 2nd proviso to Section 14B has caused immense prejudice to the appellant company and has impacted its financials and caused uncertainty. He submitted that respondent be directed to comply the term of sanction scheme dated 18.10.2011 and subsequent orders dated 17.01.2013 and 30.01.2014 passed by BIFR. Respondent is further directed to waive off the entire damages imposed upon the appellant company up to the cutoff date of 31.03.2009.
- 3. Respondent herein appeared and filed the reply. In para no. 6.1 to 6.9, respondent had not given any reply. So far so the fact mentioned in

para no. 6.10 is concerned. He had also narrated the provision of **EPF & MP Act (hereinafter referred as an "Act")**, where the power to recover the damages has been provided. He further submitted that EPFO Head Office had examined the matter in the light of 2nd proviso to Section 14B and in exercise of the powers delegated by CBT to CPFC for rejection of eligible applications, request for waiver of damages was rejected with the advice to deposit the outstanding dues immediately. He further submitted that there is no change of management, hence condition given in clause (a) of 32B of the EPF Scheme, 1952 is not satisfied. Moreover, in para 10.4 of the sanctioned scheme dated 11.11.2011, it has been stated to consider waiver of damages/penalty U/s 14B of the EPF Act. BIFR has only mentioned about consideration of waiver, it has not recommended waiver of damages. Therefore, condition given in clause (b) of Para 32B of EPF Scheme, 1952 is not satisfied.

- 4. Respondent had relied upon M/s Gowri Spinning Mills (P) Ltd., represented by its Managing Director, Dharmapuri v. Assistant Provident Fund Commissioner, Salem and another-2007 (2) LLJ. 140 (Madras H.C.-F.B.), where the full bench observed that "the para 32-B of the Employees' Provident Funds Scheme expounds upon the second proviso to Section 14B. Clause (b) of para 32-B provides that the Central Board may allow the waiver of damages up to 100% in case where the Board for Industrial and Financial Reconstruction for the reasons to be recorded in the scheme recommends such waiver. He further submitted that there is no transfer of management and the condition no. 1 of the para 32-B is not satisfied. He submitted that appeal be dismissed.
- 5. I have heard the argument at bar. Before proceeding further, history of this case is required to be reproduced herein:

History of this case:

(i) Appellant company i.e. M/s Tirupati Fibres & Industries Ltd. is a company incorporated as per the provision of the Companies Act, 1956, having its registered officer at Tirupati Nagar, Post Box No. 1, Abu Road-307026, District- Sirohi, Rajasthan. It was promoted in the joint sector by Sh. Purshottam Das Dalmia and RIICO for the

manufacture of cotton carded yarn and synthetic blended yarn at Abu Road, Rajasthan. Operation of the Appellant Company could not be stabilized and were adversely affected by factors like liquidity problems, lack of timely modernization, sluggish market conditions, inadequate working capital, labour unrest etc.

- (ii) Ultimately the company was declared sick on 08.08.2000 and its reference was registered as Case No. 31/2000 and IDBI was appointed as the Operating Agency (OA) to conduct the technoeconomic viability study of the Appellant Company and to formulate the rehabilitation scheme. Management of the company had undergone a change in the year 2005 and the dues of principal dues of EPF were paid in 2008.
- (iii) A communication dated 10.08.10 had been received by the EPF authorities to the Appellant company wherein they raised a claim of Rs. 26,06,454/- towards interest and Rs. 44,06,409/- towards damages. Appellant company had paid the interest amount of Rs. 26.06 lac. Finally, BIFR after considering the submissions made by the Appellant Company, directed IDBI to redraft the DRs in the light of the observation/directions of the BIFR as mentioned in para 2 and 2.1 of the summary record of the proceedings and submitted the corrected DRS to the Board within three weeks for consideration of the sanctioning of the scheme. Ultimately, BIFR sanctioned the DRS for the Appellant Company vide its order 18.10.11. The said scheme inter- alia envisaged the following for the EPF at para 10.4, wherein provident fund authority was directed to accept the payment of outstanding principal dues of Rs. 20.51 lac without interest. To consider waiver of interest overdue of Rs. 26.06 lac. In case, the waiver is not permitted, PF authority was directed to accept the interest dues of PF in twelve equal monthly installments from the date of the sanction of the scheme after moratorium of one month.
- (iv) Appellant company had already paid the principal dues and interest thereon as envisaged in the sanctioned scheme. Appellant company submitted that it has preferred an application dated 20.01.2012 before the Commissioner, Regional Provident Fund

Organisation, Jaipur for the consideration of waiver of liquidated damages/penalties by the PF department under section 14B of the Act, but no communication was received by the Appellant company from the EPF authorities.

- (v) company further preferred the Appellant Miscellaneous Application before the BIFR in 2013 (Application being MA No. 476/BC/2013), seeking directions to the EPF authorities to waive the damages in terms of the sanctioned scheme. Even, show-cause notice was issued to the EPF authorities for not attending the hearing in respect of MA No. 476 of 2013. That Miscellaneous Application was allowed by the BIFR vide its order dated 17.12.2013 wherein the BIFR observed that the PF department was fully empowered under its respective Act to waive the damages recoverable from the sick industrial company under a scheme sanctioned by the BIFR. The BIFR then directed the PF department to waive damages under section 14-B of the Act in consonance with the terms of the sanctioned scheme. Even, the Appellant company further submitted that on 30.01.2014, EPF authorities have not allowed the relief to the Appellant company in consonance with the order dated 17.12.2013 passed by the BIFR. BFIR then reiterated its directions issued in the order dated 17.12.2013 and directed the PF department to submit compliance report. EPF authorities neither challenged the order dated 17.12.2023 passed by the BIFR nor the order dated 30.01.2014 as they attained finality. Thereafter, Appellant company received the communication dated 24.03.2014 from the EPFO, Jodhpur, Rajasthan wherein they raised a further claim to the tune of Rs. 1,29,67,962/- for the period of 25.03.2006 to 25.02.2009. This amount is claimed by the EPF authorities consisted of an amount of Rs. 70, 24,009/- towards penalty/damages and an amount of *Rs.* 59, 43,953/- towards interest for delayed payments.
- (vi) Appellant company addressed communication dated 02.12.14 to the EPF authorities stated that the payment towards the principal and the interest has been made by them as per the terms of the sanctioned scheme and requested to minimized or to waive off the penalty of damages. Thereafter, Appellant company preferred WP

No. 5488 of 2015 before Hon'ble High Court, seeking the indulgence of the Hon'ble Court to direct the EPF authorities to comply with the terms of the sanctioned scheme dated 18.10.11 and the subsequent order dated 17.12.13 passed by the BIFR and to withdraw the summons/order dated 24.03.2014. Hon'ble High Court had disposed off the writ petition vide order dated 07.07.2015 stating that only the show-cause notice has been issued and the proper course is to give the representation to the respondent authorities. In pursuance of the direction given by the High Court of Delhi, he had given the representation to the respondent authority, however, ultimately the respondent authority had dismissed their application and asked him to deposit the amount. It is further his case that he had filed the writ petition in the High Court challenging the above said application of his rejection, after 7 years of the pendency of the writ petition in the High Court, he was forced to withdraw the said writ because the respondent has taken the objection therein about maintainability and asked him to file the statutory remedy available. Hence, he has filed present appeal.

6. Before proceeding further, language of Section 14B of the Act is required to be reproduced herein:

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 [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 [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]:

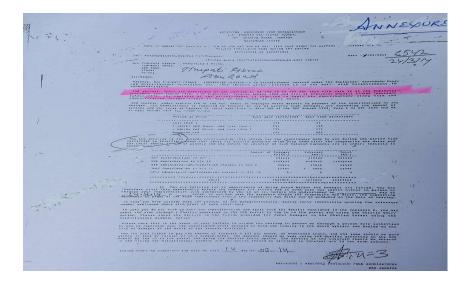
[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established 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. Second proviso attached to section 14B of the Act empowered the central board to 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.
- 8. Para 32-B of the scheme further empowered the central board to reduce of waive the damages levied under section 14B of the Act in relation to an establishment specified in the Second Proviso to Section 14B subject to the following terms & conditions. First condition is related to in case of change of management including transfer of the undertaking to the workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed or in cases where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its schemes, in this behalf recommends, waiver of

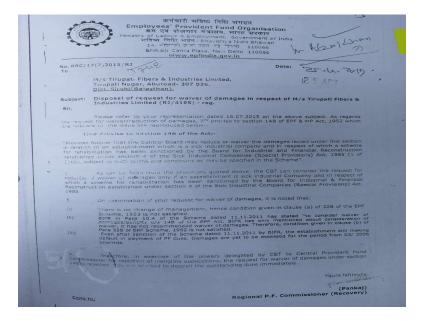
damages up to 100 per cent may be allowed. This provision has not left any discretion to the respondent not to waive the damages up to 100% when there is a change in the management or it was recommended by the BIFR.

9. In this respect, Annexure A-14 i.e. notice of demand and order of rejection dated 25.04.2017 are required to be reproduced herein:

Notice of Demand (Annexure A-14):



Order of rejection dated 25.04.2017:



- 10. The notice Annexure A-14 issued to M/s Tirupati Fibres & Industries Limited, wherein respondent has demanded the damages to the tune of Rs. 70, 24,009/- and Rs. 59, 43,953/- towards interest on the delayed payment. Against vary impugned notice, appellant preferred the writ petition i.e. which is ultimately withdrawn by him because respondent therein suggested to make the representation. He had made the representation, however, the same was rejected by the order dated 25.04.2017, wherein the PF authorities has denied. Order of rejection of his request to waive the damages has mainly upon three grounds.
 - (i) Firstly, there is no change of management and the condition given in clause (a) is not satisfied.
 - (ii) Secondly, BIFR had only stated to consider the waiver of damages and penalty.
 - (iii) Thirdly, even after sanction the scheme dated 11.11.2011 by the BIFR, establishment still making default in payment of dues.
- 11. However, counsel for the respondent herein conceded that while preparing the reply he has no knowledge about the order passed by the BIFR dated 17.12.2013 and 30.01.2014 whereby the BIFR had directed the PF authority to waive the damages.
- 12. Counsel for the respondent has tried to distinguish the fact that twin condition has not been fulfilled as there is no change of management, however, Act does not say that twin condition are to be fulfilled. First, there should be a change of management. Second, the rehabilitation scheme has been sanctioned by the Board of Industrial and Financial Reconstruction establish under section under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985. Here the second condition has been fulfilled. BIFR has declared the appellant company as a sick industrial company in 08.08.2000. BIFR had directed to waive the application and expressed his displeasure over non-appearance of the appellant. Order passed in the year 2013 by the BIFR in the MA No. 476/BC/2013 attained finality. Therefore, the respondent authority has no occasion to reject the representation.

 Division Bench of the Hon'ble Delhi High Court in <u>DGIT (Admn) and</u> <u>Anr. Vs. BIFR and Ors. [2012] 171 Comp case 147</u> had observed the purpose of scheme sanctioned by BIFR in the following words:

> ".....One has to keep in mind that any scheme is a package to rehabilitate the company. It is possible that such rehabilitation may result in early success or at times may take a greater period of time to achiever financial stability. If the argument of the Department were to be accepted it would imply that if a sick industrial company achieves success in making its net worth positive, all benefits of a sanctioned scheme would stand withdrawn whether exhausted or not, even though the emergence from sickness, and its continued health is dependent on the sanctioned scheme being fully implemented. This would, defeat the very purpose of formulating a sanctioned scheme. A sanctioned scheme in myriad ways would ordinarily devise ways and means by which the assets of the referrer are to be dealt with. The provisions of the sanctioned scheme would bind both the referrer and those who are party to it, including those in respect of which SICA makes a specific provision. It has to be appreciated that to forge a consensus on rehabilitation of a sick industrial company is no mean task. But once consensus is arrived at, and a scheme is sanctioned, it cannot equally be iettisoned without due deliberation and adherence to the provisions of law. Thus, the apprehension of the department that assets will be salted away is misconceived. The company which is the beneficiary of the sanctioned scheme

can be brought to heel by taking recourse to appropriate remedies in order to obtain its obeisance to the sanctioned scheme.

..... mere fact that the net worth has become positive does not provide an automatic exit route from the proceedings before the BIFR. It is open to the BIFR to continue to monitor the implementation of the unimplemented part of the sanctioned scheme. In the captioned cases, the BIFR appears to have discharged the reference solely on the ground that the net worth had turned positive. The discharge of reference is followed by consequent directions of relieving the operating agency and the independent director, of its mandate. The BIFR has noticed that a substantive part of the sanctioned scheme has been implemented, while issuing a direction to implement the remaining part of the sanctioned scheme. If one may say so, the second part is really redundant since, as observed, once a scheme is sanctioned it has the force of law; making its enforcement amenable as a matter of law, even in foras other than BIFR. One may emphasise at the cost of repetition that gaining entry within the domain of BIFR, the erosion of net worth (amongst other jurisdictional attributes) is an essential criteria; the inverse does not necessarily follow. In other words a referrer cannot seek an exit as a matter of right merely on the ground that net worth has turned positive, especially where a sanctioned scheme is under implementation. This is a call that the BIFR has to take."

- 14. Respondent authority is trying to derail the reconstruction of the company after the lawful authority has sanctioned the scheme for rehabilitation, ordering the respondent to waive the damages and interest under section 14B of the Act. Respondent, first not chosen to appear before the BIFR in the MA No. 476/BC/2013. When it attained finality, he had issued the notice levying the damages. Writ petition has been filed. Upon his request, representation has been made, ultimately that was rejected on the flimsy ground. If, the board i.e. BIFR directed to consider the request, it should have been made in a positive manner not in a negative manner which the respondent did herein.
- 15. Even, for the sake of the argument that management has not been changed, but, on record there is change of the management because someone has been included in the management for rehabilitating the scheme.
- 16. In view of the facts and circumstances above, appeal stands allowed. Consequent thereto, demand notice dated 24.03.2014 and order dated 25.04.2017, rejecting the request of the appellant for waiving the damages are set-aside and recalled.

Sd/-

Atul Kumar Garg (Presiding Officer)