BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2/EPFAT, DELHI

D-2/01/2024

M/s. Teleperformance Global Services Pvt. Ltd. vs. APFC/RPFC, Gurugram (East).

Present: Sh. Saumitra Singhal, Ld. Counsel for the appellant.
Sh. Chakradhar Panda, Ld. Counsel along with Sh.Lalit Kumar, Authorized Representative for the respondent.

Order dated:-05.06.2026

Appellant has assailed the order dated 11.10.2017, wherein respondent had determined the damages and interests u/s 14-B and 7-Q of the EPF & MP Act, 1952 **(hereinafter referred to as "the Act")** to the tune of Rs. 15,74,418 and 14,68,769/- respectively for the wage month 08/2014 to 09/2021.

Appellant's case is that it is a company registered under the Companies Act, 1956 and conducting business of undertaking the outsourced business process. It has received summons bearing no. GN/GGN/0025297/000/Enf 502/Damages/3101 dated 05.01.2022 for belated remittance made during the period 11/10/2017 to 06/12/2021. The AR for appellant had attended the hearing and also furnished a response, however, that response was not considered. According to him, the delay was occurred because UAN generation/registration employee was not generated due to adhering to the prescribed procedure for employee registration under the Act; hence, a valid reason existed for the delayed registration of the relevant employees. It is his stand that impugned order is liable to be set-aside as it was passed without due consideration of the genuine, factual and legal submissions put forth by the Appellant Company; impugned order are liable to be quashed considering the essence of the Section 14B & 7Q of the Act. These sections are designed not only to

penalize defaulting employers but also to offer compensation for the losses incurred by employees; impugned orders were rendered without due consideration of the absence of any "blameworthy conduct" on the part of the Appellant Company; Appellant Company undertook requisite measures to generate UANs for its employees and the delay in depositing PF contributions stemmed solely from the unavailability of pertinent documents and the constraints within the PF portal's mechanisms; impugned order lacks the reason and it was non-speaking order. He submits that the order is liable to be set-aside.

Per contra, respondent has countered the submission/grounds of the appeal. It is contended by the respondent that appeal is liable to be dismissed as the same has been filed against a well-reasoned order. Appellant has miserably failed to disclose any cause of action giving rise to the instant appeal. According to him PF and allied dues was paid belatedly for the period from 11.10.2017 to 06.12.2021 and accordingly appellant made itself liable to pay damages. Delay in remittance ranging from 2 to 1682 days show the malafide intention of the establishment and its repetition of around 137 such occasions reflected the "mens rea" on the part of the appellant. He further submits that appellant is a regular defaulter in the payment and has been depositing the dues belatedly ranging from 2-1682 days. Hence, this appeal is liable to be dismissed.

I have heard the argument at bar and gone through the case. Before proceeding further, provisions of section 14B & 7Q are required to be reproduced herein:

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 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 [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.]

7Q. 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:-

S.No.	*Period Of default*	*Rate of damages (percentage of arrears per annum)*
(1)	*(2)*	*(3)*
(a)	*Less than 2 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*

During the course of arguments, appellant counsel has limited the argument only on the point of the damages and has not pressed his appeal under section 7Q of the Act. His argument is that delay in remittance has been due to the UAN generation of the employee. Until and unless, UAN has been generated, he is not able to deposit the dues. It was beyond his control and as such the respondent has to consider the delay. The word "may" have been used in Section 14B and the respondent has to consider that the delay was not intentional. He has drawn the attention of this Tribunal towards the fact that he has been paying the contribution on November, 2013 about 15,66,22,478/- and the default in paying the contribution to the delayed remittance in regard to the various months is raising from 5,00,000/- to 81,000/- & 66,000/- which are meager nature in regard to the total contribution which is deposited. Even, at some time delay was only for seven days, two days and eleven days. It was in the corona (covid-19) period where the delay has been 48 days, 41 days, 253 days and 280 days i.e. in regard to the few employees whose UAN have not been generated due to the mismatch in their KYC details. It also reflects that he has no "*mens rea*" in delaying the remittance of the payment of damages.

On the issue of *mens rea*, the Ld. Counsel for the appellant has placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Others reported in (2014)15 S.C.C 263** and **DCW Employees Co-operative Canteen Pvt. Ltd vs. P.O. EPFAT, 2018 LLR 672,** decided by the Hon'ble High Court of Madras, where it was held that *mens rea* is an important factor to be considered while levying damages. He has also placed reliance upon **Assistant Provident Fund Commissioner vs. Management of RSL Textile India Pvt. Ltd., reported in 2017 LLR 337,** where the Hon'ble Supreme Court held that *mens rea* is required before levy of damages. It is further submitted that the respondent even preferred a review petition under article 137 of constitution of India seeking review of the said judgment, where the Hon'ble Supreme Court dismissed the said petition and upheld the impugned judgment dated 13.11.2013. Therefore, the judgment in *RSL Textile India Pvt. Ltd.* attained finality.

The Ld. Counsel for the appellant further submitted that the respondent has not given any reason for levying damages at maximum rate. According to the appellant, due to introduction of GST, it was compelled to comply with the financial standards fixed by banks, and therefore, could not deposit the PF contributions within time. It is further contended that due to the outbreak of Covid-19 also, it couldn't deposit the contributions in time.

On the other hand, the Ld. Counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court of India in **Horticulture Experiment Station, Gonikoppal, Coorg vs. the RPFC (Civil Appeal No. 2136 of 2012 order dated 23.02.2022)** where it was held that any default or delay in the payment of EPF contribution by the employer under the Act is a *sina-qua-non* for imposition of levy of damages under section 14B of the Act, and *mens rea* and *actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations.

Per contra, respondent counsel has countered the submission stating that as per judgment of **Horticulture Experiment Station Gonikoppal, Coorg vs. RPFC, Civil Appeal No. 2136/2012 delivered on 23.02.2022,** where it was held that any default or delay in the payment of EPF

contribution by the employer under the Act is a *sina-qua-non* for imposition of levy of damages under section 14B of the Act, and *mens rea* and *actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations. He further placed reliance on the Judgment of **Birla Cotton Spinning & Weaving vs. Union of India and Ors. on 29.08.1983**, whereby, it was held that the delay occurred more than 12 times than, the commissioner is justified for imposing 100% damages.

I have heard the arguments at bar and given my thoughtful consideration of the said contention of existence of *mens rea*. The judgment in *Mcleod Russel India Limited and Horticulture Experiment Station (Supra)* are of equal strength of benches. I have also gone through the judgment of Hon'ble Supreme Court in **Sandeep Kumar Bafna vs. State of Maharasthra & Others, AIR 2014 SC 1745** where it has been held that a statement of law pronounced by a Division Bench is binding upon a subsequent Division Bench of same or lesser strength. If any contrary view is expressed by a later bench, the same would fall within the category of *per incuriam* and the earlier judgment of the co-ordinate bench would prevail.

Here in the present case, the respondent has levied the damages upon the appellant at the maximum rate as prescribed under para 32-A of the Employees' Provident Funds Scheme, 1952. Word "may" has been used under section 14-B of the Act. The word "may" has been used twice under section 14-B of the Act. First, in the section that such officers have been authorized, secondly, when so aforesaid officer may recover from the employer by way of penalty such damages meaning thereby, wide discretion have been given to the respondent to levy and recover the damages. Only condition is that damages shall not exceed the amount of arrears. It is admitted fact that amount of PF was deposited by the respondent, though, belatedly. Reason for delay given by the respondent is that due to the covid-19 period, he could not deposit the PF in time for the employees who UAN have not been generated in time.

It is admitted fact that the department himself has given the benefit of three month in covid-19 period. Further, it is the common knowledge that the covid-19 pandemic has not come to an end till june 2021, even, in March-April, 2021, it was the peak time when second wave of covid-19 had spread and almost all the business stood standstill. Therefore, considering the above fact that this Tribunal is opined that all the entries for the wage months 03/2020 to 06/2021 i.e. 87 out of 236 stands deleted. All the entries for the wage months of 03/2020 to 06/2021 in the said notice stands deleted. Appellant is required to deposit the amount along with the interest.

Moreover, there is something which has not been considered by the respondent while passing the impugned order. By the Act, respondent is empowered to levy and recover the damages as per Para 32Aof the EPF Scheme, 1952. Before proceeding further, the text of **Para-32A of the EPF Scheme, 1952** is required to be produced herein:

[**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 the 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 authorized 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 in the table below:-

S.No.	*Period Of default*	*Rate of damages (percentage of arrears per annum)*

(1)	*(2)*	*(3)*
(a)	*Less than 2 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*

(2) The damages shall be calculated to the nearest rupees, fifty paise or more to be counted as the nearest higher rupee and fraction of a rupee less than fifty paise to be ignored.

Para-32A of the EPF Scheme, 1952 prescribes the maximum rate of damages. It is not open to the respondent to levy the maximum rate in every assessment. The respondent is required to apply its mind while assessing the damages, considering the intention on the part of the appellant after due consideration of the mitigating circumstances.

Looking at the circumstances of the present case, where the deposit of the PF contributions by the appellant is in crores and left out contribution for month is very low comparable to the deposit made by the appellant. Respondent has not considered the difficulty in generating UAN number of the employees who joined the company for a short period and has not furnished the complete particulars. Hence, the order passed by the respondent to levy the damages at the maximum rate, doesn't stand.

Therefore, considering the above said fact, this Tribunal is of the opinion that damages of 40% for belated remittance of PF dues barring the period of Covid-19, is appropriate. As such, the order in this regard is modified to the extent that the levy of damages shall be only 40% for belated remittance of payment of EPF dues, barring the period of covid-19 as directed earlier.

In terms of the above discussion, the appeal is partly allowed. The appellant is directed to deposit the damages for the said period within four

weeks from the receipt of this order, along with the interest component as determined under section 7Q of the Act, after adjusting the amount which was deposited at the time of grant of stay on the execution of the impugned orders. The office is directed to send a copy of this order to both the parties through email. The record of this appeal is consigned to record room.

(Atul Kumar Garg)
Presiding Officer