BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

D-1/72/2024
M/s Spice Jet Limited vs. APFC/RPFC, Delhi West.

Present: Sh. Prakash Kumar, Ld. Counsel for the Appellant
Sh. Siddharth, Ms. Swati Surhatia, Ld. Counsel for Respondent.

<u>Order Dated-20.06.2025</u>

1. This order shall dispose of two applications filed by the appellant - one u/s 7O of the **EPF & MP Act, 1952**, (hereinafter referred as the Act) as well as an application filed for seeking stay against the impugned order passed by Ld. RPFC-I whereby an amount of Rs.10,08,55,362/- has been levied as damages and Rs.5,17,20,165 as interest for the period 01.01.2020 to 31.03.2024.

2. Ld. Counsel for the appellant submitted that it is an airline providing services to the passengers on Pan-India basis and the airline business suddenly stopped because of the Corona pandemic. The establishment earned zero revenue whereas the expenses, salary, rent of stands of airplane, fee to airport and other misc. expenses were as it is. This unique and unheard situation completely ruined the financial status of the establishment. Establishment along with various other airlines sent a representation to the ministry narrating their grave financial situation seeking some bailout/ relaxation. Respondent without appreciating the severity of the unheard situation initiated the 7A enquiry for the period March, 2021 to May, 2022. It directed the establishment to remit an amount of Rs.73,00,00,000/-(Rs. Seventy Three Crores Only) as EPF dues which was complied by the appellant as the establishment is a law abiding entity. Even thereafter, respondent initiated enquiry u/s 14B & 7Q of the Act wherein the establishment prayed to drop the same because there was no malafide intention of the establishment in late payment of the contributions. In the said application, he had also made prayer for staying the operation of the impugned order.

3. It is also important to mention here that though two application have been moved here, however, the sum and substance of both these application is that the appellant wants a stay upon the impugned orders passed by the respondent authority.

4. Respondent counsel appeared and opposed the application by tooth and nail stating that appeal u/s 7Q is not maintainable because it had been passed separately by the respondent on 04.09.2024.

5. Moreover, he submits that there is a delay of more than 2000 days in remitting the PF Contribution at one occasion and thereafter of 600, 375, 485 days etc. at other several occasions. Therefore, relaxation cannot be given. He further submitted that the order has been passed u/s 6 of the Act which is the enabling provision for passing an order u/s 7A, 7B, 7C, 14B & 7Q of the Act.

6. I have heard the argument at par and perused the record including the impugned order in question. Before proceeding further Section 14B and 7Q are reproduced herein for ready reference:-

> ***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 [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 authorized 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.]***

6. However, going through the entire record, this court is unable to find, how the order u/s 14B & 7Q have been passed u/s 6 of the Act. The authority has been statutorily provided u/s 7A to conduct an enquiry. Under section 7A, the authorities mentioned are empowered to decide/dispose of the applicability of the Act as well as the determination of the amount under any provision of this Act. Under section 14B authority has been prescribed only to recover the damages. There is nothing brought on record that the authority has been prescribed by the Act of government to levy the damages. So far so the section 7Q is concerned, admittedly no authority has been prescribed.

7. In the present matter notice has been issued on 13.06.2024 which is a composite notice wherein RPFC wishes to impose the damages and interest. Proceeding were also conducted jointly at the same time. Therefore, by dictating the separate order has no meaning and the order shall be treated as a composite order, therefore, this tribunal is well within its jurisdiction to entertain this appeal.

8. Appellant mainly emphasises that it is an Airline industry and his business suffered a loss due to covid-19 pandemic. Entire fleet was grounded as such he is unable to deposit the PF dues in time. The contention of the appellant has weightage because it is in the common knowledge that entire Airline Industry suffered in loss as the entire fleet was on the ground during that period. The damages and interest prior to the Covid-19 period has been determined as Rs.85,775/- and Rs.50,737/- so far so the entire damages and interest is concerned, that amounts to Rs.10,07,96,799/- and Rs.5,16,86,771/- which includes the damages and interest for the post Covid period also.

9. It is also important to mention here that the contribution which have been delayed and the damages levied for the period 2016 to March

2020 are just a meagre part of the total damages levied after March, 2020.

10. Therefore, in the light of the above facts and circumstances, the order passed u/s 14 B & 7Q are stayed subject to deposit of an amount of 15% within four weeks by way of FDR favoring **Registrar CGIT** prepared initially for a period of one year having auto renewal mode thereafter. In the meanwhile, interim orders to continue. Ld. Counsel for the respondent is directed to file the counter reply to the appeal on the next date of hearing. Put up on 07.08.2025 for reporting compliance by the appellant and submission of reply by the respondent.

Sd/-
(Atul Kumar Garg)
Presiding Officer,

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

D-1/79/2024
M/s Spice Jet Limited vs. APFC/RPFC, Delhi West.

Present: Sh. Prakash Kumar, Ld. Counsel for the Appellant
Ms. Swati Surhatia, Ld. Counsel for Respondent.

Order Dated-20.06.2025

1. Appellant has pressed his two application one for grant of stay against the impugned orders and another for seeking waiver from depositing statutory deposit against the impugned orders. However, sum and substance are the same in both the application. Appellant want to stay the impugned order passed by the Ld. RPFC u/s **14B and 7Q of the EPF & MP Act, 1952 (hereinafter referred as the Act)** assessing the amount of Rs.15,30,72,415/- as damages and Rs.7,34,79,306/- as interest respectively for the period of 01.04.2024 to 31.08.2024.

2. Appellant has stated that it is an Airline Industry and has been facing final crunch due to Covid-19 period as such he is unable to deposit the PF dues in time. Ld. RPFC without considering the circumstances, has imposed the damages and interest.

3. Respondent has opposed the prayer stating that appellant has not come with clean hands. Appellant has deducted the employees' share of the PF contribution at the time of wage declaration (referred to herein as "Trust Money"). However, the appellant has repeatedly failed to deposit the trust money, along with the employer's contribution, in a timely manner. In fact, the dues were only paid when the department intervened and identified their attempts to evade and avoid payment. She further stated that the establishment continued to pay other expenses, as reflected in their balance sheet. This clearly demonstrates that the establishment prioritized its obligations towards other expenses while disregarding its responsibility to pay the EPF dues, thus showing a blatant disregard for the social security rights of its workers/employees. Respondent has referred the Supreme Court Judgement in the matter of **"Organo Chemical Industries and Another vs. Union of India"** where the Supreme Court has observed that imposition of damages u/s 14B serves

both the purposes. It is meant to penalize defaulting employer as also to provide reparation for the amount of loss suffered by the statutory requirements of section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries to re-compensate to the employees for loss sustained by them. Respondent has also referred to the **Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Commissioner (2022 SCC Online SC 223, dated 23.02.2022),** where it was held that any default or delay in the payment of EPF contribution by an employer under the EPF & MP Act, 1952 is a prerequisite for the imposition of damages under section 14B. The appellant has intentionally and deliberately filed this appeal before the Hon'ble Tribunal with the sole purpose of delaying the recovery of the amount determined by the respondent in its order dated 04.10.2024.

4. Respondent further submits that three condition for giving the injunction from the recovery has not been made out by the appellant. Therefore, appellant be directed to deposit the entire amount.

5. I have heard the argument and perused the record in question including the impugned order. Before proceeding further Section 14B and 7Q are reproduced herein for ready reference:-

> ***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 [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 authorized 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:]***
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> ***[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:***
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> ***[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.]

6. The ld. RPFC while passing the order stated that the appellant has not made a representation, though the appellant has been represented by General Manager (Law). The appellant has also enclosed the damages calculation sheet provided as annexure A along with the notice. Perusal of the enclosed damages calculation sheet reveals that the payment up to the March, 2020 attracts damages and interest to the tune of Rs.44,861/- and Rs.25,998/- respectively.

7. It is also important to mention here that the entire amount of the PF contribution from 15.07.2018 has been paid in the month of July, 2024 itself. It is in common knowledge that Airline Industry has been facing the financial crunches from March, 2020 onwards because of breaking out of Covid-19 pandemic in the country, complete lockdown was imposed and air travel has been banned. Most of delay is in regard to the said period and up to 09/2023.

8. Considering the above facts and circumstances the application in hand stands disposed of subject to the deposit of an amount of 15% of the damages and interest assessed within four weeks by way of FDR favouring Registrar CGIT prepared initially for a period of one year having auto renewal mode thereafter. In the meanwhile, interim orders to continue. Ld. Counsel for the respondent is directed to file the counter reply to the appeal on the next date of hearing. Put up on 07.08.2025 for reporting compliance by the appellant and submission of reply by the respondent.

Sd/-
Atul Kumar Garg
(Presiding Officer)