BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. D-2/07/2025

M/s. Ambience Hotel & Resorts Pvt. Ltd.

…Appellant

Through:- Sh. Rajiv Shukla & Sh. Sanjay Kumar, Ld. Counsels for the appellant.

vs.

APFC/RPFC, Gurugram East.

…Respondent

Through:- Sh. S.N. Mahanta, Ld. Counsel for the respondent.

Order Dated:- 07.08.2026

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 orders passed under section 14-B and Section 7-Q of the Act dated 12.03.2025, whereby the respondent assessed the damages and interest to the tune of Rs. 9,38,541/- and Rs. 6,07,906/- respectively, for the period from 18.12.2019 to 25.05.2023, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

It is case of the appellant that the respondent failed to consider its submissions; the impugned orders have been passed illegally, arbitrarily, in a mechanical manner, and without application of mind, and do not contain any finding on mitigating circumstances, especially due to covid-19 pandemic for the period from march, 2020 to May, 2022. The respondent completely ignored the fact that the appellant, being a hotel, was worst affected during Covid-19 pandemic due to extreme restrictions on public activities, resulting in a grave financial crisis, so much so that the wages also could only be paid after a delay, as such the appellant shouldn't be burdened further with damages and interest. It was further submitted that the respondent failed to revise the calculation sheet with the show-cause notice dated 02.06.2023, whereby the period for which notice was issued was 18.12.2019 to 25.05.2023, whereas the impugned orders were passed for the wage months from 09/2014 to 05/2022.

The appellant further assailed the said orders stating that the EO's report was not supplied to it; the respondent failed to appreciate that the appellant had complied with the directions of the RPFC vide letter 18.06.2021 by depositing an amount of Rs. 11,72,221/-, pertaining to the period from September, 2014 to 2021 for the casual workers under the contractors and employees. It was further submitted that if the EOs squad had pointed out defaults earlier, the establishment would not have to suffer the untenable assessment impugned in the present appeal. Therefore, the appellant prayed that the impugned orders be set aside and recalled.

The respondent filed a reply to the appeal. First, it took the preliminary objections and denied all allegations, claims, demand contained in the instant appeal except and to the extent specifically admitted. It was further stated that the appellant was duty-bound to comply with the provisions of the Act and was required to pay the employees' contributions by the 15th of the following month but failed to do so; the appellant failed to deposit dues on time, and damages and interest were levied for belated remittance of PF contributions. It further submitted that ignorance of law is no excuse. In law, citizens are presumed to know the law, and lack of knowledge doesn't give them permission to violate the same. The appellant accepted the PF liability computed by the EO for the period 09/2014 to 01/2021 after examining the records produced by the establishment and the appellant complied with the same without any question. The respondent submitted that the appeal lacks merit and is liable to be dismissed.

The appellant filed a rejoinder denying whatever had been stated by respondent in its reply.

I have heard the arguments at the Bar and perused the record as well as the impugned order. The whole of the argument of the appellant's counsel rests upon the premise that the belated remittance of PF and allied contributions was not intentional or deliberate but was beyond its control. The first inspection was carried out by the respondent in the year 2020 where certain discrepancies were found in the deposit of PF contributions in respect of casual labour, which had not been enrolled as the appellant was under the impression that casual employees were not required to be enrolled. The appellant establishment has been paying the PF contributions in respect of its direct employees. So far as the employees of the contractors are concerned, they are already covered under the code numbers of their respective contractors.

The respondent's counsel has countered the above arguments by stating that the order passed by the respondent authority is a reasoned order. The appellant is not a small enterprise which does not know the law, so it is legally bound to pay the PF and allied dues in time, and any delay in doing so invites penalty in the shape of damages as prescribed under Section 14-B of the Act as well as interest under Section 7-Q of the Act. He submitted that the appellant has already complied with the inspection report supplied as Annexure A along with the appeal, so no question arises of accepting the appeal, and the appeal is liable to be dismissed.

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 authorized 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*

Under Section 14-B, the word "may" has been used not only once but thrice. The respondent has often taken the view that it has no discretion to reduce the damages from the rate prescribed in the Scheme, which is of little value. If that were considered to be true, the legislature would never have used the word "may". This proposition is also fortified by the fact that when the department during the COVID-19 pandemic had exempted the establishments from the levy of damages imposed due to belated remittances and introduced "Para 82A – Special Provision in respect of Employees' Enrolment Campaign" under which the damages are levied @ One Rupee per annum. If the discretion were not vested with the respondent department, the department could not have done so.

Now coming to the facts of the present case, whole of the assessment done under Sections 14-B and 7-Q of the Act reflects that the same has been assessed for the belated payment of dues arrived at by the Enforcement Officer in his report dated 12.04.2021. In that report, it has been mentioned that the appellant had not deposited the complete PF contribution on the wages paid to its direct employees from 2014 onwards. It is further mentioned that the appellant had been paying less than the minimum wages categorized as basic wages, and the contribution was demanded on the allowances paid but not deposited, determining an amount of Rs.11,72,211/-. The appellant has complied with the same immediately.

There is no whisper of any kind about the basis of determination of the said dues. It is further important to mention here that there is nothing mentioned in the report of the Enforcement Officer that the dues are about the casual labourers who were employed by the appellant establishment as pleaded by the appellant in the appeal. Even the respondent while filing the reply has not mentioned that the entire dues of Rs.11,72,211/- were in regard to the short payment in respect of direct employees. Therefore, the argument of the appellant that it is related to the casual employees does not stand anywhere.

It is also important to mention here that the notice was issued for the period from 2019 to 2023 for the belated payment therein, however, belated payments were made in one go, as reflected from Annexure A attached to the notice, i.e., on 12.06.2021, which corresponds with the plea of the appellant that it complied with the report of the Enforcement Officer in one go. Only four payments of one or two employees were made in 2024, therefore, notice issued by the respondent dated 02.06.2023 for belated payment for 2019 to 2023 itself is faulty.

The Regional PF Commissioner has not taken any action for the year 2014 to 2021 regarding the short payment made by the appellant establishment. He woke up only in 2020 when the inspection was carried out. Therefore, the short deposit of any amount does not amount to total dereliction of duty on the part of the appellant. The appellant's prompt response in depositing the amount as per the Enforcement Officer's report is also required to be considered while imposing the damages. It is not required that damages are to be levied at the maximum rate in each and every case. Therefore, the respondent authority is required to apply its mind while imposing damages, which does not reflect in the present case.

ORDER

In view of the discussion above, the appeal is partly allowed. The damages are reduced to forty percent of the assessed amount, which the appellant is required to deposit within one month from the date of this order, along with the interest assessed under Section 7-Q of the Act. The amount of Rs.9,07,906/- deposited by the appellant by way of demand draft with this Tribunal is required to be released to the Regional PF Commissioner, Gurugram West, along with the accrued interest, which shall be adjusted against the amount which the appellant is required to pay. The Registrar of this Tribunal is required to take appropriate action for release of the amount as directed above.

(Atul Kumar Garg)
Presiding Officer