BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-1/EPFAT, DELHI

593(4)2007

M/s. Indcon Projects & Equipment vs. RPFC Delhi (East).

Present: Sh. S.K. Gupta, Ld. Counsel for the Appellant.
Sh. S.N. Mahanta, Ld. Counsel & Sh. Sunil Ranjan, A/R for the Respondent

<u>Order dated-31.10.2025</u>

1. The present appeal has been remanded back by the High Court of Delhi for fresh decision after the High Court had set aside the order passed by this tribunal on the writ petition bearing no. (CM(M844/2015) filed by the respondent herein i.e. Central Board of Trustees vide order dated 25.10.2017.

2. Before proceeding further, the brief history of this appeal is required to be reproduced herein:-

Appellant establishment has assailed the order passed by the respondent on 06.08.2007 whereby the respondent assessed the damages under section **14B of the EPF & MP Act, 1952 (hereinafter referred as the Act)** to the tune of Rs.7,55,279/- and interest u/s 7Q of the Act to the tune of Rs.2,69,557/-. On the date of filing the appeal, stay was granted on 17.09.2007 upon the operation of the impugned order subject to deposit of 30% of the assessed amount. Next date of hearing was fixed on 07.01.2008. However, the appeal was disposed off by the learned predecessor of this tribunal on 04.01.2008 whereby the appeal was partly allowed and damages was reduced up to 75% as assessed by the respondent. Respondent has sit idle for seven years and woke up in deep slumber and has filed the writ petition in the High Court of Delhi whereby the order passed by this tribunal was set aside and matter is remanded back.

3. Appellant has assailed the said order on various grounds *inter alia* that the impugned order is illegal, void and not maintainable in law; levy of damages u/s 14B & 7Q of the Act have been imposed without identifying period of default and the amount of default for that specified period, order is not speaking one ; interest u/s 7Q of the Act could not be charged additionally when it has already been included in the amount of damages levied under Para-32-A of the Employees Provident Fund Scheme, 1952, in view of circular issued by the office of the Central Provident Fund Commissioner vide **letter No. P.Q.Cell/3(3)86/Dam dated 29.05.1990** as approved by the Central Board of Trustees. Respondent has failed to follow the procedure laid down for levying of damages as placed before the Central Board of Trustees in 124th meeting of the Central Board of Trustees, E.P.F. held at New Delhi on 28.11.1990. He submits that the order be set aside and recalled.

4. Respondent has filed the counter reply of the appeal. First of all he has narrated objective of the Employee Provident Fund & Misc. Provision Act, 1952. He submitted that the appeal is liable to be dismissed at the threshold in as much as the appellant has not come to this court with clean hands and has suppressed material facts. In support of his contentions it has cited the judgment **Arcot Textile Mills versus Regional Provident Fund Commissioner and others AIR 2014 SC 295 & Organo Chemical Industries versus Union of India 1979 AIR (SC) 1803.** He further submitted that the appellant is given sufficient opportunity during the course of enquiry. So far so the ground taken in 6(B)(d) is concerned, respondent submitted that the question of interest u/s 7Q read with Para 32-A, which has been raised in **Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees, E.P.F.,** has been remanded back by the Hon'ble Supreme Court to the Hon'ble High Court of Delhi to consider it afresh. So the assessment done is exactly in consonance with the statutory provision of EPF & MP Act, 1952. Hence, he submits that the appeal be dismissed.

5. I have heard the arguments at par and perused the record of the appeal as well as the impugned order. At the outset, appellant counsel has stated that he had already deposited the 30% of the assessed amount u/s 14B of the Act as well as entire amount u/s 7Q of the Act. He has advanced his arguments on three counts. First of all he has stated that section 7Q was inserted by Act no. 33 of 1988, however, it has become effective in the Act w.e.f. 01.07.1997. Earlier on 29.05.1990 issued by the CPFC mentioned that all the defaulter thereafter shall be liable to pay interest at the rate specified in column 1, i.e., from 5 to 25 % depending upon the period of default as damages u/s 14B of the Act. However, the section 7Q which was inserted in 1988 in the Act has not become effective therefore, according to him the respondent has charged the damages at the rate specified earlier. Since the 7Q has been notified in 1997, respondent has not reduced the component of interest at the rate of 12% from the damages and started levying both, i.e., the damages at the rate specified earlier as well as the interest which means that appellant has to suffer double. He has relied upon the judgment passed by Hon'ble Delhi High Court on 14.01.2008 in **M/s Systems & Stamping & Anr. Vs. Employees' Provident Fund Appellate Tribunal & Ors.**

6. It is important to mention here to go through the earlier provisions of Para 32-A of EPF Scheme, 1952. Provision contains is extracted hereunder:-

> **32A. Recovery of damages for default in payment of any contribution**
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> (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 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 authorised 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 below: —

S.No. (1)	**Period of default (2)**	**Rates of Damages (percentage of arrears per annum) (3)**
(a)	Less than two months	Seventeen
(b)	Two months and above but less than four months	Twenty-two
(c)	Four months and above but less than six months	Twenty seven
(d)	Six months and above	Thirty seven

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

7. In 2008 paragraph was the same, however, the table has been changed and the rate of damages to be levied had been reduced to 5%,

10%, 15% & 25% instead of 17%, 22%, 27%, & 37%. Percentage has been reduced by 12% which is exactly charged u/s 7Q as interest. Therefore, there is a weightage in the argument of the appellant counsel that he has suffered twice. Moreover, it is admitted fact that the respondent went in Hon'ble Supreme Court filing the SLP against the judgment passed by Delhi High Court in Systems Stamping (Supra) which was dismissed. Therefore, judgment passed in M/s System Stamping still holds good. The reliance placed by the respondent upon the judgment of **Roma Henny Security Services Pvt. Ltd**. is misconceived as the matter is remanded back to the Delhi High Court for fresh adjudication by the Supreme Court and still the full bench has not decided the case. Therefore, the respondent is directed to reduce the damages by 12% in the respective column in the order under appeal.

8. Further contention of the appellant is that respondent cannot issue the notice setting out of the delay in remittance of the PF beyond the period of three years. He has placed reliance upon the circular issued by the respondent department on 28.11.1990 whereby the department has advised its officer not to issue the notices inviting damages beyond the period of three years. However, in the present case the period is not too far to take into consideration. Period is only four years i.e. from 2002 to 2006. Therefore, the contention of the appellant in this regard is not tenable.

9. Next leg of argument of the appellant is that he has been facing financial difficulty, so he could not deposit the remittance in PF fund within time. However, he has not brought any record in this respect, whether in that period he has been facing financial difficulty. Therefore, the plea is not well founded.

10. In view of the above discussion, appeal is partly allowed. Since the appellant has already deposited the 30% of the assessed amount of damages and the amount of interest, the appellant is directed to deposit

the balance amount within four weeks. If he has deposited the amount in excess, respondent is directed to refund forthwith. Office is directed to consign the record to the record room.

Sd/-

Date: 31.10.2025

Atul Kumar Garg
(Presiding Officer)