CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 04/2019
Present – P.K. Srivastava
H.J.S. (Retd.)

Bilas Ray, Proprietor,
aged about 46 years,
S/o Shri Meghan Ray,
O/o 53, Krishna Colony,
Suhagi, Maharajpur, Jabalpur (MP)

Appellant

Vs.

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishya Nidhi Bhawan,
Vijay Nagar, Jabalpur

Respondent

WITH

EPF Appeal No.- 53/2019

M/s Carewell Security Services Pvt. Ltd.,
M/7 Chetak Centre 12/2 R.N.T., Marg,
Indore (MP)

Appellant

Vs.

Regional Provident Fund Commissioner-II,
Address: 7th Floor I.D.A. Building, 7,
Race Course Road, Indore

Respondent

WITH

EPF Appeal No.- 12/2019

M/s Jasuja Enterprises Pvt. Ltd.,
Through Director, Amit Jasuja,
aged about 40 years,

S/o Shri Ramesh Jasuja,
O/o Jasuja City, Dhanwantri Nagar,
Hotel Jabali Palace, Bheraghat Road,
Jabalpur (MP) 482001 (MP)

Appellant

Vs.

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishya Nidhi Bhawan,
Vijay Nagar, Jabalpur

Respondent

<u>WITH</u>

<u>EPF Appeal No.- 15/2019</u>

Zila Panchayat, Sagar,
Through its Senior Accounts Officer,
Mr. Sanjay S Bhadoriya,
aged about 56 years,
S/o Late Shri Phool Singh Bhadoriya,
O/o Civil Lines, Sagar (MP)

Appellant

Vs.

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
10, Civil Lines, Sagar- 4700001

Respondent

Shri Uttam Maheshwari	**:**	**Learned Counsel for Appellant.**
Shri Jubin Prasad		
Shri Bahulashwa Nandam		
Shri Harshit Patel	**:**	**Learned Counsels for Respondents.**

<u>JUDGMENT</u>

(<u>Passed on 24th day of July, 2026</u>)

Since, the facts and dispute in these Four Appeals are identical hence these Appeals are being disposed of by a common Judgment.

The undisputed facts in these appeals are that, they are covered under the Act and are under obligation to deposit PF dues of their employees. The Respondent Organization launched the Scheme vide its notification dated 30.12.2016, published in the Official Gazette. The Scheme is being reproduced as follows:-

MINISTRY OF LABOUR AND EMPLOYMENT

NOTIFICATION

New Delhi, the 30th December, 2016

G.S.R. 1190(E). - In exercise of the powers conferred by section 5 read with sub-section (1) of section 7 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby, the makes the following Scheme further to amend the Employees' Provident Funds Scheme, 1952, namely:-

1. (1) This Scheme may be called the Employees' Provident Funds (Seventh Amendment) Scheme, 2016.

   (2) It shall come into force on 1st day of January, 2017 and shall cease to operate on the 31st day of March, 2017, except as respects things done or omitted to be done before such cessation.

2. In the Employees Provident Funds Scheme, 1952, after paragraph 82, the following paragraph shall be inserted namely,

"82A. Special provision in respect of Employees Enrolment Campaign, 2017-(1) The Employees Enrolment Campaign, 2017 shall come into force on the 1st day of January, 2017 and shall cease to operate on the 31st day of March,

(2) Every employer who has failed to comply with the provisions of this Scheme in relation to membership of employees and contribution thereto to the Fund, shall furnish a declaration in such Form as may be specified by the Central Provident Fund Commissioner, in respect of membership of the employees, who were required or entitled to become members of the Fund for the period beginning the 1st day of April, 2009 and ending the 31st day of December, 2016 but were not enrolled as members for any reason, to the Regional Provident Fund Commissioner.

(3) The employer shall, within fifteen days from the date of furnishing the declaration referred to in sub-paragraph (2), remit the employer's contribution payable in accordance with the provisions of this Scheme and the employee's contribution deducted from the employee's wages along with interest payable in accordance with section 7Q of the Act and damages:

Provided that employer shall not be required to pay the employee's contribution if the same has not been deducted from the wages of the employee.

(4) The employer shall, after complying with sub-paragraph (2) and sub-paragraph (3), file a return in such form as may be specified by the Central Provident Fund Commissioner to the Regional Provident Fund Commissioner.

(5) The employer shall specify the date of eligibility in respect of each employee for membership in the declaration referred to in sub-paragraph (2):

Provided that such declaration shall be valid only in respect of employees who are alive as on the 1st day of January, 2017 and no proceedings under section 7A of the Act or under paragraph 26B of this Scheme or under paragraph 8 of the Employees' Pension Scheme, 1995 have been initiated against their establishment or employer, as the case may be, to determine the eligibility for membership of such employees.

(6) **If the employer fails to remit the contribution, interest and damages payable by him as referred to in sub-paragraph (3), then, the declaration sent by the employer under sub-paragraph (2) shall be deemed to have not been made by such employer under this Scheme.**

(7) Where a declaration under sub-paragraph (2) has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed to have not been made under this Scheme and the person making such declaration shall be liable to penal action in accordance with the provisions of the Act and the Schemes made thereunder.

(8) The exceptions and modifications subject to which the provisions of this Scheme shall apply, in relation to the employees' whose membership have been declared under sub-paragraph (2) as per the Employees Enrolment Campaign, 2017, shall be as follows, namely:-

(a) in paragraph 30, after sub-paragraph (1), the following proviso shall be inserted, namely:-

"Provided that, for the purpose of increasing coverage and extension of benefits under the Act and Schemes made thereunder, the member's contribution is waived under Employees Enrolment Campaign, 2017 for the period beginning the 1st day of April, 2009 and ending the 31st day of December, 2016:

Provided further that such waiver shall be applicable only if the member's contribution has not been recovered from such member's wages.".

(b) in paragraph 32-A, in sub-paragraph (1), for the Table, the following Table shall be substituted, namely:-

TABLE

(Applicable for remittances in respect of valid declarations under Employees' Enrolment Campaign, 2017)

Period of default	Rate of damages
(1)	(2)
Between the 1 day of April, 2009 to the 31 day of December, 2016	One rupee per annum.".

(c) for paragraph 39, the following paragraph shall be substituted, namely:-

"39. Fixation of administrative charges.- The administrative charges payable under Employees Enrolment Campaign, 2017 for the period

1st April, 2009 to the 31st December, 2016 under sub-paragraph (1) of paragraph 38 shall be nil.".

[F. No. S-35012/13/2016-SS-II]

R. K. GUPTA, Jt. Secy.

Note: The principal scheme was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification number S.R.O. 1509, dated the 2nd September, 1952 and was lastly amended vide notification number G.S.R. 1065(E), dated the 11th November, 2016.

It is the case of the Appellant Establishments, in these appeals that they applied before the organization for benefit of the Scheme and they did deposit the PF dues of their employees but since, the portal was not working, the portal and challan with respect to damages was not being auto generated, they could not deposit the amount of damages u/s 14B of The ***Employees Provident Fund & Miscellaneous Provisions Act, 1952***, hereinafter referred to as the ***'Act'***, provided under the Scheme. Taking the benefit of this factual scenario, the Respondent Authority issue notice to initiate an enquiry against the Appellant Establishments with respect to recovery of penal damages and interest for delayed deposit and that since they could not deposit the damages under the Scheme within time prescribed under the Scheme, they have lost the cover of the Scheme and are liable to pay damages right from the date of first delay in deposit of PF dues without giving benefit to the Scheme to them.

The main ground of Appeal, taken by the Appellant Establishment in these appeals is mainly that, they were at fault in depositing the damages in time. They did not have any *mens rea* for delayed deposit of damages under the Scheme. In fact, the portal was not working and challans with respect to damages was not being auto generated, the damages under the Scheme could not be deposited. Hence, they could not be punished for fault of the portal of the organization. The Respondent Authority committed error in law, in ignoring the fact and recording the findings that the Appellant Establishment have defaulted deposit of damages within time limit under the Scheme. Hence, they are not entitled to cover of the Scheme and are liable to deposit penal damages in regular course u/s 14B of the Act.

The Respondent Authority has taken a case that the act is a beneficial legislation, hence any provision which is capable to two interpretations, the interpretation which furtherance the beneficiaries shall be taken, it is also the case of Respondent Authority that under the Act, Appellant Establishment is under obligation in law to deposit PF dues of its employees within time framed, failing which they make themselves liable for interest and damages. The defaults are for a long period and recurrent hence, the impugned order, finding and assessment have been recorded correctly in law and fact.

It is further the case of the Respondent Authority that since the Appellant Establishments did not deposit the damages under the Scheme within time prayed, they were not entitled to be protected under the Scheme, hence the impugned finding and assessment cannot be faulted in law and fact.

I have heard argument of Mr. Uttam Maheshwari, Learned counsel for the Appellant Establishment and Mr. Harshit Patel, Learned counsel in EPFA No. 04/2019, Mr. Jubin Prasad, Learned counsel in EPFA No. 53/2019 and 12/2019 and Mr. Bahulashwa Nandam in EPFA No. 15/2019 for the Respondent Authority. I have gone through the records as well.

On perusal of the record in light of rival arguments following point come up for determination.

> ***"Whether the finding of the Respondent Authority that, by not depositing the damages u/s 14B of the Act within time frame required under the Scheme, the Appellant Establishment are not entitled to the benefits of the Scheme and the assessment has been recorded correctly in law and fact or not?"***

It comes out from perusal of record that in **<u>Appeal No. 12/2019</u>** the show cause notice dated 06.07.2018 for the period 09/2007 to 03/2018 was issued to explain why damages u/s 14B and interest u/s 7Q of the Act not be recovered, no reply was furnished by the Appellant Establishment in response to the said notice. In **<u>Appeal No. 15/2019</u>**, show cause notice for damages for the period 04/2009 to 12/2016 was issued on 30.11.2017, the Appellant Establishment filed reply to the notice dated 06.09.2018 and put a case that they have deposited the contribution as per directions in the Scheme. As the impugned order speaks, the Appellant Establishment remitted some dues within 15 days and some after 15 days but did not deposit the interest and damages till date of the order. In **<u>Appeal 53/2019</u>**, show cause notice was issued by the Respondent Authority with respect to damages u/s 14B and interest u/s 7Q of the Act for the period 10/2012 to 01/2018 on 27.06.2018, the order under appeal was passed on 04.09.2019, the amount of penal damages was in part deposited on 29.08.2019. In **<u>Appeal No. 15/2019</u>**, the show cause notice for recovery of penal damages and interest was issued on 30.11.2017 for the period 04/2009 to 12/2016.

The Appellant Establishment submitted letter dated 06.09.2018 stating that they have deposited contribution within time as per the Scheme but the data remitted showed that some dues were deposited within 15 days and some after 15 days and interest as well damages were not deposited till date. The impugned order was passed on 08.02.2019 with respect to damages and interest.

Learned counsel for Appellant Establishment has submitted that atleast in Appeal No. 12/2019, Appeal No. 04/2019 and Appeal No. 53/2019, the Appellant Establishment stated specifically that the portal was not working and the amount with respect to challan regarding the damages and interest as well the challans were not generated in the system. The Learned counsel for Respondent Authority submits that after the declaration, submitted by the employer for availing the benefits of the Scheme, he was required to deposit interest payable u/s 7Q and damages within 15 days from the date of furnishing the declaration and in case of failure to do it, he will not be entitled to be protected under the Scheme. Learned counsel further submits that admittedly, in all the appeals, application for enrollment under the Scheme was submitted. The Appellant Establishments remitted only the amount towards employers' contribution but did not remit any amount against interest and damages under the Scheme within the time period.

Learned counsel for Appellant Establishment has taken a case that in fact the portal was not working within that time period and challans with respect to interest and damages could not be deposited due to this reason only. Learned counsel has referred to photocopies of declarations in Appeal No. 15/2019, 12/2019 and 04/2019 in which this fact was specifically mentioned. No action was taken from the side of Respondent Authority to rectify this problem and hence the challans with respect to interest and damages under the Scheme could not be deposited. Though, the learned counsel for Appellant Establishment has made same submission with respect to EPFA No. 53/2019 but his this argument could not be substantiated from record.

The Respondent Authority, though has stated in counter that this allegation is denied but there is nothing on record in support of this proposition from the side of Appellant Establishment. Till the portal started working properly and challans started generated automatically, naturally, the amount under interest and damages could not be deposited within time frame mentioned in the Scheme. Hence, from the above description, it is established that atleast in EPFA No. 12/2019, 15/2019 and 04/2019, the Respondent Authority also contributed by way of not maintaining properly and rectifying it to generate challans with respect to interest and damages when this fact was brought into their knowledge, resulting into non deposit of amounts of interest and damages within the time frame mentioned in the Scheme. With respect to EPFA No. 53/2019, this contributory negligence is held not established on the part of Respondent Authority.

As regards, the part of impugned order which relates to damages under section 14-B, this provision is being reproduced as under:-

"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 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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."***

The use of word ***'May'*** **indicates that damages are not mandatory, rather they are discretionary**. Following judgment require to referred to in this respect-

Hon'ble Calcutta High Court in ***Murarka Paint & Varnish Works Ltd. Vs. Union of India 1976 Lab IC 1453*** has held as under:

"Though the liability of the employer to the provident fund of employees is statutory, it does not follow that belated payment would always attract imposition of damages. The authority is obliged to find out how the beneficiaries have been affected by the non-payment of contribution to their fund."

Hon'ble Supreme Court in ***ESIC vs. HMT 2008 (1) SCALE 341*** has observed that:

"21. A penal provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations. Such an intention on the part of the legislature is not decipherable from Section 85-B of the Act. When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavor should be made to construe such penal provisions as discretionary, unless the statute is held to be mandatory in character.

25. The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.

26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damagers and/or the quantum thereof."

Hon'ble Apex Court in ***McLeod Russel India Ltd. Vs. Regional provident Fund Commissioner (2014) 15 SCC 263*** has held as under:

"11. ……………. the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100% of the arrears have been imposed in all the cases.

Alternatively stated, if damages have been imposed under Section 14-B it will be only logical that mens rea and/or actus reus was prevailing at the relevant time."

Further, the **Hon'ble Supreme Court in *Assistant Provident Fund Commissioner, EPFO & Anr vs. Management of RSL Textile India Private Limited (2017) 3 SCC 110*** has observed as under:

"following McLeod Russel India Ltd., (2015) 15 SCC 263, since presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under S. 14-B, High Court or appellate authority or original authority having found no mens rea and/or actus reus, respondent(s) could not be held liable under S. 14-B"

Hon'ble Punjab & Haryana High Court in ***Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal & Anr. (2016) 148 FLR 311,*** dismissing the appeal has held as under:

"5. The learned Single Judge upheld the said order passed by the Appellate Tribunal, while observing that under Section 14B of the Act, the competent authority has a discretion to impose damages which it may think fit keeping in view the facts and circumstances of a case. It has been observed that before imposing damages, the competent authority is required to see whether a default is justified or intentional in the given set of circumstance or not. The learned Single Judge has observed that in the present case, the Appellate Tribunal has rightly come to the conclusion that the competent authority without considering the facts and circumstances of the case wrongly exercised its discretion and imposed damages under Section 14B of the Act. The said order passed by the Appellate Authority has been found to be legal and the learned Single Judge has come to the conclusion that there is no ground to interfere in the discretion exercised by the Appellate Tribunal"

Hon'ble High Court of Chhattisgarh **in *M/s Mohanti English Medium School vs. Employee Provident Fund & anr. 2019 (161) FLR 289 (Chhti)*** has held as under:

"9. Very recently, the Supreme Court in the matter of Assistant Provident Fund Commissioner, EPFO and another vs. Management of RSL Textiles India Pvt. Ltd., Thr. Its Director,

*relying upon the earlier judgment rendered in the matter of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others** has held that imposition of damages without recording the finding of mens rea/actus reus on the part of the employer is unsustainable.*

10. Applying the principle of law laid down by the Supreme Court in the above stated judgements to the facts of the present case, it is quite vivid that there is no finding recorded either by the Regional Provident Fund Commissioner or by the Employees Provident Fund Appellate Tribunal with regard to mens rea/actus reus on the part of the employer and as such, in absence of finding with regard to mens rea/actus reus on the part of the employer/petitioner, action under Section 14-B of the Act of 1952 against the petitioner cannot be sustained."

*Hon'ble Calcutta High Court in W.P. No. 8527 (W) of 2015 **Tirrihannah Company Ltd. Vs Reginal Provident Fund Commissioner decided on 3107.2018** has held as under:*

"In HMT Ltd. (supra) Supreme Court declared, conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative. Existence of mens rea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and quantum thereof.

In view of law declared in HMT (supra), which come after Dalgaon (supra) this Court finds no application of the view that liability under section 14B accrues immediately on default for there to be subsequent or late quantification. Impugned order having omitted to provide illumination regarding why it was thought fit to exercise discretion to impose penal damages, corresponding to omission to record opportunity given regarding a defence against imposition of penal damages or mitigation, makes it an order which violates of principles of natural justice. As such impugned order is set aside. The Authority will give opportunity to the establishment, hear out its contention regarding imposition of penal damages or mitigation and make appropriate order."

Thus, ongoing through the principle laid down by the Hon'ble High Courts and Hon'ble Supreme Court in the case laws, cited hereinabove, it is very much clear that for conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative; moreover, existence of 'mens rea' to contravene a statutory provision has also been held to be a necessary ingredient for levy of damages and quantum thereof.

Learned Counsel for the Respondent Authority has relied on judgment of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, with connected appeals wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability.

The point still remains for that *mens rea* may not have any role in holding the defaulter liable for its civil liability when there is a discretion as mentioned under section 14-B of the Act, the Respondent Authority and this Tribunal in appellate jurisdiction are fully within its powers to consider the mitigating and aggravating the circumstances in computing the amount of damages. My this view is supported by judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., MANU/CG/0583/2022, para 19*** which is being reproduced as follows-

> ***19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."***

Another judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

“7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon’ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon’ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon’ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-

> *"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :*
>
> *(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?*
>
> *(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?*
>
> *(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"*

7.2. After considering all the relevant decisions in detail, the Hon’ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-”

> *"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has been authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived.*

Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of sizeable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court holds <u>that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-</u>

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be

levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a

rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum. It is stated that S.L.P.(Civil) No.25548 of 2024, is said to be pending before the Hon'ble Supreme Court of India.

Furthermore, Learned Counsel for the Appellant Establishment has referred to judgment of the judgment in the case of ***Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited bearing W.P. No. 14255/2020 decided by the Single Bench of Hon'ble High Court of Madrass***. Judgment of ***Hon'ble High Court of Calcutta in W.P.A. No.***

1945/2025, Regional Provident Fund Commissioner v/s Registrar, Central Government Industrial Tribunal, Kolkata & anr., and judgment of ***Hon'ble High Court of Chhattisgarh at Bilaspur in the case of Regional Provident Fund Commissioner v/s Bilaspur Spinning Mills & Industries Ltd. & anr., 2022 SCC Online Chh 635***. These judgments also support the same proposition of law as mentioned above.

Now, coming to the facts and circumstances of the Appeals in hand, in the light of the aforesaid proposition of law as laid down in the Judgments cited above, I am of the considered view that purpose of law will be served by reducing the amount of penal damages in EPFA No. 15/2019, 12/2019 and 04/2019 by 50% of the amount assessed in the impugned orders under Appeal. The EPFA No. 53/2019, deserves to be dismissed.

As regards, the order u/s 7Q of the Act, since there is no provision of Appeal against such an order, all the Appeals are held not maintainable upto that extent. The Appellants are at liberty to pursue remedy before proper forum.

Point for determination stands answered accordingly.

No other point was pressed.

In light of the aforesaid discussion and findings, the Appeal succeeds partly.

ORDER

Appeal No. 53/2019 is dismissed.

Appeal Nos. 15/2019, 12/2019 and 04/2019 are partly allowed. Confirming the finding of the Respondent Authority with respect to liability of Appellant Establishments in these Appeals, the assessed amounts u/s 14-B of the Act is reduced to 50% to which the Appellant Establishments in these three Appeals are held liable to deposit.

No order as to cost.

Date:- 24-07-2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 24-07-2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)