2026 INSC 990

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.7724 of 2023

M/s Kerala Industrial Infrastructure Development Corporation

...Appellant (s)

Versus

Central Board of Trustees and Anr.

...Respondent (s)

With

Civil Appeal Nos.1467-1496 of 2024
Civil Appeal No.2462 of 2024
Civil Appeal No.6677 of 2024
Civil Appeal Nos.14954-14955 of 2024
Civil Appeal Nos.634-636 of 2025

O R D E R

The appeals call in question the impugned orders, passed at the instance of the Central Board of Trustees (under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952[1]), which imported the finding of this Court that 'the share of workmen dues' shall be kept outside the liquidation as such and concerned workmen/employees shall have to be paid the Provident Fund (PF) or Gratuity

[1] Hereinafter referred to as 'EPF & MP Act'

Fund (GF) to the resolution plan implementation; mulcting the same liability on the Successful Resolution Applicant (SRA), the appellants in the respective appeals.

2. The respondente EPFO asserts the application of the dictum in ***Maharashtra State Cooperative Bank Limited v. Assistant Provident Fund Commissioner and Others***[2], to the Provident Fund (PF) dues, even when a Resolution Plan (RP) is in operation, as approved by the Tribunal in ***Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. and Others***[3]. The impugned order clearly found that the said decision was upheld by this Court and in that context, PF is to be paid in full as per the provisions of the EPF & MP Act.

3. We also notice the decision of a Co-ordinate Bench in ***Jalgaon District Central Coop. Bank Ltd. v. State of Maharashtra and Others***[4] (authored by one us, KVC, J.), wherein the statutory charge, as created under the EPF & MP Act, was found to prevail over a non-obstante clause; overriding the provisions of any law in force at the time of the

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[2] (2009) 10 SCC 123

[3] 2022 SCC OnLine NCLAT 418

[4] 2025 SCC OnLine SC 2513

enactment. The statutory first charge under EPF & MP Act was found to override the non-obstante clause in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and we extract Paragraph 27 of the said decision as under:

> '*27. Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers' or employees' contribution, which would include any interest or damages also as has been held in Maharashtra State Co-operative Bank Limited*(2009) 10 SCC 123*. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in Central Bank of India*(2009) 4 SCC 94*. There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.*'

4. ***Jet Aircraft Maintenance Engineers Welfare Association***[3] held that provident fund has to be paid to workmen and employees in full and that cannot be made subject of distribution under the waterfall mechanism of Section 53(1) of the IB Code. It was concluded that the

workmen and employees are entitled to payment of full amount of the provident fund and gratuity till the date of the commencement of insolvency, since they are not part of the liquidation estate under Section 36(4)(b)(iii). It was categorically indicated that the claim admitted by the Resolution Professional includes the payment of provident fund, gratuity and leave encashment also. The above view has been approved by this Court by rejection of Civil Appeal No.407 of 2023, ***Jalan Fritsch Consortium v. Regional Provident Fund Commissioner*** and Civil Appeal Nos.465-469 of 2023, ***Jalan Fritsch Consortium v. Jet Aircraft Maintenance Engineers Welfare Association*** by common order dated 30.01.2023.

5. This Court further in ***State Bank of India v. Murari Lal Jalan & Florian Fritsch (Consortium)***[5] held so in paragraph 148:

> ***'148.*** *According to the SRA, the dues relating to the provident fund would be paid upfront in compliance with Section 11 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. However, the gratuity dues could be paid in tranches since neither the order dated 21-10-2022 [Jet Aircraft Maintenance Engineers Welfare Assn. v. Jet Airways (India) Ltd. (Resolution Professional), 2022 SCC OnLine NCLAT 418] of NCLAT nor the order dated 30-1-2023 [Jalan Fritsch (Consortium) v. EPFO, (2023) 237 Comp Cas 204 : 2023*

[5] (2025) 4 SCC 354

SCC OnLine SC 106] of this Court had imposed any timelines for the payment of the gratuity dues. Furthermore, it was submitted that the provisions of the Payment of Gratuity Act, 1972 were not so stringent. However, such a proposal cannot be allowed especially in light of the fact that the order dated 21-10-2022 [Jet Aircraft Maintenance Engineers Welfare Assn. v. Jet Airways (India) Ltd. (Resolution Professional), 2022 SCC OnLine NCLAT 418] of ***<u>NCLAT is unambiguous in its declaration that both provident fund and gratuity dues have to be paid by the SRA in order to save the resolution plan from being hit by Section 30(2)(e) IBC.'</u>***

The liability of the SRA to satisfy the dues under the EPF & MP Act, including that levied under Section 7Q as interest and Section 14B as penalty for damages, is beyond cavil, as evident from the underlining above, supplied by us for emphasis.

6. We cannot but also notice the Second Proviso to Section 11B which clothes the Central Board with the power to reduce or waive the damages under Section 14B, 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 (BIFR) under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985[6](SICA). The SICA is no more in force having been repealed by Act of 2003,

[6] Hereinafter referred to as 'SICA'

made effective from 2016 and the Insolvency and Bankruptcy Code, 2016, took over the rebuilding of companies facing insolvency by an elaborate procedure delineated thereunder. Though, a statutory amendment has not been brought correspondingly in the EPF & MP Act, we are of the opinion that the Central Board could consider the application of waiver or reduction, which the SRA could make before it, considering the fact that the resolution plan sought to be implemented, is akin to a plan of rehabilitation as sanctioned by the BIFR under the SICA. One of the impugned orders specifically provides for that remedy before the Central Board.

7. Be that as it may, we cannot but notice that Section 14B was held to be mandatory in ***Horticulture Experiment Station Gonikoppal, Coorg v. Regional Provident Fund Organization***[7]. It was held that the imposition of damage for delayed payment is automatic since it is a breach of civil obligations/liabilities comitted by an employer and there is no further requirement to examine the existence of an element of *actus reus* or *mens rea*, or to examine the issue of justification for imposing damages. Though, we fully agree

[7] (2022) 4 SCC 516

with the Co-ordinate Bench that there is no reason to find *actus reus* or *mens rea*, we are of the opinion, with abiding respect to the Co-ordinate Bench, that Section 14B even after its amendment confers a discretion on the authority to decide on whether the circumstances justify a complete absolution from penalty.

8. In this context, we have to notice the provisons of Section 14B, before and after its amendment, which amendment was occasioned by Act 33 of 1988, brought into force w.e.f. 01.09.1991. Section 14B before amendment is as follows:

> *'S. 14-B. Power to recover damages- Where an employer makes default in payment of any contribution to the Fund the Family 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 provisions 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 such damages, not exceeding the amount of arrear, as it may think fit to impose:*
> *Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.'*

9. ***Organo Chemical Industries and Another v. Union of India and Others***[8], found that the words employed 'may recover' confers a discretion on the authority to either impose or not to impose any damages, and if imposed, then the authority had a further discretion to decide on the quantum, as is evident from the words employed 'may think fit to impose'. This Court in the cited case held that the Commissioner's power under Section 14B is a *quasi-judicial* function, subject to observance of principles of natural justice and that the order should be a speaking one. The penalty for default in payment of the dues under the Act by Section 14B, takes within its ambit the compensation of the loss sustained by the employee. It was categorically held that after setting off the interest granted to the employee from the quantum levied under Section 14B, the balance is to be deposited in the Fund and not to the coffers of the Government, considering the spirit of the socio-economic context and the policy under which the welfare legislation was enacted. This Court further clarified that the damages imposed under Section 14B, takes it both the interest component accrued in

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[8] (1979) 4 SCC 573

favour of the employee by reason of default, as also the aspect of deterrent penalty. However, it was held that disputes between partner's, powercut and other financial problems would not enable a discretion to be exercised in favour of the employer.

10. After amendment, by Act 33 of 1988, the provision reads 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.'

11. Together with the amendment of Section 14B, Section 7Q was also incorporated by the Amendment Act, which is extracted hereunder:

> *'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.'*

12. The interest under Section 7Q, thus, became statutory and was carved out of the discretion conferred on the Commissioner or the Authorized Officer. The compensatory aspect of interest on delay, thus, was taken out of Section 14B, as is also evident from the words *'recover from the employer such damages'*, as available in the pre-amended Section 14B and the change brought in as *'recover from the employer by way of penalty such damages'*, after amendment. Section 14B, after amendment, was only concerned with penalty and the

compensatory aspect of interest was made statutorily leviable under Section 7Q.

13. Further change brought in by the amendment was that pre-amendment, penalty was not to exceed the amount of arrears, but after amendment, though, the rigour of not exceeding the amount of arrears was retained, the quantum leviable was as specified in the Scheme, which was prescribed under the scheme by Paragraph 32A, which is also extracted hereunder:

> *'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 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:*

Period of Default	*Rates of damages (0% of arrears per annum)*
(a) Less than two months	*17*
(b) Two months and above but less than four months	*22*
(c) Four months and above but less than six months	*27*
(d) Six months and above	*37'*

14. Here, we have to pertinently observe that the words employed under the amended Section 14B, is to the effect that the Commissioner or the Authorized Officer, '*may recover*' by way of penalty such damages. Hence, the discretion is still left with the authority to decide as to whether there should be an imposition of penatly at all. If the Authorized Officer is satisfied that the imposition of penalty has to be made in the facts and circumstances, then the levy shall be under the scheme; which alone is outside the discretion of the authority.

15. In other words, the Authorized Officer could waive the penalty as such in extenuating circumstances, necessarily not solely of financial difficulties and in the event of finding justification in imposing the penalty, the quantum would be regulated by the Scheme, as coming out from the Paragraph 32A.

16. We are, hence, in doubt of the proposition laid down in ***Horticulture Experiment Station Gonikoppal***[7] by a Co-ordinate Bench; with due respect to the learned Judges. While directing the deposit of the dues as computed under the EPF & MP Act including that levied under Section 7Q of

that Act, we refer the question as to whether there is a discretion under Section 14B on the Authorized Officer to levy or not to levy the penalty.

17. We, therefore, direct the Registry of this Court to place the matter before the Hon'ble the Chief Justice of India for consideration by a larger Bench.

18. We make it clear that the reference would not impair the right of the appellants herein, SRAs, to approach the Central Board under the Second Proviso of Section 14B.

19. On the request made by the learned Counsel appearing for the respective appellants, we also deem it fit to direct the appellants to pay the due amounts under the EPF & MP Act, along with Section 7Q interest, in four quarterly instalments, the first instalment starting on 15th December, 2026 and then falling on 15th March, 2027, 15th June, 2027 and 15th September, 2027. The interest accrued under Section 7Q due to the deferred instalments, would also be levied and communicated by the Authorized Officer to the SRA after the last instalment is paid, which would be satisfied before 15th October, 2027. If any single default is committed, the EPFO can proceed for recovery.

20. With the above directions, the matter is referred to a larger Bench.

.......................................J.
(J. B. PARDIWALA)

.......................................J.
(K. VINOD CHANDRAN)

NEW DELHI;
SEPTEMBER 09, 2026.