**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Date of Decision: 21.10.2024**

**(1)CWP No. 2375 of 2015 (O&M)**

**Central Board of Trustees, Employees Provident Fund Organisation, Faridabad**

**….Petitioner**

vs.

**M/s Lakhani Footwear Private Limited and another**

**….Respondents**

| Sr.No. | Case No. | Parties name |
|---|---|---|
| 2. | CWP-2456 of 2015(O&M) | Central Board of Trustees Employees Provident Fund Organisation, Faridabad<br>vs.<br>M/s Lakhani Footwear Private Limited and another |
| 3. | CWP-2376 of 2015(O&M) | Central Board of Trustees, Employees Provident Fund Organisation, Faridabad<br>vs.<br>M/s Lakhani Shoes and Apparels Private Limited and another |
| 4. | CWP- 7104 of 2015 (O&M) | Central Board of Trustees Employees Provident Fund Organisation, Faridabad<br>vs.<br>M/s Lakhani India Limited and another |
| 5. | CWP- 7142 of 2015(O&M) | Central Board of Trustees, Employees Provident Fund Organisation, Faridabad<br>vs.<br>M/s Lakhani Footwear Private Limited and another |
| 6. | CWP-7151 of 2015(O&M) | Central Board of Trustees, Employees Provident Fund Organisation, Faridabad<br>vs. |

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| | | M/s Lakhani Footwear Private Limited and another |
| 7. | CWP-7606 of 2015(O&M) | Central Board of Trustees, Employees Provident Fund Organisation, Faridabad<br>vs.<br>M/s Lakhani International and another |
| 8. | CWP- 7916 of 2015(O&M) | Central Board of Trustees, Employees Provident Fund Organisation, Faridabad<br>vs.<br>M/s Lakhani Sales Corporation and another |

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Sandeep Goyal, Advocate
for the petitioner(s) in all the cases

Mr. Ashish Chaudhary, Advocate and
Mr. Rajeev Shukla, Advocate (through VC)
for respondent No. 1 in all the petitions

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**JAGMOHAN BANSAL, J. (ORAL)**

1. By this common order, CWP Nos. 2375, 2456, 2376, 7142, 7104, 7151, 7606 and 7916 of 2015 are hereby adjudicated as common questions of law and facts are involved. With the consent of both sides, facts are borrowed from CWP No. 2375 of 2015.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 25.08.2014 (Annexure P-4) whereby Employees Provident Fund Appellate Tribunal, New Delhi (in short "Tribunal") has set aside damages imposed under Section 14B of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short "1952 Act").

3. Respondent No. 1-M/s Lakhani Footwear Private Limited (in short “respondent’) is a private limited company and engaged in the business of manufacturing and supply of footwear. The said company during June’2006 to March’2012 delayed remittance of provident fund dues. The jurisdictional Assessing Authority initiated proceedings by way of notice dated 03.10.2012 demanding interest under Section 7Q of 1952 Act and proposing to impose damages under Section 14B of 1952 Act for delayed payment of provident fund. The respondent filed its reply pleading that a dispute erupted between family members who are managing affairs of the company, thus, provident fund could not be paid within time. The dispute reached to the extent that bank accounts were frozen. The Assessing Authority did not agree with the submissions of respondent and imposed damages to the tune of Rs. 30,67,270/- under Section 14B of 1952 Act besides interest amounting to Rs. 16,51,585/- under Section 7Q of 1952 Act.

4. The respondent preferred appeal before Employees Provident Fund Appellate Tribunal, New Delhi. The appeal came up for consideration before Tribunal on 25.08.2014 which found substance in the reasons advanced by respondent for delayed payment of provident fund dues. The Tribunal held that there is no enquiry or findings of fact that respondent has wilfully and deliberately withheld the provident fund dues. It further held that the Enquiry Officer had not disclosed that at what rate damages have been levied and whether levy of damages was necessary.

5. Mr. Sandeep Goyal, Advocate submits that damages leviable under Section 14B of 1952 Act are mandatory in nature. The Appellate

Authority has wrongly waived off damages. The reasons advanced by respondent are not convincing.

6. Per contra, Mr. Ashish Chaudhary, Advocate submits that Tribunal has recorded a categoric finding to the effect that default was not wilful and deliberate, thus, damages could not be imposed.

7. I have heard counsel for the parties and perused the record with their able assistance.

8. On being asked, Mr. Ashish Chaudhary, Advocate confirmed that during the period in question, the respondent was manufacturing footwear and unit was not lying closed. The delay in payment took place on account of litigation pending between Directors before different Courts which even led to freezing of bank accounts.

On being confronted with the factual position viz-a-viz mandate of Section 14B of 1952 Act, Mr. Chaudhary submits that he leaves it to Court to determine damages in the peculiar facts and circumstances.

9. Mr. Sandeep Goyal, Advocate has vehemently contended that provisions of Section 14B of 1952 Act are mandatory in nature and no authority has power to reduce amount of damages. The question of *mens rea* is irrelevant. Section 14B of 1952 Act reads as:-

> "**14-B. 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."*

10. This Court does not find substance in the submissions of Mr. Sandeep Goyal, Advocate.

11. From the perusal of record, it is evident that there is no finding on the part of Assessing Authority that there was intentional delay or there was *mens rea* on the part of respondent The Appellate Authority has not reduced amount of interest whereas assessed damages have been waived off.

The provisions of damages are not mandatory, thus, it was within jurisdiction of Tribunal to reduce the quantum of damages. The respondent though delayed but without being pointed out by petitioner had deposited provident fund dues. It is liable to pay interest on account of delay. Thus, quantum of damages needs to be determined judiciously. The respondent during the period in question was operating and its manufacturing unit was not closed. At the same time, it needs to be considered that it was having 8000 workers and no worker was retrenched. There was delay in payment, however, payment was made without being asked by the authorities. The respondent is liable to pay interest @ 12% per annum on the delayed payment. The Tribunal has not disturbed question of levy of interest. Thus, respondent is liable to pay interest @ 12% per annum. If it has not paid, the petitioner may recover at any point of time in the prescribed manner. Multiple cases between stake holders were pending before different Courts. The petitioner is unable to refute submissions of respondent that even bank accounts were frozen.

12. Considering totality of facts and circumstances, this Court finds it appropriate to modify the impugned order. It is not a case of complete waiver. Accordingly, it is hereby ordered to reduce the damages imposed by Assessing Authority to 20% (20% of Rs.30,67,270/-). The damages shall be paid within two months from today.

13. In view of the above facts and findings, the petitions stand disposed of.

14. Pending Misc. application(s), if any, shall stand disposed of.

**(JAGMOHAN BANSAL)**
**JUDGE**

**21.10.2024**
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| Whether speaking/reasoned: | Yes | |
| Whether reportable: | Yes | |