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WP No. 34200 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-12-2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No. 34200 of 2025

Radhakrishnan Dharmarajan,
Liquidator,
Flora Footwear Pvt Limited,
No. 131, Third Floor, Krishna,
1st Avenue, 100 feet Road,
Ashok Nagar,
Chennai – 600 083.

Petitioner(s)

Vs

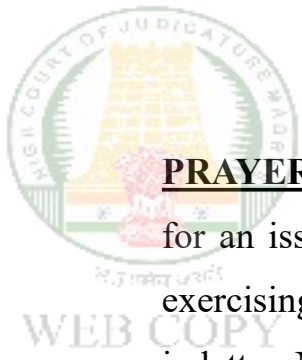
1. The Central Provident Fund Commissioner,
Employees Provident Fund Organisation ,
NBCC Centre Block 2, Ground Floor - 4th Floor,
East Kidwai Naar,
New Delhi 110 023.

2. Employees Provident Fund Organisation,
Zonal Office, No. 37, Royapettah High Road,
Chennai 600 014.

3. Employees Provident Fund Organisation,
Regional Office, S-1, TNHB, Phase III,
Vallar Sathuvachari Vellore 632 009.

4. Central Board Of Trustees,
EPF,
Bhavishya Nidhi Bhawan,
14, Bhikaiji Cama Place,
New Delhi 1110 066.

Respondent(s)



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for an issuance of writ of certiorari, to call for records of the 1st respondent exercising powers conferred on him by the 4th respondent in its 176th meeting in letter No. RRC/18 (07)/2023/TN/E379511 dated 30.05.2025 and quash the same.

For Petitioner(s): Mr.T.Ravichandran

For Respondent(s): Mr.P.K.Panneerselvan
Standing Counsel for R1 to R5

ORDER

A. The Prayer:

The writ petition is filed by the liquidator of a company under liquidation, namely Flora Footwear Pvt. Limited. The writ petition contests the order of the Central Provident Fund Commissioner, Employees Provident Fund Organisation, New Delhi, dated 30.05.2025.

B. The Brief Facts:

2. The brief facts leading to the filing of the writ petition are that the company mentioned above, namely Flora Footwear Pvt. Limited was found liable for the contribution payable under the Act, and an order was passed under Section 14(A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act, 1952'). Additionally, damages amounting to Rs.88,87,860/- had already been levied against the said company under Section 14(B) of the EPF & MP Act, 1952. While so, at the request of the



company's operational creditors, insolvency proceedings were initiated under the Insolvency and Bankruptcy Code, 2016 (for brevity, 'IBC, 2016'), and no revival or resolution plan was worked out. By an order dated 03.09.2019, the petitioner was appointed as a liquidator, replacing the interim resolution professional, and orders were passed under Section 33(1) of IBC, 2016, directing the liquidation of the company in accordance with Chapter III, Part 2 of the IBC, 2016. Under these circumstances, the official liquidator initially submitted a representation on 20.04.2021 seeking a waiver of the damages. It is also stated that the original amount due, including interest, has already been paid to the Provident Fund Organisation. The request was rejected by the Provident Fund Organisation, leading to the filing of W.P. No.18328 of 2022 by the petitioner.

2.1 After examining the issue and the proviso to Section 14(B) of the EPF & MP Act, 1952, the writ petition was allowed with a direction to reconsider the waiver proposal afresh. The Court's findings are contained in paragraphs Nos. 5 and 5.1, with the operative portion in paragraph No. 6, which is extracted hereunder for ready reference.

“5. Section 14(B) of the Employees' Provident Fund and Miscellaneous Provisions Act reads as below:

14B. Power to recover damages - Where an employer makes



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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 4[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, 6[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:] 8[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:] 9[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.] This clearly shows that the portion of this Section of the EPF & MP Act has not been updated yet. The Preamble of the I&B Code, 2016 reads as follows:

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India." Pursuant to this, BIFR was dissolved on 01.12.2016 and all proceedings were referred to National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) as per provisions of I&B Code, 2016.



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5.1 In the opinion of this Court, the relevant portion of Section 14B of the EPF & MP Act needs to be updated/amended. However, this Court cannot step into the shoes of the 1st respondent to decide on the waiver and it is the prerogative of the 1st respondent. Nevertheless, citing an invalid reason exposes the ignorance of the 1st respondent and non application of mind also. Therefore, I opine that the decision of the 1st respondent which was intimated vide the impugned order issued by the 2nd respondent is liable to be set aside. Consequently, the matter shall be referred back to the 1st respondent for a fresh assessment in the light of the provision of I&B Code and also exercising the power for waiver of damages as envisaged in Section 14B of the EPF & MP Act.

6. In the result, the Writ Petition is allowed. No costs. The 1st respondent is directed to consider the waiver proposal afresh. The impugned order dated 23.03.2022 in File No.ZACC/7/C-43(5)/2020 PART(1) of the Employees' Provident Fund Organisation, Zonal Office, Chennai, is quashed."

2.2 Pursuant thereto, the impugned order dated 30.05.2025 was passed by the first respondent. The first respondent again rejected the request for waiver. The first respondent reasoned that the waiver can be granted only in accordance with the proviso to Section 14(B) of the EPF & MP Act, 1952. The proviso states that such a power can only be exercised in relation to proceedings pending before the Board for Industrial and Financial Reconstruction (for brevity, 'BIFR') under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity, 'SICA Act'). The authority considered that, although the High Court directed the exercise of power in light of the provisions of the IBC, as noted by the High Court, no amendment has been made to



replace the corresponding provisions under the Insolvency and Bankruptcy Code, 2016. The first respondent further reasoned that, as the executive authority, he is not authorised to override statutory provisions or to amend them. Because an amendment is required and has not been made, the first respondent is unable to grant the waiver; therefore, the prayer for waiver was denied.

C. The Arguments:

3. The learned liquidator, by taking this Court through the impugned order and referencing the relevant provisions of the EPF & MP Act, 1952, and the IBC, 2016, submits that the purpose of the proviso is solely related to the waiver of damages and benefits granted to Sick Companies that are unable to repay the full damages amount. The authority should have considered the proviso with a purposive approach. When the SICA Act was initially in force, the proviso to Section 14(B) of the EPF & MP Act referred to the name of the said Act. While it is true that this proviso could be explicitly amended, it can also be observed that, under the provisions of the IBC, specifically Section 252, the provisions of the SICA Act, 1985, are deemed to be amended according to the contents of the Eighth Schedule to the IBC. A careful reading of the Repeal Act in the Eighth Schedule shows that references to proceedings under the SICA Act, 1985, are to be deemed abated and instead refer to the IBC, 2016. Therefore, the term "Board For Industrial and Financial Reconstruction (BIFR)"



should be read as the "National Company Law Tribunal (NCLT)," and the phrase "Sick Industrial Companies Act (Special Provisions) Act (SICA)" should be read as the "Insolvency Bankruptcy Code, 2016 (IBC)." Consequently, the entire reasoning of the first respondent is legally incorrect, and this Court must interfere with the impugned order.

3.1 Per contra, Mr. *P.K. Pannierselvan*, the learned Standing Counsel for the respondents, submits that even if the reasoning of the first respondent, as if the reference to BIFR and the SICA Act should be taken literally, is held incorrect, still it is evident that the proviso to Section 14(B) of the EPF & MP Act explicitly allows authorities to consider a waiver only if a rehabilitation plan is approved by the BIFR. The equivalent would be the resolution plan or the repayment plan under the IBC. In this case, there is no resolution plan sanctioned, nor is there any repayment plan. The company could not be revived, and liquidation was ordered. Once liquidation is ordered, no waiver can be claimed as per the proviso. The Provident Fund authority will also claim the damages amount due in accordance with the order of priority set out in the IBC. The learned counsel further submits that, under Section 36(4) of IBC, during liquidation, sums due to the Provident Fund cannot be used for recovery and must be paid out first. Therefore, the authorities will appropriately file claim and ensure that the amount is paid.

**D. The Questions:**

4. I have considered the rival submissions made on either side and perused the material records of the case.

- (i) Whether the interpretation of the provisions of EPF & MP Act by the first respondent is sustainable ?
- (ii) What relief can be granted to the petitioner ?

E. Question (i):

5. It is necessary to examine the enabling provision under which the representation was made. Accordingly, the proviso to Section 14(B) of the EPF and MP Act is provided below for easy reference.

“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 authorized 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 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.]”

(Emphasis Supplied)

5.1 In this context, it is important to refer to Section 252 and the Eighth Schedule of the IBC, which read as follows:

“252. Amendments of Act 1 of 2004.

The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, shall be amended in the manner specified in the Eighth Schedule.

“THE EIGHTH SCHEDULE

(See section 252)

AMENDMENT TO THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003 (1 OF 2004)

In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely—

“(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016, within one hundred and eighty days from the commencement of



the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.

1[Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.]”

5.2 Thus, it can be seen that even under the EPF & MP Act, when considered purposively, the benefit conferred by the statute was in respect of a company that is under financial constraint and trying to be rehabilitated, revived, or repaying the said sum. Since SICA has been repealed, the reference to the BIFR is to be equated with and read as a reference to the NCLT, and the reference to the provisions of the SICA Act, 1985, is to be equated with and read as a reference to the IBC, 2016. I am of the view that the finding of the first respondent that an amendment to the EPF & MP Act is needed to replace the said names expressly is unsustainable. The provisions of the statute cannot be



interpreted in a way that renders them inoperative or a dead letter. Wherever possible, the interpretation should enable the meaningful functioning of the provision. The proviso is intended to assist companies that are trying to rehabilitate themselves; therefore, the reasoning adopted by the first respondent, as if an amendment is necessary, cannot stand, although by an amendment it would be clear. Authorities implementing the statute must interpret it in a meaningful manner consistent with the purpose of the statute. In this regard, this Court, in the earlier writ petition, held that the provision requires amendment; however, it directed the respondent to consider the petitioner's case in light of the provisions of the IBC. In view of this direction and for the above reasons the reasoning contained in paragraphs 2,3,4, and 5 of the impugned order cannot be sustained. Accordingly, Question No. (1) is answered.

F . Question (ii) :

6. However, in this particular case, no further relief can be granted because even after considering the BIFR as NCLT, and SICA as IBC, it is evident that the proviso allows authorities to waive damages only if a rehabilitation plan is sanctioned. The equivalent of a rehabilitation plan would be a resolution plan. Nor any repayment is made. No repayment plan is approved. Therefore, even under a purposive interpretation of the provision, no relief can be granted to the petitioner.



6.1 In this regard, there is no longer any doubt, as the provisions of the Code on Social Security, 2020, have also come into effect from 20.11.2025.

Although the provisions of the EPF & MP Act have not been entirely repealed—since the scheme remains governed by the previous Act and no new scheme has been enacted—the same remains exempted; Section 128 of the Code on Social Security has now come into force. The section reads as follows:

*“128. **Power to recover damages:** Where an employer makes default in the payment of any contribution which he is liable to pay in accordance with the provisions of Chapter III or Chapter IV, as the case may be, or any scheme framed thereunder or in the transfer of accumulations under Chapter III, or in the payment of any charges payable under any other provision of this Code, the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or such other officer as may be authorised, by notification, by the appropriate Government, may levy on, and recover from, the employer by way of damages, an amount not exceeding the amount of arrears, in such manner as may be specified in the regulations for the purposes of Chapter IV and in respect of Provident Fund Scheme, Pension Scheme and Insurance Scheme, such levy and recovery shall be in the manner as may be specified in the respective schemes framed by the Central Government:*

Provided that before levying and recovering such damages, the employer shall be given an opportunity of being heard:

Provided further that the Central Board or the Corporation as the case may be, may reduce or waive the damages levied under this section in relation to an establishment for which a resolution plan or repayment plan recommending such waiver has been approved by the adjudicating



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authority established under the Insolvency and Bankruptcy Code, 2016 subject to the terms and conditions as may be specified by notification, by the Central Government.”

(Emphasis Supplied)

6.2 Under the new proviso, which is equivalent to the original proviso under Section 14(B), it is clearly stated that the authorities may reduce or waive damages levied against an establishment for which a resolution plan or a repayment plan recommending a waiver has been approved by the adjudicating authority and established under IBC. In this case, there is no resolution plan, nor is there any order of the NCLT recommending the waiver of damages. In such circumstances, even though the reasoning in the impugned order is unsustainable, the matter cannot be remanded further since no relief could be granted based on the previous provision under Section 14(B) of the EPF & MP Act or the current Section 128 of the Code on Social Security, 2020. Accordingly, the Question No. (ii) is answered.

G. The Result:

12. The Writ Petition stands disposed of with the observations as above. No costs.

04-12-2025

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Neutral Citation: Yes



To

1. The Central Provident Fund Commissioner,
Employees Provident Fund Organisation ,
NBCC Centre Block 2, Ground Floor - 4th Floor,
East Kidwai Naar,
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