



WP(MD)Nos.10006 of 2015 and 27781 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 03.11.2025

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)Nos.10006 of 2015 and 27781 of 2023

and

M.P.(MD)No.1 of 2015 and WMP(MD)No.23885 of 2023

W.P.(MD)No.10006 of 2015

The Regional Provident Fund Commissioner,
Office of the Regional Provident
Fund Commissioner,
Lady Doak College Road,
Chokkikulam,
Madurai District.

... Petitioner

versus

1. The Presiding Officer,
Employee's Provident Fund Appellate
Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.
2. M/s.Sri Venkatesa Paper & Board,
Swaminathapuram,
Madathukulam,
Udumalpet – 642 113.



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3. M/s.Asset Care and Reconstruction
Enterprise Ltd. (ACRE)

having its registered and corporate office
in 2nd Floor, Mohan Dev Building,
Tolstoy Marg,
New Delhi – 110 001,
Rep. by its Constituted Attorney
Parijatha Business Solution Pvt. Ltd.,
having its registered office at
No.430, 3rd Cross, 5th Block, HBR Layout
Bangalore – 560 043
through its Managing Director and CEO
Mr.P.Krishnan

(R3 is suo motu impleaded vide order
dated 19.03.2025)

4. Vasudevan Gopu,
having office at New No.18/30,
Old No.30, Ramani Street,
K.K.Pudur, Saibaba Colony,
Coimbatore,
Tamil Nadu – 641 038.

(R4 is suo motu impleaded vide order
dated 27.10.2025)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Certiorarified Mandamus, to call for
the records relating to the order passed by the 1st respondent in A.T.A.No.
746(13)2013 dated 29.11.2013 and quash the same as unconstitutional
and consequently, direct the 2nd respondent to pay 14B damages as
calculated by the order in TN/MA/11266/RO/Circle/13/PDC/LD/2013
dated 22.10.2013 within a time frame as fixed by this Court.



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For Petitioner : Mr.A.John Xavier
For R1 : No appearance
For R2 : Mr.V.O.S.Kalaiselvam
For R3 : Mr.V.Karthikeyan,
for M/s.Seth and Rathn Law
Associates

W.P.(MD)No.27781 of 2023

M/s.Sri Venkatesa Paper and Board
Swaminathapuram,
Madathukulam,
Udumalpet – 642 113.

... Petitioner

versus

The Assistant Provident Fund Commissioner,
Employee's Provident Fund Organization
District Office,
No.16, ARS Road, Bava Lodge Building,
Nagal Nagar,
Dindigul – 624 003.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondent relating to the order passed by the respondent under Section 14B of the EPF Act in MD/MDU/DO/DGL/11266/DNo. 129/2023/M13/PDC/2023 dated 12.10.2023 and demand letter under Section 7Q of the EPF Act in MD/MDU/DO/DO/11266/M13/PDC/7Q/2023 dated 12.10.2023 and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam



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For Respondent : Mr.A.John Xavier

COMMON ORDER

M/s.Sri Venkatesa Paper and Board, a Company, incorporated under the Companies Act, failed to remit the EPF contribution for the period from September 2002 to May 2005 in time and it was paid belatedly. Therefore, a proceeding was initiated by the EPF Authority as against the Management. The EPF Authority, vide order dated 22.10.2013, has levied damages to the tune of Rs.51,35,380/-, for the belated payment of EPF contribution for the period from September 2002 to May 2005, under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to the 'Act'). Challenging the same, the Management has preferred an appeal under Section 7-I of the Act before the Appellate Tribunal in ATA No. 746(13)2013. The Tribunal, by order dated 29.11.2013, allowed the appeal, holding that since the Company was under financial crisis, it was referred to BIFR and therefore, there is no *mens rea* and *actus rea* on the part of the Company for the delayed payment of EPF contribution;



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further, the levy of damages for the belated payment is not a mandatory one, however, the Authority has levied damages under Section 14-B of the Act. The Tribunal has also found that EPF contribution recovered by the Authority has not been credited to the workers. Challenging the order of the Appellate Tribunal passed in ATA No.746(13)2013, dated 29.11.2013, the EPF Authority has preferred W.P.(MD)No.10006 of 2015.

2. While so, the EPF Authority has also initiated a similar proceedings for the belated payment of EPF contribution for the period from 10/1999 to 11/2005, 06/2005 to 03/2009, 04/2009 to 03/2015 as against the very same Management and passed another order dated 12.10.2023, levying damages of Rs.1,28,15,688/- under Section 14B of the Act and also issued a demand letter dated 12.10.2023, claiming interest of Rs.52,40,796/- for the belated payment of EPF contribution, under Section 7Q of the Act. Challenging the same, the Management has filed the writ petition in W.P.(MD)No.27781 of 2023.



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3. Since both the writ petitions are arising out of the damages levied under Section 14B of the Act, as against the Management/M/s.Sri Venkatesa Paper & Board, both the writ petitions are taken up together and being disposed of by way of this common order.

4. The learned counsel appearing for EPF Authority challenged the order of the Appellate Tribunal on its observations that the Appellate Tribunal has set aside the order dated 22.10.2013 passed under Section 14-B of the Act that there is no *mens rea* and *actus rea*. The learned counsel, by relying on a Judgment of the Hon'ble Supreme Court in ***Horticulture Experiment Station, Coorge vs. Regional Provident Fund Organisation*** reported in (2022) 4 SCC 516, submitted that the requirement of *mens rea* and *actus rea* has already been settled by the Hon'ble Supreme Court that it is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities. Therefore, the findings of the Tribunal for setting aside the order passed under Section 14-B of the Act, are not correct. The learned counsel, by relying on various orders of this Court, submitted that in various cases, this Court, by applying the principles laid down by the Hon'ble Supreme



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Court in *Horticulture's case*, set aside the order passed by the Tribunal and directed the Management to pay the EPF contribution. Therefore, according to the learned counsel, the order passed by the Appellate Tribunal mainly based on *mens rea* needs to be interfered with.

5. With regard to the other writ petition filed by the Management in W.P.(MD)No.27781 of 2023, the learned counsel for the EPF Authority claimed that as against the order passed under Section 14-B of the Act, a statutory appeal is available under Section 7-I of the EPF Act before the EPF Appellate Tribunal. However, without invoking the statutory remedy available under the Act, the Establishment has preferred the writ petition. Therefore, the writ petition is liable to be dismissed.

6. The learned counsel appearing for the EPF Authority has also relied on a Judgment of the Full Bench of this Court in *Gowri Spinning Mills (P) Ltd. Vs. Assistant Provident Fund Commissioner and another*, reported in (2006) 5 CTC 1 and submitted that even if the Company is under liquidation, the company is liable to pay contribution as well as damages and the Sick Industrial Companies (Special



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Provisions) Act will not be applicable for EPF recovery proceedings.

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7. The learned counsel for the Management/M/s.Sri Venkatesa Paper and Board, submitted that the Paper Mill went on loss in the year 2002 due to globalization and import of papers from China to Russia. Therefore, the Mill was referred to the Bench of BIFR (Board for Industrial and Financial Reconstruction) in the year 2002 by the Bankers of the Mill. The BIFR has also declared M/s.Sri Venkatesa Paper and Board as a sick industry in terms of Section 3(1)(o) of the Sick Industrial Companies Act 1985 and appointed IDBI Bank as “operating agency” to workout the possibility of revival of the company for its rehabilitation. Yet another Banker, namely, the Bank of Baroda has filed an application before the National Company Law Tribunal at Chennai, under Section 7 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 to declare M/s. Sri Venkatesa Paper & Board as insolvent and the same is still pending with NCLT. The NCLT has also made interim arrangement appointing a Liquidator to sell the properties of the Company and to settle the dues of the Company. In the meantime,

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SARFAESI proceeding was initiated by the bankers and they have also handed over the properties to the 3rd respondent, namely, M/s.Asset Care and Reconstruction Enterprise Ltd. (ACRE).

8. The learned counsel for the 3rd respondent/ACRE has also filed a memo before this Court that pursuant to the order of NCLT, one Mr.Vasudevan Gopu was appointed as a Liquidator and the Liquidator has now taken over the properties of the company. Therefore, the Liquidator must be added as a party to this proceedings.

9. Considering the same, this Court, by order dated 27.10.2025, directed the Liquidator to be added as a party in W.P.(MD)No.10006 of 2015 and directed the EPF Authority to take private notice to the Liquidator. Though notice has been served on the Liquidator, there is no representation for the Liquidator.

10. This Court considered the rival submissions made and also perused the materials placed on record.



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11. Both the writ petitions are arising out of the proceedings initiated under Section 14-B of the Act. The provision of Section 14-B of the Act enables the EPF Authority to levy damages for the belated payment of EPF contribution.

12. In order to understand the provisions of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, it is extracted 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



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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, subject to such terms and conditions as may be specified in the Scheme.]

13. From the above, it appears that the recovery of damages is an optional one. The first proviso provides that such damages cannot be levied without providing an opportunity of hearing to the employer. The second proviso provides for reduction or waiver of 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.

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14. Admittedly, in this case, the Company, namely, M/s.Sri Venkatesa Paper and Board, went on loss in the year 2002 and it has been referred to the Board for Industrial and Financial Reconstruction, in the year 2002, by its bankers in Case No.236/2002. The Board, in its proceedings dated 03.09.2002, has declared the Company as sick industry in terms of Section 3(1)(o) of the Act. The relevant portion of the proceedings of the BIFR dated 03.09.2002 is extracted as under:

“The Bench was satisfied that the company had become a sick industrial company in terms of Section 3(1) (o) of the Act and accordingly declared it to be a sick company in terms of the aforesaid provisions of the Act. Based on the submissions of the company, the Bench also formed the opinion that the company would not be able to revive on its own, the company has huge debt, the company has also submitted that it would be needing reliefs and concessions beyond RBI guidelines and an opportunity should be given to the company to submit a fully tied up rehabilitation proposal and that it was necessary in public interest to take measures specified under section 18 of the Act. Accordingly, it appointed



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IDBI as the Operating Agency (OA) under Section 17(3) of the Act to examine the viability of the company and formulate a rehabilitation scheme base.”

By this proceedings, the BIFR has appointed IDBI Bank as the Operating Agency to workout the possibility of reviving the second respondent Company.

15. The Management/Company was running four (4) Paper Mills in the same premises, having more than 200 employees. It was in existence from the year 1980. The liability has also been derived long back. However, the EPF Authority has not verified the payment of contribution and for the alleged belated payment of EPF contribution for the period from September 2002 to May 2005, has levied damages only in the year 2013, when the Company was referred to BIFR and it was declared as sick industry in the year 2002.

16. Similarly, for the belated payment of EPF contribution for the period from 10/1999 to 11/2005, 06/2005 to 03/2009, 04/2009 to 03/2015, yet another proceeding was initiated in the year 2023, by



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issuing a notice dated 27.04.2023 and an order was passed on 12.10.2023, claiming damages to the tune of Rs.1,28,15,688/- under Section 14-B of the Act, along with a demand letter, claiming interest to the tune of Rs.52,40,796/- under Section 7-Q of the Act.

17. The EPF Authority has levied damages in the earlier proceedings, for the period from September 2002 and May 2005, which is the subject matter of the writ petition in W.P.(MD)No.10006 of 2015 and the same has already been set aside by the Tribunal in ATA.No. 746(13)2013 dated 29.11.2013. However, another proceeding was initiated under Section 14-B of the Act, for the belated payment of EPF contribution for the period from **10/1999 to 11/2005**, 06/2005 to 03/2009, 04/2009 to 03/2015 in the year 2023 and damages were also levied, vide order dated 12.10.2023. This shows not only the non-application of mind of the EPF Authority in levying the damages and also the manner in which the damages have been levied for the belated payment of contributions from 10/1999 to 11/2005, 06/2005 to 03/2009, 04/2009 to 03/2015 in the year 2023.



18. The Hon'ble Full Bench of this Court, in ***Sun Pressings (P)***

Ltd, represented by its Managing Director Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi, reported in ***2024-1- Writ.L.R.801***, has elaborately discussed with regard to the levy of damages by the EPF Authority, by framing issues as to whether the levy of damages is compulsory in all cases and in what cases, the levy of damages should be avoided and also issued certain guidelines as under:

“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 hold 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:

(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



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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



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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.”



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19. Considering the manner in which the damages have been levied under Section 14B of the Act in the year 2013 for the belated payment for the period from September 2002 to May 2005 in the year 2013, this Court is not inclined to interfere with the findings of the Tribunal. Accordingly, the writ petition filed by the EPF Authority in W.P.(MD)No.10006 of 2015 is dismissed.

20. Though the Company is having a remedy under Section 7-I of the Act before the Tribunal as against the order passed under Section 14B of the Act, considering the manner in which the EPF Authority has initiated a recovery proceeding under Section 14-B of the Act for the belated payment from the year 1999 to 2015, when the Authority has already claimed damages for the very same period, by way of a separate proceedings in the year 2013, this Court is inclined to interfere with the order passed by the EPF Authority under Section 14B of the EPF Act in MD / MDU/ DO /DGL/11266/DNo.129/2023/M13/PDC/2023 dated 12.10.2023 and demand letter under Section 7Q of the EPF Act in MD/MDU/DO/DO/11266/M13/PDC/7Q/2023 dated 12.10.2023.



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21. Accordingly, W.P.(MD)No.27781 of 2023 is allowed and the order passed by the respondent under Section 14B of the EPF Act in MD / MDU / DO / DGL / 11266 / DNo.129 / 2023 / M13 / PDC / 2023 dated 12.10.2023 and demand letter under Section 7Q of the EPF Act in MD/MDU/DO/DO/11266/M13/PDC/7Q/2023 dated 12.10.2023 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

03.11.2025

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Index : Yes / No.

Internet: Yes / No.

NCC : Yes / No.

To

1. The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.
2. M/s.Sri Venkatesa Paper & Board,
Swaminathapuram,
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Udumalpet – 642 113.

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3. The Managing Director and CEO

M/s.Asset Care and Reconstruction Enterprise Ltd. (ACRE)

having its registered and corporate office

in 2nd Floor, Mohan Dev Building,

Tolstoy Marg,

New Delhi – 110 001,

Rep. by its Constituted Attorney

Parijatha Business Solution Pvt. Ltd.,

having its registered office at

No.430, 3rd Cross, 5th Block, HBR Layout

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4. Vasudevan Gopu,

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