IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213 (02 cases) **CWP-7166-2013 (O&M)**
Date of Decision :31.07.2025

Regional Provident Fund Commissioner **...Petitioner**

Versus

M/s Punjab Fibres Limited and others **...Respondents**

CWP-7176-2013 (O&M)

Regional Provident Fund Commissioner **...Petitioner**

Versus

M/s Punjab Fibres Limited and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Hooda, Advocate for the petitioner.
(in both petitions).

Mr. Ashim Aggarwal, Advocate with
Mr. Gautam Aggarwal, Advocate for respondent No.2
(in both petitions).

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<u>Harsimran Singh Sethi, J. (Oral)</u>

1. In the present petitions, the challenge is to award dated 11.09.2012 (Annexure P/12) passed by the Employees' Provident Fund Appellate Tribunal (for short, 'Appellate Tribunal') by which, penalty imposed vide order dated 15.04.2011 in respect of the non-deposit of the

provident fund by respondent No.1-M/s Punjab Fibres Limited have been directed not to be recovered from the respondent No.2 i.e. purchaser of assets of respondent No.1.

2. For the purpose of this order, facts are being taken from ***CWP-7166-2013 titled as, Regional Provident Fund Commissioner vs. M/s Punjab Fibres Limited, and others .***

3. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

4. A financial institution i.e. IFCI, to which M/s Punjab Fibres Limited owed certain amount, had sold the assets of M/s Punjab Fibres Limited by way of public auction. In the public auction notice, it was mentioned that the liability of the respondent No.1-M/s Punjab Fibres Limited will be borne by the company who will purchase the assets of M/s Punjab Fibres Limited.

5. Respondent No.2-M/s Ashajyot Mercantile (P) Ltd. participated in the said auction and ultimately purchased the assets of respondent No.1-M/s Punjab Fibres Limited. At the time when the assets of M/s Punjab Fibres Limited were purchased by respondent No.2-company, there were certain dues of the Provident Fund Authorities which M/s Punjab Fibres Limited had defaulted. After the purchase of the M/s Punjab Fibres Limited by respondent No.2 on 15.12.2010, an assessment was done by the Provident Fund Authorities and liability of Rs.2.95 Crores was assessed upon M/s Punjab Fibres Limited and out of said amount of Rs.2.95 Crores, a sum of Rs.1.17 Crores was the liability towards the provident fund dues for the period starting from October, 1999 to October, 2010 and Rs.80.12

lacs was qua interest and the remaining amount was qua the damages for not depositing the amount within time frame.

6. Respondent No.2 deposited a sum of Rs.2.95 Crores in total but under protest that they are not liable to pay the damages for which they can have appropriate remedy before the appropriate forum.

7. With regard to the claim of the approximately Rs.80 lacs as a damages for not depositing the amount of provident fund by the M/s Punjab Fibres Limited prior to the date of purchase of the same by respondent No.2, an appeal was preferred before the Appellate Tribunal in the year 2012 challenging the charging of penalty under Section 14 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, '1952 Act') by respondent No.2. Vide order dated 11.09.2012 (Anenxure P/12), by recording certain findings that assets of M/s Punjab Fibres Limited was purchased by respondent No.2-company under certain terms and conditions of the auction, which only restricted the claim to the liability, the damages being claimed from the respondent No.2-company was not correct and the damages deposited by the respondent No.2 were held to be bad and same was directed to be refunded back to respondent No.2. The said order is under challenge in the present petition.

8. Learned counsel for the petitioner submits that once, the liability was accepted by respondent No.2 to be deposited after the purchase of M/s Punjab Fibres Limited, the same will include actual liability, interest as well as damages to be imposed upon M/s Punjab Fibres Limited and hence, the impugned order dated 11.09.2012 (Annexure P/12) passed by the Appellate Tribunal holding that damages recovered from the respondent

No.2 is incorrect and the said order is liable to be set aside and the direction given by the Appellate Tribunal to refund the damages recovered from respondent No.2, be treated as illegal.

9. Learned counsel for respondent No.2 submits that the respondent No.2-company had purchased the assets of respondent No.1-M/s Punjab Fibres Limited on the basis of the terms and conditions of the auction notice wherein only liability was accepted to be deposited. Learned counsel for respondent No.2-company further submits that the liability towards assets purchased, has already been deposited but the demand of the damages was beyond the jurisdiction of the petitioner and the Appellate Tribunal has rightly held that damages being claimed qua the assets purchased by the respondent No.2-company from M/s Punjab Fibres Limited is incorrect and the impugned order has rightly been set aside by the Appellate Tribunal.

10. Learned counsel for the petitioner submits that under Section 17-B of the 1952 Act, the provident authorities are within its jurisdiction to claim the damages as well qua the pending dues of transferred unit from the subsequent purchaser.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. It may be noticed that respondent No.2-company had never purchased the assets of M/s Punjab Fibres Limited from the Managing authorities of the M/s Punjab Fibres Limited. Rather, the same was purchased from the financial institution i.e. IFCI, who had seized the assets of respondent No.1 and further auctioned the same. It was only on the basis of the auction notice issued by the financial institution i.e. IFCI, respondent

No.2-company had purchased the assets of respondent No.1-M/s Punjab Fibres Limited.

13. Further, in the terms and conditions of the tender document, it was mentioned that the unit may have certain outstanding liabilities which are to be met by the purchaser which will be over and above the purchase consideration and the prospective buyer will have to meet these liabilities, if arisen, and the financial institution will not be liable to meet such liabilities. Relevant Clause 2.7 of the tender document is reproduced as under:-

> "The unit may have certain outstanding liability which are to be met by the purchaser and which will be over and above the purchase consideration. The prospective purchaser may carry out due-diligence in respect of likely liability pertaining to the unit before submitting the tender. It may be noted that the purchaser will be responsible for meeting these liabilities, if arise, and IFCI Ltd. Will not be liable to meet any such liabilities whatsoever."

14. It may be noticed that the word used in the tender document is 'liability'. The liability has to be determined keeping in view the date when the unit or its assets were purchased. In the present case, it is a conceded position that on the date when the assets of M/s Punjab Fibres Limited were purchased by respondent No.2-company i.e. 15.12.2010, no liability had been assessed by the petitioner herein qua the deposit of the outstanding dues of provident fund. The assessed liability of M/s Punjab Fibres Limited qua the unit purchased by respondent No.2-company on account of non-deposit of the provident fund dues was Rs.1.17 Crore, which assessment was done after the purchase of M/s Punjab Fibres Limited by respondent No.2. Later on, the interest to the tune of Rs.80.12 lakhs was also assessed. Apart

from this, another some of Rs.85.5 lakhs was imposed as damages for non-deposit of the provident fund dues. It may be further noticed that the total amount of Rs.2.95 Crore have already been deposited by respondent No.2 in lieu of demand notice.

15. Further, the challenge raised by respondent No.2 before the Appellate Tribunal is only qua the damages and not with regard to the assessed liability or even the interest to be paid upon the said liability. The Appellate Tribunal has recorded a finding that amount which was assessed qua the outstanding provident fund dues along with interest was the only liability to be paid by the purchaser keeping in view clause 2.7 of the tender document and the damages which have been assessed later on cannot be claimed hence, a sum of Rs.85.5 lacs deposited by respondent No.2-company on account of damages are liable to be refunded. This Court has no hesitation in accepting the said view of the Appellate Tribunal. The liabilities which are assessed could only be with regard to the actual liability along with interest but the damages cannot be made part of the liability especially when, no such damages had been assessed before the assets of the unit were purchased by respondent No.2-company. After the purchase, damages cannot be assessed especially when, the purchaser of the assets was not in default of making payment.

16. Reliance is being placed by learned counsel for the petitioner upon Section 17-B of the 1952 Act. For better understanding, Section 17-B of the 1952 Act is reproduced as under:-

17B. Liability in case of transfer of establishment.—

> Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension. Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

17. A bare perusal of the above reproduction would show that where the employer sells the property to another one then the person to whom the assets are transferred shall be jointly and severally liable for all the sums due from the employer. In the present case, it is a conceded fact that M/s Punjab Fibres Limited never sold any property to respondent No.2. It was secured by financial Insittuion i.e. IFCI, who had further auctioned the said property after seizing the same and the respondent No.2 purchased it hence, it is not the case of transfer of liability by one employer to another. In the facts and circumstances of the present case, Section 17-B of the 1952 Act will not be applicable as no sale with regard to assets was effected between M/s Punjab Fibres Limited and respondent No.2-company.

18. Learned counsel for the petitioner has not been able to show any document that the sale was between respondent No.1-M/s Punjab Fibres Limited and respondent No.2-company

19. At this stage, learned counsel for the petitioner has placed reliance upon the judgment of the Full Bench of Calcutta High Court in ***FMA No.1658/2003 with W.P. No.16037 (W)/2003 titled as Dalgaon Agro Industries Ltd. vs. Union of India with Pratya Nivesh (P) Ltd. and another vs. Regional Provident Commissioner and another.***

20. It may be noticed that said judgment is on Section 17-B of the 1952 Act. Once, this Court has already held that Section 17-B of the 1952 Act will not be applicable in the facts and circumstances of the present case, judgment in **Dalgaon Agro (supra**) will not come to the rescue of the petitioner.

21. Further, the issue raised in the present petition, has already been decided by the Coordinate Bench of this Court in ***CWP-15933-2009 titled as Tayal Energy Limited vs. Regional Provident Fund Commissioner Employee's Provident Fund Organization and others decided on 07.03.2011*** wherein, it has been held that Section 17-B of the 1952 Act can only be brought into operation where the unit is sold by one employer to another employer and the same cannot come into operation where the transfer is by operation of law and is not voluntary by the earlier employer. Relevant paragraph of the said judgment is as under:-

> "It is viewed that Section 17-B of the Act can not be interpreted to mean that transferee employer would be liable also to pay penalty for default committed by previous employer during the period anterior to the transfer. The different High Courts have consistently viewed that transferee would be liable only if it is voluntary transfer in the manner as given in Section 17-B of the Act. The liability under the E.P.F. Act would not arise when the transfer is by operation of law and is not voluntarily by the earlier employer. It would be safe to conclude that when and is not voluntarily or on account of operation of law, then the transferee can not be held liable for the payment which was due prior to the date of transfer. I have deeply considered the view expressed by the Full Bench of Calcutta High Court,. I am of the considered opinion that the liability would arise only when the transferee is stepping into the shows of employer and in case of transfer by operation of

> law, the position would be different, for which there are number of precedents by different court including our own Court."

22. It may be noticed that the judgment of the Full Bench of the Calcutta High Court in **Dalgaon Agro (supra)** has been noticed in the case of ***Tayal Energy Ltd (supra)*** and the same was found not to be applicable in case, the transfer is by operation of law.

23. Learned counsel for the petitioner has not been able to rebut the said proposition of law.

24. Keeping in view the fact and circumstances of the present case as learned counsel for the petitioner has not been able to point out any perversity in the impugned award dated 11.09.2012 (Annexure P/12) passed by the Appellate Tribunal on the basis of the facts or evidence brought on record, no ground for interference by this Court is made out and the writ petitions are accordingly dismissed.

25. Civil miscellaneous application pending, if any is also disposed of.

26. A photocopy of this order be placed on the file of connected case.

July 30, 2025 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : *Yes*
Whether reportable : *No*