



NO PENALTY FOR DELAY IN PAYMENT OF EPF CONTRIBUTION DURING LOCKDOWN

Introduction/ Background

The Employees Provident Fund Organization (“**EPFO**”) has, on 15 May 2020, issued a circular (**EPFO Circular**) clarifying that no proceedings for levy of penal damages would be initiated against an employer for any delay in payment of EPF contribution or administrative charges during the lockdown period.

Please [click here](#) to read the EPFO circular.

Reasoning

The reasoning behind this relaxation is explained in the EPFO Circular as follows:

- In view of the prolonged lock down announced by the Government to control the spread of COVID-19 pandemic and other disruptions due to the pandemic, establishments covered under the Employees Provident Fund and Miscellaneous Provisions Act 1952 (“**EPF Act**”) are distressed and not able to function properly.
- In the cases of *McLeod Russel India Limited v RPFC*¹ and *Assistant Provident Fund Commissioner v Management of RSL Textiles*² it was held that *mens rea* or culpable state of mind on the part of the employer was a necessary element to invite damages for a delay in payment under section 14B of the EPF Act.
- Considering the difficulty faced in timely deposit of contributions during lockdown due to operational and economic reasons, it is evident that such delays are without *mens rea* of the employer and hence cannot be attributed to any culpable state of mind of the employer. Such delay will therefore, not attract the penalty provisions of section 14B of the EPF Act.

Conclusion

¹ (2014) 15 SCC 263

² Supreme Court CA 96-97 of 2017

- No penalties for delays in EPF contributions is a welcome move by the EPFO and it has staved off unnecessary litigation/ harassment that may have occurred if any of its officers, reading the law literally, attempted to recover damages from an employer.
- It is laudable that the EPFO took the initiative and issued this circular *suo moto*.

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