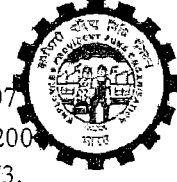


कर्मचारी भविष्य निधि संघटन

(श्रम एवं रोजगार मंत्रालय, भारत सरकार)



Employees' Provident Fund Organisation
(Ministry of Labour & Employment, Govt. of India)
क्षेत्रीय कार्यालय/ Regional Office



प्लॉट नं. पी-11 भविष्य निधि भवन, एम.आय.डी.सी., सातपुर, नाशिक - 422007
Plot No P-11 "Bhavishya Nidhi Bhavan", MIDC, Satpur, Nashik-422007
दूरभाष/Telephone, (0253) 2360974/2362410/ फ़ैक्स/: (0253) 2360973.

E-mail: ro.nasik@epfindia.gov.in

No. MH/PF/KD/NSK/22450/RO/Nasik /Compliance/7A order/ 2024

Date: 12.03.2025

BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER, REGIONAL OFFICE, NASIK, MAHARASHTRA.

In the matter of proceeding under section 7-A of the Employees Provident Fund and
Miscellaneous Provisions Act 1952 (hereinafter referred to as the Act) against M/s.
Sudal Industries Ltd., A-5, MIDC, Ambad, Nasik - 422010 bearing Provident
Fund Code No. KD/NSK/22450 (hereinafter referred to as the Establishment)
for assessment of dues for the period 04.2016 to 04.2023.

A) CODE NO: - KD/NSK/22450

B) PRESENT

On behalf of the establishment : Shri. Mangesh Jagtap, Manager, HR
Shri. Manoj Gujar, Advocate

On behalf of the EPFO : Shri. S. T Shinde, EO

C) Background of the Case:-

The establishment M/s. Sudal Industries Ltd., A-5, MIDC, Ambad, Nasik -422010 (hereinafter referred to as the establishment) is an establishment to which the provisions of EPF & MP Act' 1952 are applicable (hereinafter referred to as the Act) under section 1 (3) (a) with effect from 31.05.1984 bearing PF Code No: KD/NSK/22450. (Exhibit,R1)

Whereas it has been informed that the establishment has undergone CIRP i.e the establishment is in IBBI List. As per HO circular (File No. Compliance / SOP/ handling of IBC cases / 2023) dated 24/11/2023 for standard operating procedure for handling IBC cases it is mentioned in serial no (h) of point no 7.1 that "As per HO circular dated 04/09/2023, containing SOP for Inspection, the cases pertaining to Insolvency or Liquidation of establishments fall under the category 'require Urgent/Emergency Physical Inspection' where there is no requirement to seek permission or go through the drill of nudging as expedient actions are of essence here." Therefore, a Shram Shuvidha Inspection may be allotted to the concern Area Enforcement Officer.

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SUDAL INDUSTRIES LTD.	
A-5 MIDC, AMBAD, NASHIK-10	
(7626) Received	
SERIAL NO.....	
Time In. 11.25	Time Out.....
SECURITY OFFICER	
Date. 26/03/23	

It has been reported by the Area Enforcement Officer to the undersigned vide report dated 26.06.2023 (Exhibit,R2) that establishment failed to remit the PF and allied dues amounting to Rs. 62,68,676/- of all or other employees of the establishment for period 04.2016 to 04.2023. Further this office has forwarded the copy of said AEO report dated 26.06.2023 to the establishment for submission of comment/say/reply in the matter. In reply, the establishment vide letter dated 14.07.2023 (Exhibit, R3) made submission on said EO report dated 26.06.2023 that they have paid all contributions on the amount on which PF is payable. The employer in relation to said establishment has denied the outstanding dues of PF amount Rs.62,68,674/- for period 04.2016 to 04.2023 is payable and requested that, If any amount is not deposited by the company, then the amount of contribution, which the department feels is due and payable has to be determined by holding a statutory enquiry under section 7A of the Act.

The establishment has submitted that the enquiry under section 7A of the Act is quasi-judicial proceeding. The EO vested with certain powers of CPC to facilitate a free and fair enquiry. The company is required to be heard and opportunity to defend is required to be given and after conclusion of enquiry a speaking order passed is with reasons thereof. Unless and until an enquiry under section 7A is held and speaking order is passed therein, no amount due and payable towards PF contributions can be crystallized. The report of EO is mere opinion. Any claim made without Speaking Order passes under section 7A is void and liable to be quashed.

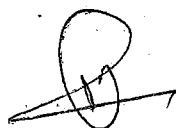
Further, the establishment has requested for initiation of 7A inquiry for determination of dues liable to be paid by the establishment. In reply to the establishment letter dated 14.07.2023, this office has issued letter dated 17.08.2023 (Exhibit,R4) informing that as per the guidelines received from Head Office vide e-mail dated 25.11.2022, as soon as the inspection report containing the extent of dues under the EPF & MP Act 1952 is received, a notice of dues should be submitted to the concerned Resolution Professional or The Liquidator within seven days of receipt of this report. All procedures under the IBC are strictly time bound. The dues is not assessed by this office but calculated by Enforcement Officer based on his finding, for filing claim before IRP. It is also informed that as per Section 36(4) of the Insolvency and Bankruptcy Code, 2016 clearly declares all dues towards provident fund, the pension fund and gratuity as third party assets and excludes them from the liquidation estate of the corporate debtor. Section 36 (4) makes a further declaration that such sums cannot be utilized for recovery of debts of the Corporate Debtor. For reference, Section 36 (4) of the IBC 2016 is reproduced below:-

“Section: 36 (4)(a)(iii) all the sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.”

The position of law that, dues under EPF Act are not debts and do not form a part of the waterfall mechanism under Section 53 of IBC is judicially settled after judgment of Hon'ble NCLAT in Sikandar Singh Jamwal Vs Vinay Talwar [CA(AT) 483/2019; judgment dated 11.03.2022] and the same has also been approved by the Hon'ble Supreme court by way of dismissal of SLP against the said judgment. The position has attained finality after Hon'ble Supreme Court Judgment in Sunil Kumar Jain Vs Sundresh Bhatt [CA 5910 of 2019; decided on 19.04.2022]. Extract of the judgment is as follows:

Dues of the workmen/employees towards Provident Fund, Gratuity Fund and Pension Fund.

"13. Now so far as the dues of the workmen/employees on account of provident fund, gratuity and pension are concerned, they shall be governed by Section 36(4) of the IB code. Section 36(4)(iii) of the IB code specifically excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund", from the ambit of "liquidation estate assets". Therefore, Section 53 (1) of the IB Code shall not be



applicable to such dues, which are to be treated outside the liquidation process and liquidation estate assets under the IB Code. Thus, Section 36 (4) of the IB Code has clearly given outright protection to workmen's dues under provident fund, gratuity fund and pension fund which are not to be treated as liquidation estate assets and the Liquidator shall have no claim over such dues. Therefore, the concerned workmen/employees shall be entitled to provident fund, gratuity fund and pension fund from such funds which are specifically kept out of liquidation estate assets and as per Section 36(4) of the IB Code, they are not to be used for recovery in the liquidation."

It is also brought to your notice that Hon'ble National Company Law Appellate Tribunal vide order dated 21/10/2022 in the matter of Jet Aircraft Maintenance Engineers Welfare Association Vs Resolution professional, Jet airways (company appeal No 987, 643, 801, 915 and 771 of 2022) has held that if the corporate debtor has not deposited the statutory dues with the EPFO, the said statutory liability has to be discharged by the successful Resolution Applicant. By virtue of the Hon'ble NCLAT order, the successful resolution applicant is only liable to pay the full amount of Provident Fund and gratuity payable to the employees and the workmen till the date of commencement of the liquidation of the corporate Debtor. This NCLAT order has been affirmed and upheld by the Hon'ble Supreme Court vide order dated 30/01/2023 in the matter of Jalan Fritsch Consortium Vs Regional Provident Fund Commissioner (civil appeal No 407 of 2023 with civil appeal Nos 465-469 of 2023).

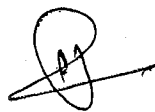
Accordingly, a Show Cause Notice before initiation of inquiry under section 7-A of the Act, vide No. KD/NSK/22450/PF/RO/Comp-I/1596, Dated: 28/02/2024 (Exhibit,R5) issued to the establishment for submission of their say /comments / reply in the matter.

Hence, Summons Vide No.MH/22450/PF/RO/NSK/Compli-I/Dia No/222/2024/1741, dated: 19.03.2024 (Exhibit,R6) under section 7-A of the Act for the period 04.2016 to 04.2023 was issued to the establishment on 19.03.2024, directing the employer to appear before the Assessing Authority on 26.03.2024 at 11.00 am virtually (through Google Meet)

The employer in relation to said establishment has informed that, the matter is registered in the Hon'ble High Court, Bombay in October 2023. It is to inform that the establishment has filed the case against the Shram Suvidha Report submitted by the Enforcement officer and said is forwarded to the Employer in relation to the establishment. This inquiry under section 7-A of the EPF & MP Act, 1952 was initiated for determination of dues vide Summons No. MH/22450/PF/RO/Compliance-I/Dir. NO 222/2024/1741 dated 19-03-2024. The matter is not related with this inquiry and till date no order has been pronounced by Hon'ble High Court in this regard.

Hon'ble NCLT, Mumbai Bench C-IV in I.A. No. 3021/2023 in CP(IBPP) No. 01/MB-IV/2022 vide order dated 10/08/2023, mentions in the order that -

"10. The approval of the Base Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned."



The aforementioned judgement reinforces the principle that regulatory compliance remains mandatory even after the approval of a resolution plan.

Further, Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Ins) No. 707 of 2023 held that –

“25 In our considered opinion, this procedure could not have been followed as the law is totally against it, therefore, in such circumstances, we hold that the order passed on the application filed under Section 54C on 20.04.2023 for the purpose of initiation of PPIRP is patently illegal and thus, the same is hereby set aside.”

The Hon'ble NCLAT ruling underscores that any deviation from the prescribed legal procedure, including the initiation of Pre-Packaged Insolvency Resolution Process (PPIRP) in contravention of the law, is patently illegal and liable to be set aside. These rulings reinforce the necessity of strict adherence to legal and regulatory frameworks in insolvency proceeding

Moreover, it is also imperative to note that the Writ Petition no. 6455 of 2024 filed by the Establishment before the Hon'ble High Court of Bombay, is still pending before the Hon'ble Court and has not been listed till date for hearing after 03/05/2024.

It is noticed that, the establishment has failed to implement the various provision of the EPF & MP Act, 1952 and failed to extend correct social security benefits in the nature of Provident Fund, Pension and Insurance Fund to the employees engaged by or through its contractors and the weaker section of the (society) employees deprived from their legitimate statutory benefits only due to deliberate, intentional negligence of the management of the establishment.

The employer in relation to said establishment being aware that the act becomes applicable on its own, and being aware that, it is duty of employer in relation to the establishment to make payments of statutory dues in stipulated time frame and submit related monthly as well as annual returns within stipulated period, was required to deposit the contributions but did not do so in its own wisdom, and hence deliberately avoided both correct deduction and deposition of statutory dues and submission of monthly as well as annual returns.

The Employee's Provident Fund & Misc Provisions Act, 1952, is legislation for providing social security to employees working in any establishment engaging 20 or more persons in any day. It provides for compulsory deduction of provident fund from employees and contribution from the employer which is deposited in the worker's account in employees and contribution from the employer which is deposited in the worker's account in Employees Provident Fund Organization Office. Similarly, the Act also provides insurance and pensionary benefits to the employees.

Invalidation, Pension, Family Pension and Deposit Linked Insurance, Employees Provident Fund and Miscellaneous Provisions Act, 1952 is intend to provide wider terminal benefits to the Industrial workers e.g, the Act provides for terminal benefits in various contingencies such as retrenchment, closure and retirement on reaching the age of superannuation, Voluntary Retirement and retirement due to incapacity to work and on death while in service. Basically it is welfare Legislation as to provide for the future of the employees.



Similarly, the Act also provides for providing insurance and Pensionary benefits to the employees. The Provident Fund and other contributions have to be deposited by the employer by 15th of the next month in which the employee has worked in the establishment and the dues become payable to him, because the worker has already performed the employment up to last day of the previous month. The contributions have to be deposited by the employer/establishment only after beneficiary workers has already worked and thus earned this amount in terms of the contract of employment and the provisions of the Act.

EPF & MP ACT, 1952 provides that:-

That the establishment covered under the Act required to pay:

- (i). The Provident Fund Contribution under section 6 of the Act read with Para 38 of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as the scheme).
- (ii). The Family Pension Fund Contribution under section 6A of the Act read with Para 9 (1) of the family Pension Scheme, 1971/Para 3(1) of the Employees Pension Fund Scheme, 1995 (hereinafter referred to as the pension scheme).
- (iii). The Administrative charges under Para 38 of the Employees Provident Scheme, 1952; and
- (iv). The Employees Deposit Linked Insurance Scheme Contribution/administrative charges under section 6 (c) of the Act. Within 15 days of the close of each month.

For any delay in remittance of dues as stated above the establishment is liable to pay damages under section 14-B and interest as provided U/s 7Q of the Employees Provident Fund & Misc. Provisions Act, 1952, on delay payment of EPF Contribution, administrative charges on EPF contribution, delay in payment of contribution to Employees Pension Scheme, 1995, administrative charges on delay in payment of contribution to Pension Fund, delay in payment of Employees Deposit Linked Insurance Scheme, 1976 and administrative charges on Employees Deposit Linked Insurance Scheme, 1976.

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial piece of legislation enacted by the Act of Parliament for the welfare of working class. This social security measure is a humane homage the State pays to Articles 39 and 41 of the Constitution. The viability of the fund depends on the employer duly deducting the workers' contribution from their wages, adding his own little and promptly depositing the sum into the fund constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory fund. The proper implementation of various Schemes under the Act is solely dependent upon the prompt compliance by the establishment. It is the statutory duty / responsibility of the principle employer under Para 30 of the EPF Scheme, 1952 to report / ensure the compliance of the contractors and contractor employees under the said Act/ Scheme of 1952 by the establishment. It is the statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time. Practical difficulties, if any, in managing any establishment cannot be allowed to supersede the statutory provisions.



Section 1 of the Act clearly stipulates that the Act applies by its own force. Whenever the establishment engages any employee, either directly or indirectly, in or in connection of work of the establishment, it is the legal duty of the establishment to extend EPF benefits to all its employees. As already recorded in the preceding paragraphs, when the Act became applicable to the employees in question, the liability arises. What is done under section 7-A of the Act is only determination or quantification of the same.

Further, The Scheme stipulates that the Employer shall inform the Commissioner regarding persons employed either directly or by or through Contractor by way of monthly return. The scheme further envisages the primary responsibility of the principal employer to pay both the contributions payable by him in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

The inquiry under section 7-A is a quasi-judicial inquiry, the officer conducting the enquiry under sub-section 1 of section 7-A shall for the purpose of such enquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) for trying a suit in respect of the following matters namely: -

- Enforcing attendance of any person or examining him on oath;
- Requiring the discovery and production of documents;
- Receiving evidence on affidavit;
- Issuing commission for the examination of witnesses,

and any such enquiry shall be deemed to be a judicial proceedings within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860)]and the instant inquiry under section 7-A taken almost more than 02 years to conclude because of indifference / non-cooperation of the management of the establishment by not producing the required relevant records in respect of contractors and contractor employees engaged by the establishment for verification before the Enforcement Officers and poor workers / employees of the establishment deprived from their legitimate statutory social security benefits due to the negligence of the management of the establishment.

The Hon'ble Supreme Court in the matter of **RPFC v/s Shibu Metal Workers, 1964-65(27) FJR 491** upheld that in construing the material provisions of the Act, if two views are reasonably possible, the court should prefer the view which helps the achievement and furtherance of the object.

In the matter of **'State v/s Girdhari Lal Bajaj], 1962 II LU 46 (Born. DB')**, the Court observed that when there is a doubt about their meaning, it is to be understood in the sense in which it best harmonizes with the subject of the enactment and the object which the legislation has in view.

Further, in the matter of **"Regional P.F. Commissioner V/s Hooghly Mills Company Limited and Others, reported in (2012)2 SCC 489"** Hon'ble Supreme Court held that Employees P.F. & MP Act 1952 is a social welfare legislation, as such in case of doubt, statute should be read as a whole considering its design, purpose and remedy which its seek to achieve and same should be resolve in favour of the class of persons for whose benefit statute is enacted.



It is well known that an interpretation of the statute which harmonizes with its avowed object is always to be accepted than the one which dilute it.

Therefore while construing the statute where there may be some doubt, the court has to consider the statute as a whole its design, its purpose and the remedy which it seeks to achieve. Sinha CJ. of this Court in "State of W.B. Vs. Union of India, AIR 1963 SC 1241" emphasized the importance of construing the statute as a whole. In the words of the chief justice (AIR para-68)

"68.....the court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute, it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs"

The respondent herein more specifically submits that the mandate of the EPF & MP Act 1952, enumerated above and the preliminary objection mentioned below may kindly be taken into consideration before passing any order in the present Appeal.

However, it is often observed that the employer resorts to filing a petition in the Court once the recovery process is initiated, which in any case starts on failure to remit the legitimate dues by the employer concerned. Filing of such petitions by the concerned employer automatically hampers the main object of the social security legislation which provides for a lump sum payment to the employees on their retirement so that they can live their retired life with some element of comfort".

D) Proceeding:-

None attended virtual hearing on behalf of the establishment on 12/06/2024. However, a letter dated: 11.06.2024 received from the establishment stating that, we are in receipt of your email dtd. 10/06/2024 for virtual hearing w.r.t. Our establishment bearing PF code KD/NSK/22450. We have already inform to you for attend this virtual meeting. The inconvenience is highly regretted. Further for your kind information, this is to inform you that my Aunty (mother's own sister) has been expired on 29/05/2024. As per Hindu rituals, I can't be free before 8th June, 2024 to attend virtual hearing with the proper record of evidences. And in connection to this our company Surveillance audit against the certification of EMS ISO 14001: 2015 has been scheduled for 10th & 11th June, 2024 long before. Hence, it's our humble request to give us the time up to 15th June, 2024 for this purpose. Kindly consider our case, we will be highly obliged. The copy of EO report dated: 24.05.2024 (Exhibit, R7) and counter reply dated: 04.06.2024 (Exhibit,R8) on the establishment letter dated: 22.03.2024 (Exhibit,R6) already forwarded to the establishment through email. In the interest of natural justice of law one more opportunity is hereby accorded to the establishment for submission of say /comments / reply in the matter. Shri. S T Shinde, EO attended virtual hearing on behalf of the EPFO. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 20/06/2024.

None attended virtual hearing on behalf of the establishment on 20/06/2024. The copy of EO report dated: 24.05.2024 and counter reply dated: 04.06.2024 on the establishment letter dated: 22.03.2024 already forwarded to the establishment through email for submission of their say / comments / reply in the matter. In the interest of natural justice of law one more opportunity is hereby accorded to the establishment for



submission of say /comments / reply in the matter. Shri. S T Shinde, EO is on pre sanctioned leave. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 27/06/2024.

Shri. Mangesh Jagtap, Manager HR attended virtual hearing on behalf of the establishment 27/06/2024. He has requested to allow time for submission of say / comments / reply in the matter. In the interest of natural justice of law his request is accepted. The copy of EO report dated: 24.05.2024 and counter reply dated: 04.06.2024 on the establishment letter dated: 22.03.2024 already forwarded to the establishment through email for submission of their say / comments / reply in the matter. In the interest of natural justice of law one more opportunity is hereby accorded to the establishment for submission of say /comments / reply in the matter. Shri. S T Shinde, EO is on pre-sanctioned leave. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 04/07/2024.

Shri. Manoj Gujar, Advocate, attended virtual hearing on behalf of the establishment on 04/07/2024 without authority letter. He has been requested to submit his authority on or before next date hearing. He has requested to allow time for submission of say / comments / reply in the matter. In the interest of natural justice of law his request is accepted. The copy of EO report dated: 24.05.2024 and counter reply dated: 04.06.2024 on the establishment letter dated: 22.03.2024 already forwarded to the establishment through email for submission of their say / comments / reply in the matter. In the interest of natural justice of law one more opportunity is hereby accorded to the establishment for submission of say /comments / reply in the matter. Shri. S T Shinde, EO attended virtual hearing on behalf of the EPFO. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 11/07/2024.

Shri. Manoj Gujar, Advocate, attended virtual hearing on behalf of the establishment on 11/07/2024 without authority letter. He has been requested to submit his authority on or before next date hearing. He further deposed that, the establishment has already file submission dated: 11/07/2024 (Exhibit, R9) along with order of the Hon'ble NCLT dated: 10.08.2023 (Exhibit, R10) taken on records. The copy of EO report dated: 24.05.2024 and counter reply dated: 04.06.2024 on the establishment letter dated: 22.03.2024 already forwarded to the establishment through email for submission of their say / comments / reply in the matter. Department is directed to forward copy of submission made by the establishment dated: 11.07.2024 to the EO for submission of his counter reply immediately. Shri. S T Shinde, EO attended virtual hearing on behalf of the EPFO. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 18/07/2024.

Shri. Manoj Gujar, Advocate, attended virtual hearing on behalf of the establishment on 18/07/2024. He further deposed that, the establishment has already file submission dated: 11/07/2024 along with order of the Hon'ble NCLT dated: 10.08.2023 taken on records. Department has already forwarded copy of submission made by the establishment dated: 11.07.2024 to the EO for submission of his counter reply. Same is awaited from Area EO. Shri. S T Shinde, EO attended virtual hearing on behalf of the EPFO. He has requested to allow time for submission of his counter reply. His request is accepted. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 01.08.2024.

Shri. Manoj Gujar, Advocate and Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment on 01/08/2024. He deposed that, the establishment has already file submission dated: 11/07/2024 along with order of the Hon'ble NCLT dated: 10.08.2023 taken on records. Department has already forwarded copy of submission made by the establishment dated: 11.07.2024 to the EO for submission of his counter reply. Same is awaited from Area EO. Shri. S T Shinde, EO attended virtual



hearing on behalf of the EPFO. He deposed vide his letter dated: 01.08.2024 that, the establishment vide submission dated: 11.07.2024 contended that, the establishment has engaged 04 excluded employees but failed to submit documentary evidences. He has requested establishment to produce the required details of excluded employees immediately. Department is directed to forward his request letter dated: 01.08.2024 along with proceeding to the employer for further action. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 22.08.2024.

Shri. Manoj Gujar, Advocate and Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 22/08/2024. He deposed that, the establishment has already file submission dated: 11/07/2024 along with order of the Hon'ble NCLT dated: 10.08.2023 taken on records. Shri. S T Shinde, EO attended virtual hearing on behalf of the EPFO. He has requested to allow time for submission of his counter reply in the matter. Department has already forwarded copy of submission made by the establishment dated: 11.07.2024 to the EO for submission of his counter reply. Same is awaited from Area EO. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 29.08.2024.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 29/08/2024. He deposed that, the establishment has already file submission dated: 11/07/2024 along with order of the Hon'ble NCLT dated: 10.08.2023 taken on records. Shri. S T Shinde, EO attended virtual hearing on behalf of the EPFO. He has submitted his counter reply to the submission made by the establishment dated: 11.07.2024 taken on records. Department has already forwarded copy of counter reply submitted by EO dated: 29.08.2024 (Exhibit,R11) to the establishment for submission of any say / comments / reply in the matter on or before next date of hearing. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 05.09.2024.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 05/09/2024. He deposed that, the establishment has already received the copy of counter reply submitted by EO 29.08.2024 and requested to allow time for submission of his comments / say / comments on the EO report. He has been directed to submit his request through email but in vain. Department has already forwarded copy of counter reply submitted by EO dated: 29.08.2024 to the establishment for submission of any say / comments / reply in the matter on or before next date of hearing. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 12/09/2024.

None attended virtual hearing on behalf of the establishment 12/09/2024. However, in the last hearing the representative of the establishment has deposed that, the establishment has already received the copy of counter reply submitted by EO 29.08.2024 and requested to allow time for submission of his comments / say / reply on the EO report. In the interest of natural justice of law, this office has allowed ample reasonable time to the establishment for submission of the comments / reply to the counter reply submitted by the EO dated: 29.08.2024 but in vain. The employer in relation to said establishment has been directed to submit the say / comments / reply in the matter at the earliest otherwise case will be decided on the basis of available records on merit. Department has already forwarded copy of counter reply submitted by EO dated: 29.08.2024 to the establishment for submission of any say / comments / reply in the matter on or before next date of hearing. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 17/09/2024.

None attended virtual hearing on behalf of the establishment 17/09/2024. However, an email dated: 16.09.2024 along with copy of letter dated: 17.09.2024 stating that, this is to inform you that, tomorrow is

the holiday in Mumbai for Ganesh Visarjan. Hence, our advocate Mr. Manoj Gujar would not be able to attend the virtual hearing dated: 17.09.2024. you are hereby requested to give next date for the same virtual hearing. We seek your kind reply from your good office against all the particulars as asked for in our letter under ref. No. SUDAL/HR/09/001, dated: 16.09.2024 (Exhibit, R12) before giving next virtual hearing date to us taken on records supported by letter dated: 16.09.2024 taken on records. Department is directed to forward the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 19/09/2024.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 19/09/2024. He deposed that, the establishment already submitted reply dated: 16.09.2024 stating that, we seek your kind reply from your good office against all the particulars as asked for in our letter under ref. No. SUDAL/HR/09/001, dated: 16.09.2024 before giving next virtual hearing date to us taken on records supported by letter dated: 16.09.2024 taken on records. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He has submitted request letter dated: 19.09.2024 requesting to allow time for submission of his complete reply in the matter taken on records. His request is accepted in the interest of natural justice of law. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 23/09/2024.

Shri. Manoj Gujar, Advocate and Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 23/09/2024. He deposed that, the establishment already submitted reply dated: 16.09.2024 stating that, we seek your kind reply from your good office against all the particulars as asked for in our letter under ref. No. SUDAL/HR/09/001, dated: 16.09.2024 before giving next virtual hearing date to us supported by letter dated: 16.09.2024 taken on records. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He has requested to allow time for submission of his complete reply in the matter. His request is accepted in the interest of natural justice of law. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 25.09.2024.

None attended virtual hearing on behalf of the establishment 25/09/2024. However, an email dated: 25.09.2024 along with letter dated: 25.09.2024 (Exhibit, R13) received from the establishment stating that, The aforesaid 7A Virtual Hearing is Fixed on 23rd September 2024. Prior thereto, we had submitted our reply as well as all relevant documents before EO. The EO had submitted a report Statement dtd. 29.08.2024 in this Enquirer before the Authority. Please refer our letter under reference SUDAL/HR/09/002 DTD. 17.09.2024. It was clearly mentioned that we seek your kind reply from your good office against all the particulars " as asked for" before next virtual Hearing is scheduled, But till date, no reply received from your end. Hence you are hereby once again requested to give your kind reply against our letter SUDAL/HR/09/002 DTD. 17.09.2024 at the earliest. We request you to schedule the next virtual hearing at least after 7 days from the date of receipt your replay at our end. The copy of email and letter taken on records. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He has requested to allow time for submission of his complete reply in the matter. Department is directed to issue copy of



proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 30.09.2024.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 30/09/2024. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO is on leave. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 03/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 03/10/2024. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he is having court attendance on 07.10.2024 and requested to allow 2-3 days' time for his submission. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 08/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 08/10/2024. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has prepared individual employee wise dues statement and their monthly summary in PDF file and ready to forward the details to the employer. He has been directed to forward the soft copy of the details to the establishment and department through email. As regards, submission of counter reply to the establishment letter dated: 16.09.2024 he has requested to allow 2-3 days' time. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 10/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 10/10/2024. He deposed that, he has received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 (**Exhibit,R14**). Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the

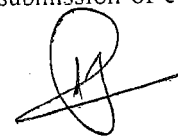


concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 14/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 14/10/2024. He deposed that, he has received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 and requested to allow time for verification of the same. He has been requested to submit his request through email but in vain. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 17/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 17/10/2024. He deposed that, he has received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 and requested to allow time for verification of the same. He has been requested to submit his request through email but in vain. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 21/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 21/10/2024. He deposed that, he has received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 and requested to allow time for verification of the same. He has forwarded an email dated: 21.10.2024 stating that, As per your mail dated.21.10.2024, We are working on Your EO's Report, We request you to schedule the next virtual hearing at least after 7 days from the date of receipt your replay at our end. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the



submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 24/10/2024. To join the meeting on Google Meet, click this link: Link to attend the hearing: <https://meet.google.com/jen-qezd-vrv>. The said link is from EPFO, RO, Nasik for online virtual hearing under section 7-A of the EPF & MP Act, 1952 at 3.00 p.m. To 3.30 p.m.

Shri. Mangesh Jagtap, HR Executive attended virtual hearing on behalf of the establishment 24/10/2024. He deposed that, he has received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 and requested to allow time for verification of the same. He has forwarded an email dated: 24.10.2024 stating that, As per your mail dated.21.10.2024, We are working on Your EO's Report, We request you to schedule the next virtual hearing at least after 7 days from the date of receipt your replay at our end. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 28/10/2024.

None attended virtual hearing on behalf of the establishment 28/10/2024. However, the representative of the establishment has forwarded an email stating that, We are in receipt of your email dtd. 28/10/2024 for virtual hearing w.r.t. Our establishment bearing PF code KD/NSK/22450. We have been missed to attend this virtual meeting. The inconvenience is highly regretted. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 01/11/2024.

None attended virtual hearing on behalf of the establishment 01/11/2024. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As



regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO is directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 05/11/2024.

Shri. Mangesh Jagtap, Representative attended virtual hearing on behalf of the establishment 05/11/2024. He has requested to allow time for submission of say in the matter.

It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 11/11/2024.

Shri. Mangesh Jagtap, Representative attended virtual hearing on behalf of the establishment 11/11/2024. He has requested to allow time for submission of say in the matter. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 14/11/2024.

None attended virtual hearing on behalf of the establishment 14/11/2024. However, an email dated: 14/11/2024 received from the establishment stating that, With a reference to the proceeding (Virtual Hearing) dtd. 14/11/2024, we are informed you that our EHS 14001 : 2015 & 45001 : 2018 Re - Certification Audit for Safety Purpose is Going on from last 13rd Nov.2024 to 15th Nov. 2024, my self involve in this Audit. We are Request to you please give us a next date for Virtual Hearing taken on records. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment

representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 19/11/2024.

None attended virtual hearing on behalf of the establishment 19/11/2024. However, an email dated: 14/11/2024 received from the establishment stating that, With a reference to the proceeding (Virtual Hearing) dtd. 14/11/2024, we are informed you that our EHS 14001 : 2015 & 45001 : 2018 Re - Certification Audit for Safety Purpose is Going on from last 13rd Nov.2024 to 15th Nov. 2024, my self involve in this Audit. We are Request to you please give us a next date for Virtual Hearing taken on records. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 21/11/2024.

Shri Mangesh Jagtap attended virtual hearing on behalf of the establishment 21/11/2024. He has requested to allow time for submission of say / comments / reply in the matter. He has been directed to submit his request through email but in vain. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 25/11/2024.

Shri Mangesh Jagtap attended virtual hearing on behalf of the establishment 25/11/2024. He has requested to allow time for submission of say / comments / reply in the matter. He has been directed to submit his request through email but in vain. It is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already forwarded PDF statement of

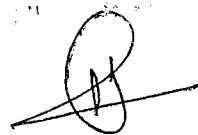


calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024. He has requested to allow time for submission of his counter reply in the matter. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 28/11/2024.

None attended virtual hearing on behalf of the establishment 28/11/2024. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with Office Duty. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024 is still awaited from the EO. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 02/12/2024.

None attended virtual hearing on behalf of the establishment 02/12/2024. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with Office Duty. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024 is still awaited from the EO. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 05/12/2024.

None attended virtual hearing on behalf of the establishment 05/12/2024. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. Department has already forwarded the copy of reply dated: 16.09.2024 submitted by the establishment representative to the department representative for filling his comments / say / reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with Office Duty. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. As regards, submission of counter reply on the submission of the establishment dated: 16.09.2024 is still awaited from the EO. Shri. S.T. Shinde, EO and the establishment are directed to submit his say / comments / reply in the matter immediately. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 10/12/2024.



None attended virtual hearing on behalf of the establishment 10/12/2024. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. The establishment representative has been directed to submit the reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with Office Duty. Shri. S.T.Shinde, EO has submitted his counter reply dated: 10/12/2024 (Exhibit,R15) to the establishment reply dated: 16.09.2024 taken on records. Department is directed to forward the copy of counter reply dated: 10/12/2024 submitted by the EO to the establishment for submission of their comments. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 12/12/2024.

Shri. Mangesh Jagtap, Representative attended virtual hearing on behalf of the establishment 12/12/2024. He has requested to allow time for submission of say / comments / reply in the matter. He has been directed to submit his request through email but in vain. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. The establishment representative has been directed to submit the reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with the urgent work of UAN activation. Shri. S.T.Shinde, EO has submitted his counter reply dated: 10/12/2024 to the establishment reply dated: 16.09.2024 taken on records. Department is directed to forward the copy of counter reply dated: 10/12/2024 submitted by the EO to the establishment for submission of their comments. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 17/12/2024.

None attended virtual hearing on behalf of the establishment 17/12/2024. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. The establishment representative has been directed to submit the reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with the urgent work of UAN activation. Shri. S.T.Shinde, EO has submitted his counter reply dated: 10/12/2024 to the establishment reply dated: 16.09.2024 taken on records. Department is directed to forward the copy of counter reply dated: 10/12/2024 submitted by the EO to the establishment for submission of their comments. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 19/12/2024.

None attended virtual hearing on behalf of the establishment 19/12/2024. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. The establishment representative has been directed to submit the reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with the urgent work of UAN activation. Shri. S.T. Shinde, EO has submitted his counter reply dated: 10/12/2024 to the establishment reply dated: 16.09.2024 taken on records. Department has already forwarded copy of counter reply dated: 10/12/2024 submitted by the EO to the establishment for submission of their comments. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email



on 09/10/2024 for which establishment representative agreed. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 24/12/2024.

Shri. Manoj Gujar, Advocate attended virtual hearing on behalf of the establishment 24/12/2024. He has forwarded an email dated: 24/12/2024 stating that, The Company Management has received the documents from the Enforcement Officer recently in the 3rd Week of December, 2024. The Company Management handed over the documents on 23-12-2024 to the undersigned. The undersigned shall go through the same as early as possible and shall file rejoinder thereto. The undersigned therefore prays that 2 weeks time may kindly be granted to consider the documents submitted by Enforcement Officer in the aforesaid 7A Enquiry. It is prayed accordingly.

However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. The establishment representative has been directed to submit the reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with the urgent work of UAN activation. Shri. S.T. Shinde, EO has submitted his counter reply dated: 10/12/2024 to the establishment reply dated: 16.09.2024 and department has already forwarded copy of counter reply dated: 10/12/2024 submitted by the EO to the establishment for submission of their comments. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed on 27/12/2024.

Shri. Manoj Gujar, Advocate attended virtual hearing on behalf of the establishment 27/12/2024. He deposed that, he has already submitted letter dated: 27/12/2024 (Exhibit,R16) taken on records. Wherein, has requested for cross examination of the Enforcement Officer. In the interest of natural justice of law, his request is accepted. However, it is noticed that, the establishment has already received PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024. Reply from the establishment still awaited. The establishment representative has been directed to submit the reply in the matter immediately. Shri. S.T. Shinde, EO has been assigned with the urgent work of UAN activation. Shri. S.T. Shinde, EO has submitted his counter reply dated: 10/12/2024 to the establishment reply dated: 16.09.2024 and department has already forwarded copy of counter reply dated: 10/12/2024 submitted by the EO to the establishment for submission of their comments is still awaited. It is noticed that, he has already forwarded PDF statement of calculations of employee's wise dues and month wise summary of dues for period inquiry through email on 09/10/2024 for which establishment representative agreed. Department is directed to issue notice to Shri. S. T. Shinde, EO to present himself for cross examination on the date fixed. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed for cross examination on 07/01/2025 at 3.00 pm as per request of the Shri. Manoj Gujar, Advocate.

Shri. Manoj Gujar, Advocate and Shri. Mangesh Jagtap establishment Representative attended hearing on behalf of the establishment for physical cross examination of EO on 01/01/2025. Shri. S.T. Shinde, EO attended hearing on behalf of the EPFO. Shri. Manoj Gujar, Advocate taken cross examination of Shri. Sunil T. Shinde, EO. Shri. Manoj Gujar, Advocate has requested time for taking further cross examination on next date due to shortage of time. In the interest of natural justice law his request is accepted. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed for cross examination on 14/01/2025 at 3.00 pm as per request of the Shri. Manoj Gujar, Advocate.



Shri. Mangesh Jagtap, establishment Representative attended hearing on behalf of the establishment on 14/01/2025. He deposed that, he has already submitted letter dated: 14/01/2025 requesting for adjournment of hearing stating that, due to paucity of time advocate on records has requested to adjourn the cross examination on 7th January, 2025 further requested to adjourned the proceedings fixed on 14th January, 2025 as the advocate on records is required to attend the old matters fixed at small causes Court. Which are more than 15 years old and expedited by the Hon'ble High Court. In the interest of natural justice of law. Request is accepted. Shri. S.T. Shinde, EO attended hearing on behalf of the EPFO. In the interest of natural justice law his request is accepted. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. The case is adjourned; next date of hearing is fixed for physical cross examination on 23/01/2025 at 3.00 pm as per request of the Shri. Manoj Gujar, Advocate. The case is adjourned; next date of hearing is fixed on 23.01.2025.

Shri. Manoj Gujar, Advocate and Shri. Mangesh Jagtap establishment Representative attended hearing on behalf of the establishment for physical cross examination of EO on 23/01/2025. Further, he has submitted letter dated: 23/01/2025 (Exhibit,R17) along with documents taken on records. The copy of same has been handed over the Shri. S.T.Shinde, EO for submission of his counter reply in the matter. Shri. S.T. Shinde, EO attended physical hearing on behalf of the EPFO. Shri. Manoj Gujar, Advocate taken cross examination of Shri. Sunil T. Shinde, EO. Shri. Manoj Gujar, Advocate has requested time for taking further cross examination on next date due to shortage of time. The recorded copy of cross examination is handed over to the establishment represented as well as EO (Exhibit R18). In the interest of natural justice law his request is accepted. It is also clarified to the establishment representative that Hon'ble Supreme Court Judgments are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgments is considered precedents and is binding while deciding any similar cases with identical facts and issues. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. In the interest of natural justice of law. The case is adjourned; next date of virtual hearing is fixed on 28/01/2025 at 3.00 pm.

Shri. Manoj Gujar, Advocate and Shri. Mangesh Jagtap establishment Representative attended virtual hearing on behalf of the establishment on 28/01/2025. Shri. Mangesh Jagtap, establishment representative has submitted letter dated: 28/01/2025 (Exhibit,R19) along with documents and questioner having 12 questions to be answer by the Shri. S.T. Shinde, EO as part of the cross examination taken on records. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. The copy of letter dated: 28/01/2025 along with documents and questioner handed over to Shri. S.T. Shinde, EO for submission of his counter reply and reply to the questioner on or before next date of hearing. It is also clarified to the establishment representative that Hon'ble Supreme Court Judgments are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. In the interest of natural justice of law. The case is adjourned; next date of virtual hearing is fixed on 04/02/2025 at 3.00 pm.

None attended virtual hearing on behalf of the establishment 04/02/2025. However, an email dated: 04/02/2025 received from the establishment stating that, with reference to your trailing mail and request you to please grant an adjournment to enable us to make the submission. Shri. S.T. Shinde, EO is on leave. Shri. S. T. Shinde, EO has already submitted counter reply to the submission made by the establishment vide letter dated: 29/01/2025 (Exhibit, R20) which was forwarded to the establishment through email dated: 31/01/2025 for submission of any comments / say / reply in the matter on or before next date of hearing. It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts



and issues. Department is directed to issue copy of proceedings and notices to all the concerned through all modes of communications immediately. In the interest of natural justice of law The case is adjourned; next date of virtual hearing is fixed on 11/02/2025 at 3.00 pm.

Shri. Manoj Gujar, Advocate attended virtual hearing on behalf of the establishment 11/02/2025. He deposed that, he has submitted letter dated: 27/01/2025 along with details of left employees on 11/02/2025 along with copy of letter dated: 27/01/2025 as assured. He has requested to allow time for his final submission.

He has been directed to submit his final version along with documentary evidences if any by 17/02/2025 which will be consider in final order. Shri. S.T. Shinde, EO attended virtual hearing on behalf of the EPFO. He deposed that, he has already submitted his report dated: 09/10/2024 forwarded to the establishment through email dated: 09/10/2024 with attachment calculation of individual employee's wise dues. It is also clarified to the establishment representative that Hon'ble Supreme Court Judgments are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgments is considered precedents and are binding while deciding any similar cases with identical facts and issues.

The total outstanding dues for the period 04/2016 to 04/2023 are as under

Period	A/c. I EE	A/c. I ER	A/c. II	A/c.X	A/c.XXI	A/c.XXII	Total
04/2016 to 04/2023	3005205	919270	171767	2085935	162781	450	6345408

Total outstanding dues Rs. 63,45,408/- (Rs. Sixty Three Lakhs Forty Five Thousand Four Hundred Eight Only.) The case is reserve and close for order.

E) RULE PROVISIONS

Provisions of the EPF & MP Act, 1952 & Scheme framed thereunder

Section 2 (b) "Basic wages" means all emoluments which are earned by an employee while on duty or [on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

- (i) the cash value of any food concession;
- (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

Section 2(f) : "Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment] and who gets his wages directly or indirectly from the employer, [and includes any persons,-

- (i) Employed by or through a contractor in or in connection with the work of the establishment;
- (ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act'1961 (52 of 1961) or under the standing orders of the establishment;]

Section: -6 :Contributions and matters which may be provided for in Schemes. - the contribution which shall be paid by the employer to the fund shall be 4[ten per cent.] of the basic wages,5[dearness allowance and retaining allowance (if any) for the time being payable to each of the employees 6[(whether employed by him directly or by or through a contractor)],and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may ,[if any employee so desires ,be an amount exceeding 4[ten per cent.] of his basic wages, dearness allowance and retaining allowance (if any),subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section):

7 (provided that in application to any establishment or class of establishment which the Central Government, after making such inquiry as deems fit, may by notification in the official gazette specify, this



section shall be subject to the modification that for the words "4[ten per cent.]", at both the places where they occur words 8["12 per cent."] shall be substituted:]

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

1[, the 2[pension] Fund or the Insurance Fund] or 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 4[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17,5[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 6[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme].]

7[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.]

8[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.]

Para:- 26. Classes of employees entitled and required to join the fund. -

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and member of the fund from the day this paragraph come into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph come into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry of cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become member of the Fund forthwith

- (2) After this paragraph come into force in a other establishment every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory or establishment
- (3) An excluded employee employed in or in connection with the work of a factory or other establishment to which scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee
- (4) On re-election of an employee or a class of employees exempted under paragraph 27 or 27-A to join the Fund or on the expiry of cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.
- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as member of the fund shall, on joining a factory or other establishment to which this scheme applies, become a member of the Fund forthwith.



- (6) Notwithstanding anything contained in this paragraph an officer not below the rank of an assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this scheme applies and his employer enroll such employee as a member or allow him to contribute on more than {fifteen thousand rupees} of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled the benefits and shall be subject to the conditions of the Fund, Provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.}

Para 29. Contributions: -- (1) The contributions payable by the employer under the Scheme shall be at the rate of [ten per cent.] of the [basic wages, dearness allowance including the cash value of any food concession and retaining allowance (if any) payable to each employee to whom the scheme applies: [Provided that the above rate of contribution shall be [twelve per cent.] in respect of any establishment or class of establishment which the Central Government may specify in the official Gazette from time to time under the first proviso to sub-section 6 of the Act.]

2) The contribution payable by the employee to the scheme shall be equal to the contribution payable by the employer in respect of such employee:

[Provided that in respect of any employee to whom the scheme applies, the contribution payable by him may, if he so desires be an amount exceeding [ten per cent] as the case may be of his basic wages, dearness allowance and retaining allowance (if any) subject to the condition that employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act.]

3) The contribution shall be calculated on the basis of the [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any) actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis].

Para 30: Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

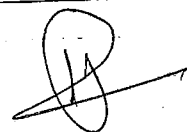
(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Para 32-A:- Recovery of damages for default in payment of any contribution -

[(a) Where an employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulation required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 of the Act or in the payment of any charges payable under any other provision of the act or the scheme or under any of the condition specified under section 17 of the act, the Central Provident Fund Commissioner or such 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 damages at the rates given in the table below.

Period of default	Rate of damages (% of arrears per annum)	
	w.e.f. 01.09.1991	w.e.f. 26.09.2008



(a) Less than two months	17	5
(b) Two months and above but less than four months	22	10
(c) Four months and above but less than six months	27	15
(d) Six months and above	37	25

- (1) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

Para 36. Duties of employers: -

(1) Every employer shall send to the commissioner, within fifteen days of the commencement of this scheme a consolidated return in such form as the commissioner may specify, 2[***] of the employees required or entitled to become member of the fund showing the 3[basic wage, retaining allowance (if any) and dearness allowance including the cash value of food concession of any food concession] paid to each of such employees. 4 [Provided that if there is no employee who is required or entitled to become a member of the fund, the employee shall send a 'Nil' return.]

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return: -

- 5[***] in Form 5, of the employees qualifying to become members of the fund for the first time during the preceding month together with the declarations in form 2 furnished by such qualifying employees], and
- 2[***] 6 [in such form as the commissioner may specify] of the employees leaving service of the employer during the preceding month
- 7[Provided that if there is no employee qualifying to become a member of the fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'Nil' return

Para 38. Mode of payment of contribution: -

(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage 5[of the pay (basic wages dearness allowance, retaining allowance, if any, and cash value of food concessions admissible there on) for the time being payable to the time being payable to the employees other an excluded employee, and in respect of which provident fund contributions are payable as the Central Government may fix, he shall within fifteen days of the close of every month pay the same to the Fund by separate bank drafts or cheques on account of contributions and administrative charge:]

[Provided that if the payment is made by cheque, it should be drawn only on the local bank of the place in which deposits are made:]

Provided further that where there is no branch of the Reserve Bank or the [State Bank of India] at the station where the [factory or other establishment] is situated, the employer shall pay to the fund the amount mentioned above by means of Reserve Bank of India [Government Drafts at per] separately on account of contributions and administrative charge.

[(2) The employer shall forward to commissioner, within twenty-five days of close of the month, a monthly abstract in such form as the commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and aggregate amount contributed by the employer in respect of all such members for the month.

Provided that an employer shall send a 'Nil' return, if no such recoveries have been made from the employees.

Provided further that in the case of any such employee who has become a member of pension fund under the employees' pension scheme 1995 the afore said form shall also contain such particulars as are necessary to comply with the requirement of that scheme

(3) The employer shall send to the commissioner within one month of the close of the period of currency, a consolidated annual contribution statement in form 6-A showing the total amount of

recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period the employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the inspector.

F) Submission of the Enforcement Officer:-

AEO vide report dated 24.05.2024 submitted that, the establishment M/s. Sudal Industries Ltd., A-5, MIDC, Ambad, Nashik-422 010 is seen covered establishment under the EPF & MP Act, 1952 vide PF Code No KD/NSK/22450. The establishment M/s. Sudal Industries Ltd., is manufacturing of Aluminum extrusions and aluminum base alloys activity and is seen covered under schedule head "EMGE" w.e.f. 31/05/1982 (statutory) with 116 (One hundred sixteen) employees were declared by the employer at the time of registration for Provident Fund under the EPF Act. The establishment is a Limited company and registered under the company Act-1956.

Under the Shram Suvidha Portal an inspection was allotted, Enforcement officer submitted his report dated 26-06-2023 calculating the dues of Rs.62,68,676/-.

The Adjudication authority Mumbai bench has ordered for the public Announcement of commencement of pre-packaged insolvency resolution process in respect of M/s. Sudal Industries Ltd. The report was forwarded to Recovery section to file the claim application before the IRP vide Note No MH/22450/PF/RO/NSK/Compliance-I/SKT dated 06-07-2023. The said report vide letter No MH/KD/NSK/Recovery/22450/RO/139 dated 10th July 2023 address to the Resolution Professional Mr. Prashant Jain appointed by NCLT Mumbai Bench and copy to the establishment.

As per the copy of report which was forwarded to M/s. Sudal Industries Ltd., Ambad to demand the amount as per Enforcement officer report sum of Rs. 62,68,676/-. The Employer in relation to the establishment has submitted letter vide No Nil dated 14th July 2023 to this office on 17th July 2023 where disagree with the report and prayer to commencement of the 7A enquiry under the PF Act and Principal of Natural Justice on this count earliest.

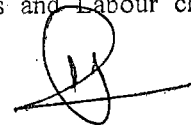
Therefore, this inquiry under section 7-A of the EPF & MP Act, 1952 was initiated for determination of dues vide Summons No. MH/22450/PF/RO/Compliance-I/Dir. NO 222/2024/1741 dated 19-03-2024 and directed to attain the hearing on 26th March 2024.

I Shri Sunil T Shinde, Enforcement officer, do hereby submit following deposition which may be considered in ensuing personal hearing against which 7-A enquiry was initiated as per the above referred summons. The authorized representative Shri Mangesh Jagtap on behalf of the establishment attained the hearing; the required documents mentioned in the summons were not submitted by the employer. The hearing adjourned to 23-04-2024. Shri Mangesh Jagtap Authorized officer of the establishment deposed that the all relevant records are submitted before the earlier EO and he submitted the report, but the report is not agree by the establishment. The report is reproducing as under:

The earlier EQ has submitted the report dated 26-06-2023 is placed below.

On verification of the office records it is seen that the following records are available:

- Affidavit for non availability of the record prior to 2016/17 dated 13.06.2023
- Balance sheet for the year 2016/17 to 2021/22
- Ledger (i.e. group booking expenses sheet) of Salary/wages/stipends and Labour charges for 2016/17 to 2021/22



- Salary/wages/stipend/Mumbai staff salary sheets in hard & soft copies from 2016/17 to April 2023(except some month of sheet not in record).
- Year wise List of contractor engaged by establishment with Code number and also list of outside job workers.
- Letter regarding the list of excluded employees already exit the establishment and getting pension.
- Dues remittance statement for 2016/17 to 04/2023-
- Letter regarding the Apprentice and paid stipend.
- Consolidated month wise calculation sheet of salary/wages/Stipend/Mumbai staff salary etc.

The establishment has submitted the Affidavit dated -13.06.2023 regarding the record prior to 2016/17 not available and if any complaint received regarding the provident fund or the information and record/documents as submitted/produced during the course of inspection of the EPF & MP Act 1952 & Scheme framed there under is found false or incorrect in future the establishment will take responsibility towards the payment of EPF & other Allied dues.

The establishment has paid the amount under head Labour charges:- In which the estt, has booked the amount paid to the 1) Outside Job worker 2) To the contractor engaged at establishment for Canteen, Housekeeping, and Labour work. The establishment remitted the dues on the establishment code number i.e. MH/22450 as the said contractor are not covered under EPF Act 1952.

The establishment has produced the list of contractors with their Name, nature of activity, Provident Fund Number. As per the details the establishment has remitted the dues on the establishment (M/s. Sudal Ind. Ltd, MH/22450) code number of the contractor are who are not covered under the EPF & MP Act and the code number of the other contractors who are separately covered under this Act, the year wise list these contractors is enclosed herewith. The establishments produce the list of the outside job workers and sample bills of that establishment. The establishment has produced the group booking ledger of Labour charges, as per this ledger the establishment paid the amount to outside job work and also the contractor worked in establishment.

On verification of the salary sheet the establishment has booked the Basic and DA amount of staff salary Nasik, Mumbai Staff salary in balance sheet in group booking as per the ledger. As per the head wages amount of wages and stipend are booked in balance sheet as per group booking ledger.

Establishment has categorized its employee those who are getting Nasik staff Salary/Mumbai staff salary/wages/O.T. on wages/Stipend etc. however the establishment started showing salary to be summation of basic and different allowances like HRA, Education Allowance, CCA to avoid the P.F. dues on this amount, i.e. less PF deduction/deposition. The copies of salary/wages/stipend sheets for 2016/17(04/2016 to 06/2016 and Nov. 2020 and Dec. 2020 not produced) to 04/2023 are enclosed herewith.

As per interpretation of basic wages given by Hon'ble Supreme court in CIVIL APPEAL NO(s). 6221 OF 2011, **The Regional Provident Fund... vs Vivekananda Vidyamandir** on 28 February, 2019, it has been held that those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. In this case establishment has provided CCA & Education Allowance apart from basic, HRA to its entire employee irrespective of their linkage to extra output. Hence allowances viz CCA, Education allowance have been clubbed into basic and dues calculated on basic salary up to ceiling limit of rupees 15,000/-

The establishment has submitted letter dated 23.06.2023 regarding the student who were appointed as Apprentice employees and paid amount and booked under the stipend head which is enclosed herewith and these employees are excluded.



The establishment has booked the amount under retainer head in the books of account and paid to the employees who are exit the establishment and withdrawn the Provident Fund amount as per system and getting the pension and rejoined the establishment. These employees are excluded, the separate list of those employees are also submitted is enclosed herewith.

Therefore the dues are calculated on the basis of the record produced before me during in the inspection period by the establishment are as under:-

TOTAL DUES AFTER CONSIDARATION OF REMITTANCE FROM 2016/17 TO 04/2023.

Year	P.F.SALARY	A/C I	A/C I ER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
2016/17	27324673	3278961	1016456	2262504	229996	136623	2183	6926724
2017/18	30042974	3605157	1118707	2486450	193413	150215	0	7553941
2018/19	32263780	3871654	1203850	2667804	164751	161319	0	8069378
2019/20	31574610	3790159	1173567	2616592	157873	157923	0	7896115
2020/21	22551719	2591543	717218	1874325	112759	112824	0	5408668
2021/22	23035886	2764306	869016	1895290	117258	115179	0	5761050
2022/23	23795883	2855506	896216	1959289	118979	118979	0	5949002
Apr -23	2163116	259574	84312	175262	14243	10816	0	544206
Total	192752641	23016860	7079342	15937516	1109272	963878	2183	48109084

M/s SUDAL IND. LTD. REMITTANCE

YEAR	A/C IEE	A/C I ER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
2016/17	2934187	927207	2006980	207828	120752	2464	6199418
2017/18	3071818	962330	2109488	171016	126856	1294	6442802
2018/19	3361426	1067244	2294182	146623	138310	0	7007785
2019/20	3353091	1066508	2286583	128391	137799	11247	6983619
2020/21	2262067	667904	1594163	98430	96662	0	4719226
2021/22	2310306	815155	1495114	96264	92448	0	4809287
2022/23	2510691	993903	1516788	104612	94095	0	5220089
Apr -23	220384	88005	132379	9183	8231	0	458182
TOTAL	20023970	6588256	13435677	962347	815153	15005	41840408

TOTAL DUES ON THE BASIS OF SALARY/WAGES SHEET FROM 04/2016 TO 04/2023

YEAR	A/C IEE	A/C I ER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
DUES FROM 04/2016 TO 04/2023	23016859	7079343	15937516	1109272	963879	2183	48109052
REMITANCE FROM 04/2016 TO 04/2023	20023970	6588256	13435677	962347	815153	15005	41840408
ACTUAL DUES	2992889	491087	2501839	146925	148726	0	6281466

Therefore, the total outstanding EPF & allied dues of Rs- 62,81,466/- (Rupees - Sixty two Lacs Eighty One Thousand Four Hundred and Sixty Six Rupees Only) may be assessed against the establishment for the period 2016/17 to 04/2023 on the basis of record produced before me during the inspection period. The Total Outstanding dues may be changed after submission of further records/documents if brought under the notice of the department.

However, the employer further has to be responsible that in case of any complaint is received by this office in future, from any employee or any other source regarding provident fund matter or the information and records/documents as submitted/produced during the course of inquiry of the Employees Provident Fund & Miscellaneous Provision Act 1952 and scheme framed there under are found false or incorrect in future, the Employer/Establishment/Responsible persons/IRP of the establishment, will take whole responsibility towards the payment of EPF & Allied dues of the complaint and also responsible for panel damages and interest thereon as per EPF laws, therefore, the I the undersigned is working out the dues on the basis of records/documents produced before me and enclosed herewith.

On deposit of dues as worked out above, establishment/owner/director/ responsible person will be liable to pay further damages u/s 148 & interest u/s 70 of the Act respectively

Establishment/Owner/Director/Responsible person is also directed to update KYC, E- nomination of each and every employee of the establishment.

Thus, in view of the above facts the deposition is submitted on basis of the records/documents as produced by the employer/establishment. Submitted for kind perusal and further necessary orders/direction if any, please.

After verifying the records which are available in office records, the report in Shram Suvidha portal submitted by the EO vide dated 26-06-2023 I agreed the calculation of the dues on as per the Hon. Supreme Court judgment in the matter of *The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011.*

Some technical correction in the report the dues calculated are as under:

TOTAL DUES AFTER CONSIDARATION OF REMITTANCE FROM 2016/17 TO 04/2023.

Year	P.F.SALARY	A/C I	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
2016/17	27324673	3278961	1016456	229996	2262504	136623	2183	6926723
2017/18	30042974	3605157	1118707	193413	2486450	150215	0	7553942
2018/19	32263780	3871654	1203850	164751	2667804	161319	0	8069378
2019/20	31574610	3790159	1173567	157873	2616592	157923	0	7896114
2020/21	22551719	2591543	717218	112759	1874325	112824	0	5408669
2021/22	23035886	2764306	869016	117258	1895290	115179	0	5761049
2022/23	23795883	2855506	896216	118979	1959289	118979	0	5948969
Apr-23	2163116	259574	84312	14243	175262	10816	0	544207
Total	192752641	23016860	7079342	1109272	15937516	963878	2183	48109051

YEAR	A/C IEE	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
2016/17	2934187	927207	207828	2006980	120752	2464	6199418
2017/18	3071818	962330	171016	2109488	126856	1294	6442802
2018/19	3361426	1067244	146623	2294182	138310	0	7007785
2019/20	3353091	1066508	128391	2286583	137799	11247	6983619
2020/21	2262067	667904	98430	1594163	96662	0	4719226
2021/22	2310306	815155	96264	1495114	92448	0	4809287
2022/23	2510691	993903	104612	1516788	94095	0	5220089
Apr-23	220384	88005	9183	132379	8231	0	458182
TOTAL	20023970	6588256	962347	13435677	815153	15005	41840408

TOTAL DUES ON THE BASIS OF SALARY/WAGES SHEET FROM 04/2016 TO 04/2023

YEAR	A/C I EE	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
DUES FROM 04/2016 TO 04/2023	23016860	7079342	1109272	15937516	963878	2183	48109052
REMITANCE FROM 04/2016 04/2023	20023970	6588256	962347	13435677	815153	2183	41827586
ACTUAL DUES	2992890	491086	146925	2501839	148725	0	6281466

Rs.62,81,466/- (Rs. Sixty Two Lacks Eighty One Thousand Four Hundred Sixty Six only)

The employer in relation to the establishment has bifurcated the salary to avoid the liability of PF such as HRA, Education Allowances & Conveyances allowances all three type of allowances rate is 25% to 26%. The HRA is excluded from the Basic wages In this case establishment has provided Conveyance Allowance, Education Allowance each. Hence allowance viz Education allowances and Conveyance Allowance have been clubbed into basic of employees and dues have been calculated on basic salary (Which has been worked out after clubbing basic with Education and conveyance allowance) up to ceiling limit of rupees 15000/- for each employee comes to Rs. 62,81,466/-

The definition of the basic wages as provided under section 2(b) of the EPF Act, 1952 is:

*"Section 2(b) **"basic wages"** means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—*

(i) the cash value of any food concession;



- (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (iii) any presents made by the employer;"

"Section 6: Contributions and matters which may be provided for in Schemes.

The contribution which shall be paid by the employer to the Fund shall be ten percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or the quarter of a rupee.

Explanation I – For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation II – For the purposes of this section, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services."

On the plain reading of the above two sections, it is clear that some allowances/components/amounts have been expressly excluded for making payment of PF contributions. The list of expressly excluded allowances are house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment and any presents made by the employer.

The some judgments in this matter is placed below:

Petitioner: Relying on the judgment of Hon'ble Supreme Court in the case of *Manipal Academy of Higher Education v. Provident Fund Commissioner* [(2008) 5 SCC 428], petitioner contended that it is not liable to deduct provident fund from the wages of the workers except basic wages + DA and it has been depositing the provident fund contribution with the department accordingly.

Respondent: As per the test laid down by the Hon'ble Supreme Court in the case of *Bridge and Roofs Co. Ltd v. Union of India and Ors.* [AIR 1963 SC 1474], the principle of universality has to be applied in determining the basic wages and on the basis of the aforesaid principle the orders passed by both the Authorities are in accordance with law.

- (i) Supreme Court judgment in *Manipal Academy case (supra): Jay Eng. Works Ltd. v. Union of India* [AIR 1963 SC 1480] and *TI Cycles of India v. M.K. Gurumani* [(2001) 7 SCC 204] to reiterated that:

"On combine reading of Section 2(b) and Section 6 of the Act, the wages' which is universally necessarily and ordinarily paid to all across the board, such emoluments are 'basic wages' and where the payment is available to be specially paid to those who avail of the opportunity in not the 'basic wages'".



- (ii) *"The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011 wherein Hon'ble court held that in order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at the factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of the allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees".*

In consideration of the above facts and the judgments the undersigned has observed that definition of basic wages has been wrongly interpreted by establishment as per their convenience just to evade PF liability in this regard it is to submit that any allowance which is uniformly paid to all employees constitute basic wages since in this case allowances have been uniformly paid they constitute basic wages and therefore liable for calculation of PF dues except HRA.

In view of the above, it is therefore, recommended that the present proceedings/ inquiry under section 7-A may kindly be concluded by determining the amount Rs.62,81,465/- (Rs. Sixty Two Lacks Eighty One Thousand Four Hundred Sixty Five only) for the inquiry period i.e. from April 2016 to April-2023, on the basis of available records, subject to section 7-C of the Act if agreed to.

However, the employer further has to be responsible that in case of any complaint is received by this office in future, from any employee or any other source regarding Provident Fund matter or the information and records/documents as submitted/ produced during the course of inquiry of the Employees Provident Fund & Miscellaneous Provision Act 1952 and scheme framed there under are found false or incorrect in future. The Employer/ Establishment /Responsible persons of the establishment will take whole responsibility towards the payment of EPF & Allied dues of the compliant and also responsible for panel damages and interest thereon as per the provisions under EPF & MP Act.

Therefore, the undersigned is working out the dues as per the available records/ documents only for the said period and for the identified employees only.

It is also a prayer that on deposit of dues by the employer in relation to the establishment is liable for Damages under section 14B and Interest under section 7Q of the EPF & MP Act, 1952 for belated remittances of the statutory dues, same may be informed to concerned section if the Office for further action. It is prayer to the assessing officer to conclude the inquiry for the period April-2016 to April-2023.

In continuation of my earlier report dated 24-05-2024, the assessing officer is directed me to comments the letter of establishment dated 22-03-2024 which is received in this office on 02-04-2024 in 7-A proceeding dated 30-05-2024.

1. It is to state that my earlier report dated 24-05-2024 has covered all points and justified with the provision of EPF Act-1952 and reference to the Hon. Supreme Court Judgment in the matter of *"The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011"*. Also indicating various judgments of the Hon Courts in deposition dated 24-05-2024.



The definition of the basic wages as provided under section 2(b) of the EPF Act, 1952 is:

"Section 2(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) The cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;"

"Section 6: Contributions and matters which may be provided for in Schemes.

The contribution which shall be paid by the employer to the Fund shall be ten percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or the quarter of a rupee.

Explanation I – *For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.*

Explanation II – *For the purposes of this section, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services."*

On the plain reading of the above two sections, it is clear that some allowances/components/amounts have been expressly excluded for making payment of PF contributions. The list of expressly excluded allowances are house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment and any presents made by the employer.

The some judgments in this matter is placed below:



Petitioner: Relying on the judgment of Hon'ble Supreme Court in the case of Manipal Academy of Higher Education v. Provident Fund Commissioner [(2008) 5 SCC 428], petitioner contended that it is not liable to deduct provident fund from the wages of the workers except basic wages + DA and it has been depositing the provident fund contribution with the department accordingly.

Respondent: As per the test laid down by the Hon'ble Supreme Court in the case of Bridge and Roofs Co. Ltd v. Union of India and Ors. [AIR 1963 SC 1474], the principle of universality has to be applied in determining the basic wages and on the basis of the aforesaid principle the orders passed by both the Authorities are in accordance with law.

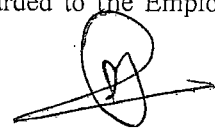
(i) Supreme Court judgment in Manipal Academy case (supra): Jay Eng. Works Ltd. v. Union of India [AIR 1963 SC 1480] and TI Cycles of India v. M.K. Gurumani [(2001) 7 SCC 204] to reiterated that:

"On combine reading of Section 2(b) and Section 6 of the Act, the wages' which is universally necessarily and ordinarily paid to all across the board, such emoluments are 'basic wages' and where the payment is available to be specially paid to those who avail of the opportunity in not the 'basic wages'".

(ii) The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011 wherein Hon'ble court held that in order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at the factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of the allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees.

In consideration of the above facts and the judgments the undersigned has observed that definition of basic wages has been wrongly interpreted by establishment as per their convenience just to evade PF liability in this regard it is to submit that any allowance which is uniformly paid to all employees constitute basic wages since in this case allowances have been uniformly paid they constitute basic wages and therefore liable for calculation of PF dues except HRA.

2. Establishment has informed in his para No 6 the matter is registered in the Hon'ble High Court, Bombay in October 2023. It is to inform that the establishment has filed the case against the Shram Suvidha Report submitted by the Enforcement officer and said is forwarded to the Employer in



relation to the establishment. This inquiry under section 7-A of the EPF & MP Act, 1952 was initiated for determination of dues vide Summons No. MH/22450/PF/RO/Compliance-I/Dir. NO 222/2024/1741 dated 19-03-2024. The matter is not related with this inquiry and till date no order has been pronounced by Hon'ble High Court in this regards.

3. The employer in relation to the establishment has required three week time from 22-03-2024; however the submission of the establishment has not been received even after lapse of 8-9 weeks.
4. Therefore, it is recommended to conclude the dues as per the report /deposition submitted on 24-05-2024 calculating the dues of Rs.62,81,466.00 (Rs. Sixty Two Lacs Eighty One Thousand Four Hundred Sixty Six only) for the period from April-2016 to April 2023.
5. It is also a prayer that on deposit of dues by the employer in relation to the establishment is liable for Damages under section 14B and Interest under section 7Q of the EPF & MP Act, 1952 for belated remittances of the statutory dues, same may be informed to concerned section in the Office for further action.

Further AEO report dated 29.08.2024 submitted that, this has reference to the establishments M/s. Sudal Industries Ltd submission dated 11-07-2024 deposition submitted in 7A proceedings;

The establishment submitted letter dated 14-07-2023, on verification of the facts and the request of the employer the inquiry under section 7-A of the Act was initiated.
Point wise reply to the establishment letter dated: 11/07/2024 is as under

Point No 1: No comments.

Point No 2 :

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition. The Provident Fund (PF) and allied dues were calculated based on the basic wages of employees as defined under Section 2(b) of the EPF Act, taking into account Section 6 of the Act.

The establishment has claimed that the dues are not supported by documentary evidence and that the beneficiaries have not been properly identified, which is incorrect. The establishment provided the salary and wages statements to the department, and based on the details provided for all employees, including those from the Mumbai Office, the undersigned has calculated the outstanding EPF & Allied dues.

The relevant provisions of the EPF & MP Act, 1952 are outlined below:

Section 2(b) : "basic wages" means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include :

- i. *Cash value of any food concession.*
- ii. *Any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus, commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment.*
- iii. *Any present made by the employer.*



Section 6: Contributions and matters which may be provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, Dearness Allowance, and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishment which the Central Government, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted.

Provided further that there where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding of such fraction to the nearest rupee half of a rupee, or quarter of a rupee.

Explanation 1 – For the purpose of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

5. It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country.

The Hon'ble Supreme Court of India in *Bridge & Roof Company Ltd Vs Union of India*, 1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

- a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

The Hon'ble Supreme Court of India ratified the above position in *Manipal Academy of Higher Education Vs PF Commission*, 2008(5)SCC 428. The above tests were against reiterated by the Hon'ble Supreme Court in *Kichha Sugar Company Limited Vs. Tarai Chini Mill Majzoor Union* 2014 (4) SCC 37. The Hon'ble Supreme Court of India examined all the above cases in *RPFC Vs Vivekananda Vidya Mandir and Others*, 2019 KHC 6257. In this case the Hon'ble Supreme Court considered whether travel allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases the Hon'ble Supreme Court held that

“the wage structure and the components of salary have been examined on facts, both by the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflage as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference.”

The Hon'ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of *EPF Organization Vs MS Raven Beck Solutions (India) Ltd*, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon'ble Supreme Court to conclude that

"this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, forms an integral part of basic wages and as such the amount paid by way of these allowance to the employees by the respondent establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent establishment by classifying it as payable for uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of provident fund contribution by the respondent establishment".

In *Montage Enterprises Pvt Ltd Vs EPFO*, 2011 LLR 867 (MP.DB) the Division Bench of the Hon'ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages.

In *RPFC West Bengal Vs. Vivekananda Vidya Mandir*, 2005 LLR 399(CalcuttaDB) the Division Bench of the Hon'ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages. This decision of the Hon'ble High Court of Calcutta was later approved by the Hon'ble Supreme Court in *RPFC Vs Vivekananda VidyaMandir(supra)*.

In *Mangalore Ganesh Beedi Workers Vs APFC*, 2002 LIC 1578 (Kart.HC) the Hon'ble High Court of Karnataka held that special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers.

In *Damodar Valley Corporation Bokaro Vs. Union of India*, 2015 LIC 3524 (Jharkhand HC) the Hon'ble High Court of Jharkhand held that special allowance paid to the employees will form part of basic wages.

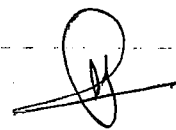
The employer, in relation to the establishment, paid wages/salaries, including basic salary/wage and allowances. Since allowances were uniformly paid to all employees, they are considered part of the basic wages and therefore subject to Provident Fund (PF) calculations, with the exception of House Rent Allowance (HRA). The employer remitted PF contributions only on the basic salary as shown but split the basic wages into Education Allowance and Conveyance Allowance, not considering these allowances for PF deductions.

Consequently, the undersigned has calculated the outstanding dues only for those employees whose total basic wages (i.e., basic salary, Education Allowance and Conveyance Allowance) were below the statutory ceiling limit of Rs. 15,000/- and has restricted the calculation to this limit.

Based on this, the dues should be considered as calculated on Basic Wages rather than on Conveyance Allowance and Medical Allowance. To the best of my knowledge, these calculations are accurate. The total outstanding dues from the employer amount to Rs. 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only).

Point No 3:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.



Concerning the excluded employees, undersigned requested the employer to provide the details of these employees as directed during the virtual hearing on 01-08-2024. However, the employer failed to submit the required information.

As a result, the undersigned visited the establishment on 08-08-2024 and requested the relevant records. The authorized representative, Shri Mangesh Jagtap, provided the necessary documents/records. These were reviewed and considered accordingly in the calculation of the final outstanding dues.

Point No 4:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

It is pertinent to mention that the details regarding the remittances made by the establishment for their employees are submitted solely by the establishment. During the inspection, it is the duty of the enforcement officer to identify any escaped amount that are due from the establishment.

Therefore, the remittance details available on the web portal are subject to re-verification during the inspection and should not be relied upon directly.

Point No 5:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

The employer remitted PF contributions only on the basic salary as shown but split the basic wages into Education Allowance and Conveyance Allowance, not considering these allowances for PF deductions. Consequently, the undersigned has calculated the outstanding dues only for those employees whose total basic wages (i.e., basic salary, Education Allowance and Conveyance Allowance) were below the statutory ceiling limit of Rs. 15,000/- and has restricted the calculation to this limit.

As per the EPF & MP Act, 1952, the establishment is required to make deductions based on Section 2(b), with consideration of Section 6. It is pertinent to mention that if the establishment has made any remittance exceeding the statutory ceiling limit, such remittances are considered voluntary. The EPF & MP Act, 1952 does not restrict any establishment from making voluntary remittances.

Based on this, the dues should be considered as calculated on Basic Wages rather than on Conveyance Allowance and Medical Allowance. To the best of my knowledge, these calculations are accurate. The total outstanding dues from the employer amount to Rs. 62,81,466/- (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Six Only).

Point No 6:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

It is pertinent to mention that the details regarding the remittances made by the establishment for their employees are submitted solely by the establishment. During the inspection, it is the duty of the enforcement officer to identify any escaped amount that are due from the establishment.

Moreover, a 7A Summon No. MH/22450/PF/RO/NSK/Compl-I/Dia No/222/2024/ 1741, dated 19.03.2024, was issued to the establishment.

Point No 7:



The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition.

Point No 8:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition.

Further the total outstanding dues calculated is Rs. Rs. 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only). Employer in relation to the establishment linked the matter of NCLT with the 7-A proceeding.

Point No 9:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition. While preparing the deposition on the basis of identification of employees & documentary evidence which was produced by the establishment.

Point No 10:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

Section 7A of the EPF & MP Act, 1952 clearly states:

"The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner conducting the inquiry under sub-section 7A(1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908). Any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860)."

Therefore, the permission for cross-examination or the process of cross-examination clearly falls within the jurisdiction of the assessing authority.

Point No 11:

The deposition was submitted considering the case laws as mentioned in point No 2. It is also state that Allowances (Education+ conveyance) payment has to be justified by nature. However, the same has been not done by employer, paying in percentage terms without justifying its nature seems to be modus operrandi for subterfuge of wages and hence it is nothing but basic wages and thus must be included for PF deduction.

Since the allowances (education and conveyance) in the present case has been shown by employer to be earned by all employees of the establishment, it has to be included for the purpose of deduction under Section 6 of the Act. The allowances (education and conveyance) in the present case is a part of the salary break up payable to all employees and did not have any nexus with extra output produced by the employees out of his allowances, and thus it fell within the definition of 'basic wages'.

Point No 12:

At the conclusion of the inquiry under Section 7A of the Act, the authority will assess any dues. A separate inquiry for interest and damages under Sections 7Q and 14B will be initiated if applicable.



All points have been addressed as per the employer's submission dated 11th July 2024, and no additional issues remain in the matter. The conveyance allowance and education allowance were paid by the employer to the employees for only avoid the PF and allied dues liabilities under the EPF Act, 1952.

Therefore, there is no change to the earlier deposition submitted by me, which amounts to Rs. 62,81,466/- (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Six Only) for the period from April 2016 to April 2023.

It is requested that the assessing officer conclude the inquiry for the period from April 2016 to April 2023.

Further AEO vide mail dated 09.10.2024 forwarded employees wise details and informed that due to consolidated calculation and individual employees calculation the dues has changed from Rs. 62,81,465/- to Rs. 63,45,408/-.

Further AEO vide report dated 10.12.2024 submitted that This has reference to the establishments M/s. Sudal Industries Ltd submission dated 16-09-2024 deposition submitted in 7A proceedings;

The deposition was submitted PF and allied dues were shown as 62,81,466/- (Rs. Sixty-Two Lakh Eighty One Thousand Four Hundred Sixty Six Only) dues to the consolidated calculations error the dues shown less. After calculating the individual employee wise the correct dues for the inquiry period are Rs 63,45,408/- (Rs. Sixty Three Lacks Forty Five Thousand Four Hundred Eight Only) The PDF format Monthly calculation 3 (Three) pages and employee wise details of 239 Pages was already forwarded to the employer through mail.

Point No 1: No comments.

Point No 2:

The averments made by the establishment is false and baseless as establishment provided the documents at the time of visit of Enforcement officer. The deposition submitted on the basis of records produced by the establishment. Such as Balance sheets, Salary, wages registers soft copies and hard copies, establishment clarification regarding excluded employees and Apprentice/Trainees. The dues statement in details employees wise was already forwarded to the establishment.

Point No 3:

The averments made by the establishment is false and baseless as establishment. The dues calculated all the identified employees there Employee ID (token Nos) and Name as recorded in the statement which was provided by the establishment. All the Identified employees whose dues are calculated as per the EPF Act, 1952. The dues statements with name of the employees and applicable PF Salary, PF deducted of PF salary, outstanding PF dues statement was already forwarded to the employer.

Point No 4:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The dues was calculated during the period they was working in the establishment. The establishment has having the PF_Nos, UAN and Employees name.

Point No 5:

The detail list of the employees month wise was already forwarded to the establishment..

Point No 6: The details was already forwarded to the establishment.



Point No 7: as per Sr. No 6.

Point No 8:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The submission is proper as per the law and useful to the establishment.

Point No 9:

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The inquiry period is April 2016 to April 2023, deposition submitted on the basis of records produced by the establishment is available in office record while submission of report by earlier Enforcement officer. The calculation was made on basic+DA+CCA+Education allowance of class of employees paid uniformly in percentage basis. The basic wages amount for PF deduction considered by the establishment only on Basic and Dearness amount (if applicable). Establishment had remitted the PF dues on only Basic + DA (Workmen) only.

Point No 10: The individual employee's wise details are submitted.

Point No 11:

on submission of the deposition all the facts were mentioned and detail outstanding dues calculation was forwarded to the employer.

Point No 12: No Comments.

Point No 13: No Comments.

Point No 14:

At the time of submission of deposition under Section 7-A of the Act all records which are collected from the establishment are submitted and in possession of Compliance section of RO, Nashik.

Point No 15 :

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. As there are no complaints from the employees. The records are made available with the establishment and PF Department compliance section,

Point No 16: No Comments.

Point No 17: No Comments.

Point No 18:

As per Point No 9. The allowances are paid by the employer to the employees during his working. These allowances are paid uniformly to all the employees and these are not reimbursement made by the employees. Therefore, the allowances are considered the part of Basic wages as provided u/s 2(b) of the EPF Act, 1952.

Point No 19 :

The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The required documents were provided by the employer in relation to the establishment no arbitrarily documents are taken on records.



Point No 20:

Already submitted on report dated 29/08/2024. The deposition was submitted carefully considering the facts the argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

Point No 21:

Report has been prepared on the basis of documents/records produced by the establishment. As per the provision U/s. 7Q and 14B of the Act the interest and penalties are applicable to the establishment for delayed in the remittances from the date of remittances of PF and allied dues accordingly.

Point No 22:

Records was produced by the establishment and hence available with Establishment and Office Records.

All points have been addressed as per the employer's submission dated 11th July 2024, and no additional issues remain in the matter. The conveyance allowance/CCA and Education allowance were paid by the employer to the employees for only avoid the PF and allied dues liabilities under the EPF Act, 1952.

Therefore, Rs 63,45,408/-(Rs. Sixty Three Lacks Forty Five Thousand Four Hundred Eight Only) for the period from April 2016 to April 2023.

It is requested that the assessing officer conclude the inquiry for the period from April 2016 to April 2023 for assessing the amount of Rs 63,45,408/-(Rs. Sixty Three Lacks Forty Five Thousand Four Hundred Eight Only).

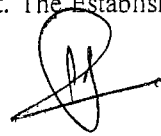
G) Submission of Establishment:

The employer on relation to said establishment vide letter dated: 14/02/2025 (Exhibit, R21) made final submission along with documentary evidences taken on records. Shri. S.T. Shide, EO has also submitted his counter reply on the final submission made by the establishment vide letter dated: 21/02/2025 (Exhibit, R22) taken on records.

The details evaluation of the final submission made by the establishment is as under

Points wise reply:

1. It is the statutory duty of the Establishment to comply with the mandatory provisions of the EPF Act, irrespective of its financial condition. The plea of financial hardship is a blatant attempt to evade its statutory obligations. The EPF Act is a social welfare legislation, and no plea of financial incapacity can absolve the Establishment from its legal mandate. The Hon'ble Supreme Court in a catena of judgments has categorically held that financial difficulty is not a valid defence for non-compliance under the EPF Act. The Establishment's failure to discharge its statutory duty constitutes a gross violation of the Act, warranting strict action.
2. The submissions made by the Establishment through letters dated 14th July, 2023, 11th July, 2024, and 16th September, 2024, are self-serving and devoid of any legal merit. The Establishment was afforded



sufficient opportunities to present its case, which were duly considered during the enquiry proceedings. The Establishment's attempt to use these submissions as a shield against its statutory liability is nothing but an afterthought, which deserves outright rejection.

3. The Establishment's contention that the issuance of summons dated 19th March, 2024, was for extraneous reasons is a baseless allegation, devoid of any factual or legal merit. The issuance of Show Cause Notice dated 28th February, 2024, and subsequent Summons dated 19th March, 2024, is strictly in exercise of the statutory powers conferred under Section 7A of the EPF Act. The EPFO is vested with the authority to summon documents and direct the personal appearance of representatives of the Establishment in the course of enquiry proceedings. The absence of any reference to internal administrative circulars in the Show Cause Notice or Summons does not vitiate the statutory proceedings initiated under Section 7A. The Establishment's attempt to discredit the statutory process by terming the summons as arbitrary or extraneous is nothing but a desperate ploy to derail the enquiry proceedings. Mere production of documents cannot be equated with discharge of statutory obligations, and the Establishment's claim of compliance is a deliberate misrepresentation of facts.
4. The Establishment's assertion that all contributions due and payable from the Establishment have been regularly and punctually paid is nothing but a bald, self-serving statement, devoid of any credible supporting evidence. The Establishment's attempt to rely on the absence of communication from the RPFC, Nashik Regional Office, as a defence is legally untenable. The statutory obligation to remit proper and full contributions lies solely with the Establishment, and the lack of prior intimation from the EPFO cannot absolve it of its default. The EPFO is under no statutory obligation to intimate every defaulting establishment before initiating enquiry proceedings. The onus lies entirely on the Establishment to demonstrate full compliance by producing documentary evidence such as ECRs, payment challans, and wage registers. The Establishment's reliance on cross-examination of the Enforcement Officer is wholly misconceived. The assertion that the EO did not inspect the file or visit remarks is irrelevant to the assessment of dues under Section 7A. The Establishment's attempt to discredit the EO's report is nothing but a desperate ploy to derail the enquiry proceedings and deserves outright rejection.
5. The Establishment's plea regarding cessation of 110 employees is a calculated and deceitful attempt to evade liability. The EPFO is fully justified in relying on the Enforcement Officer's findings, which are based on objective verification of records and field inspections. The tabular chart submitted by the EO in his report dated 24th May, 2024, is based on thorough scrutiny of records and field verification, which cannot be discredited on the basis of mere self-serving statements. The claim for deletion of 110 employees is nothing but an afterthought and deserves to be rejected in toto. All of the 110 employees are identified employees and are having Universal Account Number (UAN). There is no provision in the EPF Act & Scheme to delete the dues of left employees.
6. The Establishment's contention that the present enquiry amounts to reopening the case is legally untenable, factually misconceived, and devoid of any merit. Proceedings under Sections 14B and 7Q pertain exclusively to delayed remittances, whereas the present enquiry under Section 7A is for the assessment of short payments. Both proceedings are entirely distinct, and there is no bar under the EPF Act on initiating a fresh enquiry under Section 7A for assessment of dues not determined earlier. The mere payment of damages and interest does not absolve the establishment from its liability to pay the correct contributions. The cross-examination of the EO does not support the establishment's plea, as the EO has merely identified documents without making any conclusive admission regarding the correctness of contributions. The establishment's argument is nothing but a deliberate attempt to mislead the Hon'ble Authority and deserves to be rejected outright.
7. The Establishment's reliance on the Circulars dated 28th August, 2019, and 14th February, 2020, is wholly misplaced. These circulars are merely clarificatory and cannot curtail the statutory powers of the

RPFC under Section 7A of the EPF Act. The present enquiry is based on statutory mandate and cannot be termed as a fishing or roving enquiry under any circumstances.

8. The Establishment's contention that allowances paid to employees do not form part of basic wages under Section 2(b) of the EPF Act is wholly misconceived, misleading, and devoid of any legal or factual merit. The Establishment's bifurcation of wages into basic, DA, and allowances is a deliberate and fraudulent subterfuge to evade statutory liability. The Enforcement Officer's report dated 24th May, 2024, meticulously scrutinizes the Establishment's records and correctly concludes that the allowances paid by the Establishment form part of basic wages. The Establishment's plea that allowances were paid on a grade-wise basis is nothing but a ruse to circumvent statutory obligations. The quantification of dues by the Enforcement Officer is based on a sound legal premise and deserves to be upheld in toto.
9. The Establishment's contention that the EPFO should summon individual employees for recovery of contributions is wholly misconceived and contrary to the scheme of the EPF Act. The primary obligation to remit contributions rests squarely on the employer. The EPFO is under no statutory obligation to pursue individual employees for recovery of contributions. The quantification of Rs. 30,05,205/- in Account No. 1 is based on meticulous scrutiny of records and is fully justified in law. The Establishment's plea is nothing but a desperate attempt to evade statutory liability and deserves to be rejected outright.
10. All the employees whose Social Security benefits are being assessed under this inquiry are identified employees and registered with the EPFO. All employees in question have been duly registered with the EPFO, and their Universal Account Numbers (UANs) are valid. The identification and registration process are crucial to the correct implementation of the EPF Act, and the Establishment must ensure ongoing compliance with these requirements.
11. Merely sighting reason that the 110 employees have presently ceased to be an employee under the establishment, establishment can not deny to discharge its statutory duties. The 110 employees are identified employees and are entitled for the benefits which they have earned.

Further, for sake of more clearance, Para 29, Para 30 & Para 36 of the EPF Scheme is reproduced hereunder-

29. Contributions-

(1) The contributions payable by the employer under the Scheme shall be at the rate of [ten per cent] of the [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] payable to each employee to whom the Scheme applies:

Provided that the above rate of contribution shall be [twelve] per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding [ten per cent] or [twelve per cent], as the case may be, of his basic wages, dearness allowance and retaining allowance (if any) subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act;

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by



him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

36. Duties of employers

(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employees:

Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NIL' return.

12. The Establishment's reliance on the Pawan Hans judgment is misplaced and legally incorrect. The facts and circumstances in that case are entirely different from those at hand. In the present case, the facts and legal issues do not align with the principles laid down in the case of *Pawan Hans Ltd. Vs. Aviation Karmachari Sanghatana*. Therefore, the Establishment's attempt to use this judgment as a defence is legally untenable and irrelevant.

PAWAN HANS LIMITED AND OTHERS VS AVIATION KARAMCHARI SANGHATAN [Civil Appeal No.353 of 2020]

Pawan Hans Limited is a company with the Government of India holding a share of 51%. The company had 840 employees on its rolls, of which 270 were enrolled on a 'contractual' basis. The company has instituted a provident fund trust to provide provident funds for its employees and framed the 'Pawan Hans Provident Fund Trust Regulations' (hereinafter referred to as PF Trust regulations). The provisions of the regulation stated that the rules contained therein would apply to all the corporation's employees. An employee was defined as: Employee means any person who is employed for wages/salary in any kind of work, monthly or otherwise, in or in connection with the work of the corporation and who gets his wages/salary directly or indirectly from the corporation and excludes any person employed by or through a contractor or in connection with the work of the corporation but does not include any person employed as an apprentice or trainee.

The company implemented the PF trust regulations only for their regular employees even though the above definition of 'employee' included persons engaged directly or indirectly. Further, the company claimed exemption under section 16 of the EPF Act. Subsequently, the Central Government issued a notification under section 1(3)(b) in 2001 notifying a scheduled head, "*An establishment of aircraft or airlines other than the aircraft airlines owned or controlled by the Central or State Government.*" The respondent union represented the company to extend the benefit of PF Trust regulations as the company directly employs them and has been working for a long time. The company did not respond to the representation. Aggrieved, the union filed a writ petition in the High Court with a prayer to direct either the company to extend the benefits of PF Trust regulations or extend the benefits under the EPF and MP Act. High Court, taking a liberal interpretation, directed the company to enrol the contractual employees under the EPF Act from the date of their joining till they are employed. The company approached the Supreme Court against the order of the High Court.

The petitioner company argued that the notification of the scheduled head itself had excluded the airlines owned or controlled by the central government, and since the Central Government has a 51% stake in the company, it is out of the purview of the EPF Act. Further, the company's Board of Directors are appointed by the Ministry of Civil Aviation and is governed under the guidelines issued by the Department of Public Enterprises. Secondly, the petitioner contested the retrospective application of the EPF Act, given that many workers have superannuated, resigned or died.

The respondent union contended that these contractual workers were directly engaged by the company and hence covered under the definition of the 'employee' in the PF Trust regulations. Also,



they are covered under the definition of 'employee' under the EPF Act. Also, since the Board of Directors controls the company and not the central government, it is covered under the notified scheduled head.

The Supreme Court relied on the judgment of *RPFC vs Sanatan Dharm Girls Secondary School* [(2007) 1 SCC 268], where a twin test was laid down to check whether an establishment was exempted from the purview of the EPF Act.

The first test of whether the establishment was 'owned by or under the control of the Central Government' was satisfied in this case, as 51% of the shares were held by the Central Government. The second test is the question as to whether the employees are entitled to a contributory provident fund or old age pension in accordance with any scheme or rules framed by the government. The court observed that the benefits of PF Trust regulations were extended to only 'regular' employees, and the Central Government did not frame such regulations.

It was held that the case did not pass the second test, so the exclusion under section 16 is not applicable.

The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

The Court was seized of the fact that the retrospective application of the EPF Act caused a disadvantage to the fund from an actuarial point of view. Accordingly, it was held that the benefits did not apply to employees who superannuated, resigned or died as of the date of the judgment.

Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company.

But it was clearly stated that, The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

The Court was seized of the fact that the retrospective application of the EPF Act caused a disadvantage to the fund from an actuarial point of view. Accordingly, it was held that the benefits did not apply to employees who superannuated, resigned or died as of the date of the judgment.

Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company reveals that, the contractual employees were not at all the members / subscribers of the EPF Scheme, 1952.

In the instant case, the contention of the establishment is nothing but misinterpretation of the judgement pronounced by the Hon'ble Supreme Court. No where it is mentioned in the order that, benefits should not be given to the employees who were already members / subscribers of the EPF Scheme, 1952.

However, it is observed in the instant case that, the employees engaged by the establishment were all permanent employees having their UAN numbers (UNIVERSAL ACCOUNT NUMBER) linked to their PF Account Numbers and updated KYC details also. therefore all the employees of the establishment were identifiable permanent employees.



The Establishment's reliance on the Pawan Hans judgment is misplaced incorrect and legally untenable.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

13. To avoid duplications the Information at Para 12 may be refereed to.
14. To avoid duplications the Information at Para 12 may be refereed to.
15. The Establishment's plea regarding cessation of 110 employees is a calculated and deceitful attempt to evade liability. The EPFO is fully justified in relying on the Enforcement Officer's findings, which are based on objective verification of records and field inspections. The tabular chart submitted by the EO in his report dated 24th May, 2024, is based on thorough scrutiny of records and field verification, which cannot be discredited on the basis of mere self-serving statements. The claim for deletion of 110 employees is nothing but an afterthought and deserves to be rejected in toto. All of the 110 employees are identified employees and are having Universal Account Number (UAN). There is no provision in the EPF Act & Scheme to delete the dues of left employees.

The relevant provisions of the Act and Schemes, 1952 are reproduced below

Para:- 26. Classes of employees entitled and required to join the fund. -

- (1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and member of the fund from the day this paragraph come into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph come into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry of cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become member of the Fund forthwith

- (2) After this paragraph come into force in a other establishment every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory or establishment
- (3) An excluded employee employed in or in connection with the work of a factory or other establishment to which scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee
- (4) On re-election of an employee or a class of employees exempted under paragraph 27 or 27-A to join the Fund or on the expiry of cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.



- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as member of the fund shall, on joining a factory or other establishment to which this scheme applies, become a member of the Fund forthwith.
- (6) Notwithstanding anything contained in this paragraph an officer not below the rank of an assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this scheme applies and his employer enroll such employee as a member or allow him to contribute on more than {fifteen thousand rupees} of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled the benefits and shall be subject to the conditions of the Fund, Provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.}

J.P. TOBACCO PRODUCTS VS UNION OF INDIA AND OTHERS (1996) 1 LLJ 822 SC

On November 1, 1990, a notification was issued by the Central Government amending Paragraph 26(2) of the Employees' Provident Funds Scheme, 1952. This amendment required all employees, except those expressly excluded, to become members of the Provident Fund from the moment they joined their respective establishments. The legal validity of this amended Paragraph 26(2) was challenged in the case of

Khemchand Motilal Tobacco Product Ltd. vs Union of India [1995 (II) CLR 360]

before the Madhya Pradesh High Court. The challenge to the notification was primarily based on four grounds:

1. The contention is that the amendment to Paragraph 26(2) violated Section 7(2) of the EPF Act.
2. The argument that the mandatory contributions amounted to a denial of minimum wages.
3. Claims that the amendment was unworkable and impracticable.
4. Allegations that the amendment conflicted with the EPF Act and Articles 14 and 19(1)(g) of the Indian Constitution.

The Madhya Pradesh High Court ruled in favour of the validity of the amendment, and the Supreme Court subsequently upheld this decision in the case of J.P. Tobacco Products vs Union of India and others. The Supreme Court determined that the amendment to Paragraph 26(2) of the Scheme was valid, and the requirement of compulsory contributions to the provident fund did not constitute a denial of minimum wages. Additionally, the Court found that the amendment was practical and workable and did not violate the EPF Act or Articles 14 and 19(1)(g) of the Indian Constitution.

Consequently, there is no differentiation between temporary or permanent employees or contract and casual employees engaged by contractors under the Act. Furthermore, there are no eligibility conditions or qualifying services for the enrollment of employees. All employees or workers falling within the definition of 'employee' under Section 2(f) of the EPF Act are obligated to become members, and the provisions of the EPF Act and Schemes apply to such employees.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

Hence, the contention of the establishment is not tenable under the law provision is rejected.

16. To avoid duplications the Information at Para 15 may be referred to.

17. To avoid duplications the Information at Para 15 may be referred to.



18. To avoid duplications the Information at Para 15 may be refereed to.
19. It is imperative to state that the PF & allied dues calculated are based on allowances as per salary sheets provided by the employer, which indicates the allowances earned by the employees. Further, the calculation of PF & allied dues were in accordance with the laws laid down by the Hon'ble Supreme Court, vide Judgment dated 28/02/2019 – Vivekananda Vidya Mandir, Surya Roshni, Manipal University, ors.
20. The claim that no amount is due from the Company Management is not supported by the facts and records available. The EPF Act mandates the employer's obligation to remit contributions as specified under Section 6 of the Act, including contributions for both the employer and the employee. It is not sufficient to merely claim no dues without substantiating this claim with proper documentation. A failure to provide the required evidence leaves room for non-compliance, thereby necessitating the continuation of the enquiry.

The argument that the enquiry is baseless and should be closed down is legally and factually unsustainable. The statutory duty of the employer to remit contributions must be assessed, and the enquiry under Section 7A is the correct process for this determination. Therefore, the enquiry should continue as mandated by law, and the Establishment must produce the necessary documentary evidence to refute any claims of outstanding dues. Any attempt to prematurely close the enquiry without fulfilling the statutory process is improper and should be rejected.

H) FINDINGS

As per the Memorandum of Association the establishment is engaged in the work of Manufacturing of Aluminum extrusions and aluminum base alloys activity and is seen covered under schedule head "EMGE" w.e.f. 31/05/1984 at Nashik District. The establishment has paid salary under different heads such as Basic Wages, HRA, Education Allowance and Conveyance allowance. For computation of contribution for provident fund only basic wages is taken into account. Enforcement Officer while conducting inspection of the establishment noticed that the establishment is splitting wages into various allowances to the detriment of the employees. Hence an enquiry U/s 7A of the Act was initiated. On verification of the records, it is seen that the establishment is paying HRA, Education Allowance and Conveyance allowance apart from the basic wages to its employees. It is seen that the establishment is paying contribution only on less than 50% of the gross salary paid to the employees. From the records produced it is seen that the establishment is splitting wages into HRA, conveyance allowance and Education Allowance only to evade provident fund contribution. It is also observed that the establishment has provided Conveyance Allowance and Medical Allowance each at the rate of 25% to 26%, to all the employees irrespective of the linkage to extra output.

The representative of the establishment has raised the issue of including conveyance allowance and Education Allowance within the definition of the basic wages for the purpose of assessment of dues. As per the Hon'ble High Court of Kerala in case of *EPF Organization Vs MS Raven Beck Solutions India Ltd*, WPC No.17507 of 2016 vide order dt.15/10/2020 has held that HRA will not form part of basic wages in view of the specific exclusion U/s 2(b)(ii) of the Act. Further it is to inform that the Area Enforcement Officer has not calculated dues on HRA component forming part of the salary.



Some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Section 6 of the Act. The Hon'ble Supreme Court of India in *Bridge & Roof Company Ltd Vs Union of India*, 1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

- (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

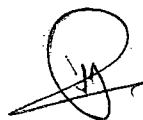
The Hon'ble Supreme Court of India ratified the above position in *Manipal Academy of Higher Education Vs PF Commission*, 2008(5)SCC 428. The Hon'ble Supreme Court of India examined all the above cases in *RPFC Vs Vivekananda Vidya Mandir and Others*, 2019 KHC 6257. In this case the Hon'ble Supreme Court considered whether travel allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc. will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases the Hon'ble Supreme Court held that "the wage structure and the components of salary have been examined on facts, both by the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflage as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference."

From the above discussion, it is clear that the establishment is liable to pay contribution on Conveyance allowance and Education Allowance as it is paid to all employees uniformly.

Thus, it is amply clear that the conveyance allowance and Education Allowance paid by the establishment will form part of the basic salary and attract provident fund deduction.

Considering the facts, circumstances and evidence and pleading in this case it is ordered that Conveyance allowance and Education Allowance will form part of basic wages and the assessment shall include contribution on conveyance allowance and Education Allowance. It is also observed from the Enforcement Officer's report dated 24.05.2024, 04.06.2024, 29.08.2024, & 10.12.2024. that dues has been calculated on the basis of Basic wages, Conveyance Allowance and Education Allowance paid to the employees subject to wage ceiling limit of Rs. 15,000/- per month of each employees for period 04/2016 to 04/2023.

Further, it is also clarified to the establishment that the Hon'ble Supreme Court vide order dated 28.02.2019 in *Surya Roshni Limited Vs Employees Provident Fund and Others in Civil Appeal No (s).3965-3966 of 2013* dealt with legal issue if the special allowances paid by an establishment to its employees would fall within the expression "basic wages" under Section 2(b)(ii) read with Section 6 of the



Act for computation of deduction towards Provident Fund. The Hon'ble Supreme Court in the above case considered the well settled legal position vis-à-vis the provisions of the EPF & MP Act, 1952 has ordered that '.....

'The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts.....'.

After the order of the Hon'ble Supreme Court in the above said case the said dictum becomes applicable to all the factories and the establishments covered by the provisions of the EPF & MP Act, 1952 and it becomes binding to all establishments in the light of the constitutional mandate contained in Article 141 read with Article 144 of the Constitution of India.

I have considered the submission made on behalf of the establishment and also perused the documents on records. I have applied my mind to all the relevant facts and also perused records and hereby record my findings as given below.

- That the employer was given sufficient time and reasonable opportunity to represent the case and submit the records / documents.
- That the principle of natural justice has been followed in true letter and spirit.
- That, the establishment M/s. Sudal Industries Ltd., A-5, MIDC, Ambad, Nasik - 422010 (hereinafter referred to as the establishment) is an establishment to which the provisions of EPF & MP Act' 1952 are applicable (hereinafter referred to as the Act) u/s 1(3) (a) with effect from 31.05.1984 bearing PF Code KDNSK/22450.
- The applicability of the Act to the establishment M/s. Sudal Industries Ltd., A-5, MIDC, Ambad, Nasik -422010 bearing PF code KDNSK0022450000 is an establishment covered under EPF & MP Act 1952 w.e.f 31.05.1984 is well established and there remains no dispute.
- That, the establishment has failed to remit the outstanding dues amounting to Rs. 63,45,408/-(Rs. Sixty Three Lakhs Forty Five Thousand Four Hundred Eight Only.) for the period 04.2016 to 04.2023.

Period	A/c. I EE	A/c. I ER	A/c. II	A/c. X	A/c. XXI	A/c. XXII	Total
04/2016 to 04/2023	3005205	919270	171767	2085935	162781	450	6345408

The total outstanding dues Rs. 63,45,408/-(Rs. Sixty Three Lakhs Forty Five Thousand Four Hundred Eight Only.) for the period 04.2016 to 04.2023



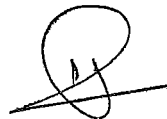
The employer in relation to said establishment has failed to deduct correct contribution of PF & allied dues in respect of identified employees in the above referred matter.

- As required under section 7A (3) sufficient reasonable opportunities have been afforded to the employer to represent the case. The Enforcement Officer Shri. Sunil T Shinde, appointed Inspector under Section 13 (i) submitted report/deposition dated: 24.05.2024, 04.06.2024, 29.08.2024, & 10.12.2024.
- I find that the summons to the employer has been served and in the interest of natural justice of law, reasonable opportunity has been afforded to the establishment to represent the case.
- It is observed that, the employer in relation to the establishment has bifurcated the salary to avoid PF liability such as HRA, Education Allowances & Conveyances allowances all three type of allowances rate is 25% to 26%, HRA is excluded from the Basic wages. In this case establishment has paid Conveyance Allowance, Education Allowance each. Hence allowance viz Education allowances and Conveyance Allowance have been clubbed into basic of employees and dues have been calculated on total basic salary (Which has been worked out after clubbing basic with Education and conveyance allowance) up to the salary ceiling limit of rupees 15,000/- of each individual employee comes to Rs. 63,45,408/-
- Further, it is clarified that, It is settled law that there is no conflict between the provisions of Section 17B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Insolvency and Bankruptcy Code, 2016 as held in the case of **Sikander Singh Jamawal, supra**. The Hon'ble NCLAT discussed provisions of Section 31 (1), Section 30(2), Section 36(4)(a) (iii) & Section 238 of the IB Code along with section 17B of the EPF Act in the said order.

Upon analyzing the aforesaid provisions of the IB Code and EPF Act, the Hon'ble NCLAT stated as follows:

"From the above stated provisions of the PF Act that the Resolution Applicant is also liable to pay the contribution and other sums due from the employer under any provisions of this act as the case may be in respect of the period up to the date of such transfer. All this requires that the explicit provisions of the above said PF Act needs to be complied with. This aspect is justiciable as a duty has been casted on the Resolution Professional/Adjudicating Authority/ on this Tribunal. This is not a commercial wisdom as compliance of law is a must. The aspect of parity for payment of Finance Creditors and Operational creditors are not being looked into by this Tribunal as it is a commercial wisdom of CoC.

Further, also held that "12. Since no provisions of the above said Act are in conflict with any of the provisions of the I & B Code, the applicability of even



Section 238 of the I & B Code does not arise. PF dues are not the assets of the CD as amply made clear by the provisions of Section 36(4)(a)(iii) of the I & B Code, 2016"

In case of *Regional Provident Fund Commissioner vs. Ramchandra Choudhary*, decided on 02.06.2022 the Hon'ble NCLAT at paras 44 and 45 held that the provisions of EPF Act are not in conflict with the provisions of IBC .

- Hon'ble NCLT, Mumbai Bench C-IV in I.A. No. 3021/2023 in CP(IBPP) No. 01/MB-IV/2022 vide order dated 10/08/2023, mentions in the order that -

"10. The approval of the Base Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned."

The aforementioned judgement reinforces the principle that regulatory compliance remains mandatory even after the approval of a resolution plan.

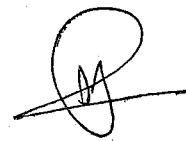
Further, Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Ins) No. 707 of 2023 held that -

"25 In our considered opinion, this procedure could not have been followed as the law is totally against it, therefore, in such circumstances, we hold that the order passed on the application filed under Section 54C on 20.04.2023 for the purpose of initiation of PPIRP is patently illegal and thus, the same is hereby set aside."

The Hon'ble NCLAT ruling underscores that any deviation from the prescribed legal procedure, including the initiation of Pre-Packaged Insolvency Resolution Process (PPIRP) in contravention of the law, is patently illegal and liable to be set aside. These rulings reinforce the necessity of strict adherence to legal and regulatory frameworks in insolvency proceeding

Moreover, it is also imperative to note that the Writ Petition no. 6455 of 2024 filed by the Establishment before the Hon'ble High Court of Bombay, is still pending before the Hon'ble Court and has not been listed till date for hearing after 03/05/2024.

- The Establishment's reliance on the Pawan Hans judgment is misplaced and legally incorrect. The facts and circumstances in that case are entirely different from those at hand. In the present case, the facts and legal issues do not align with the principles laid down in the case of *Pawan Hans Ltd. Vs. Aviation Karmachari Sanghatana*. Therefore, the Establishment's attempt to use this judgment as a defence is legally untenable and irrelevant.



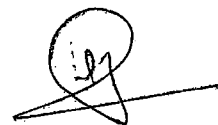
**PAWAN HANS LIMITED AND OTHERS VS AVIATIONKARAMCHARI
SANGHATAN [Civil Appeal No.353 of 2020]**

Pawan Hans Limited is a company with the Government of India holding a share of 51%. The company had 840 employees on its rolls, of which 270 were enrolled on a 'contractual' basis. The company has instituted a provident fund trust to provide provident funds for its employees and framed the 'Pawan Hans Provident Fund Trust Regulations' (hereinafter referred to as PF Trust regulations). The provisions of the regulation stated that the rules contained therein would apply to all the corporation's employees. An employee was defined as: Employee means any person who is employed for wages/salary in any kind of work, monthly or otherwise, in or in connection with the work of the corporation and who gets his wages/salary directly or indirectly from the corporation and excludes any person employed by or through a contractor or in connection with the work of the corporation but does not include any person employed as an apprentice or trainee.

The company implemented the PF trust regulations only for their regular employees even though the above definition of 'employee' included persons engaged directly or indirectly. Further, the company claimed exemption under section 16 of the EPF Act. Subsequently, the Central Government issued a notification under section 1(3)(b) in 2001 notifying a scheduled head, "*An establishment of aircraft or airlines other than the aircraft airlines owned or controlled by the Central or State Government.*" The respondent union represented the company to extend the benefit of PF Trust regulations as the company directly employs them and has been working for a long time. The company did not respond to the representation. Aggrieved, the union filed a writ petition in the High Court with a prayer to direct either the company to extend the benefits of PF Trust regulations or extend the benefits under the EPF and MP Act. High Court, taking a liberal interpretation, directed the company to enrol the contractual employees under the EPF Act from the date of their joining till they are employed. The company approached the Supreme Court against the order of the High Court.

The petitioner company argued that the notification of the scheduled head itself had excluded the airlines owned or controlled by the central government, and since the Central Government has a 51% stake in the company, it is out of the purview of the EPF Act. Further, the company's Board of Directors are appointed by the Ministry of Civil Aviation and is governed under the guidelines issued by the Department of Public Enterprises. Secondly, the petitioner contested the retrospective application of the EPF Act, given that many workers have superannuated, resigned or died.

The respondent union contended that these contractual workers were directly engaged by the company and hence covered under the definition of the 'employee' in the PF Trust regulations. Also, they are covered under the definition of 'employee' under the EPF Act. Also, since the Board of Directors controls the company and not the central government, it is covered under the notified scheduled head.



The Supreme Court relied on the judgment of *RPFC vs Sanatan Dharm Girls Secondary School* [(2007) 1 SCC 268], where a twin test was laid down to check whether an establishment was exempted from the purview of the EPF Act.

The first test of whether the establishment was 'owned by or under the control of the Central Government' was satisfied in this case, as 51% of the shares were held by the Central Government. The second test is the question as to whether the employees are entitled to a contributory provident fund or old age pension in accordance with any scheme or rules framed by the government. The court observed that the benefits of PF Trust regulations were extended to only 'regular' employees, and the Central Government did not frame such regulations.

It was held that the case did not pass the second test, so the exclusion under section 16 is not applicable.

The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

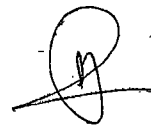
The Court was seized of the fact that the retrospective application of the EPF Act caused a disadvantage to the fund from an actuarial point of view. Accordingly, it was held that the benefits did not apply to employees who superannuated, resigned or died as of the date of the judgment.

Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company.

But it was clearly stated that, The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

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Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company reveals that, the contractual employees were not at all the members / subscribers of the EPF Scheme, 1952.



In the instant case, the contention of the establishment is nothing but misinterpretation of the judgement pronounced by the Hon'ble Supreme Court. No where it is mentioned in the order that, benefits should not be given to the employees who were already members / subscribers of the EPF Scheme, 1952.

However, it is observed in the instant case that, the employees engaged by the establishment were all permanent employees having their UAN numbers (UNIVERSAL ACCOUNT NUMBER) linked to their PF Account Number and updated KYC details also. therefore all the employees of the establishment were identifiable permanent employees.

The Establishment's reliance on the Pawan Hans judgment is misplaced incorrect and legally untenable.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

Hence, the contention of the establishment is not tenable under the law provision is rejected.

- The Establishment's plea regarding cessation of 110 employees is a calculated and deceitful attempt to evade liability. The EPFO is fully justified in relying on the Enforcement Officer's findings, which are based on objective verification of records and field inspections. The tabular chart submitted by the EO in his report dated 24th May, 2024, is based on thorough scrutiny of records and field verification, which cannot be discredited on the basis of mere self-serving statements. The claim for deletion of 110 employees is nothing but an afterthought and deserves to be rejected in toto. All of the 110 employees are identified employees and are having Universal Account Number (UAN). There is no provision in the EPF Act & Scheme to delete the dues of left employees.

The relevant provisions of the Act and Schemes, 1952 are reproduced below

Para:- 26. Classes of employees entitled and required to join the fund. -

- (1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and member of the fund from the day this paragraph come into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph come into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry of cancellation of an order of exemption under section 17 of the Act, every



employee who but for the exemption would have become and continued as a member of the Fund, shall become member of the Fund forthwith

- (2) After this paragraph come into force in a other establishment every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory or establishment
- (3) An excluded employee employed in or in connection with the work of a factory or other establishment to which scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee
- (4) On re-election of an employee or a class of employees exempted under paragraph 27 or 27-A to join the Fund or on the expiry of cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.
- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as member of the fund shall, on joining a factory or other establishment to which this scheme applies, become a member of the Fund forthwith.
- (6) Notwithstanding anything contained in this paragraph an officer not below the rank of an assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this scheme applies and his employer enroll such employee as a member or allow him to contribute on more than {fifteen thousand rupees} of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled the benefits and shall be subject to the conditions of the Fund, Provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.}

J.P. TOBACCO PRODUCTS VS UNION OF INDIA AND OTHERS

(1996) 1 LLJ 822 SC

On November 1, 1990, a notification was issued by the Central Government amending Paragraph 26(2) of the Employees' Provident Funds Scheme, 1952. This amendment required all employees, except those expressly excluded, to become members of the Provident Fund from the moment they joined their respective establishments. The legal validity of this amended Paragraph 26(2) was challenged in the case of

Khemchand Motilal Tobacco Product Ltd. vs Union of India [1995 (II) CLR 360] before the Madhya Pradesh High Court. The challenge to the notification was primarily based on four grounds:

1. The contention is that the amendment to Paragraph 26(2) violated Section 7(2) of the EPF Act.
2. The argument that the mandatory contributions amounted to a denial of minimum wages.
3. Claims that the amendment was unworkable and impracticable.
4. Allegations that the amendment conflicted with the EPF Act and Articles 14 and 19(1)(g) of the Indian Constitution.



The Madhya Pradesh High Court ruled in favour of the validity of the amendment, and the Supreme Court subsequently upheld this decision in the case of J.P. Tobacco Products vs Union of India and others. The Supreme Court determined that the amendment to Paragraph 26(2) of the Scheme was valid, and the requirement of compulsory contributions to the provident fund did not constitute a denial of minimum wages. Additionally, the Court found that the amendment was practical and workable and did not violate the EPF Act or Articles 14 and 19(1)(g) of the Indian Constitution.

Consequently, there is no differentiation between temporary or permanent employees or contract and casual employees engaged by contractors under the Act. Furthermore, there are no eligibility conditions or qualifying services for the enrollment of employees. All employees or workers falling within the definition of 'employee' under Section 2(f) of the EPF Act are obligated to become members, and the provisions of the EPF Act and Schemes apply to such employees.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

Hence, the contention of the establishment is not tenable under the law provision is rejected.

I) ORDER

I have considered the submission made on behalf of the establishment; deposition submitted by AEO. Also perused the records. I have applied my mind to all relevant facts and closed the enquiry on the basis of AEO's report with a direction,

1. Department is directed to initiate action for further period against the establishment after verification of the details in office records. If required.
2. Department is directed to initiate action under section 14-B & 7-Q after verification of the data in office records. If required.
3. Now, therefore I K. K. Kumbhar, Assistant PF Commissioner, Regional Office, Nasik having regards to the facts and circumstances of the case and having considered all records and deposition, etc hereby decide that the establishment M/s. Sudal Industries Ltd., A-5, MIDC, Ambad, Nasik - 422010 has failed to deduct the correct contribution of PF & Allied benefits on the salary paid to employees for enrolment under the EPF & MP Act, 1952, and failed to submit necessary monthly and annual returns in respect of the establishment and failed to remit necessary dues on account of the Provident Fund, Pension Fund & Insurance Fund contribution and administrative charges towards Provident Fund and Insurance Fund.



1. Shri Sunil T Shinde,
Enforcement Officer,.

For information and necessary action.

2. The APFC, Accounts
RO, Nashik

For Information and necessary action.

3. The APFC, Damages,
RO, Nashik

For Information and necessary action.

4. Shri. Prashant Jain (Resolution Professional)
A501, Shanti Heights Plot No.2,3,9 B/10 Sector 11
Koparkharine, Thane, Navi Mumbai – 400709

Email:- ipprashtantjain@gmail.comFor information and necessary action

5. Shri. Prashant Jain (Resolution Professional)
B610, BSEL Tech Park,
Sector 30A, Opposite Vashi Railway Station,
Navi Mumbai – 400703
Email:sudal.ppirp@gmail.com



OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER

भविष्य निधि भवन, 341, बांद्रा (पूर्व) बम्बई-400 051

Bhavishya Nidhi Bhavan, 341, Bandra (East), Bombay-400 051

सं. नं./म. नि./प्रयोग्यता
No. MH/PE/APP/22250/PF/APP/LNK/14975

दिनांक

Date: 5th Jan 85

सेवा में
To
M/s. Sudarshan Aluminium
Industries Ltd. A-5 MIDC
Ambad. Nasik. - 422010

विषय:- कर्मचारी भविष्य निधि एवं प्रकिर्ण-उपलब्ध अधिनियम, 1952 और उसके अधिन बनाई गई योजना-हमको प्रयोग्यता-संकेत संख्या का आवंटन।

Sub.: Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the scheme framed thereunder—applicability thereof—Allotment of code number.

होदय,
Sirs,

1. आपकी फैक्ट्री/स्थापना उसकी सभी शाखाएँ और विभागों के साथ दि. _____ से कर्मचारी भविष्य निधि एवं प्रकिर्ण उपलब्ध अधिनियम, 1952 और उसके अधिन बनाई गई योजना के प्रविधान खण्ड में समाविष्ट की गई है। उपलब्ध सूचनाओं के अनुसार यह प्रकट होता है कि:—

1. Your factory/establishment with all its branches and departments is brought within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the scheme framed thereunder with effect from 31.5.1984. The information made available reveals that—

(1) आपकी फैक्ट्री अनुसूची 1 में उल्लिखित उद्योग _____ का कार्य करती है जिसपर अधिनियम की धारा 1 (3) के अधिन 1952 और उसके अधिन बनाई गई योजना के प्रविधान खण्ड में समाविष्ट की गई है।

(i) Your factory is engaged in E.M. OR G.R. one of the Industries specified in Schedule I to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applicable under Section 1 (3) (a) of the Act.

2. आपकी स्थापना _____ के लिए वर्गीकृत की गई है जिसपर अधिनियम की धारा 1 (3) (बी) के अधिन भारत सरकार जारी की गई अधिसूचना के अनुसार कर्मचारी भविष्य निधि एवं प्रकिर्ण उपलब्ध अधिनियम, 1952 लागू किया है।

(ii) Yours is an establishments classified as _____ to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has been made applicable by the Government of India by a Notification issued under Section 1 (3) (b) of the Act.

3. आपकी फैक्ट्री/स्थापना जो कार्य करती है वह अनुसूची 1 में उल्लिखित उद्योग में तथा अधिनियम की धारा 1 (3) (बी) के अनुसार भारत सरकार अनुसूचित स्थापनाओं के वर्ग में अन्तर्भूत नहीं है। अतः आपकी स्थापना को अ-सूचिबद्ध माना गया है।

(1-क) जब पड़ताल/उपलब्ध सूचना के आधार पर व्याप्ति तत्कालिक स्वरूप की है; लेकिन इस शर्त पर कि आपके पूर्व अवधि के प्रलेख सत्यापित जाए।

(1-A) The coverage is provisional on the basis of enquiries made/information available and is subject further verification of your records for prior periods.

(1-ख) अधिनियम की धारा (1) (4) के अनुसार कर्मचारी भविष्य निधि एवं प्रकिर्ण उपलब्ध अधिनियम, 1952 के स्वीच्छक रूप से विस्तार के सम्बन्ध आपकी आवेदन सं. _____ दि. _____ के संदर्भ में कर्मचारी भविष्य निधि प्रकिर्ण उपलब्ध अधिनियम धारा 1 की उपधारा (4) द्वारा प्रदत्त अधिकार का प्रयोग करते हुये भारत सरकार द्वारा अधिसूचना जारी होने तक आपकी स्थापना की तात्कालिक रूप से, व्याप्ती करके उसके लिए एम्.एच./ _____ यह संकेत संख्या नियत की गई है।

(1-B) With reference to your application No. _____ Dated _____ provided for extension of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 under section 4 of the Act, on a voluntary basis, a code number is hereby allotted to your establishment namely _____ covering your establishment with effect from _____ provisionally pending issue of a notification by the Government of India in exercise of the powers conferred on them by sub-section (4) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(1-क) आपकी कर्मचारी भविष्य निधि एवं प्रविण उपलब्ध अधिनियम, 1952 और उसके अधिन बनाई गई योजना के उपबंधों का अनुपालन करने पर निम्न रूप से उद्धृत की जाए।

(1-C) The code No. MH/.. 22450 is allotted to you for the purpose of making compliance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Scheme framed thereunder. This code number should invariably be quoted in all the correspondence with this office.

2. आपको से कर्मचारी भविष्य निधि योजना से परिवार पेंशन योजना तथा से निम्न सहवर्ध योजना के उपबंधों को कार्यान्वित करना है, अगर अभी तक न किये हो, तो।

2. You are required to implement the provisions of the Employees' Provident Fund Scheme w.e.f. 1.1.1985 and Deposit Linked Insurance Scheme w.e.f. 1.6.1984 if not already done.

3. फेक्टरी/स्थापना में या उसके काम के सम्बन्ध में कार्य करने वाला कर्मचारी भविष्य निधि योजना, 1952 की धारा 26 के अनुसार निधि की सदस्य के लिए पात्र होगा।

3. As provided in para. 26 of the Employees' Provident Fund Scheme, 1952, an employee working in or in connection with the work of the factory/establishment shall be eligible for membership of the fund.

4. (1) हर सहित प्रत्येक कर्मचारी को देय मूल वेतन, महागाई भत्ता (अनाज सुविधा की तगद कीमत के साथ) और अगर हो तो प्रतिधारण के 6 1/8% / 8 1/8% / 19% की दर से अंशदान नियोजता द्वारा देय होगा। कर्मचारी द्वारा देय अंशदान नियोजता द्वारा देय अंशदान के समान होगा।

4. (i) The contributions payable by the employer shall be at the rate of 6 1/8% / 8 1/8% of basic wages, dearness allowance (including cash value of food concession) and retaining allowance, if any payable to each employee, every month. The contribution payable by the employee shall be equal to the contribution payable by the employer.

(2) अंशदान पूर्ण सहित में प्राप्त किये मूल वेतन, महागाई भत्ता आदी के आधार पर परिकलित किया जाए, चाहे वह दैनिक, साप्ताहिक, पाक्षिक या मासिक आधार पर अदा किया है।

(ii) The contributions shall be calculated on the basic wages, dearness allowance etc. actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

(3) प्रत्येक अंशदान रुपये के नजदिक के चतुर्थांश में परिकलित किया जाएगा। जैसे कि 125 या उसके अधिक पैसे रुपये के अगले उच्च चतुर्थांश के अनुसार गिने जाए।

(iii) Each contributions shall be calculated on the nearest quarter of a rupee i. e. 125 paise more to be counted as the next higher quarter of a rupee.

(4) अंशदान की परिणयना हेतु वेतन नजदिक के रुपये में पूर्णकित किया जाए जैसे कि 50 या उससे अधिक पैसे एक रुपया के अनुसार गिने जाए और 50 से कम पैसे छोड़ दिये जाए।

(iv) For the purpose of calculation of contributions, the wages may be rounded off to the nearest rupee i. e. 50 paise or more being taken as one rupee and less than 50 paise ignored.

टिप्पणी :- किसी भी दिन आपने 50 या 50 से अधिक व्यक्तियों को कामपर रखा तो आप 8% अंशदान देने के लिए उत्तरदायी होंगे।

NOTE : On your employing 50 or more than 50 persons on any day, you will be liable to pay contributions—8%.

(5) नियोजता प्रथमतः उसके और कर्मचारी की ओर से देय दोनों अंशदान भरें।

(v) The employer shall in the first instance, pay both contributions payable by himself and also on behalf of the member.

(6) डेकेदार द्वारा कामपर लगाये हुये कर्मचारीयों के बारे में देय अंशदान डेकेदार वसूल करेगा और सदस्य के अंशदान की कटौती समान अंशदान की राशी प्रशासनिक खर्च की रक्कम के साथ मुख्य नियोजता को सुपुर्त करेगा।

(vi) In respect of employee employed by or through a contractor, the contractor shall recover the contribution payable by such employees and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contributions and administrative charges.

(7) मुख्य नियोजता पर उसके कर्मचारीयों के एवं डेकेदार द्वारा कामपर लगाये गये कर्मचारीयों के बारे में देय दोनों अंशदान और प्रशासनिक खर्चों की रकम भरने की जिम्मेदारी होगी।

(vii) It shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of employees employed by him and also in respect of employees employed by or through a contractor and also Administrative charges.

5. Before paying the member his wages, you shall deduct the employee's contributions from his wages which together with your own contribution and administrative charges shall, within 15 days of the close of every month be paid in the Accounts of the Fund maintained by the State Bank of India by separate challans in the following manner :

- (क) भ. नि. अंशदान (दोनों कर्मचारी एवं नियोजता का)
(a) P. F. contributions (both employees' and employer's) To be deposited in Employee's Provident Fund Account No. 1.
- (ख) प्रशासनिक खर्चों की रकम
(b) Administrative charges To be deposited in Employees' Provident Fund Account No. 2.
- (ग) परिवार पेन्शन अंशदान
(c) Family Pension contributions To be deposited in Employees' Family Pension Fund Account No. 10.

टिप्पणी :- 1. प्रशासनिक खर्चों की दर वेतन के, अर्थात् मूल वेतन, अनाज सुविधा की नकद कीमत के साथ महंगाई भत्ता और अगर हो तो प्रतिधारण के 0.37 % है। जिस स्थापना द्वारा प्रशासनिक खर्चों की रकम प्रतिमास 5.00 रुपये के कम परिकलित होती हो, उसके द्वारा प्रशासनिक खर्चों की प्रतिमास कम से कम 5.00 रुपये देय होगी।

NOTE : (i) The rate of administrative charges is 0.37 per cent of pay i.e. basic wages, dearness allowance including cash value of any food concession and retaining allowance, if any.

(2) यह भी नोट कर लिया जाये की सदस्य के वेतन से यथा समय कटौती न करने पर अंशदान के दोनों हिस्से खुद नियोजता को भरने होंगे क्योंकि स्वर्ती वेतन से पिछले अवधि के लिये बकाये अंशदान की वसूली निषिद्ध है।

(ii) It may be noted that if timely deductions are not made from the members wages, the employer will have to pay both the shares himself as the recovery of arrears contributions for back period from the subsequent wages of the employee is prohibited.

(3) आपको सभी प्राप्त कर्मचारियों के बारे में पिछले _____ से _____ तक के महिनो के लिए भविष्य निधि कुल अंशदान पत्र की तारीख से 30 दिन के अन्दर सम्बन्धित खाते में निक्षेपित करना है।

(iii) You have to deposit the total P. F. contributions of the eligible employees for all past month namely from 1.6.1984 to 31.12.1984 in to the respective account within 30 days from the date of this letter.

(4) घन प्रेषण हेतु सम्बन्धित चालान इस कार्यालय या विभिन्न जिलों में स्थित निरीक्षक कार्यालय से प्राप्त किये जा सकते हैं।
(iv) The relevant challans for the purpose of remittance of can be had from any branch of the State Bank of India.

(5) चेक यथा अवस्था क. भ. नि. लेखा सं. 1, 2, 10, 21 और 22 के नाम से लिखकर चालान की चार प्रतियों के साथ भारतीय स्टेट बैंक की किसी भी शाखा में प्रस्तुत किये जाए।

(6) लेखा संख्या 1, 2 और 10 में (उपयुक्त व्योरे के अनुसार) किये जाने वाले निक्षेप के अतिरिक्त आपको कर्मचारी निक्षेप सहवृद्ध बीमा योजना 1976 के अन्तर्गत लेखा सं 21 और 22 में निम्नलिखित प्रकार से राशिका निक्षेप प्रत्येक महिने की समाप्ति के बाद अगले महिने के 15 दिन के अन्दर करना है।

6. Besides making deposits in Account Nos. 1, 2 and 10 (as explained above), you are also required to deposit the amounts in Account Nos. 21 and 22 under the Employees' Deposit Linked Insurance Scheme, 1976 in the manner indicated below within 15 days of the close of each month.

1. निक्षेप सहवृद्ध बीमा निधि
लेखा सं. 21.

(i) Deposit Linked Insurance Fund
Account No. 21

2. क्षेत्रीय बीमा निधि प्रशासन
लेखा सं. 22.

(ii) Regional Insurance Fund Administration
Account No. 22

इस लेखा में नियोजता द्वारा कर्मचारी को देय मूल वेतन, महंगाई भत्ता (अनाज सुविधा की नकद कीमत के साथ) और अगर हो तो प्रतिधारण भत्ते की कुल राशी पर 0.5 % की दर से अंशदान निक्षेपित करना है।

To this account will be deposited the contribution 0.5 % which will be the aggregate of the basic wages, dearness allowance (including cash value of food concession) and retaining allowance, if any, payable to the employees by employer.

इस लेखा में नियोजता द्वारा कर्मचारी को देय मूल वेतन, महंगाई भत्ता (अनाज सुविधा की नकद कीमत के साथ) और अगर हो तो प्रतिधारण भत्ते की कुल राशी पर 0.1 % की दर से प्रशासनिक खर्चों की रकम निक्षेपित करनी है।

To this account will be deposited the administrative charges 0.1 per cent which will be the aggregate of the basic wages, dearness allowance (including the cash value of food concession) and retaining allowance; if any payable to the employees by employer.

7. उपर्युक्त लेखा सं. 1, 2, 10, 21, और 22 में किया जानेवाला निक्षेप अलग चालान द्वारा किया जाए एवं बैंक द्वारा प्राप्त पावकी चालान की प्रति प्रपत्र सं. 9-ए (निम्नलिखित व्योरो के अनुसार) के साथ संलग्न करके इस कार्यालय को भेजी जाए।
 7. The deposit in the above Account viz. No. 1, 2, 10, 21 and 22 are to be made by separate challan and a copy of the challan as receipted by the Bank may be forwarded to this office duly attached with form 12-A (explained below)

8. आपको निम्नलिखित विवरणियों का पोषण/प्रेषण करना है।

8. You are required to maintain/forward the following returns.

1. क. भ. नि. योजना 1952 के अन्तर्गत प्रपत्र संख्या 9 तथा प. पे. योजना 1971 के अन्तर्गत प्रपत्र सं. 3 (प. पे. नि.)

योजना के अन्तर्गत फैक्ट्री/स्थापना की व्याप्ति की तारीख पर जिन्हें सदस्य बनाना आवश्यक है या जो सदस्य बननेके लिए पात्र हैं उन कर्मचारियों के बारे में, केवल एक बार इन्हें इस कार्यालय में प्रस्तुत करना है।

(i) Form No. 9 under the EPF Scheme 1952 and Form No. 3 (FPF) under the F. P. F. Scheme, 1971.

These are to be submitted to this office once in respect of those employees who are required or entitled to become members on the date of the factory/establishment is covered under the Scheme.

2. कर्मचारी भ. नि. योजना 1952 तथा प. पे. नि. योजना 1971 के अन्तर्गत प्रपत्र सं. 2

इन्हें इस कार्यालय को भेजने के लिए प्रत्येक सदस्य से दो प्रतियों में प्राप्त करना है।

(ii) Form No. 2 under the EPF Scheme, 1952 and also under F. P. F. Scheme, 1971.

These are to be obtained in duplicate from every member for submission to this office.

(3) प्रपत्र सं. 5-ए.

(iii) Form No. 5-A.

यह इस कार्यालय को प्रस्तुत किया जाएगा। मालिकी में अगर उत्तरवर्ती परिवर्तन हो जाए तो उसे इस प्रपत्र के जरिए इस कार्यालय को सूचित किया जाए।

This is to be submitted to this office. Any subsequent change in ownership is also to be notified to this office through this form.

(4) प्रपत्र सं. 3-ए

(v) Form No. 3-A

इसे प्रत्येक सदस्य कर्मचारी के बारे में फैक्ट्री/स्थापना में पोषित किया जाना है।
 This is to be maintained at the factory/establishment in respect of every employee who is a member

(4) प्रपत्र सं. 6-ए

(v) Form No. 6-A

यह अंशदान की वार्षिक विवरणी है और इसे वित्तिय वर्ष की समाप्ति पर 30 दिन के अन्दर इस कार्यालय को भेजा जाता है।

This is the annual return of contributions and is to be submitted to this office within 30 days of the close of the financial year.

(6) प्रपत्र सं. 12-ए

(vi) Form No. 12-A

यह अंशदान की मासिक विवरणी है और इसे 25 तारीख तक इस कार्यालय को भेजा जाना है। भारतीय स्टेट बैंक में किये गये निक्षेप के पुष्टिकरण हेतु चालान की प्रतियाँ इसके साथ संलग्न की जाएँ।

This is the monthly return of contributions and is to be submitted to this office by 25th. Copies of the challan, in support of the deposits made in the State Bank of India should be attached with this.

(7) प्रपत्र सं. 5 और 10

(vii) Form Nos. 5 and 10

यह महिने में जिन कर्मचारियों को सदस्य बनाना गया है तथा जिन कर्मचारियों ने सेवा त्याग दी है उनके सम्बन्धि विवरणियाँ हैं जिन्हें 25 तारीख तक इस कार्यालय को भेजा जाता है।
 These are the returns of employees who have become new members or have left the service in the month and are to be submitted to this office by the 25th.

9. कर्मचारी भविष्य निधि योजना, परिवार पेन्शन योजना तथा निक्षेप सहबद्ध बीमा योजना 1976 के अन्तर्गत सभी निर्धारित प्रपत्र भविष्य निधि निरीक्षक के कार्यालय में उपलब्ध हैं और आपकी पहचान पर उसीमें पूर्ति की जाएगी। योजना के निर्धारित विभिन्न प्रपत्रों का संक्षिप्त विवरण अनुलग्नक "क" में दिया है। शीघ्र गणक भी इसके संलग्न है।

9. All the forms prescribed under the Employees' Provident Funds Scheme, the Family Pension Fund Scheme and the Deposit Linked Insurance Scheme, 1976 are available in the Provident Fund Inspector's Office and will be supplied on receipt of your indent. A summary of the various forms prescribed under the Scheme is given as Annexure 'A'. A ready reckoner is also enclosed.

10. इसके अलावा आपको सेवा में लिए गये प्रत्येक कर्मचारी से प्रपत्र सं. 11 में निवेदन प्राप्त करना होगा जिससे वह पहले भविष्य निधि योजना का सदस्य था या नहीं इसका पता चल सके। सदस्यता के लिये लगनेवाली योग्यता की जाँच करने हेतु प्रत्येक स्थापना असदस्य कर्मचारीयों के बारे में पात्रता रजिस्टर रखेगी।

10. Besides, you should also take a declaration in form No. 11 from every employee who is taken in employment to ascertain as to whether or not he was already a member of the Provident Fund Scheme.

11. निम्नलिखित आरक्ष के अनुसार एक निरीक्षक पुस्तिका रखी जाए एवं टीका-टिप्पणी दर्ज करने के लिए उसे भविष्य निधि निरीक्षक को प्रस्तुत किया जाए।

11. An Inspection book in the following proforma may also be maintained and produced to the Provident Fund Inspector for recording his observations:

(1) भविष्य निधि निरीक्षक का नाम

(i) Name of the Provident Fund Inspector... Mrs. V. R. Bengali

(2) जाँच किये गये लेखा की अवधि

(ii) Period for which accounts are checked

(3) भेट की तारीख

(iii) Date of visit

(5) टीका-टिप्पणी

(iv) Observations.....

12. उपयुक्त धारा 2 के अनुसार आपकी फैक्ट्री/स्थापना के लिए एमएच/..... यह संकेत संख्या नियत की है। सदस्यों की लेखा संख्या, प्रपत्र संख्या 9 और प्रपत्र संख्या 3 (प. पे. नि.) के अनुसार क्रमजः होगी। एतद् अनुसार सदस्यों की वैयक्तिक लेखा संख्या एमएच/...../1, एमएच/...../2, एमएच/...../3, और इसीतरह लगातार होगी। एक बार एक सदस्य को नियत की गयी लेखा संख्या किसी भी मामले में दुसरे सदस्य के लिए नियत नहीं की जाएगी। (जिस सदस्य को लेखा संख्या दी गई है उसने आपको सेवा त्याग देने पर भी)

12. As stated in para. 2 above, the code number allotted to your factory/establishment is MH/... The account number of the individual members will be suffixed by the serial numbers in which they appear in Form No. 9, Form No. 3, (FPF). Thus the Account number of individual members will be MH/22450...../1, MH/22450...../2, MH/22450...../3, and so on. An account number once allotted to a member should in no case be allotted to another member, even though the member bearing Account number may have left your establishment.

13. यह सुनिश्चित किया जाए कि निधि की देय राशी निर्धारित समय में भरनी है। विलंबित अदायगी कर्मचारी भविष्य निधि एवं प्रकीर्ण नकद अधिनियम की धारा 14-बी के अनुसार और प्रतिशत क्षतिपूर्ति के लिए उत्तरदायी होगी।

13. It is important to ensure that the amount due to the Fund is paid within the prescribed time limit. Delayed payments are liable to damages upto hundred per cent of the arrears as provided in Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

14. इसके अतिरिक्त देयता की अदेनगी तथा विवरणियों की अ-प्रस्तुति के लिए अग्नियोग भी लगाया जाएगा।

14. Besides, Prosecution could also lie for non-payment of dues and for non-submission of returns.

15. इस कार्यालय के निरीक्षक आपकी स्थापना को भेट देंगे। इसलिए आपसे निवेदन है की उन्हें आवश्यक सहयोग दे। तथापि, अगर आपको कोई कठिनाई महसूस हो या आप किसी प्रकार के मार्गदर्शन की अपेक्षा रखते हैं; तो इस कार्यालय को या निम्नलिखित पते पर भविष्य निधि निरीक्षक को लिख सकते हैं।

15. An Inspector of this office will be visiting your establishment. You are requested to please afford him necessary co-operation. However, if you experience any difficulty or desire any guidance, you may please write to this office or the Provident Fund Inspector whose address is given below.

श्री/श्रीमती _____

भविष्य निधि निरीक्षक

भदोच,

क्षेत्रीय भविष्य निधि कार्यालय

महाराष्ट्र तथा गोवा

Provident Fund Inspector

Mrs. V. R. Bengali

Nasik

Please acknowledge receipt of this communication.

Yours faithfully,

[Signature]
Regional Provident Fund Commissioner,
Maharashtra and Goa

Copy to

① Estt.

② Enl.

③ P.F.I.

④ F&S

⑤ A/c Gr. through Card-I.

NR
11/1/85

encl.

1. संकेत संख्या के आवंटन सम्बन्धि सूचना
1. Instruction regarding allotment of A/c number and filling up of Scheme.
2. Instructions regarding transfer of previous Provident Fund accumulations and transfer of securities.
3. Ready Reckoner for calculating P. F. contributions/F. P. contribution/Deposit Linked Insurance Contribution.

लेखा संख्या के आवंटन सम्बन्धि सूचना

INSTRUCTION REGARDING ALLOTMENT OF ACCOUNT NUMBER

फैक्ट्री स्थापना की संकेत संख्या के अन्तर्गत योगकर्ता कर्मचारी की लेखा संख्या क्रमिक रूप से होगी। प्रत्येक फैक्ट्री/स्थापना अपनी खुद की क्रमसंख्या बनाएगी। निधि के जितने योगकर्ता हैं उतनी ही क्रमसंख्या होगी। फैक्ट्री/स्थापना की संकेत संख्या क्रमसंख्या के पहले जोड़ने पर सम्बन्धित कर्मचारी/योगकर्ता की भविष्य की पूर्ण लेखा संख्या तैयार होगी। उदाहरण के तौर पर, अगर आपकी फैक्ट्री/स्थापना में 52 योगकर्ता हैं तो उनकी पूर्ण भविष्य निधि लेखा संख्या एम्एच/306/1, एम्एच/306/2, एम्एच/306/3, और इसी तरह लगातार एम्एच/306/52 तक होगी। जिससे एम्एच/306 यह फैक्ट्री/स्थापना की अपरिवर्तनीय संख्या सूचित है और संख्यात्मक क्रमांक योगकर्ता के लिए नियत की गयी लेखा संख्या सूचित करते हैं। संकेत संख्या की तरह योगकर्ता को एक बार नियत की गयी लेखा संख्या भी अपरिवर्तनीय होगी। योगकर्ता सेवा त्याग देने पर उसका लेखा बंद हो गया हो बन्द लेखा की लेखा संख्या रिक्त रखी जाए। उसे किसी नये योगकर्ता के लिए फिर से नियत न की जाए। योगकर्ता का फैक्ट्री/स्थापना से स्थानांतरण होने पर, जिस फैक्ट्री/स्थापना में वह कार्य करता था उसमें उसकी लेखा संख्या अप्रवृत्त रहेगी लेकिन किसी अन्य को नियत नहीं की जाएगी। क्षेत्रीय भविष्य निधि आयुक्त और फैक्ट्री/स्थापना के बीच होनेवाले पत्राचार में योगकर्ता की लेखा संख्या उद्धृत की जायगी।

The employee's subscriber's account number will be a running number under the code number of the factory/establishment. Each factory/establishment having a serial of its own and as many numbers in the serial as there are subscribers to the Fund. The running numbers prefixed with the code number of the factory/establishment will be the full Provident Fund Account Number of the employee/subscriber concerned. For example, if there are 52 subscribers in a factory/establishment their full Provident Fund Account Numbers will be MH/306/1, MH/306/2, MH/306/3, and so on till MH/306/52, where MH/306 denotes the unalterable factory/establishment's code number and the running numerical numbers denote the Account Number allotted to each subscriber, like the code number, the account number, once allotted to the subscriber will not be changed when he quits service and his account is closed, the number of the closed account will be left blank and WILL NOT BE RE-ALLOTTED TO ANY NEW MEMBER. On transfer of a subscriber from one factory/establishment he joins and his account number in the factory/establishment in which he was last employed will become inoperative and will not be re-allotted to and vice versa. The Account Number of each subscriber must be quoted in all correspondence between the Regional Provident Fund Commissioner and the factory/establishment and vice versa.

No. MH/22450/PF/NSK/Comp.I/EO

Date : 26./06/2023.

To,
The Regional P.F. Commissioner (II),
Compliance Section,
R.O., Nasik

Sub : Submission of Shram Suvidha Report in respect of M/s Sudal Industries Ltd, bearing code No. MH/22450 reg....

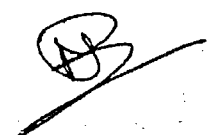
Sir,

With reference to the above subject and As direction received through Shram Suvidha Portal I, the under signed , Enforcement Officer/PF Inspector, RO, Nasik, appointed u/s 13 of the EPF & MP Act, 1952, visited the aforesaid establishment to conduct the inspection on 24.05.2023 as the establishment gone under the Insolvency, and registered Pre Packaged Insolvency from 20.04.2023 and shri Prashant Jain (Resolution Professional) are appointed, Regd. No. IBBI/IPA-001/IPPO1368/2018/2019/12131.

During the visit at above said address, it is noticed the establishment is running their business activity, and shri Mangesh M. Jagtap, Manager HR, was present, I have explained the purpose to visit the establishment and asked for the following record or the period last inspection to till date for verification. I have also explained to shri M.M. Jagtap, Manager HR the time limit to produce the record/document for verification and also time limit to submit the report with the claim amount to IRP. The establishment has not produce the record, therefore I have again visited to the establishment on -07.06.2023 and 13.06.2023. on 13.06.2023 the establishment has submitted the letter dated 13.06.2023 requesting that due to EMS 14001 & OHSMS 45001:2015 Audit will be going on from 14.06.2023 to 17.06.2023 therefore allow at least one week time to produce the all record for verification.

Therefore I have again visited the establishment on request on establishment on 22.06.2023 .06.2023 and the establishment has produced the following record in various time.

1. Affidavit for non availability of the record prior to 2016/17 dated 13.06.2023.
2. Balance sheet for the year 2016/17 to 2021/22.
3. Ledger (i.e. group booking expences sheet) of Salary/wages/stipends and Labour charges for 2016/17 to 2021/22.
4. Salary/wages/stipend/Mumbai staff salary sheets in hard & soft copies from 2016/17 to April 2023(except some month of sheet not in record).
5. Year wise List of contractor engnaged by establishment with Code number and also list of out side job workers.
6. Letter regarding the list of excluded employees already exit the establishment and getting pension.
7. Dues remittance statement for 2016/17 to 04/2023.-
8. Letter regarding the Apprentiship and paid stipend.
9. Consolidated month wise calculation sheet of salary/wages/Stipend/Mumbai staff salary etc.



The establishment is covered under EPF & MP Act 1952 w.e.f 31.05.1984, u/s 1(3)(b), under schedule head E.M.G.E. and as per the compliance file and the than Enforcement Officer squad has submitted the report for the period 03/2006 to 06/2008.

On verification of the record produced before me by the establishment during the visit it is noticed that :

The establishment has submitted the Affidavit dated -13.06.2023 regarding the record prior to 2016/17 not available and if any complaint received regarding the provident fund or the information and record/documents as submitted /produced during the course of inspection of the EPF & MP Act 1952 & Scheme framed there under is found false or incorrect in future the establishment will take responsibility towards the payment of EPF & other Allied dues .

The establishment has paid the amount under head Labour charges :-

In which the estt. has booked the amount paid to the 1) Out side Job worker 2) To the contractor engaged at establishment for Canteen, House keeping, and Labour work. the establishment remitted the dues on the establishment code number i.e. MH/22450 as the said contractor are not covered under EPF Act 1952.

The establishment has produced the list of contractor with their Name, nature of activity, Provident Fund Number. As per the details the establishment has remitted the dues on the establishment (M/s. Sudal Ind. Ltd, MH/22450) code number of the contractor are who are not covered under the EPF & MP Act and the code number of the other contractors who are separately covered under this Act, the year wise list these contractor is enclosed herewith. The establishment produce the list of the outside job workers and sample bills of that establishment. The establishment has produce the group booking ledger of Labour charges, as per this ledger the establishment paid the amount to out side job work and also the contractor worked in establishment.

On verification of the salary sheet the establishment has booked the Basic and DA amount of staff salary Nasik, Mumbai Staff salary in balance sheet in group booking as per the ledger. As per the head wages amount of wages and stipend are booked in balance sheet as per group booking ledger.

1. Establishment has categorized its employee those who are getting Nasik staff Salary/Mumbai staff salary/wages/O.T.on wages/Stipend etc. however the establishment started showing salary to be summation of basic and different allowances like HRA, Education Allowance, CCA to avoid the P.F. dues on this amount, i.e. less PF deduction/deposition. The copies of salary/wages/stipend sheets for 2016/17(04/2016 to 06/2016 and Nov.2020 and Dec. 2020 not produced) to 04/2023 are enclosed herewith.



As per interpretation of basic wages given by Hon'ble Supreme court in CIVIL APPEAL NO(s). 6221 OF 2011, The Regional Provident Fund ... vs Vivekananda Vidyamandir on 28 February, 2019, it has been held that those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. In this case establishment has provided CCA & Education Allowance apart from basic, HRA to its entire employee irrespective of their linkage to extra output. Hence allowances viz CCA, Education allowance have been clubbed into basic and dues calculated on basic salary up to ceiling limit of rupees 15000/-

The establishment has submitted letter dated 23.06.2023 regarding the student who were appointed as Apprentice employees and paid amount and booked under the stipend head which is enclosed herewith and these employees are excluded.

The establishment has booked the amount under retainer head in the books of account and paid to the employees who are exit the establishment and withdrawn the Provident Fund amount as per system and getting the pension and rejoined the establishment. These employees are excluded, the separate list of those employees are also submitted is enclosed herewith.

Therefore the dues are calculated on the basis of the record produced before me during in the inspection period by the establishment are as under :-

TOTAL DUES AFTER CONSIDARATION OF REMITTANCE FROM 2016/17 TO 04/2023.

	P.E.SALARY	A/C I	A/C I ER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
2016/17	27324673	3278961	1016456	2262504	229996	136623	2183	6926724
2017/18	30042974	3605157	1118707	2486450	193413	150215	0	7553941
2018/19	32263780	3871654	1203850	2667804	164751	161319	0	8069378
2019/20	31574610	3790159	1173567	2616592	157873	157923	0	7896115
2020/21	22551719	2591543	717218	1874325	112759	112824	0	5408668
2021/22	23035886	2764306	869016	1895290	117258	115179	0	5761050
2022/23	23795883	2855506	896216	1959289	118979	118979	31	5949002
Apr-23	2163116	259574	84312	175262	14243	10816	0	544206
	192752642	23016859	7079343	15937516	1109271	963879	2215	48109084

M/s SUDAL IND. LTD. REMITTANCE

YEAR	A/C I EE	A/C I ER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
2016/17	2934187	927207	2006980	207828	120752	2464	6199418
2017/18	3071818	962330	2109488	171016	126856	1294	6442802
2018/19	3361426	1067244	2294182	146623	138310	0	7007785
2019/20	3353091	1066508	2286583	128391	137799	11247	6983619
2020/21	2262067	667904	1594163	98430	96662	0	4719226
2021/22	2310306	815155	1495114	96264	92448	0	4809287
2022/23	2510691	993903	1516788	104612	94095	0	5220089
Apr-23	220384	88005	132379	9183	8231	0	458182
TOTAL	20023970	6588256	13435677	962347	815153	15005	41840408

**TOTAL DUES ON THE BASIS OF SALARY/WAGES SHEET FROM
04/2016 TO
04/2023**

YEAR		A/C I EE	A/C I ER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
DUES FROM 04/2016 TO 04/2023	192752642	23016859	7079343	15937516	962347	963879	15005	48109084
REMITANCE FROM 04/2016 04/2023		20023970	6588256	13435677	962347	815153	15005	41840408
ACTUAL DUES		2992889	491087	2501839	0	148726	0	6268676

Therefore, the total outstanding EPF & allied dues of Rs- 6268676/- (Rupees – Sixty two Lacs Sixty Eight Thousand Six Hundred and Sevebty Six Rupees Only) may be assessed against the establishment for the period – 2016/17 to 04/2023 on the basis of record produced before me during the inspection period. The Total Outstanding dues may be changed after submission of further records / documents if brought under the notice of the department.

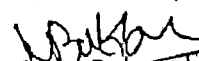
However, the employer further has to be responsible that in case of any complaint is received by this office in future, from any employee or any other source regarding provident fund matter or the information and records/documents as submitted/produced during the course of inquiry of the Employees Provident Fund & Miscellaneous Provision Act 1952 and scheme framed there under are found false or incorrect in future, the Employer/Establishment/Responsible persons/IRP of the establishment, will take whole responsibility towards the payment of EPF & Allied dues of the complaint and also responsible for panel damages and interest thereon as per EPF laws, therefore, the I the undersigned is working out the dues on the basis of records/documents produced before me and enclosed herewith.

On deposit of dues as worked out above, establishment/owner/director/responsible person will be liable to pay further damages u/s 14B & interest u/s 7Q of the Act respectively.

Establishment/Owner/Director/Responsible person is also directed to update KYC, E-nomination of each and every employee of the establishment.

Thus, in view of the above facts the deposition is submitted on basis of the records/documents as produced by the employer/establishment. Submitted for kind perusal and further necessary orders/direction if any, please.

Yours faithfully,


[N.V. Bakare]

Enforcement Officer,
RO, NASIK.

Encl. – As stated above
i.e. sr.no 01 to 09.



561
17/7/23

Exh-R3

SUDAL

INDUSTRIES LIMITED

Certified for ISO 9001:2015, IATF 16949:2016, ISO 14001:2015 & ISO 45001:2018
CIN L21541MH1979PLC021541



Corporate Office : 26A Nariman Bhavan, Opp. NCPA, 227 Nariman Point, Mumbai 400 021, (INDIA)
Phone: 91-22-22023845, 61577100, 61577177 • Fax : 91-22-22022893 • E-mail : mumbai@sudal.co.in • www.sudal.co.in

Date : 14th July 2023

To,
Mr. K. K. Kumbhar,
Assistant PF Commissioner / Recovery Officer,
Regional Office, Nashik,

Subject : Submission of representation in respect of alleged Provident Fund and allied dues of M/s. Sudal Industries Ltd. situated at A-5, MIDC, Ambad Industrial Area, Mumbai -Nashik Highway, Nashik - 422010.

Ref. : PF Code No.KD/NSK/22450

Ref.: (I) Your letter bearing No.MH/KD/NSK/Recovery/22450/RO/139 dated 10th July 2023 addressed to the Resolution Professional, Mr. Prashant Jain appointed by NCLT, Mumbai Bench - IV.

Enquiry Officer, Mr. N.V. Bakare's report letter bearing No.MH/22450/PF/NSK/Comp./EO dated 26th June 2023 submitted to the RPFC-II, Compliance Section, RO-Nashik

Sudal Industries Limited (for short "Sudal / Company") is a company incorporated under the Companies Act, 1956 on 8th August, 1979 vide CIN No.L21541MH1979PLC021541 by ROC, Mumbai having its Registered Office at A-5, MIDC Ambad Industrial Estate Mumbai Nashik Highway, Nashik, MH 422010. The Company is a medium size enterprise as defined in the Micro, Small and Medium Enterprises Development Act, 2006 (for short MSMIE Act) and is holding Udyam

Manufacturers of Aluminium Extrusions & Components • Architectural & Transport Systems • Non Ferrous Alloys

Regd. Office & Works : A5 MIDC, Ambad Industrial Area, Mumbai Nashik Highway, Nashik 422 010.

Phone : 91-253-2382396 / 6636200 - 234 • Fax : 91-253-2382197

E-mail : nashik@sudal.co.in

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INDUSTRIES LIMITED

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CIN L21541MH1979PLC021541



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2. Certificate dated 2nd December 2020 bearing No. UDYAM-MH-23-001-4829. The company is engaged in manufacturing of aluminium extrusions and aluminium base alloys.
3. The Company is covered under the provisions of the Employees Provident Funds & Misc. Provisions Act, 1952 (EPF Act, for short) with effect from 31st May, 1984 under Section 1(3)(b) read with the Schedule to the Act. The company has scrupulously complied with the provisions of the EPF Act and Schemes framed thereunder. It is submitted that the past record will disclose that there is no default in compliance of the provisions of the Act and Scheme framed thereunder.
4. The Board of Directors of the Company reviewed the financial position of the Company as on 30th June, 2022 and took note of the fact that the debt payable to financial creditors, including operational creditors, was more than 130 crores. Being a Corporate debtor classified as a Medium Enterprise under Section 7(1) of the MSME Act, it preferred an Application under Chapter 3A of the Insolvency and Bankruptcy Code (Amendment) Act, 2021 (IB Code, for short) under the Pre-Packaged Insolvency Resolution Process (Chapter III-A) Sections 54C and 54D of the IB Code read as under:

"54C. Application to initiate pre-packaged insolvency resolution process:

(1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating Authority for initiating pre-packaged insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

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(3) *The corporate applicant shall, along with the application, furnish-*

(a) *the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;*

(b) *the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;*

(c) *a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;*

(d) *information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.*

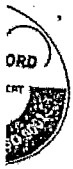
(4) *The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,-*

(a) *admit the application, if it is complete; or*

(b) *reject the application, if it is incomplete;*

Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) *The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).*



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54D. Time-limit for completion of pre-packaged insolvency resolution process

(1) The prepackaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of section 54K, within a period of ninety days from the prepackaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified".

5. The aforesaid Application filed under Section 54(C) of IB Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was placed before the National Company Law Tribunal, Mumbai Bench-IV (NCLT, for short). The Learned Authority after hearing the Counsels for parties, declared that CP(IB) No.,63 (MB) 2021 is dismissed as not maintainable and CP IB No.638(MB) 202 is dismissed as infructuous in view of Applicant therein consenting and voting in favour of resolution approving Pre-Packaged Insolvency Resolution process u/s. 54A (3) of the Code. Copy of the said Order dated 20th April, 2023 is annexed hereto and marked as ANNEXURE – A.

6. By the said order, NCLT appointed Mr. Prashant Jain as Resolution Professional (RP). As per the resolution the Resolution Professional addressed letters to creditors, authorities, etc. for submission of claim if



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or agreement. One such letter appears to have been addressed to your good-self. We may record that we are not in possession of the said letter as on date of writing of this letter.

8. The Resolution Professional forwarded to us a copy of the letter dated 10th July, 2023 whereby your office has raised a claim in the sum of Rs.1,45,25,662/- purportedly being claim in respect of PF and other allied dues.
9. First and foremost, the Company would like to clarify that despite the financial challenges faced by the management of the company are a result of unforeseen and unavoidable circumstances it has paid all statutory dues within the prescribed time. There is no default in payment of statutory dues, including contributions to Provident Fund, ESI Corporation, Labour Welfare Fund and other social beneficial welfare legislations.
10. Kindly take note that we have paid all contributions on the amount on which Provident Fund is payable. We deny that for the period 4/2016 to 4/2023 a sum of Rs.62,68,674/- is due and payable as computed by the Enforcement Officer (EO). In any event, please take note that the opinion of the EO is not determination of the contribution due and payable by the company. In any event the department is of the view that PF contribution as per EPF Act or Schemes framed thereunder has not been deposited by the Company then the amount of contribution, which the department feels is due and payable, has to be determined by holding a statutory enquiry under Section 7A of the EPF Act.
11. The enquiry under Section 7A of the EPF Act is a quasi-judicial proceedings. The EO is vested with certain powers of CPC to facilitate

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a free and fair enquiry. The company is required to be heard and opportunity to defend is required to be given and after conclusion of enquiry a Speaking Order passed is with reasons thereof. Unless and until an enquiry under Section 7A is held and a speaking order is passed therein, no amount due and payable towards PF contributions can be crystallised. The Report of the EO is a mere opinion. In the circumstances, the alleged claim of the PF in the sum of Rs.62,68,674/- as intimated by your letter under Reference (1) above is ultra vires the provisions of the EPF Act.

12. As regards purported "14B dues", please note that Section 14D empowers the authority to levy damages in case of default in payment of contributions. The said levy of damages is not automatic and is subject to personal hearing as contemplated by the said provision. It has to be noted that a proceeding under Section 14B can be initiated only in the event of default in payment of contributions. As on date there is no default on the part of the Company in paying PF contributions as per law. In this connection, your attention is drawn to the EO's Report dated 26th June, 2023 which admits that for the period 2016-17 upto April, 2023, the Company has remitted a sum of Rs.4,18,40,408/- towards PF dues. This is not a case of non-remittance or default in payment. Hence question of initiating proceedings under Section 14B of the EPF Act does not arise.

13. Absent a speaking order under Section 14B, there cannot be any claim for damages. In the circumstances, the claim in the sum of Rs.50,89,709/- towards "14B dues" for the period 4/2016 to 4/2023 is contrary to the EPF Act. We reiterate that the claim is ultra vires the provisions of law.



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14. Similarly, the demand for interest in the sum of Rs.31,67,279/- purportedly under Section 7Q of the EPF Act is uncalled for in the facts of the present case neither due nor payable.
15. It is, therefore, submitted that the Asstt. PF Commissioner has casually made a claim in the sum of Rs.1,45,25,662/- in his letter dated 10th July, 2023 addressed to the Resolution Professional. The claim made in the said letter is not as per the provisions of the EPF Act. The claim is in the realm of conjectures and surmises. On this ground itself, you are requested to direct your office to forthwith withdraw the claim submitted by Mr. K. K. Kumbhar, Asst PF Commissioner/Recovery Officer, Regional Office, Nashik vide letter at Ref.(1) above.
16. Without prejudice to the above and without prejudice to each other, it is submitted that claim in sum the of Rs.62,68,674/- under head of "Provident Fund Dues" is legally untenable.
17. Apart from the above, the demand for PF dues is untenable for more than one reason. In the first place, the report of the Enquiry Officer with all annexures and enclosures thereto has not been served upon the Company. It is the basic principle of natural justice that when a demand of civil nature is made the person against whom the demand is made has to be served with a notice and all material in support of the notice setting out all facts leading to the demand. Absent such a notice, a demand or claim for contribution is untenable under the EPF Act. The value of the report of a PF Inspector or Enforcement Officer was subject matter of decision in the case of *Minerva Stores vs. RPFC - 1978 LIC 1160*. In the said case, the Hon'ble HighCourt observed that



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the impugned orders demanding contribution was made on the basis of report of Provident Fund Enquiry and not by an independent enquiry by the authority concerned as contemplated under Section 7A of the Act. The Hon'ble High Court approvingly referred the decision of the Orissa High Court in the case of *Ganesh Das Kaluram vs. RPFC - 1973 II LLJ 465*. Similarly, in the case of *Glamour vs. RPFC - 1975 I LLJ 514* the High Court held that "..... the investigation made by the inspector or the report submitted by him was no substitute for a quasi judicial enquiry envisaged by Section 7A. The Petitioner is entitled to show to the appropriate officer that the report of the inspector is not correct.". Hence merely on the basis of EO Report, no claim for provident fund dues can be made as done by the Asstt. PF Commissioner/Recovery Officer vide communication at Ref.(1) above.

18. Secondly, an enquiry under Section 7A is a judicial order rendered by a quasi-judicial authority. When liability to pay any contribution under the Act is disputed by the employer, determination of the liability is a condition precedent to the making of an order under Section 7A (see *Jaylaxmasid Sikaria & Co. vs. RPFC - 1973 II LLJ 594*, *H. A. Mohammed Osman vs. RPFC - 1973 LIC 205*, *Younus Mohammed vs. RPFC - 1987 II CLR 50*. Hence determination of liability is sine-qua-non for a valid and bonafide claim of PF dues.
19. Thirdly, any claim made without a speaking order passed under Section 7A is void and liable to be quashed (*D.K. Barua vs. RPFC - 1972 I LLJ 385* and *Balasure Automobile Works vs. RPFC - 1983 LIC 1219*).
20. Fourthly, there is sufficient documentary evidence to demonstrate that the allowances in question being paid to the employees are variable and linked to specific purposes entailed by their nature of duty. The

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payment of conveyance allowance is being paid specially to employees who are required to commute to reach the place of work. It is indisputable that the factory/works of the company is situated in a non-metropolitan area and away from residential areas. It is difficult to get skilled labour from the locality in which the factory is situated. It is the requirement of the factory that skilled labour is employed to facilitate production. Hence conveyance allowance is not 'basic' wages but as specific allowance to workmen who are required to commute to come to the place of work. This is strictly not a payment across the board. Similarly, education allowance is given to employees who have school-going children. The said payment is part of Corporate Social Responsibility. The workmen are only entitled to basic wage, DA and HRA as remuneration for work performed. Hence the EO has erred in considering special allowances paid for specific purposes to meet a specific object as part of basic wages. As the very foundation of the claim is untenable, the claim is void. This is also an additional reason to withdraw the unauthorised claim made by the Asstt. Regional PF Commissioner/Recovery officer vide letter at Ref.(1) above to the RP.

21. Lastly, if education allowance and conveyance allowance are treated as basic wage then most of the employees would be excluded from the ambit of the EPF Act and schemes framed thereunder because their salary would exceed the ceiling limit as on date of entry into the service of the Company. In other words, if the two allowances identified by the EO are treated as basic wage then a large number of employees would not be eligible for membership under Para 26B of the PF Scheme. It is trite that if eligibility of PF membership under Para 26B is to be determined then no notice can be issued under Section 7A of the Act for determining amount of contribution due from the employer until and

Manufacturers of Aluminium Extrusions & Components for Architectural & Transport Systems & Non Ferrous Alloys
Regd. Office & Works : A5 MIDC, Ambad Industrial Area, Ambad Nashik Highway, Tel. No. 422 010.
Fax : 01 652 222296 / 6632110 / 6632111. E-mail : 01 652 222297

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unless the question of eligibility under Para 26B of the Scheme is first decided after hearing all concerned (*see Shashidharan vs. KPFC - 1982 LIC 597*).

22. The Company also observes that the EO in his Report has assessed a sum of Rs.29,92,889/- as amount payable by employees under Account-1 of the PF Scheme. The Company may point out that employees contribution comes from the salary of the employee. If the department demands contribution for past period then employees will be obligated to deposit their contribution for the past period alongwith interest. Specific attention is drawn to para 8(v) of the decision of the Supreme Court in the case of *Pawan Hans Ltd. vs. Aviation Karmachari Sanghatana - (2020) 13 SCC 506*.
23. Hence the liability to pay a sum of Rs.29,92,889/- cannot be foisted upon the Company as it is the exclusive liability of the concerned employee.
24. As regards the claim for damages under Section 14B the said demand can be made only in case of an undisputed or indisputable default in payment of contribution. Hence unless and until there is a default in payment of PF contribution determined as per law, cause of action to commence proceedings under Section 14B of the EPF Act does not accrue. The claim for damages in the sum of Rs.50,89,709/- by the Asstt. PF Commissioner in his letter at Ref.(1) above is, therefore, premature.
25. Moreover, a claim for damages cannot be without notice and/or hearing. The quantum of damages is required to be assessed on the principles laid down by the Supreme Court in the case of *Alecoid Russel India*



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Ltd. vs. RPFC, Jalpatguri – (2014) 15 SCC 263. The Supreme Court laid down the dictum that the quantum of damages can only be proportionate to the loss in interest to the fund as well as damages to be ascertained after due hearing and consideration of all facts leading to the default in payment of the contribution. Hence a default has to be first established and thereafter the extenuating circumstances, if any, leading to the default. In absence of such determination, a claim for damages under Section 14B is non-est.

26. As regards the claim for Rs.31,67,279/- towards interest under Section 7Q, please note that no further amount is due and payable by the Company as PF Contribution for the period 4/2016 to 4/2023, other than what has already been remitted for the said period and noted by the EO in his Report.
27. The company, therefore, submits that it has a reasonable case on merits to show that the report of the EO is demonstrably erroneous. Hence the claim for PF dues based upon the said erroneous Report the further claim towards Section 14B and Section 7Q dues are non-est, to say the least and hence ought to be recalled/withdrawn.
28. The management of the company is fully cognizant and understands its obligations as an employer and the importance of complying with provisions of the applicable Acts, Rules and Regulations. The Company, till date, has scrupulously deposited contributions (both employer and employee) as per the mandate of the Act and Scheme with the Provident Fund Authority within the stipulated time.

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29. Furthermore, the management of the Company would like to emphasize
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difficulties, the Company has continued to regularly pay salaries as per the terms of the contract. In addition, benefits and perquisites extended to them as a social welfare measure is continued. We recognize the importance of the dedication of the employees and their willing contribution in these challenging times to ensure that the company breaks through the current financial crisis.

30. The Company submits that the letter at Ref.(1) above addressed to the Resolution Professional by the Asstt. Regional PF Commissioner / Recovery Officer, Regional Office, Nashik is without jurisdiction and ultra vires the Act.
31. We, therefore, request that as the Head of the Regional Office, Nashik, this demonstrably baseless and illegal claim made by letter at Ref.(1) above to the RP be forthwith withdraw.
32. Considering that IBC proceedings are strictly time bound, we request that the communication at Ref.(1) be withdrawn within 5 working days from receipt of this representation so that the IBC proceedings can continue as per law. The management of the Company is sure that this representation will be expeditiously dealt with as per law and the claim at Ref.(1) above withdrawn. The management trusts that the needful will be done within the above time frame and the company will not be compelled to move the Hon'ble High Court Bombay in its extra ordinary jurisdiction for quashing the illegal claim made by the Asst. Regional PF Commissioner, Nashik.

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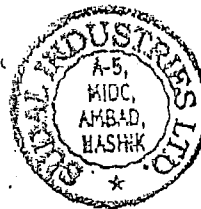
33. We are certain that this representation will be positively dealt with and in anticipation thank you for your understanding and positive action as requested above.

Thanking you,

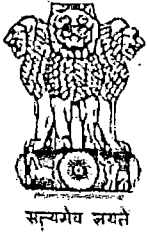
Yours sincerely,

FOR SUDAL INDUSTRIES LTD.
FOR SUDAL INDUSTRIES LTD


AUTHORISED SIGNATORIES



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कर्मचारी भविष्य निधि संघटन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)

Employees' Provident Fund Organisation
(Ministry of Labour & Employment, Govt. of India)

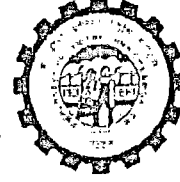
क्षेत्रीय कार्यालय/ Regional Office

प्लॉट नं. पी-11 भविष्य निधि भवन, एम.आय.डी.सी., सातपुर, नाशिक - 422007

Plot No P-11 "Bhavishya Nidhi Bhavan", MIDC, Satpur, Nashik-422007.

दूरभाष/Telephone, (0253) 2360974/2362410/ फ़ैक्स/ (0253) 2360973.

E-mail: ro.nasik@epfindia.gov.in



No.MH/22450/NSK/PF/RO/Comp-I/SKT/

Date:-02.08.2023

To,
M/s. Sudal Industries Limited,
A5, MIDC, Ambad,
Mumbai Nashik Highway,
Nasik- 422010.

Subject:- Regarding AEO report dated 26.06.2023 in respect of the establishment M/s. Sudal Industries Limited, bearing PF code No. KDNSK/22450.

Reference: Establishment letter dated 14.07.2023.

Sir,

Please refer to your letter dated 14.07.2023 whereby, it has been requested to withdraw claim submitted before Resolution Professional in 'Annex - A' vide claim dated 03.07.2023.

In this regards, it is to inform that as per the guidelines received from Head Office vide e-mail dated 25.11.2022, as soon as inspection report containing the extent of dues under the EPF Act is received, a notice of dues, as per Annex-A should be submitted to the concerned Resolution Professional or the Liquidator within seven days of receipt of this report. All procedures under the IBC are strictly time bound.

Whereas, enquiries under section 7A of the Act for as certain of dues in a short span of time is not possible as it may cause unnecessary delay in filing claim and further legal complications. If the claim is not filed in time it may cause irreparable loss to workmen/employees. The debt owed to the EPFO is the debt owned by the employees. Therefore the claim filed by department represents the claim of the employees and workmen in respect of their claim for PF and allied dues.

Further, it is to inform that no due has been assessed under section 7A of the EPF & MP Act 1952 against the establishment M/s. Sudal Industries Limited, A5, MIDC Ambad, Nasik-422010 for period 04.2016 to 04.2023. The due for period 04.2016 to 04.2023 has been calculated by the Enforcement Officer on the basis of records/documents submitted by the establishment. Based on the finding of Enforcement Officer this office has filed a claim before the IRP.

Further the complete copy of Area Enforcement Officer Report dated 26.06.2023 along with detailed calculated sheets running in 129 pages (pdf file) is being supplied for comments/say, through Email id i.e mangesh@sudal.co.in due to voluminous size of detailed calculation sheet.

(Ganeshprasad Arote)
Regional PF Commissioner-II
Regional Office, Nasik.

Enclosed :As above..



(अम एन रोडमार्ग मंडाळ, भारत सरकार)

Employees' Provident Fund Organisation
(Ministry of Labour & Employment, Govt. of India)

क्षेत्रीय कार्यालय/ Regional Office

प्लॉट नं. पी-11 भाविष्य निधि भवन, एम.आर.सी.सी., सातपुर, नाशिक - 422007
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दुरभाष/Telephone, (0253) 2360974/2362410/ फॅक्स: (0253) 2360973.

E-mail: ro.nashik@epfindia.gov.in



No. KD/NSK/22450/PR/RO/Compl-1/1596 1597 153 Date: 28.02.2024

(SHOW CAUSE NOTICE BEFORE INITIATION OF INQUIRY UNDER
SECTION 7A OF THE ACT)

To,
The Director,
M/s. Sudal Industries Limited,
A-5, MIDC Ambad,
Industrial Area, Mumbai Naka Highway,
Nashik - 422010

Whereas, M/s. Sudal Industries Limited, A-5, MIDC Ambad, Industrial Area, Mumbai Nashik Highway, Nashik - 422010 (hereinafter referred to as the establishment) is an establishment to which the provisions of EPF & MP Act'1952(hereinafter referred to as the Act) are applicable. The establishment is covered under the Act with EPF Code number MH/22450 w.e.f 31.06.1982.

Whereas Area Enforcement Officer vide report dated 26.06.2023 has submitted his report wherein he calculated dues Rs.62,68,676/- outstanding against the establishment for period 04.2016 to 04.2023 (AEO report dated 26.06.2023 is enclosed). Further it is noticed that the establishment has failed to remit the outstanding dues till date.

In the light of the facts mentioned above, the establishment is a defaulter as per the provisions of EPF & MP Act 1952. Whereas, attention of establishment is invited towards section 7A of the Act which read as:

"Determination of moneys due from employers. - (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary"

Therefore, the establishment is hereby called upon to show cause to the undersigned within 07 days of receipt of this notice as to why inquiry under Section 7A of the Act from 04.2016 to 04.2023 may not be initiated against the establishment for determination of dues. Establishment is also directed to submit complete records before Area Enforcement Officer Shri. S T Shinde for Inspection. If no reply is received from the establishment within the prescribed time, undersigned will be at liberty to proceed further for initiation of inquiry under section 7A of the Act, without any further notice to the establishment.

(K K Kumbhar)

Assistant PF Commissioner (Compliance)
Regional Office, Nashik.

Copy to: 1. S T Shinde, Enforcement Officer, RO, Nashik..... for information.

2. Shri. Prashant Jain (RP)

A501, Shnati Heights,

Plot No.2,3,9, 13/10 Sector 11,

Koparkharinc, Thane, Navi Mumbai - 400709.....For information.



कर्मचारी भविष्य निधि संगठन
(श्रम मंत्रालय, भारत सरकार)
Employees' Provident Fund Organisation
(Ministry of Labour, Govt. of India)
क्षेत्रीय कार्यालय /Regional Office
प्लॉट नं . पी 11-भविष्य निधि भवन, एम आर डी सी सातपुर, नासिक-422007-
Plot No. P-11, "Bhavishya Nidhi Bhavan", MIDC Satpur, Nasik-422007
दूरभाष /Telephone : (0253) 2360974/236241/फैक्स/Fax@0253) 2360973
Email: ro.nasik@epfindia.gov.in

Exh-R6



No. MH/22450/PF/RO/NSK/Compli-I/DiaNo/222/2024/1741, Date: 19.03.2024

Summons to appear in person under Section 7A of the
Employees' Provident Funds and Miscellaneous Provisions Act, 1952

To,

M/s Sudal Industries Limited,
A - 5, MIDC, Ambad,
Nasik - 422010

The Area Enforcement Officer has submitted his report dated 26.06.2023 wherein he has calculated the PF and allied dues of Rs 62,68,676/- on the basis of available records for the period 01.04.2016 to 30.04.2023. Further a show cause notice before initiation of 7A issued to the establishment on 28.02.2024 but the establishment has failed to remit the PF and allied dues till date. Hence, to determine the correct PF and allied dues, an enquiry u/s 7A of the EPF & MP Act, 1952 is initiated against the establishment.

Whereas, Under Section 6, 6A and 6C of the Employees Provident Fund and Miscellaneous Provision Act, 1952 read with the Paragraph 38 of the Employees Provident Fund Scheme, 1952, Paragraph 3(1) of Employees Pension Scheme, 1995 and Paragraph 8(1) of the Employees Deposit Linked Insurance Scheme, 1976, you are required to deposit the Employees Provident Fund and Employees Pension Fund and the Employer's share of the Insurance Fund Contributions together with the Administrative and/or Inspection Charges payable under Section 17 of the Act to the respective funds, within 15 days of the close month in the respect of the employees of the establishment M/s Sudal Industries Limited, Nashik bearing PF code number KDNSK0022450000.

Whereas, information has been laid down before me and on consideration whereof, I have reason to believe that establishment have failed to remit:

- 1) Provident Fund contribution for the period from 01.04.2016 to 30.04.2023 in accordance with the provisions of the Employees' Provident Fund, 1952 of extended employees.
- 2) Pension Fund contribution for the period from 01.04.2016 to 30.04.2023 in accordance with the provisions of the Employees' Pension Scheme, 1995 of extended employees.
- 3) Insurance Fund contribution for the period from 01.04.2016 to 30.04.2023 in accordance with the provision of Employees' Deposit Linked Insurance Scheme, 1976 of extended employees.
- 4) Administrative Charges/Inspection Charges to the Fund for the period from 01.04.2016 to 30.04.2023 in accordance with the provision of the Employees' Provident Fund Scheme, 1952 of extended employees.
- 5) Administrative Charges/Inspection Charges to the Fund for the period from 01.04.2016 to 30.04.2023 in accordance with the provision of the Employees' Deposit Linked Insurance Scheme, 1976 of extended employees.

O/C

And, Whereas, I, Smr Manjusha R Jadhav, Assistant Provident Fund Commissioner, is empowered under Section 7A of the Employees' Provident Funds and Miscellaneous Act, 1952 to determine the amount due from you under the provisions of the Employees' Provident Funds and Miscellaneous Provision Act, 1952, Employees' Provident Fund Scheme, 1952, Employees' Pension Scheme, 1995 and Employees' Deposit Linked Insurance Scheme, 1976.

And Whereas, for determining the amount due from you for the said period from 01.04.2016 to 30.04.2023, it is desired to give you a reasonable opportunity of representing your case either in person or by or through an authorized representative.

Now, therefore, in exercise of powers conferred on me under Section 7A of the Employees' Provident Funds and Miscellaneous Provision Act, 1952, you are hereby summoned to appear before me either in person or through an authorized representative on the 26.03.2024 at 11.00 a.m. in my office to give evidence, and produce the original and attested copies of all the relevant records you intend to rely in support of payment including those mentioned below for conducting an enquiry and determining the amount due from you :

- 1 Attendance Registers
- 2 Cash Book and Vouchers
- 3 Payment Register/Pay Bills
- 4 General Ledger
- 5 Trading and Profit & Loss account and Balance Sheets
- 6 Any other documents necessary for ascertaining the amount due
- 7 Copy of statutory return/returns in Form 12A for the above said period

Please take notice that if you fail to attend the said inquiry as aforesaid, I shall proceed to hold the inquiry in the aforesaid matters, 'ex parte', on merits and an order shall be passed on the basis of available records determining the amount due from you under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Employees' Provident Fund Scheme, 1952, Employees' Pension Scheme, 1995 and Employees' Deposit Linked Insurance Scheme, 1976, there under.

Issued under my seal and signature at this 9 March 2024



MR
19/3/2024
(M R Jadhav)

Assistant P.F. Commissioner
RO, Nasik

Copy to:

Shri S. T. Shinde,

Enforcement Officer,

directed to generate the diary number in the e-court, visit the establishment & handover the copy of summons to employer & obtain acknowledge and submit the complete comprehensive report this office within 07 days.

BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,
Regional PF office, Nashik

In the matter of proceeding under section 7-A of the Employees Provident Fund & MP Act, 1952 against:

Name of the Establishment	: M/s. Sudal Industries Ltd., A-5,, MIDC Industrial Area, Ambad, Nashik-422010.
PF Code No	: KD/NSK/22450
Diary No	: 222/2024
Period of Inquiry	: April-2016 to April 2023
Enforcement officer	: Shri Sunil T Shinde

That the M/s. M/s. Sudal Industries Ltd., A-5, MIDC, Ambad, Nashik-422 010 is seen covered establishment under the EPF & MP Act, 1952 vide PF Code No KD/NSK/22450. The establishment M/s. M/s. Sudal Industries Ltd., is manufacturing of Aluminum extrusions and aluminum base alloys activity and is seen covered under schedule head "EMGE" w.e.f. 01-06-1984 (statutory) with 116 (One hundred sixteen) employees were declared by the employer at the time of registration for Provident Fund under the EPF Act. The establishment is a Limited company and registered under the company Act-1956.

Under the Shram Suvidha Portal an inspection was allotted, Enforcement officer submitted his report dated 26-06-2023 calculating the dues of Rs.6268676.00

The Adjudication authority Mumbai bench has ordered for the public Announcement of commencement of pre-packaged insolvency resolution process in respect of M/s. Sudal Industries Ltd. The report was forwarded to Recovery section to file the claim application before the IRP vide Note No MH/22450/PF/RO/NSK/Compliance-I/SKT dated 06-07-2023. The said report vide letter No MH/KD/NSK/Recovery/22450/Ro/139 dated 10th July 2023 address to the Resolution Professional Mr. Prashant Jain appointed by NCLT Mumbai Bench and copy to the establishment.

As per the copy of report which was forwarded to M/s. Sudal Industries Ltd., Ambad to demand the amount as per Enforcement officer report sum of Rs. 6268676.00. The Employer in relation to the establishment has submitted letter vide No Nil dated 14th July

2023 to this office on 17th July 2023 where disagree with the report and prayer to commencement of the 7A enquiry under the PF Act and Principal of Natural Justice on this count earliest.

Therefore, this inquiry under section 7-A of the EPF & MP Act, 1952 was initiated for determination of dues vide Summons No. MH/22450/PF/RO/Compliance-I/Dir. NO 222/2024/1741 dated 19-03-2024 and directed to attain the hearing on 26th March 2024.

I Shri Sunil T Shinde, Enforcement officer, do hereby submit following deposition which may be considered in ensuing personal hearing against which 7-A enquiry was initiated as per the above referred summons. The authorized representative Shri Mangesh Jagtap on behalf of the establishment attained the hearing; the required documents mentioned in the summons were not submitted by the employer. The hearing adjourned to 23-04-2024. Shri Mangesh Jagtap Authorized officer of the establishment deposed that the all relevant records are submitted before the earlier EO and he submitted the report, but the report is not agree by the establishment. The report is reproducing as under:

The earlier EO has submitted the report dated 26-06-2023 is placed below.
On verification of the office records it is seen that the following records are available:

- Affidavit for non availability of the record prior to 2016/17 dated 13.06.2023
- Balance sheet for the year 2016/17 to 2021/22
- Ledger (i.e. group booking expenses sheet) of Salary/wages/stipends and Labour charges for 2016/17 to 2021/22
- Salary/wages/stipend/Mumbai staff salary sheets in hard & soft copies from 2016/17 to April 2023 (except some month of sheet not in record).
- Year wise List of contractor engaged by establishment with Code number and also list of outside job workers.
- Letter regarding the list of excluded employees already exit the establishment and getting pension.
- Dues remittance statement for 2016/17 to 04/2023-
- Letter regarding the Apprentice and paid stipend.
- Consolidated month wise calculation sheet of salary/wages/Stipend/Mumbai staff salary etc.

The establishment has submitted the Affidavit dated -13.06.2023 regarding the record prior to 2016/17 not available and if any complaint received regarding the provident fund or the information and record/documents as submitted/produced during the course of inspection of the EPF & MP Act 1952 & Scheme framed there under is found false or incorrect in future the establishment will take responsibility towards the payment of EPF & other Allied dues.

The establishment has paid the amount under head Labour charges:-

In which the estt, has booked the amount paid to the 1) Outside Job worker 2) To the contractor engaged at establishment for Canteen, Housekeeping, and Labour work. The establishment remitted the dues on the establishment code number i.e. MH/22450 as the said contractor are not covered under EPF Act 1952.

The establishment has produced the list of contractor with their Name, nature of activity, Provident Fund Number. As per the details the establishment has remitted the dues on the establishment (M/s. Sudal Ind. Ltd, MH/22450) code number of the contractor are who are not covered under the EPF & MP Act and the code number of the other contractors who are separately covered under this Act, the year wise list these contractors is enclosed herewith. The establishments produce the list of the outside job workers and sample bills of that establishment. The establishment has produce the group booking ledger of Labour charges, as per this ledger the establishment paid the amount to outside job work and also the contractor worked in establishment.

On verification of the salary sheet the establishment has booked the Basic and DA amount of staff salary Nasik, Mumbai Staff salary in balance sheet in group booking as per the ledger. As per the head wages amount of wages and stipend are booked in balance sheet as per group booking ledger.

Establishment has categorized its employee those who are getting Nasik staff Salary/Mumbai staff salary/wages/O.T. on wages/Stipend etc. however the establishment started showing salary to be summation of basic and different allowances like HRA, Education Allowance, CCA to avoid the P.F. dues on this amount, i.e. less PF deduction/deposition. The copies of salary/wages/stipend sheets for 2016/17(04/2016 to 06/2016 and Nov. 2020 and Dec. 2020 not produced) to 04/2023 are enclosed herewith.

As per interpretation of basic wages given by Hon'ble Supreme court in CIVIL APPEAL NO(s). 6221 OF 2011, The Regional Provident Fund... vs Vivekananda Vidyamandir on 28

February, 2019, it has been held that those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. In this case establishment has provided CCA & Education Allowance apart from basic, HRA to its entire employee irrespective of their linkage to extra output. Hence allowances viz CCA, Education allowance have been clubbed into basic and dues calculated on basic salary up to ceiling limit of rupees 15000/-

The establishment has submitted letter dated 23.06.2023 regarding the student who were appointed as Apprentice employees and paid amount and booked under the stipend head which is enclosed herewith and these employees are excluded.

The establishment has booked the amount under retainer head in the books of account and paid to the employees who are exit the establishment and withdrawn the Provident Fund amount as per system and getting the pension and rejoined the establishment. These employees are excluded, the separate list of those employees are also submitted is enclosed herewith.

Therefore the dues are calculated on the basis of the record produced before me during in the inspection period by the establishment are as under:-

TOTAL DUES AFTER CONSIDERATION OF REMITTANCE FROM 2016/17 TO 04/2023.

Year	P.F.SALARY	A/C I	A/C IER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
2016/17	27324673	3278961	1016456	2262504	229996	136623	2183	6926724
2017/18	30042974	3605157	1118707	2486450	193413	150215	0	7553941
2018/19	32263780	3871654	1203850	2667804	164751	161319	0	8069378
2019/20	31574610	3790159	1173567	2616592	157873	157923	0	7896115
2020/21	22551719	2591543	717218	1874325	112759	112824	0	5408668
2021/22	23035886	2764306	869016	1895290	117258	115179	0	5761050
2022/23	23795883	2855506	896216	1959289	118979	118979	0	5949002

Apr -23	2163116	259574	84312	175262	14243	10816	0	544206
	192752641	23016860	7079342	15937516	1109272	963878	2183	48109084

M/s SUDAL IND. LTD. REMITTANCE

YEAR	A/C IEE	A/C IER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
2016/17	2934187	927207	2006980	207828	120752	2464	6199418
2017/18	3071818	962330	2109488	171016	126856	1294	6442802
2018/19	3361426	1067244	2294182	146623	138310	0	7007785
2019/20	3353091	1066508	2286583	128391	137799	11247	6983619
2020/21	2262067	667904	1594163	98430	96662	0	4719226
2021/22	2310306	815155	1495114	96264	92448	0	4809287
2022/23	2510691	993903	1516788	104612	94095	0	5220089
Apr -23	220384	88005	132379	9183	8231	0	458182
TOTAL	20023970	6588256	13435677	962347	815153	15005	41840408

TOTAL DUES ON THE BASIS OF SALARY/WAGES SHEET FROM 04/2016 TO 04/2023

YEAR	A/C IEE	A/C IER	A/C X	A/C II	A/C XXI	A/C XXII	TOTAL
DUES FROM 04/2016 TO 04/2023	23016859	7079343	15937516	962347	963879	15005	48109084
REMITANCE FROM 04/2016 04/2023	20023970	6588256	13435677	962347	815153	15005	41840408
ACTUAL DUES	2992889	491087	2501839	0	148726	0	6268676

Therefore, the total outstanding EPF & allied dues of Rs-6268676/- (Rupees - Sixty two Lacs Sixty Eight Thousand Six Hundred and Seventy Six Rupees Only) may be assessed against the establishment for the period 2016/17 to 04/2023 on the basis of record produced before me during the inspection period. The Total Outstanding dues may be changed after submission of further records/documents if brought under the notice of the department.

However, the employer further has to be responsible that in case of any complaint is received by this office in future, from any employee or any other source regarding provident fund matter or the information and records/documents as submitted/produced during the course of inquiry of the Employees Provident Fund & Miscellaneous Provision Act 1952 and scheme framed there under are found false or incorrect in future, the Employer/Establishment/Responsible persons/IRP of the establishment, will take whole responsibility towards the payment of EPF & Allied dues of the complaint and also responsible for penal damages and interest thereon as per EPF laws, therefore, the undersigned is working out the dues on the basis of records/documents produced before me and enclosed herewith.

On deposit of dues as worked out above, establishment/owner/director/ responsible person will be liable to pay further damages u/s 148 & interest u/s 70 of the Act respectively.

Establishment/Owner/Director/Responsible person is also directed to update KYC, E-nomination of each and every employee of the establishment.

Thus, in view of the above facts the deposition is submitted on basis of the records/documents as produced by the employer/establishment. Submitted for kind perusal and further necessary orders/direction if any, please.

After verifying the records which are available in office records, the report in Shram Suvidha portal submitted by the EO vide dated 26-06-2023 I agreed the calculation of the dues on as per the Hon. Supreme Court judgment in the matter of *The Regional Provident Fund vs Vivekananda Vidyamandir* delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011.

Some technical correction in the report the dues calculated are as under:

TOTAL DUES AFTER CONSIDARATION OF REMITTANCE FROM 2016/17 TO 04/2023.

Year	P.F.SALARY	A/C I	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
2016/17	27324673	3278961	1016456	229996	2262504	136623	2183	6926723
2017/18	30042974	3605157	1118707	193413	2486450	150215	0	7553942
2018/19	32263780	3871654	1203850	164751	2667804	161319	0	8069378
2019/20	31574610	3790159	1173567	157873	2616592	157923	0	7896114
2020/21	22551719	2591543	717218	112759	1874325	112824	0	5408669
2021/22	23035886	2764306	869016	117258	1895290	115179	0	5761049
2022/23	23795883	2855506	896216	118979	1959289	118979	0	5948969
Apr-23	2163116	259574	84312	14243	175262	10816	0	544207
Total	1.93E+08	23016860	7079342	1109272	15937516	963878	2183	48109051

PF remitted as per challans for the period 2016-2017 to April 2023

YEAR	A/C IEE	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
2016/17	2934187	927207	207828	2006980	120752	2464	6199418
2017/18	3071818	962330	171016	2109488	126856	1294	6442802
2018/19	3361426	1067244	146623	2294182	138310	0	7007785
2019/20	3353091	1066508	128391	2286583	137799	11247	6983619
2020/21	2262067	667904	98430	1594163	96662	0	4719226
2021/22	2310306	815155	96264	1495114	92448	0	4809287
2022/23	2510691	993903	104612	1516788	94095	0	5220089
Apr-23	220384	88005	9183	132379	8231	0	458182
TOTAL	20023970	6588256	962347	13435677	815153	15005	41840408

TOTAL DUES ON THE BASIS OF SALARY/WAGES SHEET FROM 04/2016 TO 04/2023

YEAR	A/C IEE	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
DUES FROM 04/2016 TO 04/2023	23016860	7079342	1109272	15937516	963878	2183	48109051
REMITANCE FROM 04/2016 04/2023	20023970	6588256	962347	13435677	815153	2183	41827586

ACTUAL DUES	2992890	491086	146925	2501839	148725	0	6281465
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Rs.6281465.00 (Rs. Sixty Two Lacks Eighty One Thousand Four Hundred Sixty Five only)

The employer in relation to the establishment has bifurcated the salary to avoid the liability of PF liability such as HRA, Education Allowances & Conveyances allowances all three type of allowances rate is 25% to 26%. The HRA is excluded from the Basic wages In this case establishment has provided Conveyance Allowance, Education Allowance each. Hence allowance viz Education allowances and Conveyance Allowance have been clubbed into basic of employees and dues have been calculated on basic salary (Which has been worked out after clubbing basic with Education and conveyance allowance) up to ceiling limit of rupees 15000/- for each employee comes to Rs. 6281465.00.

The definition of the basic wages as provided under section 2(b) of the EPF Act, 1952 is:

"Section 2(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;"

"Section 6: Contributions and matters which may be provided for in Schemes.

The contribution which shall be paid by the employer to the Fund shall be ten percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be

under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or the quarter of a rupee.

Explanation I – For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation II – For the purposes of this section, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services."

On the plain reading of the above two sections, it is clear that some allowances/components/amounts have been expressly excluded for making payment of PF contributions. The list of expressly excluded allowances are house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment and any presents made by the employer.

The some judgments in this matter is placed below:

Petitioner: Relying on the judgment of Hon'ble Supreme Court in the case of **Manipal Academy of Higher Education v. Provident Fund Commissioner** [(2008) 5 SCC 428], petitioner contended that it is not liable to deduct provident fund from the wages of the workers except basic wages + DA and it has been depositing the provident fund contribution with the department accordingly.

Respondent: As per the test laid down by the Hon'ble Supreme Court in the case of **Bridge and Roofs Co. Ltd v Union of India and Ors.** [AIR 1963 SC 1474], the principle of universality has to be applied in determining the basic wages and on the basis of the aforesaid principle the orders passed by both the Authorities are in accordance with law.

(i) Supreme Court judgment in *Manipal Academy case (supra)*; *Jay Eng. Works Ltd. v. Union of India* [AIR 1963 SC 1480] and *TI Cycles of India v. M.K. Gururani* [(2001) 7 SCC 204] to reiterated that:

"On combine reading of Section 2(b) and Section 6 of the Act, the wages' which is universally necessarily and ordinarily paid to all across the board, such emoluments are 'basic wages' and where the payment is available to be specially paid to those who avail of the opportunity in not the 'basic wages'".

(ii) The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011 wherein Hon'ble court held that in order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at the factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of the allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees.

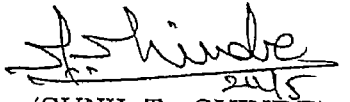
In consideration of the above facts and the judgments the undersigned has observed that definition of basic wages has been wrongly interpreted by establishment as per their convenience just to evade PF liability in this regard it is to submit that any allowance which is uniformly paid to all employees constitute basic wages since in this case allowances have been uniformly paid they constitute basic wages and therefore liable for calculation of PF dues except HRA.

In view of the above, it is therefore, recommended that the present proceedings/ inquiry under section 7-A may kindly be concluded by determining the amount Rs.6281465.00 (Rs. Sixty Two Lacks Eighty One Thousand Four Hundred Sixty Five only) for the inquiry period i.e. from April 2016 to April-2023, on the basis of available records, subject to section 7-C of the Act if agreed to.

However, the employer further has to be responsible that in case of any complaint is received by this office in future, from any employee or any other source regarding Provident Fund matter or the information and records/documents as submitted/ produced during the course of inquiry of the Employees Provident Fund & Miscellaneous Provision Act 1952 and scheme framed there under are found false or incorrect in future. The Employer/ Establishment /Responsible persons of the establishment will take whole responsibility towards the payment of EPF & Allied dues of the compliant and also responsible for panel damages and interest thereon as per the provisions under EPF &MP Act. Therefore, the undersigned is working out the dues as per the available records/ documents only for the said period and for the identified employees only.

It is also a prayer that on deposit of dues by the employer in relation to the establishment is liable for Damages under section 14B and Interest under section 7Q of the EPF & MP Act, 1952 for belated remittances of the statutory dues, same may be informed to concerned section if the Office for further action.

It is prayer to the assessing officer to conclude the inquiry for the period April-2016 to April-2023.


(SUNIL T. SHINDE)
Enforcement Officer,
Circle-C, R.O. Nashik.

Date: 24-05-2024

BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,

Regional PF office, Nashik

In the matter of proceeding under section 7-A of the Employees
Provident Fund & MP Act, 1952 against:

Name of the Establishment : M/s. Sudal Industries Ltd.,
A-5,, MIDC Industrial Area,
Ambad,
Nashik-422010.

PF Code No : KD/NSK/22450

Diary No : 222/2024

Period of Inquiry : April-2016 to April 2023

Enforcement officer : Shri Sunil T Shinde

In continuation of my earlier report dated 24-05-2024, the assessing officer is directed me to comments the letter of establishment dated 22-03-2024 which is received in this office on 02-04-2024 in 7-A proceeding dated 30-05-2024.

1. It is to state that my earlier report dated 24-05-2024 has covered all points and justified with the provision of EPF Act-1952 and reference to the Hon. Supreme Court Judgment in the matter of "The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011". Also indicating various judgments of the Hon'ble Courts in deposition dated 24-05-2024 which are again re-produced below:

The definition of the basic wages as provided under section 2(b) of the EPF Act, 1952 is:

"Section 2(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;"

"Section 6: Contributions and matters which may be provided for in Schemes.

The contribution which shall be paid by the employer to the Fund shall be ten percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or the quarter of a rupee.

Explanation I – For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation II – For the purposes of this section, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services."

On the plain reading of the above two sections, it is clear that some allowances/components/amounts have been expressly excluded for making payment of PF contributions. The list of expressly excluded allowances are house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment and any presents made by the employer.

The some judgments in this matter is placed below:

Petitioner: Relying on the judgment of Hon'ble Supreme Court in the case of *Manipal Academy of Higher Education v. Provident Fund Commissioner* [(2008) 5 SCC 428], petitioner contended that it is not liable to deduct provident fund from the wages of the workers except basic wages + DA and it has been depositing the provident fund contribution with the department accordingly.

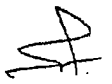
Respondent: As per the test laid down by the Hon'ble Supreme Court in the case of **Bridge and Roofs Co. Ltd v. Union of India and Ors.** [AIR 1963 SC 1474], the principle of universality has to be applied in determining the basic wages and on the basis of the aforesaid principle the orders passed by both the Authorities are in accordance with law.

(i) Supreme Court judgment in **Manipal Academy case (supra): Jay Eng. Works Ltd. v. Union of India** [AIR 1963 SC 1480] and **TI Cycles of India v. M.K. Gurumani** [(2001) 7 SCC 204] to reiterated that:

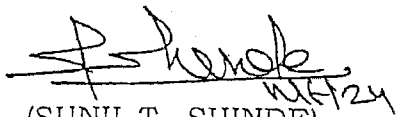
"On combine reading of Section 2(b) and Section 6 of the Act, the wages' which is universally necessarily and ordinarily paid to all across the board, such emoluments are 'basic wages' and where the payment is available to be specially paid to those who avail of the opportunity in not the 'basic wages'".

(ii) The Regional Provident Fund vs Vivekananda Vidyamandir delivered on 28 February, 2019 by Hon'ble Supreme Court in CIVIL Appeal NO(s) 6221 OF 2011 wherein Hon'ble court held that in order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at the factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of the allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees.

In consideration of the above facts and the judgments the undersigned has observed that definition of basic wages has been wrongly interpreted by establishment as per their convenience just to evade PF liability in this regard it is to submit that any allowance which is uniformly paid to all employees constitute basic wages since in this case allowances have been uniformly paid they constitute basic wages and therefore liable for calculation of PF dues except HRA.



2. Establishment has informed in his para No 6 the matter is registered in the Hon'ble High Court, Bombay in October 2023. It is to inform that the establishment has filed the case against the Shram Suvidha Report submitted by the Enforcement officer and said is forwarded to the Employer in relation to the establishment. This inquiry under section 7-A of the EPF & MP Act, 1952 was initiated for determination of dues vide Summons No. MH/22450/PF/RO/Compliance-I/Dir. NO 222/2024/1741 dated 19-03-2024. The matter is not related with this inquiry and till date no order has been pronounced by Hon'ble High Court in this regards.
3. The employer in relation to the establishment has required three week time from 22-03-2024, however the submission of the establishment has not been received even after lapse of 8-9 weeks.
4. Therefore it is recommended to conclude the dues as per the report /deposition submitted on 24-05-2024 calculating the dues of Rs.6281465.00 (Rs. Sixty Two Lacks Eighty One Thousand Four Hundred Sixty Five only) for the period from April-2016 to April 2023.
5. It is also a prayer that on deposit of dues by the employer in relation to the establishment is liable for Damages under section 14B and Interest under section 7Q of the EPF & MP Act, 1952 for belated remittances of the statutory dues, same may be informed to concerned section if the Office for further action.


(SUNIL T. SHINDE)
Enforcement Officer,
Circle-C, R.O. Nashik.

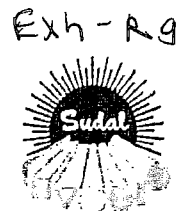
Date: 04-06-2024



SUDAL

INDUSTRIES LIMITED

Certified for ISO 9001:2015, IATF 16949:2018, ISO 14001:2015 & ISO 45001:2018
CIN L21541MH1979PLC021541



Corporate Office : 26A Nariman Bhavan, Opp. NGPA, 227 Nariman Point, Mumbai 400 021, (INDIA)
Phone: 91-22-22023845, 61577100, 61577177 ● Fax : 91-22-22022893 ● E-mail : mumbai@sudal.co.in ● www.sudal.co.in

Date : 11th July, 2024

Assistant PF Commissioner
Regional Office, Nashik,
Plot No.P-11, Bhavishya Nidhi Bhavan,
MIDC Satpur, Nashik - 422007,

Diary No.87 of 2023 and 222 of 2024

- Reg. (1) PF Code No.KD/NSK/22450
- (2) 7A Enquiry for the period 01/04/2016 to 30/04/2023
- (3) Our reply dated 14-07-2023 detailing therein all factual aspects as well as relevant case laws (*already submitted*).

Madam,

1. We would like to submit additional reply by this letter to this Hon'ble Authority. We reiterate and confirm submissions made in our earlier reply dated 14th July, 2023 by this communication.
2. At the outset we state that the Adhoc Claim made by Enforcement Officer vide his report dated 26th June, 2023 and reaffirmed in your Order No 222/2024 dated 24/05/2024 is improper, unsubstantiated, baseless and contrary to the our records. The said report is not supported by any documentary evidence nor beneficiaries are properly identified. Though EFP & MP Act, 1952 is beneficial legislation, still the money required to be deposited in individual account for respective period and those members are required to be identified properly and

only then the benefits can be credited to such members account. The Enforcement Officer failed to perform the said duty and on hypo thecal manner submitted the report before the Hon'ble Authority. Such procedure are impracticable and therefore the said claim of the Enforcement Officer is nothing but baseless and unfounded. In view of the above, we emphatically state that base on such baseless report, this Hon'ble Authority ought not to have determine the liability against the Company Management in this 7A Enquiry.

3. It is submitted that the Company Management used to deduct amount of contributions over and above Rs.15,000/- in respect of certain class of employees. There were employees who were drawing salary more than Rs.15,000/- and less than Rs.15,000/-. The salary and wages account reflected in the Balance Sheet is consolidated in respect of all the employees including a Directors drawing salary as per Company Board Resolutions. The 7A Enquiry is April, 2016 to April, 2023. The following table shall reveal that during the aforesaid period total appx 130 employees were employed and apax126 employees were covered under EPF Act.

Year	Total No. of employees employed on the role of Company Management	Covered employees under EPF Act	Exempted Employees due to salary ceiling prescribed under EPF Act.	Uncover able due to exemption/ submitted Form 11	Whether returns filed or not under EPF Act
2016 - 17	134	130	0	4	Yes
2017 - 18	131	127	0	4	Yes
2018 - 19	128	124	0	4	Yes

2019 - 20	112	108	0	4	Yes
2020 - 21	127	123	0	4	Yes
2021 - 22	133	129	0	4	Yes
2022 - 23	141	137	0	4	Yes
Apr,2023	134	130	0	4	Yes

4. The aforesaid data is available on Web-Portal of the Authority and it ought to have been considered by the Enforcement Officer before submitting report to the Hon'ble Authority. The Enforcement Officer failed to do so and thus failed to perform his duty as per EPF Act and rules framed thereunder.

5. The above chart also shows that the present Claim is considered taking into account that the employees would go beyond prescribed coverage ceiling and not liable for paying contributions to the EPFO Fund. In that event their contributions as paid earlier would be required to be refunded. That aspect has not been considering by the Enforcement Officer in his report seems to be one sided and does not give true and correct picture to this Hon'ble Authority. Hence based on the said improper report liability cannot be fasten or determined against the Company Management.

6. We record at the cost of repetition that the Company Management has paid contributions regularly and punctually and filed returns in time. The Accounts of the 7A Enquiry period are finalised and requisite credit is given to each members who are employed in the Company. Even the interest is credited to the individual account

which was declared by EPFO Board for the financial year 2022 - 23. If there is no deficiency pointed out in respect of the compliance made by the Company Management initiating enquiry u/s. 7A is impermissible in law. We record that not a single letter was addressed to the Company Management pointing out that the Company is failed to remit contributions of the employees or class of employees during all these years. Hence the 7A Enquiry is untenable in law and ought to be close down forthwith.

7. The inspection of the all documents such as Salary Register, Attendance Register, Balance Sheet, Profit and Loss Account, Books of Accounts and details as demanded by the Enforcement Officers was given to him at the time of inspections. Hence all material particulars were made available to the Enforcement Officers by extending co-operations. Therefore, there was no need to submit a report on Adhoc Basis as done by the Enforcement Officer hurriedly before the IRP and even in Summons No MH/22450/PF/RO/NSK/Compli-I/Dia
No/222/2024/1741 read with proceeding u/s 7- A of Act. Dated 24/05/2024 Hence, we reserve our right to submit to details of employees covered under EPF Act and drawing salary above Rs.15,000/- in a statement form to substantiate above table.

8. Perusal of the said statement shall reveal that purported claim made by the Enforcement Officer in his report dated 26th June, 2023 to the tune of Rs.1,45,25,662/- is created and concocted. Such Adhoc Claim is unsustainable in the eyes of law. The said purported claim was submitted directly before IRP on assumption basis. We have

submitted claim wise details in our reply dated 14th July, 2023. Nothing contrary till date has come on record nor PF Department has supported their claim in any manner. We have submitted copy of the Order dated 20th April, 2023 passed by NCLT, Mumbai Bench alongwith the said reply as Annexure - A. We are submitting order dated 10th August, 2023 passed by NCLT in IA No.3021 of 2023 as Annexure - A to this reply.

9. The report of the Enforcement Officer is erroneous and wrongly tried to fasten liability upon the Company Management contrary to the provision of EPF Act. As the report is improper and erroneous this Hon'ble Authority has power to discard such erroneous report while conducting 7A Enquiry being quasa judicial proceedings.
10. We reserve our right to submit Applications and seek permission of this Hon'ble Authority in the event it decides to go ahead with the 7A Enquiry and cross-examined the Enforcement Officer in respect of his report. The Hon'ble High Court has considered such Applications and granted permission to cross-examined in Writ Petition.
11. ***In addition*** to the earlier case laws relied by the Company Management, following case laws is also relied as under :
 - a. ***Sandeep Dwellers Pvt. Ltd. vs Union of India*** reported in 2007 (3) BOM CR 898, High Court Bombay is relied on the point of identification of beneficiaries is must for granting benefits.
 - b. ***Civil Appeal No.9284 of 2013 between Assistant Provident Fund Commissioner Vs. G4S Security Services India Ltd.*** decided by the Hon'ble Supreme Court it has been held that once the EPF Act contents a specific provisions defining the word basic wage u/s. 2(b), then there was no occasion for

the PF Department to expect the court to have travel to the Minimum Wages Act, to give it a different connotation or expansive definition. On that count the Order passed u/s.7A by the APFC was quash and set aside and judgments passed by Punjab and Haryana High Court, Single Bench and Division Bench was upheld.

c. **2017 3 SCC Pg. 110 Supreme Court APFC Vs. RSL Textiles (India) Pvt. Ltd.**

d. **Durable Doors and Windows Vs. APFC decided on 21st October, 2020. (WP (C) No.8281 of 2020)**

12. We also record that submitting report and claiming damages and interest in the report is a premature act. The 7A Enquiry has not been completed nor any amount is determined. On what basis in such situations damages are proposed and interest is claim by the Enforcement Officers at this stage. It clearly shows the report is demonstrably improper and wrong. There are several factors to be considered before determining damages and interest and law to that effect is settled.

a. **2013 SCC Online Pg. 945 Supreme Court Arcot Textile Ltd. Vs. RPFC.**

b. **Assistant PF Commissioner South Vs. Shalom Restaurant 2015 SCC Online Del 7220.**

c. **Puna Shims Pvt. Ltd. Vs. BP Ramalah, RPFC reported in 2007 (2) LLM 821**

d. **Abhijit Samayadarshika Maharashtra Ltd. Vs. Union of India Writ Petition No.3007 of 1987 decided on 7th February, 1995 Bombay High Court.**

e. **Denstu Marcom Pvt. Ltd. Vs. Central Board of Trustees LPA No.688 of 2018 decided on 24th January, 2019 Delhi High Court.**

13. We therefore, humbly prayed kindly consider all factual details and close this enquiry by discarding the said report

dated 26th June, 2023/ Order No 222/2024 of
24/05/2024 of the Enforcement Officer. We emphatically
deny that we have liable to pay any amount of EPFO Fund
much less Rs.62,68,676/- as contented by Enforcement
Officer.

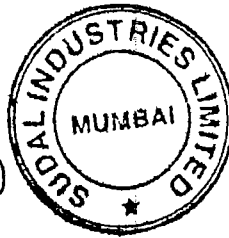
Thanking you,

Yours sincerely,

FOR SUDAL INDUSTRIES LTD.


Mukesh V Ashar

(Whole Time Director)



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA NO. 3021/2023
IN
CP (IBPP) No. 01/MB-IV/2022

*In the matter of Application under section 54K
(15) of the Insolvency and Bankruptcy Code, 2016
read with regulation 49(1) of the Insolvency and
Bankruptcy Board of India (pre-packaged
insolvency resolution process) regulations, 2021*

In the matter of:

Mr. Prashant Jain CA

*... Resolution Professional
of the Corporate Debtor*

In the matter of:

Sudal Industries Limited

... Corporate Debtor

Order delivered on 10.08.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant

:

Mr. Viraj a/w Ms. Ritika, Ld.
Counsel for Resolution
Professional/ Applicant.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA NO. 3021/2023
IN
CP (IBPP) No. 01/MB-IV/2022

For the Corporate Debtor : Mr. Rohit Gupta a/w Mr.
Kunal Chheda, Ld. Counsel for
the Corporate Debtor

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application being IA 3021/2023 filed on 13.07.2023 by CA. PRASHANT JAIN, Resolution Professional, in CP (IBPP) No. 01/MB-IV/2022 under section 54K (15) of the Insolvency and Bankruptcy Code, 2016 read with regulation 49(1) of the Insolvency and Bankruptcy Board of India (pre-packaged insolvency resolution process) regulations, 2021 for approval of base resolution plan in the matter of Sudal Industries Limited, the Corporate Debtor.
2. The Applicant has submitted that –
 - 2.1. The Corporate Debtor is a body corporate incorporated under the relevant provisions of the Companies Act, 1956 bearing CIN: L21541MH1979PLC021541 and having its registered address at A-5, MIDC, Ambad Industrial Area, Mumbai – Nashik Highway, Nashik – 422 010, Maharashtra, India.
 - 2.2. That a petition for initiating Pre-Packaged Insolvency Resolution Process (PPIRP) for Sudal Industries Limited was filed by Sudal Industries Limited (Corporate Applicant) under Section 54C of the Code. The said Application was admitted by this Tribunal vide common order dated 20th April 2023 passed in CP(IB) No.63(MB) 2021 AND CP IB No 638(MB)2021 AND CP (IBPP) No. 01/MB-IV/2022.

2.3. That vide the said Order dated 20th April 2023 this Tribunal appointed the Applicant Mr. Prashant Jain, having Regn. No. IBBI/IPA-001/IP-P01368/2018-2019/12131 as the Resolution Professional for the PPIRP of the Corporate Debtor, and thus directed the Applicant to take necessary action in accordance with the relevant provisions of the Code. It is pertinent to mention herein that the Order was received by the Resolution Professional on 22nd February 2023.

2.4. That the Resolution Professional in compliance with section 54E and other applicable sections of the Code read with Regulation 19(2) of the PPIRP Regulations issued a public announcement, in Form P9, of the commencement of PPIRP for Sudal Industries Limited (Corporate Debtor), *inter alia* for the attention of the creditors of Sudal Industries limited (Corporate Debtor). The Form P9 was published on 24th April 2023 in Financial Express (All India Edition) in the English Language, in Navakal (Mumbai Edition) in Marathi Language, and in Gavkari (Nashik Edition) in the Marathi Language i.e., where the registered office of the Corporate Debtor is located. The Resolution Professional also sent the Form P9 to every creditor and to the information utilities on the same date. The Resolution Professional also published the same on the website of the Corporate Debtor as per Regulation 19. The copy of Form P9 along with the newspaper clippings is annexed to the Application.

2.5. The Corporate Debtor provided to the Resolution Professional a List of Claims in Form P10 along with a preliminary information memorandum under section 54G. As per the list provided by the Corporate Debtor, it is submitted that the Corporate Debtor had 10 Financial Creditors whose claims amounted to Rs. 1,50,73,73,186.00

(Rupees One Hundred and Fifty Crore Seventy-Three Lakh Seventy-Three Thousand One Hundred and Eighty-Six) and 32 Operational creditors whose claims amounted to Rs. 5,73,44,945.00 (Rupees Five Crore Seventy-Three Lakhs Forty-Four Thousand Nine Hundred and Forty-Five Only). Further, in compliance with Section 54-I of the Code, the Resolution Professional filed a Report constituting the Committee of Creditors (COC) of the Corporate Debtor. The copy of Form P10 is annexed to the Application.

2.6. That the First COC Meeting of the Corporate Debtor held on 4th May, 2023 by the Resolution Professional, wherein he *inter alia* placed the Base Resolution Plan received from the Corporate Debtor before the COC Members and apprised the COC Members that in the Resolution plan submitted by the Corporate Debtor, there is no sacrifice or concession sought as far as payment to Operational Creditors is concerned. As there was no impairment of any claims owed by the Corporate Debtor to their Operational Creditors, the Resolution Professional apprised the COC Members that they may either provide the Corporate Debtor an opportunity to revise base Resolution Plan prior to its approval under Section 54K (2) or approve the base Resolution Plan under Section 54K (4). The COC Members decided that the further course of action would be decided in the next COC meeting.

2.7. The Second Meeting of the Committee of Creditors was conducted by the Resolution Professional on 9th May 2023 wherein *inter alia* the COC Members decided not to approve the Base Resolution Plan and to publish the Invitation of Resolution Plan as per section 54K(5) in Form P11 in order to receive Resolution Plans from Prospective Resolution

Applicants. The copy of the Minutes of the Second COC Meeting of Corporate Debtor along with the e-voting results is annexed to the Application.

2.8. The Corporate Debtor objected to the decision of the COC to invite Resolution Plans. However, as resolved by the COC Members in the Second COC meeting, the Resolution Professional duly published the invitation of Resolution Plan in Form P11 on 13th May, 2023. The copy of Form P11 along with Newspaper clippings is annexed to the Application.

2.9. That the last date for submission of the Resolution Plan as per the Form P11 published by the Resolution Professional was 29th May 2023. However, the Resolution Professional did not receive any Resolution Plan.

2.10. The Resolution Professional thereafter conducted the third COC meeting on 13th June, 2023 wherein, the Resolution Professional informed the COC Members that no Resolution plan was received by the Resolution Professional till the last date of submission of the Resolution Plan i.e. 29th May 2023. In accordance with Regulation 48(2) of the PPIRP Regulation, the members of COC decided to consider the base Resolution Plan as no resolution plan was received under Regulation 46.

2.11. That has no Resolution Plan had been received pursuant to the publication of the invitation of Resolution Plan and the base Resolution Plan was already circulated to COC Members, the Resolution

Professional circulated the confidentiality undertaking to the COC Members to enable him to share the fair value and liquidation value with the COC Members as per regulation 39(2) of the PPIRP Regulation. The Summary of the Valuation of the Corporate Debtor along with the Valuation Reports is annexed to the Petition. The liquidation value of the Corporate debtor is estimated to be Rs.29,45,11,500 and fair value to be Rs. 52,40,68,280.50/-.

2.12. That the Resolution Professional conducted the Fourth COC Meeting on 22nd June, 2023. The COC Members considered the feasibility, viability, and distribution proposed in the base Resolution Plan and decided to put forth the base Resolution Plan for approval by the COC. The base Resolution plan submitted by the Corporate Debtor was put to vote through e-voting from 23rd June 2023 to 5th July 2023. The Corporate Debtor has clarified that there is no impairment of the claims and has submitted a list consisting of tentative dates of payments to all the operational creditors as there is no impairment in the payment to the Operational Creditors. The copy of the Minutes of the Fourth COC meeting along with e-voting results and a List of payments proposed by the Corporate Debtor to operational creditors is annexed with the Application.

2.13. That the Resolution Plan is approved by majority of 77.72% of CoC members. The voting share of the COC Members is as follows:

Sr. No.	Financial creditor	Voting Share (%)
1.	<i>Canara Bank</i>	77.72
2.	<i>Surya Spices Vyapar Pvt Ltd</i>	0.67

IN THE NATIONAL COMPANY LAW TRIBUNAL
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3.	<i>Jaldhara Properties & Trading Pvt Ltd</i>	<i>11.08</i>
4.	<i>Gilbertinvestment Pvt Ltd</i>	<i>6.61</i>
5.	<i>Effervescent Commercial Pvt Ltd</i>	<i>1.20</i>
6.	<i>Aarkay Tieup Pvt Ltd</i>	<i>0.61</i>
7.	<i>Kothsons Finance & Consultancy Pvt Ltd</i>	<i>0.60</i>
8.	<i>Cosmos Tradelink Pvt Ltd</i>	<i>0.60</i>
9.	<i>Nicholson Vanijya Pvt Ltd</i>	<i>0.60</i>
10.	<i>GMB Finvest Pvt Ltd</i>	<i>0.31</i>
	TOTAL	100.00

3. The Salient Features of the Resolution Plan are as follows:

3.1. Proposal of payments to Creditors

A. Payment to Secured Financial Creditor (First Charge):

<i>Name</i>	<i>Total amount outstanding</i>	<i>Resolution Amount</i>
<i>Canara Bank</i>	<i>96,77,21,328</i>	<i>32,17,10,279</i>

A.1 THE TERMS OF PAYMENT OF SECURED FINANCIAL CREDITOR (FIRST CHARGE):

1.1. Upfront amount of Rs. 1,50,00,000/- (Rupees One Crores Fifty Lakhs) paid at the time of submission of proposal and kept in no lien account by Secured Financial Creditors, shall be appropriated towards the amount set aside in the plan upon its approval, and

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- 1.2. The remaining amount of Rs. 30,67,10,279/- (Rupees Thirty Crores Six Seven Lakhs Ten Thousand Two Hundred Seventy-Nine only) is agreed to be paid in the following manner-

S.no.	Date	Amount
1.	In March 2022 (Paid)	1,72,00,000
2.	Within 15 days of approval of the Resolution Plan by Hon'ble NCLT	23,84,95,835
3.	Balance with Interest at MCLR within 1 year in 4 quarterly instalments from the approval of the Resolution Plan.	5,00,00,000
	Total	30,67,10,279

B. Payment of Rs. 76,35,262/- (Rupees Seventy-Six Lakhs Thirty-Five Thousand Two Hundred and Sixty-Two only) to the Secured Financial Creditors (Second charge), as per the timeline agreed between the parties.

C. Payment proposed for Unsecured Financial Creditors of Sudal Industries Limited to be made within 45 days from the date of NCLT order:

Sr. No.	Name	Total amount outstanding (Rs.)	Settlement amount (Rs.)
1.	Jaldhara Properties & Trading Pvt.Ltd	12,43,39,407	246,000
2.	Gilbert Investments Pvt.Ltd.	7,41,20,690	140,000
3	Surya Spices Vyapar Pvt.Ltd.	75,56,250	15,500
4	Effervescent Commercial Pvt. Ltd.	1,71,09,691	100,000
5	Aarkwy Tirup Pvt. Ltd.	85,49,575	50,000
6	Kothsons Finance and Consultancy Pvt. Ltd.	85,47,356	50,000
7	Cosmos Tradelink Pvt.Ltd.	85,47,356	50,000
8	Nicholson Vanijya Pvt Ltd.	85,47,356	50,000
9	GMB Finvest Pvt. Ltd.	46,68,499	26,000
Total		26,19,86,180	727,500

D. The terms of payment to Operational Creditors:

This unit is a going concern. The Operational creditors are being paid as a going concern. In this Resolution Plan, there is no sacrifice or concession sought as far as payment to Operational Creditors is concerned. As all the Operational Creditors are being paid the entire amount outstanding, there is no impairment of any claims owed by Sudal to their Operational Creditors as stipulated under Section 54K of IBC, 2016.

E. Payment to Employees and Workmen:

This unit is a going concern. The Employees and workmen are being paid as going concern. In this Resolution Plan, there is no sacrifice or concession sought as far as payment to Employees and workmen is concerned.

F. Payment to Statutory Authorities, Other Than PF

In this Resolution Plan, there is no sacrifice or concession sought as far as payment of statutory dues is concerned.

G. Payment to Provident Fund Authorities:

There are no outstanding Statutory Dues pertaining to Provident Fund or Employee State Insurance (ESIC) owed by Sudal.

3.2. Simultaneously on payment to the secured financial creditors or unsecured financial creditors, the Corporate Debtor will execute necessary documents so as to substitute the Investor as the "Secured Creditor" in place of Secured Financial Creditor (first charge) and Secured Financial Creditor (Second Charge). The Corporate Debtor

will also execute necessary documents, if required for creation of security in favour of the Investor. However, the charge and rights of Secured Financial Creditors will remain unaffected and shall continue till their payment is made in full. The charge in favour of Investor will be subservient to that of Secured Financial Creditors.

3.3. In terms of Section 54K (14) of the Code, the COC Members recorded their opinion during the Fourth COC meeting that *"as they have already published the invitation of the Resolution Plan and no Resolution Plans have been received to compete with the base Resolution Plan, they do not have any issue with no dilution in the Share capital as long as the payments and timelines in the Resolution Plan are honoured by the Corporate Debtor."*

3.4. The Corporate Debtor has clarified that all the Operational Creditors are being paid the entire amount outstanding, there is no impairment of any claims owed by the Corporate Debtor to their Operational Creditors in Clause III-F of the base Resolution Plan.

3.5. Investor will Infuse Rs.1,00,00,000/- (Rupees One Crore only) as Equity Share Capital in Sudal against allotment of 10,00,000/- shares of Rs.10 each in accordance with Sections 54L and 30 of the Code read with Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

3.6. List of Approvals and Timelines sought in the base Resolution Plan:

Sr. No.	Name of the Law	Competent Authority	Purpose	Timeline
1	Income Tax	Chief Commissioner	NOC/Approval Carry	Within 1 year from the order

		/ commissioner	forward of Losses	of Hon'ble NCLT
2	VAT, Maharashtra	Commissioner	NOC/ Approval	approving the Resolution
3	VAT, Central	Commissioner	NOC/ Approval	Plan or within
4	GST, Maharashtra	Commissioner	NOC/ Approval	such period as
5	Commissioner Provident Fund	Commissioner	NOC/ Approval	provided for in
6	Excise & Custom	Commissioner	NOC/ Approval	such law,
7	Factories Act	Commissioner	NOC/ Approval	whichever is
8	Revenue Department for 7/12 Extract	Collector	Remove any attachment	later
9	Maharashtra Pollution Control Board (MPCB)	Member Secretary MPCB	NOC/ Approval & Consent to Operate.	
10	Weights & Measures Act 1976	Legal Metrology Department	NOC/ Approval	
11	Maharashtra Industrial Development Act, 1961	Maharashtra Industrial Development Corporation (MIDC)	NOC for Change in Ownership of company if and as per NCLT	
12	Any other applicable laws		NOC/ Approval	
13	Any other applicable laws	Any other Central Government, State Government, Local Authority, etc	NOC/ Approval	

3.7. The clause III-L of the base Resolution Plan details the sources of funds.

3.8. The base Resolution plan provides for supervision and monitoring of the implementation of the Plan. The proposed composition of the Monitoring Committee is as under:

Sr. No.	Member	Designation	Tenure
1	Resolution Professional	Chairman	From the date of approval of Resolution Plan by Hon'ble NCLT Till Successful Completion of Resolution Plan as certified by the Committee
2	Managing Director	Member	
4	Representative of Canara Bank (Financial Creditors)	Member	

3.9. The Corporate Debtor has also sought some relief & concessions stated in detail in Part III-J of the Plan. During the hearing, the Ld. Counsel for the Applicant clarified that the Corporate Debtor has admitted one claim from GST Department in full and agrees that this claim shall not be subject matter of any relief & concession prayed in the Plan.

4. In accordance with Regulation 49 (1) the Resolution Professional has submitted the compliance Certificate in Form P12 for approval which is annexed to the Application. The Applicant has stated that –

- a. the said resolution plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (pre-packaged Insolvency Resolution Process) Regulations, 2021 and does not contravene any of the provisions of the law for the time being in force.

b. the Corporate Debtor has submitted affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit a Resolution Plan. The contents of the said affidavit are in order.

c. the said Resolution Plan has been approved by the committee in accordance with the provisions of the Code and the regulations made thereunder. The resolution plan has been approved by 77.72% voting share of the Financial creditors after considering its feasibility and viability and other requirements specified by the PPIRP Regulations.

d. the voting was held in the 4th meeting of the Committee on 22/06/2023 sought vote of members of the committee by electronic voting system which was kept open at least for 24/48 hours.

5. We heard the Counsel and perused the material available on record.

5.1. After going through the same, this Bench finds that the Base Resolution Plan submitted by the Corporate Debtor meets the requirement of Section 30(2) of the Code, and has been approved by 77.72% vote within 120 days from the date of order allowing commencement of PIRP, and the remaining CoC members had abstained from the voting on the plan. The plan does not provide for any impairment in the claims of Operational Creditors. Nonetheless, the Resolution Professional had invited Resolution Plan from third parties also after decision of CoC to do so, and the CoC has stated its reasons for approving the plan without impairment in the shareholding of its promoters.

5.2. The RP has not made any application u/s 54(J)(1) hence, provisions contained in section 54(L)(4) are not applicable.

5.3. The Counsel fairly submitted that relief and concessions to the extent permissible under law and in terms of Judicial Pronouncements may be considered, and in case any of the relief or concession as prayed is not made available to the Corporate Applicant, the same shall not have any bearing on the implementation of the proposals contained in the plan.

5.4. In view of the above, this Bench is of the considered view that the Base Resolution Plan, approved by CoC u/s 54K (12) of the Code and submitted with the present Application, in Pre-packaged Insolvency Resolution of the Corporate Debtor by the Corporate Debtor deserves to be approved, and the IA 3021/2023 is allowed.

ORDER

6. The Interlocutory Application No. 3021/2023 is allowed and hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

7. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) if entails any amendment, concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

8. The moratorium under Section 14 of the Code shall cease to have effect from this date.
9. The Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter. The following shall be the constitution –

	Member	Designation	Remuneration	Tenure
1	Resolution Professional	Chairman	10,000/month	From the date of approval of Resolution Plan by Hon'ble NCLT Till Successful Completion of Resolution Plan as certified by the Committee
2	Managing Director	Member	-	
4	Representative of Canara Bank (Financial Creditors)	Member	-	

10. The approval of the Base Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
11. In terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, "on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution

plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan."

"95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

12. In the view of the above judgement the applicant is entitled to waivers/ concessions/ reliefs as expressly provided under the Code and under any other law for the time being in force.

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13. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
14. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
15. The Interlocutory Application No. 3021/2023 is accordingly allowed and disposed of.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
10.08.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,
Regional PF office, Nashik
In the matter of proceeding under section 7-A of the Employees Provident Fund & MP
Act, 1952 against:

Name of the Establishment	: M/s. Sudal Industries Ltd., A-5,, MIDC Industrial Area, Ambad,Nashik-422010.
PF Code No	: KD/NSK/22450
Diary No	: 222/2024
Period of Inquiry	: April-2016 to April 2023
Enforcement officer	: Shri Sunil T Shinde

This has reference to the establishments M/s. Sudal Industries Ltd submission dated 11-07-2024 deposition submitted in 7A proceedings;

The establishment submitted letter dated 14-07-2023, on verification of the facts and the request of the employer the inquiry under section 7-A of the Act was initiated.

Point No 1: No coments.

Point No 2 : The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition. The Provident Fund (PF) and allied dues were calculated based on the basic wages of employees as defined under Section 2(b) of the EPF Act, taking into account Section 6 of the Act.

The establishment has claimed that the dues are not supported by documentary evidence and that the beneficiaries have not been properly identified, which is incorrect. The establishment provided the salary and wages statements to the department, and based on the details provided for all employees, including those from the Mumbai Office, the undersigned has calculated the outstanding EPF & Allied dues.

The relevant provisions of the EPF & MP Act, 1952 are outlined below:

Section 2(b) : "basic wages" means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include :

1. Cash value of any food concession.
2. Any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus, commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment.

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3. Any present made by the employer.

Section 6: Contributions and matters which may be provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, Dearness Allowance, and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section. Provided that in its application to any establishment or class of establishment which the Central Government, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted. Provided further that there where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding of such fraction to the nearest rupee half of a rupee, or quarter of a rupee.

Explanation 1 – For the purpose of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

5. It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country.

The Hon'ble Supreme Court of India in *Bridge & Roof Company Ltd Vs Union of India*, 1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. The Hon'ble Supreme Court of India ratified the above position in *Manipal Academy of Higher Education Vs PF Commission*, 2008(5)SCC 428. The above tests were against reiterated by the Hon'ble Supreme Court in *Kichha Sugar Company Limited Vs. TaraiChini Mill Majzoor Union* 2014 (4) SCC 37. The Hon'ble Supreme Court of India examined all the above cases in *RPFC Vs Vivekananda Vidya Mandir and Others*, 2019 KHC 6257. In this case the Hon'ble Supreme Court considered whether travel allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases the Hon'ble Supreme Court held that " the wage structure and the

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components of salary have been examined on facts, both by the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference." The Hon'ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of *RPF Organization Vs MS Raven Beck Solutions (India) Ltd*, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon'ble Supreme Court to conclude that "this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, forms an integral part of basic wages and as such the amount paid by way of these allowance to the employees by the respondent establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent establishment by classifying it as payable for uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of provident fund contribution by the respondent establishment".

In *Montage Enterprises Pvt Ltd Vs EPFO*, 2011 LLR 867 (MPDB) the Division Bench of the Hon'ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In *RPF West Bengal Vs. Vivekananda VidyaMandir*, 2005 LLR 399 (CalcuttaDB) the Division Bench of the Hon'ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages. This decision of the Hon'ble High Court of Calcutta was later approved by the Hon'ble Supreme Court in *RPF Vs Vivekananda VidyaMandir* (supra). In *Mangalore Ganesh Beedi Workers Vs APFC*, 2002 LIC 1578 (Kart.HC) the Hon'ble High Court of Karnataka held that special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In *Damodar Valley Corporation Bokaro Vs. Union of India*, 2015 LIC 3524 (Jharkhand HC) the Hon'ble High Court of Jharkhand held that special allowance paid to the employees will form part of basic wages.

The employer, in relation to the establishment, paid wages/salaries, including basic salary/wage and allowances. Since allowances were uniformly paid to all employees, they are considered part of the basic wages and therefore subject to Provident Fund (PF) calculations, with the exception of House Rent Allowance (HRA). The employer remitted PF contributions only on the basic salary as shown but split the basic wages into Education Allowance and Conveyance Allowance, not considering these allowances for PF deductions. Consequently, the undersigned has calculated the outstanding dues only for those employees whose total basic wages (i.e., basic salary, Education Allowance and Conveyance Allowance) were below the statutory ceiling limit of Rs. 15,000/- and has restricted the calculation to this limit.

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Based on this, the dues should be considered as calculated on Basic Wages rather than on Conveyance Allowance and Medical Allowance. To the best of my knowledge, these calculations are accurate. The total outstanding dues from the employer amount to Rs. 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only).

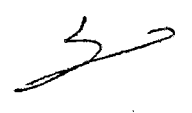
Point No 3: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. Concerning the excluded employees, undersigned requested the employer to provide the details of these employees as directed during the virtual hearing on 01-08-2024. However, the employer failed to submit the required information. As a result, the undersigned visited the establishment on 08-08-2024 and requested the relevant records. The authorized representative, Shri Mangesh Jagtap, provided the necessary documents/records. These were reviewed and considered accordingly in the calculation of the final outstanding dues.

Point No 4: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. It is pertinent to mention that the details regarding the remittances made by the establishment for their employees are submitted solely by the establishment. During the inspection, it is the duty of the enforcement officer to identify any escaped amount that are due from the establishment. Therefore, the remittance details available on the web portal are subject to re-verification during the inspection and should not be relied upon directly.

Point No 5: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The employer remitted PF contributions only on the basic salary as shown but split the basic wages into Education Allowance and Conveyance Allowance, not considering these allowances for PF deductions. Consequently, the undersigned has calculated the outstanding dues only for those employees whose total basic wages (i.e., basic salary, Education Allowance and Conveyance Allowance) were below the statutory ceiling limit of Rs. 15,000/- and has restricted the calculation to this limit. As per the EPF & MP Act, 1952, the establishment is required to make deductions based on Section 2(b), with consideration of Section 6. It is pertinent to mention that if the establishment has made any remittance exceeding the statutory ceiling limit, such remittances are considered voluntary. The EPF & MP Act, 1952 does not restrict any establishment from making voluntary remittances.

Based on this, the dues should be considered as calculated on Basic Wages rather than on Conveyance Allowance and Medical Allowance. To the best of my knowledge, these calculations are accurate. The total outstanding dues from the employer amount to Rs. 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only).

Point No 6: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. It is pertinent to mention that the details regarding the remittances made by the establishment for their employees are submitted solely by the establishment. During the inspection, it is the duty of the enforcement officer to identify any escaped amount that are due from the establishment.



Moreover, a 7A Summon No. MH/22450/PF/RO/NSK/Compl-U/Dia No/222/2024/1741, dated 19.03.2024, was issued to the establishment.

Point No 7: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition.

Point No 8: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition.

Further the total outstanding dues calculated is Rs. Rs. 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only). Employer in relation to the establishment linked the matter of NCLT with the 7-A proceeding.

Point No 9: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The deposition submitted on 24-05-2024 was the final report and not an ad hoc basis. All categories of employees were considered while preparing the deposition. While preparing the deposition on the basis of identification of employees & documentary evidence which was produced by the establishment.

Point No 10: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

Section 7A of the EPF & MP Act, 1952 clearly states:

"The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner conducting the inquiry under sub-section 7A(1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908). Any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860)."

Therefore, the permission for cross-examination or the process of cross-examination clearly falls within the jurisdiction of the assessing authority.

Point No 11: The deposition was submitted considering the case laws as mentioned in point No 2. It is also state that Allowances (Education+ conveyance) payment has to be justified by nature. However, the same has been not done by employer, paying in percentage terms without justifying its nature seems to be moduls operrandi for subterfuge of wages and hence it is nothing but basic wages and thus must be included for PF deduction.

Since the allowances (education and conveyance) in the present case has been shown by employer to be earned by all employees of the establishment, it has to be included for the purpose of deduction under Section 6 of the Act. The allowances (education and conveyance) in the present case is a part of the salary break up payable to all employees and

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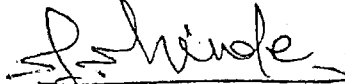
did not have any nexus with extra output produced by the employees out of his allowances, and thus it fell within the definition of 'basic wages'.

Point No 12: At the conclusion of the inquiry under Section 7A of the Act, the authority will assess any dues. A separate inquiry for interest and damages under Sections 7Q and 14B will be initiated if applicable.

All points have been addressed as per the employer's submission dated 11th July 2024, and no additional issues remain in the matter. The conveyance allowance and education allowance were paid by the employer to the employees for only avoid the PF and allied dues liabilities under the EPF Act, 1952.

Therefore, there is no change to the earlier deposition submitted by me, which amounts to Rs. 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only) for the period from April 2016 to April 2023.

It is requested that the assessing officer conclude the inquiry for the period from April 2016 to April 2023.


(SUNIL T. SHINDE) 25/8/24
Enforcement Officer,
Circle-C, R.O. Nashik.

Date: 22-08-2024

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
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1	Mr.K.N. Dulla	100183877277	Retired
2	Mr.A.K. Biswas	100069522320	Retired
3	Mr.V.K. Pawar	100398418315	Retired
4	Mr.U.R.Dulla	100393912784	Death
5	Mr.S.R.Sakhare	100321277861	Better Opportunity
6	Mr.K.M.Shukla	100182808907	Better Opportunity
7	Ms. Monal Amale	100208244023	Better Opportunity
8	Mr.S.M.Sonawane	100753421761	Better Opportunity
9	P.V.KIRANGE	100264522931	Retired
10	D.B.THAKARE	100128515399	Retired
11	Mr. PR Gunjal	100264027908	Retired
12	Mr. AB Pawar	100070234223	Retired
13	Mr. MN Kshirsagar	100210524082	Retired
14	Mr. BM Jadhav	100102819209	Retired
15	Mr. KP Agwan	100181715745	Better Opportunity
16	D.B.JADHAV	100128513152	Retired
17	D.D. SHINDE	100128555138	Retired
18	D.K.THETE	100128645815	Retired
19	S.D.SHINDE	100323611043	Retired
20	B.B.BACHAV	100102989836	Retired
21	D.P.JADHAV	100128783912	Retired
22	U.P.KATAD	100393907437	Retired
23	J.L.Mungad	100169022240	Retired
24	D.S.Bagul		Better Opportunity
25	A.B.Shinde	100586491503	Better Opportunity
26	J.K. Shinde	100169449268	Better Opportunity
27	RB Khatri	100318489233	Death
28	KK Wagh	100183509925	Retired
29	SB Dhokpalil	100323484683	Retired
30	VB Thakare	100398266275	Retired
31	BS Berad	100102397715	Retired
32	Kamalesh	100199773616	Better Opportunity
33	VM Chaudhari	100398509424	Better Opportunity
34	Arvind Yadav	101067797685	Better Opportunity
35	SN Jagtap	100324287370	Retired
36	GI Shinde	100753014709	Better Opportunity
37	Akash Wadikar	101842741479	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
38	Mr. ANIKET KONU	101826482276	Better Opportunity
39	Mr. RAHUL NAGARE	101156938532	Better Opportunity
40	Vaibhav Wagh	101936499755	Better Opportunity
41	Sujata Varade	101291159548	Better Opportunity
42	Raviraj Patil	101519886584	Better Opportunity
43	C N Kulkarni	101936499772	Better Opportunity
44	Santosh Mokal	101762608828	Better Opportunity
45	Navnath Sangle	100253057984	Better Opportunity
46	Reena Bajpeyi	101215301236	Better Opportunity
47	Dyaneshwar Bagul	101321041714	Better Opportunity
48	Rahul Ghomase	101907210998	Better Opportunity
49	Sunil Kachare	101178851683	Better Opportunity
50	Sagar Kapdane	101780606150	Better Opportunity
51	Suraj Varma	100895651876	Better Opportunity
52	Hemantr Mulmule	101213855954	Better Opportunity
53	Ankita Khairnar	101204240276	Better Opportunity
54	Vaishnavi Shinde	101871639987	Better Opportunity
55	Sarath S	101690471524	Better Opportunity
56	Dipesh Bhowmick	101866080734	Better Opportunity
57	Kiran Khairnar	101248507656	Better Opportunity
58	Tushar Sonawane	101547071784	Better Opportunity
59	Suyog Rajderkar	101854670712	Better Opportunity
60	Shreyash Borawake	101804309003	Better Opportunity
61	Vaibhav Bidve	101297698702	Better Opportunity
62	Rahul Wani	101286726156	Better Opportunity
63	Shreyash Navale	101782987718	Better Opportunity
64	Mr. ABHISHEK VINAYAK MARATH	101771822387	Better Opportunity
65	Mr. ABHINAV SHEKHAR MURHEK	101771822394	Better Opportunity
66	Mr. JAYESH RAMDAS PAWAR	101749576645	Better Opportunity
67	Mr. CHETAN DATTATRAY JAGTA	101640498609	Better Opportunity
68	Mr. PRASAD BHAUSAHEB GAVAL	101728010265	Better Opportunity
69	Mr. ABHIJEET SUNIL GADE	101728010283	Better Opportunity
70	Mr. PRASHANT VASANT SHINDE	101717007740	Better Opportunity
71	Mr. SAGAR EKNATH KAHANDAL	101674401794	Better Opportunity
72	Mr. SAGAR RAVINDRA MAHALE	101674401804	Better Opportunity
73	Mr. VIKRANT DEEPAK KSHATRIYA	101317348293	Better Opportunity
74	Mr. SUSHANT JAYVANT PAGAR	101668761139	Better Opportunity
75	Mr. VIVEK RATNAKAR KUDALE	101668761125	Better Opportunity
76	Mr. SAURABH VIJAY JADHAV	101668761118	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
77	Mr. TAPAS MUKHERJEE	100016075704	Better Opportunity
78	Mr. RAVIRAJ ASHOK THORAT	101074515798	Better Opportunity
79	Mr. KIRAN RAM URBHAYKAR	100046085471	Better Opportunity
80	Mr. CHAVAN ROSHAN HAUSHIRA	101284256838	Better Opportunity
81	Mr. SHARAD SOMNATHI TILE	100063470462	Better Opportunity
82	Mr. PRATHAMESH RAMESH PEND	101596045887	Better Opportunity
83	Mr. PRAVIN BALKRUSHIANA SUTA	101610817283	Better Opportunity
84	Mr. NITIN WAMANRAO GOVARDI	101605208471	Better Opportunity
85	Mr. SHANKAR RAMU KASABE	100941922925	Better Opportunity
86	Mr. BHAURAV RAJARAM DARANI	101563322605	Better Opportunity
87	Mr. KATORE MAYUR LAHU	101445769349	Better Opportunity
88	Mr. YOGESH VISHNUDAS SONAW	101239466192	Better Opportunity
89	Mr. GAVATE SUSHANT SUNIL	101445769706	Better Opportunity
90	Mr. YOGESH KAILASH TAYDE	101362780754	Better Opportunity
91	Mr. MADHUKAR BANDU MATE	100586480358	Better Opportunity
92	Mr. RUPESH ASHOK GAIKWAD	101626366376	Better Opportunity
93	Mr. VIJAY RAGANATH ASWALE	101545108513	Better Opportunity
94	Mr. VINIT VIJAY SABLE	100896538915	Better Opportunity
95	Mr. GANESH PANDHARINATH TO	101543277791	Better Opportunity
96	Mr. MOHAN PANDURAG BHARAS	101522477181	Better Opportunity
97	Mr. RAMJI SHUKLA	101520094183	Better Opportunity
98	Mr. NITIN BHASKAR BACHHAV	101284464252	Better Opportunity
99	Ms. AISHWARYA ANANDRAO GA	101488775469	Better Opportunity
100	Mr. AMOL DATTU JADHAV	101236852438	Better Opportunity
101	Mr. RAMRAO BHIMRAO FASATE	101469000738	Better Opportunity
102	Mr. SATYESH BHIMRAO FASATE	101469000729	Better Opportunity
103	Mr. CHNDRASEN PARASHRAM KO	101272708645	Better Opportunity
104	Mr. VILASH VASNT ALHAT	101460982409	Better Opportunity
105	Mr. GAURAV VINOD MORE	101460982413	Better Opportunity
106	Mr. RAHUL KAILAS AAHIRE	101423992745	Better Opportunity
107	Mr. SANDIP MADHUKAR SHINDE	101382537708	Better Opportunity
108	Mr. RAMESH PANDURANG AGHA	101267670380	Better Opportunity
109	Mr. VIJAY DAGADU GABHALE	101288950397	Better Opportunity
110	Mr. SURESH SHRIRAM SHIRSATH	101411430568	Better Opportunity
111	Mr. SAMADHAN DADAJI SONWAN	101411915020	Better Opportunity
112	Mr. SOMNATH SHRAVAN DAGAL	101401883713	Better Opportunity
113	Mr. SURESH RAMCHANDR SHIELA	101401883659	Better Opportunity
114	Mr. ROHIT NARESH SHINDE	101401883692	Better Opportunity
115	Mr. SHUBHAM MACHHINDRA TU	101389114039	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
116	Mr. SAGAR KAILAS SHIRJAWAL	101389114060	Better Opportunity
117	Mr. DNYANESHWAR MAHAJOUKI	101362552125	Better Opportunity
118	Mr. YOGESH SHRAVANA IDI	101362552092	Better Opportunity
119	Mr. SURAJ PANDURANG MOHITE	101362552118	Better Opportunity
120	Mr. BHARAT ARJUN MALI	101362552141	Better Opportunity
121	Mr. SATYAWAN MURALIDHAR KI	101362574227	Better Opportunity
122	Mr. YOGESH RAMESH RATNAPAR	101341928815	Better Opportunity
123	Mr. DATTA SARANGDHAR JEJKA	101341928804	Better Opportunity
124	Mr. NITIN KRUSHNA GURAV	101324683259	Better Opportunity
125	Mr. PRAKASH NIVRUTTI KHOKAL	101227683529	Better Opportunity
126	Mr. SANTOSH SUKDEV PAGAR	101324683271	Better Opportunity
127	Mr. AKASH SANJAY MALI	101324683244	Better Opportunity
128	Mr. YOGESH BABARAO SAGAT	101300872220	Better Opportunity
129	Mr. PRAMOD YUVRAJ PANSARE	101174302828	Better Opportunity
130	Mr. SANDIP SOMANATH WAGH	101300872231	Better Opportunity
131	Mr. KIRAN SAJAN SONAWANE	101301473891	Better Opportunity
132	Mr. JITESH ARJUN CHAVAN	101287923682	Better Opportunity
133	Mr. RAHUL UTTAM VYAVAHARAI	101272710316	Better Opportunity
134	Mr. ROOP SINGH RAJPUT	101272710290	Better Opportunity
135	Mr. PAWAN SINGH RAJPUT	101272710288	Better Opportunity
136	Mr. SANJAY BHANUDAS CHAVAN	101272708613	Better Opportunity
137	Mr. RAJKUMAR	101272710274	Better Opportunity
138	Mr. KAUSTUBH VALMIK SONWAN	101258182530	Better Opportunity
139	Mr. DINESH	101258182553	Better Opportunity
140	Mr. SAMADHAN SOPAN MUNGAS	101258182524	Better Opportunity
141	Mr. NAROTTAM PADHAN	101245219958	Better Opportunity
142	Mr. TANAJI SITARAM GADAR	101245952667	Better Opportunity
143	Mr. ASHOK CHINDHU GHANE	101245219915	Better Opportunity
144	Mr. MILIND RAVINDRA DESALE	101212787558	Better Opportunity
145	Mr. ASHOK SINGH RAJPUT	101212787562	Better Opportunity
146	Mr. LAXMINARAYAN RAJPUT	101212787570	Better Opportunity
147	Mr. RAMAKANT YADAV	101212787543	Better Opportunity
148	Mr. APPASAHEB ANANDA POKAL	101197973183	Better Opportunity
149	Mr. SANTOSH KUMAR CHAUDHA	101151290889	Better Opportunity
150	Mr. MOSIN PATHAN	101127087058	Better Opportunity
151	Mr. SUJIT GEDAM	101127087043	Better Opportunity
152	Mr. SHANKAR MUKANE	101127086991	Better Opportunity
153	Mr. SATISH WAGHMARE	101127087015	Better Opportunity
154	Mr. CHETAN THORAT	101106772562	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
155	Mr. UMESH HARISHCHAI SUNDRA	101106772570	Better Opportunity
156	Mr. VASUDEV RAMKRISHNA MAI	101106772558	Better Opportunity
157	Mr. SATISH WAGH	101106772543	Better Opportunity
158	Mr. SHAMBHU RAJPUT	101106772504	Better Opportunity
159	Mr. KALYAN DEORE	101106772515	Better Opportunity
160	Mr. RAMRAO MORE	101106772527	Better Opportunity
161	Mr. TEJAS MUSALE	101083944316	Better Opportunity
162	Mr. SUNIL MANE	101083944337	Better Opportunity
163	Mr. AMOL KARBHARI	101083944385	Better Opportunity
164	Mr. CHANDRAKANT THAPEKAR	101083944344	Better Opportunity
165	Mr. DINKAR BARVE	101083944274	Better Opportunity
166	Mr. RAM WARADE	101083943441	Better Opportunity
167	Mr. YOGESH BARVE	101083944261	Better Opportunity
168	Mr. TANAJI CHUMBALE	101083944257	Better Opportunity
169	Mr. ANAND BAVISKAR	101083944328	Better Opportunity
170	Mr. ASHOK OKATE	101083944288	Better Opportunity
171	Mr. DHANANJAY SHIRSATH	101083944392	Better Opportunity
172	Mr. SAMADHAN SAHANE	101083944290	Better Opportunity
173	Mr. JIJABRAO PATIL	101083944300	Better Opportunity
174	Mr. DIGAMBAR CHAUDHARI	101067797587	Better Opportunity
175	Mr. NITIN NATEKAR	101067797671	Better Opportunity
176	Mr. GULAB BEZEKAR	101067797573	Better Opportunity
177	Mr. DHANAJI MONDHE	101067797628	Better Opportunity
178	Mr. BHAAURAO BEZEKAR	101067797663	Better Opportunity
179	Mr. SACHIN CHAURE	101067797644	Better Opportunity
180	Mr. RAHUL AHER	101067797594	Better Opportunity
181	Mr. SWAPNIL VIVEK JOSHI	101038074295	Better Opportunity
182	Mr. VISHAL KHANDARE	101038074314	Better Opportunity
183	Mr. KAILAS MARSALE	101038074305	Better Opportunity
184	Mr. RAJENDRA BHISE	101038074322	Better Opportunity
185	Mr. SAGAR NIKAM	101038074333	Better Opportunity
186	Mr. ASHOK CHAVAN	101038074346	Better Opportunity
187	Mr. SUKHDEV MUKANE	101038074351	Better Opportunity
188	Mr. MAHESH SANAP	101038074367	Better Opportunity
189	Mr. RAMAKUMAR	101012414515	Better Opportunity
190	Mr. PARSHURAM RAVJI NIRGUDE	101012610899	Better Opportunity
191	Mr. HEMANT ISWAK PENTHE	101012610881	Better Opportunity
192	Mr. ANIL CHANDRAKANT THONG	101012901080	Better Opportunity
193	Mr. MANOJ RAMSEVAK SAIHANI	101012414536	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
194	Mr. PRASAD SUDAM MANKAR	100983082714	Better Opportunity
195	Mr. BHEEM DHANNULAL PAWAR	100983082798	Better Opportunity
196	Mr. KAILU JAGATALAL MANDAL	100983082780	Better Opportunity
197	Mr. SAHADEB ARTTATRANA DHIL	100983082746	Better Opportunity
198	Mr. KRISHNA RAMAKANT RAY	100983082751	Better Opportunity
199	GORAKH CHAVAN	100960531909	Better Opportunity
200	HEMANT JAGTAP	100960531913	Better Opportunity
201	LALIT PENTHEI	100960531921	Better Opportunity
202	Mr. PRAVIN KADLAG	100942435099	Better Opportunity
203	Mr. ANKUSH SABALE	100943487127	Better Opportunity
204	Mr. RAHUL DONDE	100943311758	Better Opportunity
205	Mr. BHARAT KHODE	100942697113	Better Opportunity
206	Mr. DNYANESHWAR SHELAR	100942318197	Better Opportunity
207	Mr. RAHUL SONAWANE	100943312627	Better Opportunity
208	Mr. SAGAR MOKAL	100943205551	Better Opportunity
209	Mr. RAHUL LAHANU BAGUL	100919651141	Better Opportunity
210	Mr. AMOL BOMBALE	100915997971	Better Opportunity
211	Mr. DHANRAJ GUDA	100918572571	Better Opportunity
212	Mr. ARJUN GUNJAL	100930172156	Better Opportunity
213	Mr. SHATUDHAN SADAY	100921424363	Better Opportunity
214	Mr. RAKESHKUMAR JASWAL	100919789921	Better Opportunity
215	Mr. SIKANDAR THAKUR	100914603274	Better Opportunity
216	Mr. VIKAS TANAJI JACHAK	100929319067	Better Opportunity
217	Mr. AMOL A WAGH	100913212390	Better Opportunity
218	Mr. RAHUL TELURE	100928645805	Better Opportunity
219	Mr. MAYUR JAGTAP	100752598593	Better Opportunity
220	Mr. HRUSHIKESH PAWAR	100752652568	Better Opportunity
221	Ms. KAVERI BHASKAR RAUT	100752652575	Better Opportunity
222	Mr. YOGESH DESHMUKH	100752656843	Better Opportunity
223	Mr. SURESH SHELAR	100892733037	Better Opportunity
224	Mr. SUSHEEL KISHAN	100753953801	Better Opportunity
225	Mr. KIRAN KISAN	100752716952	Better Opportunity
226	Mr. RAJU YADAV	100752842956	Better Opportunity
227	Mr. GAURAV MORE	100754372885	Better Opportunity
228	Mr. AJU BEHERA	100752949017	Better Opportunity
229	Mr. PRITAM MORE	100752536880	Better Opportunity
230	Mr. BHIMASEN PENTHEI	100752918546	Better Opportunity
231	Mr. KIRAN SHRIKRUSHNARAO RO	100754129328	Better Opportunity
232	Mr. AKHILA PENTHEI	100752944372	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
233	Mr. VISHAL ATHAWALE	100753111864	Better Opportunity
234	Mr. ASHISH YADAV	100753311975	Better Opportunity
235	Mr. GORAKSHANATH GADAKH	100753658765	Better Opportunity
236	Mr. SANDEEP TAYADE	100752507091	Better Opportunity
237	Mr. SHANKAR ATHAWALE	100753111762	Better Opportunity
238	Mr. SAMADHAN SANER	100752838802	Better Opportunity
239	Mr. ARJUN NAMADAS	100753902338	Better Opportunity
240	Mr. YOGESH RATHOD	100752799344	Better Opportunity
241	Mr. RAVINDRA JADHAV	100752899752	Better Opportunity
242	Mr. MAHESH PATIL	100752647779	Better Opportunity
243	Mr. MEGHANAND DHIBAR	100753700935	Better Opportunity
244	Mr. PANCHANAND CHHAJ DHIVA	100983082779	Better Opportunity
245	Mr. KRUSNACHANDRA DHIBAR	100753001444	Better Opportunity
246	Mr. CHABU TUKARAM BHOR	100983082733	Better Opportunity
247	Mr. TIKUNU DHIBAR	100753405713	Better Opportunity
248	Mr. SAGAR SONAWANE	100754083695	Better Opportunity
249	Mr. THUBE SAINATH BALASAHEB	100752598868	Better Opportunity
250	Mr. ANIL NISAL	100752774202	Better Opportunity
251	Mr. GOPI BALLAV MAJI	100586549981	Better Opportunity
252	Mr. ANKUSH PAGAR	100587126619	Better Opportunity
253	Mr. SANTOSH CHIKNE	100587203192	Better Opportunity
254	Mr. SAMADHAN SOLANKE	100586675676	Better Opportunity
255	Ms. SIBA SHAKIL KHAN	100587058829	Better Opportunity
256	Ms. SIDDHI KADAM	100586564629	Better Opportunity
257	Mr. YOGESH KHANDAL	100586453629	Better Opportunity
258	Mr. MUKESH YADAV	100586560973	Better Opportunity
259	Mr. JITENDRA ARJUN CHAVAN	100983082812	Better Opportunity
260	Mr. BRIJESH YADAV	100586981399	Better Opportunity
261	Mr. GAURAV KULKARNI	100586907627	Better Opportunity
262	Mr. PANDHARINATH SHENE	100586700829	Better Opportunity
263	Mr. SIDDARTH SITARAM TOMPE	100587100050	Better Opportunity
264	Mr. BHAGWAT SHANKAR DAIHW	100587061077	Better Opportunity
265	Mr. KIRAN SURESH JADHAV	100429093554	Better Opportunity
266	Mr. DURGESH SHAMKANT BAGUL	100429105675	Better Opportunity
267	Mr. AMIT VASANT KUDTARKAR	100066210427	Better Opportunity
268	Mr. GANGADHARA L.	100028795000	Better Opportunity
269	Mr. RAMDAS DHOTARE	100059845616	Better Opportunity
270	Mr. VILAS VASANT ALHAT	100983082808	Better Opportunity
271	Mr. KANAIYYA SARASAR	100188459722	Better Opportunity

SUDAL INDUSTRIES LIMITED
FULL & FINAL SETTLEMENT LIST

Sr No	NAME	UAN NUMBER	Reason of Leaving
272	Mr. BANILKUMAR RAMBALAK YA	100586970487	Better Opportunity
273	Mr. PRATIK D SHAH	100586564923	Better Opportunity
274	Mr. PRASHANT SURESH PATIL	100262446738	Better Opportunity
275	Mr. R. A. THORAT	100287613387	Better Opportunity
276	Mr. VINAY KUMAR PANDEY	100412907425	Better Opportunity
277	Mr. KRISHNA MADHAV SHUKLA	100182808907	Better Opportunity
278	Mr. S R SAKHARE	100321277861	Better Opportunity
279	Mr. PRAKASH BANDU AAMLE	100261637497	Better Opportunity
280	Mr. SHIVRAJ ANANT CHAFERKAR	100126898380	Better Opportunity
281	Mr. SURESH BHAGOJI PANDHARE	100283709498	Retired
282	Mr. J G ANDE	100171876285	Better Opportunity
283	Mr. D D SHINDE	100128555138	Retired
284	Mr. BALASAHEB PARBAT BARDE	100103369695	Retired
285	Mr. RAMESH PANDIT SHEWALE	100288443188	Retired
286	Mr. A K BISWAS	100069522320	Retired
287	Mr. VISHNU SHIVRAM SAWANT	100410403976	Retired
288	Mr. BALASAHEB MUKTAJI JADHA	100102819209	Retired
289	Mr. KISHOR RAMCHANDRA JADH	100184118990	Retired
290	Mr. V S RANGLE	100400673312	Retired

Exh - R12

SUDAL

SUDAL INDUSTRIES LIMITED

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CIN L21541MH1979PLC021541

Ref.No. SUDAL/HR/09/001

Date: 16th September, 2024

To,

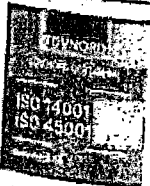
The Assistant P.F. Commissioner,
Authority under EPF & MP Act
Employees' Provident Fund Organization
Nashik - 422 007

SUB:- (1) 7A ENQUIRY FOR THE PERIOD 04/2016 to 04/2023
(2) DIARY NO.222/2024
(3) Deposition Statement dated 24.05.2024 of EO.

Respected sir,

- 1) The aforesaid 7A Enquiry is now fixed on 17th September, 2024.
Prior thereto we have submitted our reply as well as all relevant documents before the EO. The EO submitted a report / Deposition Statement dated 29.08.2024 in this Enquiry before the Ld. Authority.
- 2) At the very outset, we submit and place on record that the purported Report / Deposition Statement is not supported by any documentary evidence in respect of the alleged Provident Fund dues for the enquiry period.
- 3) It is trite law that contributions can be demanded under the Employees Provident Fund & Misc. Provisions Act, 1952 (**EPF Act**) only in respect of identified employees amenable to

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coverage under the EPF Act. we draw kind attention of the Hon'ble Authority to the following case law in support of our above contentions.

a) *Sandeep Dwellers Pvt. Ltd. vs. Union of India - 2006 III CLR 748 & 2007 (3) Bom CR 898*

b) *Himachal Pradesh State Forest Corporation vs. Regional Provident Fund on 3-4-2008 - 2008(3) SCC 247*

4) Further, it may kindly be noted that many of the employees have left the services of the Company during the period 04/2016 to 04/2023 and have taken up employment elsewhere. Their whereabouts is not known to the Company Management. These employees have settled their account with the EPFO finally and fully. In such circumstances, the said employees have either transferred their PF Accumulations to their new employer or have settled their PF Account fully by submitting online / requisite offline Form to the PF Authority. These employees have received their PF Accumulation in settlement of their dues and the entire record to the above effect is exclusively available with the Office of this Hon'ble Authority. We request to kindly see the said record before proceeding further in this enquiry and kindly place such documents in this enquiry. A list of employees who have left the services for better prospectus,

by way of resignation or for any other reason is attached hereto and marked as Annexure - A.

5) In the circumstances, we request that the Enforcement Officer be directed to furnish list of employees in respect of whom contributions and/or dues have been calculated in the Report / Deposition Statement, at the first being for the period 04/2016 to 04/2023 i.e. Enquiry period.

6) It is also settled law list of employees / persons who have been identified by the Enforcement Officer for purpose of calculation of Provident Fund dues allegedly payable by the Establishment for the enquiry period is required to be disclosed as part and parcel of the process of natural justice, fair play and equity. As the list of employees in respect of whom the Enforcement Officer has calculated purported Provident Fund dues payable by the Establishment will also enable the management to counter check whether

a. The identified persons are amenable for coverage under the EPF Act;

b. The establishment has paid Provident Fund contributions as per extant Schemes for the relevant period;

c. The computation made by the Enforcement Officer is as per extant schemes.

- 7) We, therefore, request that this Hon'ble Authority be pleased to direct the Enforcement Officer to forthwith furnish list of employees / persons identified by EO forthwith and submit the same in this enquiry in respect of whom contributions have been allegedly proposed as dues in the Report / Deposition Statement dated 29.08.2023.
- 8) It is respectfully submitted that unless and until the aforesaid list/s of identified persons are supplied to the Establishment with copy being filed in the 7A proceedings, the Report of Enforcement Officer is incomplete and, therefore, may not be useful to arrive at just and proper decision in this 7A enquiry.
- 9) Without prejudice to the above, we may further submit that awaiting receipt of list of identified employees alongwith computation of Provident Fund Contribution dues as prayed above, it may also be noted that the said Report / Deposition Statement refers to and relies upon several documents, copies whereof have not been made available to the Establishment. The Report / Deposition Statement of Enforcement Officer is silent as to how he has arrived at the figure of "Basic Wages" of each identified individual employee/person in respect of whom a consolidated claim under different heads of account has been made in tabular form at pages 5&7 for the enquiry period. In the Report / Deposition Statement it is not mentioned whose wages were considered for the period 04/2016 to 04/2023 and

what is the basis for arriving at the figure in the column "Wages". The Report / Deposition Statement also does not disclose the basis on which the Enforcement Officer has arrived at the figure of "Wages" as set out in the 2nd column of both the tables. It is relevant to note that the amount mentioned in the column "Wages" for each month commencing from 04/2016 to 04/2023 does not tally with the statutory record maintained by the Establishment in the shape of Wage Registers, Books of Accounts or Balance Sheets. It is, therefore, of paramount importance that the amount mentioned in the column "Wages" for diverse months should be co-related with the employee to whom the payment has been made under the head of Account "Basic Wages" for the concerned month / period. Unless and until such co-relation is established, the Report is merely an *ispi-dixt* of the Enforcement Officer and cannot be a basis for determining statutory liability, which has both civil and penal consequences.

- 10) Hence, in the interest of justice, fair play and equity :

It is prayed that the Enforcement Officer be directed to furnish list of employees identified by him and the criteria & method adopted and/or documents considered while arriving at the consolidated amount set out under the 2nd column entitled "Wages" for the period 04/2016 to 04/2023 in the first table

and in the table at pages 5&7 of the said Report / Deposition Statement.

- 11) Without prejudice to the above and without prejudice to one another, it is submitted that in the event the Enforcement Officer does not file any further document and/or statement in support of the Report then it is to be noted that this Hon'ble Authority as a fact finding authority, it is vested with the powers of a Civil Court for recording evidence.
- 12) The Enforcement Officer be directed to submit himself for cross examination on the report / Deposition Statement dated 24.05.2024. In this connection, attention of this Hon'ble Authority is drawn to the judgment of the Hon'ble High Court Bombay in the case of *Sarah Exim Pvt. Ltd. Vs. The Assistant Provident Fund Commissioner in Writ Petition (ST) No.97150 of 2020 dated 13th January 2021* and more particularly para 4 which reads as under :

"4. In my opinion, it cannot be said the proceedings are unduly delayed that even an opportunity of cross-examination cannot be given to the Petitioner. The report dated 17th march 2020 to serve on the Petition only on 28th October 2020. In this circumstance, the interest of justice with a view to give one opportunity to the Respondent to cross-examine to Enforcement Officer, the Petition deserves to be allowed...."

- 13) It would be just proper and legal to permit the establishment to cross-examine the Enforcement Officer who has submitted the

report / Deposition Statement dated 24.05.2024 before this Hon'ble Authority in the 7A Enquiry proceeding.

- 14) It is also prayed to this Hon'ble Authority to kindly direct to PF Department to handover documents which are in their exclusive possession and custody and which were taken into account and considered for drawing up report / Deposition Statement dated 24.05.2024.
- 15) We, in the circumstances, once again request you that in the interest of natural justice, fair play and equity, kindly direct the PF Department to make available to the establishment all relevant documents which the Enforcement Officer is relying upon or filed by Complainants or which are relied upon by the Enforcement Officer at the earliest and at least before cross examination of the Enforcement Officer under this 7A proceeding. .
- 16) It is submitted that this Hon'ble Authority is conducting enquiry u/s. 7(A) and this Hon'ble Authority has power u/s. 7A(2) for the purpose of doing enquiry to enforce the attendance of any person and or examine him on oath. Secondly it is legal right vested with establishment in a quasi-judicial proceeding to cross-examine the said Enforcement Officer who have filed report in this enquiry in the interest of justice, fair play and equity.

- 17) We draw attention of the Hon'ble Authority that the establishment has filed reply dated 18th November 2021 and drawn attention to guidelines issued by RPFC (Central), New Delhi in respect of enquiry conducted under Section 7A. The present Enquiry is being conducted in breach of the said guidelines issued by RPFC (Central).
- 18) In reply dated 18th November 2021 we have explained in detail the nature of allowances payable to the staff, field staff and Officers employed in the Company. As set out in our reply, the allowances paid are neither uniform nor across the board. In many cases the allowances paid are in the nature of reimbursement. It is settled law that reimbursement of expenditure incurred by the employee on account of his duty, does not constitute "Basic Wages" within the meaning of Section 2(b) of the EPF Act. We have also pointed out that some of the employees are paid a sum of money as allowances to defray special expenses entailed upon him by the nature of his employment. It is settled law that any allowances paid to an employee to defray expenses entailed by him during the course of his employment does not constitute basic wages within the meaning of Section 2(b) of the EPF Act. For the sake of convenience, copy of the said reply dated 18th November 2021, which is self-explanatory, is annexed hereto and marked as **Annexure - A**. We have not received any reply in rebuttal to the

said submissions and thus the said factual details stands admitted by the PF Department.

- 19) In the 7A enquiry some documents are being arbitrarily taken on record by the Hon'ble Authority and that too without furnishing copies thereof to the establishment. This Hon'ble Authority may take note that copies of documents taken on record of the 7A enquiry proceedings submitted by the Complainants or the Department or the Enforcement Officer are required to be furnished to the establishment. This is a cardinal principal of natural justice and due process of law. It is apparent that the Enforcement Officer has unilaterally filed a Report on the basis of documents which have not been furnished to the establishment. A fair trial or enquiry pre-supposes fairness at all stages, which includes furnishing any document before any Report, adverse to the establishment, is taken on record of the enquiry proceedings.
- 20) We shall file relevant case laws in support of our contentions as stated in our reply. The report / Deposition Statement discloses the details of passing of order by the Hon'ble Supreme Court on 28-02-2019 in the case of *RPFC Vs. Vivekanand Vidyamandir and Manipal Academy of Higher Education Vs. Provident Fund Commissioner*. Based on said judgment, submissions are made in the Report / Deposition Statement by your good office and some allowances taken into account while assessing

purported dues payable randomly without proper identification. The EPF Act is a social security and the amount collected is required to be deposited to a respective persons Account number. The Enforcement Officer failed to identify the persons, / members for whom assessment is proposed as dues. In absence of identification of members, who are employed in the Company during the period 04/2016 to 04/2023, dues cannot be assessed in a method and manner disclosed by EO in his report. The report / deposition statement dated 24.05.2024 is therefore defective and cannot be relied as a best piece of evidence by this Hon'ble Authority for the purpose of 7A proceeding. The total dues as proposed by the EO on page 5&7 tables are therefore improper, baseless and unfounded. The Company emphatically denied that they are liable to pay any amount for the disputed period / 7A enquiry period much less then Rs.62,81,465/- as dues, as proposed by the EO. It is submitted that the said judgment of the Hon'ble Supreme Court would be applicable prospectively and not retrospectively, as misunderstood by the EO. Thus there is no merit in the proposed dues calculated by the EO in the Report / Deposition Statement.

- 21) It is further submitted that the EO has also proposed of the said amount action under section 7Q and 14B in Para (xii) prematurely. At this stage there is no 7A Order passed for any

amount by the Hon'ble Authority. Therefore the proposed due as reflected in the report is unsustainable in the eyes of law as well as in factual matrix. The conduct of the EO also disclosed that he / she is not interested to assist this Hon'ble Authority to bring true and correct fact on record conveniently and make to believe that company has adopted improper practice. There is no other proceeding initiated against the Company for any prior period nor was any show cause notice issued prior to the enquiry period. Hence the report submitted by EO is nothing but mere *ipsi-dixit* of the Enforcement Officer and stated the figures of "wages" out of his imagination and to suit his claim and convenience or to please this Hon'ble Authority. The report is totally improper and baseless. It is prayed that the report be declare accordingly by this Hon'ble Authority in interest of justice and equity.

22) It is, therefore, humbly prayed that

- a. The Enforcement Officer be directed to file list of employees identified by him in respect of whom he has arrived at the conclusion that payments made to them constitutes wages for each month as set out in the tables at Pages 5&7.
- b. Submit documents on the basis of which payments made to an individual have been taken into account for arriving

at the amount of "Basic Wage" for the purpose of computation of Provident Fund Contribution.

c. Permit the establishment to cross-examine Enforcement Officer on Report / Deposition Statement dated 24.05.2024 filed in this proceeding.

23) We anticipate kind co-operation of the Hon'ble Authority in line with principles of natural justice, fair play and equity

Thanking you,

FOR SUDAL INDUSTRIES LTD.


(AUTHORISED SIGNATORY)

Exh - R 13

SUDAL

SUDAL INDUSTRIES LIMITED

Certified for ISO 9001:2015, IATF 16949:2016, ISO 14001:2015 & ISO 45001:2018
CIN L21541MH1979PLC021541

Ref No. SUDAL/HR/09/004

DATE : 25TH September, 2024

To,
The Assistant P.F. Commissioner,
Authority under EPF & MP Act.
Employees Provident fund Organization,
Nashik - 422 007

Sub. : 1] 7A Enquiry for the period 04/2016 to 04/2024,

2] Diary No 222/2024,

Respected Sir,

The aforesaid 7A Virtual Hearing is fixed on 25th September 2024, Prior thereto, we had submitted our reply as well as all relevant documents before EO. The EO had submitted a report Statement Dated 29.08.2024 in this Enquiry before the Authority.

Please refer our letter under reference SUDAL/HR/09/002 Dtd. 17.09.2024. It was clearly mentioned that we seek your kind reply from your good office against all the particulars "as asked for" before next virtual Hearing is scheduled. But till date, no reply is received from your end.

Hence, you are hereby once again requested to give your kind reply against our letter SUDAL/HR/09/002 Dtd. 17.09.2024 at the earliest.

We request you to schedule the next virtual hearing at least after 7 days from the date of receipt your reply at our end.

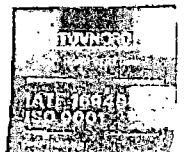
Thanking You,

For SUDAL INDUSTRIES LIMITED

(AUTHORISED SIGNATORY)



Manufacturers of Aluminum Extrusions & Components • Architectural & Transport Systems • Non Ferrous Alloys
Regd. Office & Works : A5 MIDC, Ambad Industrial Area, Mumbai Nashik Highway, Nashik 422 010.
Phone : 91-253-2382396 / 6636200 - 234 • E-mail : nashik@sudal.co.in
• Central : 9223192842 • Pune : 9223192800 • Vadodara : 9223192804 • Delhi : 9313823303 • South : 9223192825
Corporate Office : 26A Nariman Bhavan, Opp. NCPA, 227 Nariman Point, Mumbai 400 021, (INDIA)
• Phone: 91-22-22023845, 61577100, 61577177 • E-mail : mumbai@sudal.co.in • www.sudal.co.in



Exh - R 13

SUDAL

SUDAL INDUSTRIES LIMITED

Certified for ISO 9001:2015, IATF 16949:2016, ISO 14001:2015 & ISO 45001:2018
CIN L21541MH1979PLC021541

Ref No. SUDAL/HR/09/004

DATE : 25TH September, 2024

To,
The Assistant P.F. Commissioner,
Authority under EPF & MP Act.
Employees Provident fund Organization,
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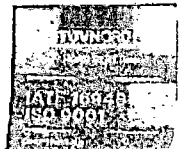
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• Phone: 91-22-22023845, 81577100, 61577177 • E-mail : mumbai@sudal.co.in • www.sudal.co.in



BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,

Regional PF office, Nashik

In the matter of proceeding under section 7-A of the Employees Provident Fund & MP Act, 1952 against:

Name of the Establishment : M/s. Sudal Industries Ltd.,
A-5, MIDC Industrial Area,
Ambad, Nashik-422010.

PF Code No : KD/NSK/22450

Diary No : 222/2024

Period of Inquiry : April-2016 to April 2023

Enforcement officer : Shri Sunil T Shinde

The deposition was submitted the PF and allied dues were shown was 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only) dues to the calculations error the dues shown less. The correct dues for the inquiry period Rs 6345408.00 (Rs. Sixty Three Lacks Sixty Seven Thousand Six Hundred Forty Four Only) The PDF format Monthly calculation 3 (Three) pages and employee wise details of 239 Pages was already forwarded to the employer on mail. The forwarded details are attached herewith for information.

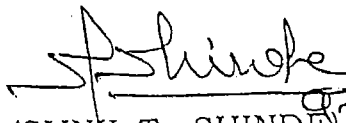
The Accountwise outstanding dues from the employer are as under:

Period	Wages/Salary Diff Payable	A/C I EE	A/C I ER	A/C II	A/C X	A/C XXI	A/C XXII	TOTAL
April 2016 to April 2023	25042954	3005205	919270	171767	2085935	162781	450	6345408

Rs.6345408/- (Rs.Sixty three lacks forty five thousand four hundred eight only)

The above details i.e. changes of dues were forwarded to the establishment vide e-mail dated 09-10-2024 at 11:33 AM.

It is requested that the assessing officer conclude the inquiry for the period from April 2016 to April 2023 for assessing the amount of Rs Rs.6345408/- (Rs.Sixty three lacks forty five thousand four hundred eight only).


(SUNIL T. SHINDE)
Enforcement Officer,
Circle-C, R.O.
Nashik.

Date: 09-10-2024.

Sunil Tukaram Shinde

Submission of Employee wise data in respect of M/s. Sudal Industries Ltd., in
respect of PF Code No KD/NSK/22450 Dirary No 222/2024

From : Sunil Tukaram Shinde <sunil.shinde@epfindia.gov.in> Wed, Oct 09, 2024 11:33 AM

Subject : Submission of Employee wise data in respect of M/s. Sudal Industries Ltd., in respect of PF Code No KD/NSK/22450 Dirary No 222/2024 2 attachments

To : mangesh@sudal.co.in, gujarmanoj@gmail.com,
Regional Office Nasik <ro.nasik@epfindia.gov.in>

Sir,

This has been referenced with the proceeding under section 7-A of the Act In respect of M/s. Sudal Industries Ltd., Ambad, Nashik-422 010. The establishment has required the employee's wise details where dues are calculated. The dues are changed from Rs.6281465.00 to Rs.6345408.00 due to the consolidated calculation and individual employees' calculation. Kindly note the calculated dues Rs.6345408.00 (Rs. Sixty-Three Lacks Forty-Five Thousand Four Hundred Eight Only). The Employees' wise details and Month wise details are attached here with for information.

Yours Faithfully,

Sunil Shinde,
Enforcement officer,
RO, Nashik.

 **Sudal Industries Employee wise details of PF.pdf**
2 MB

 **Sudal Industries monthly details of PF.pdf**
422 KB

Inquiry period from April 2016 to April 2023

YYYYMM	BASIC	D.A	EDU. Allow	CONV/CC A Allow	Appl. EPF wages	Basic wage + DA	Payable wages	EEPF A/c 01	ER PF A/c 01	A/c 02	Pension A/c 10	INS Con. A/c 21	Ins. Adm. A/c 22	Total
201604	969283	147202	204309	202629	1486773	1116485	370288	44435	13591	3147	30844	2407	37	94461
201605	976679	154680	206344	204666	1497222	1131359	365863	43902	13429	3110	30473	2378	37	93329
201606	937238	147387	197917	196378	1440638	1084625	356013	42716	13058	3026	29658	2314	36	90808
201607	1017473	152929	256033	254516	1550262	1170402	379860	45582	13936	3229	31646	2469	38	96900
201608	1057694	160826	269786	268167	1591708	1218520	373188	44785	13697	3172	31088	2426	37	95205
201609	1014842	150502	258698	257222	1556363	1165344	391019	46921	14349	3324	32572	2542	39	99747
201610	1029753	151144	262688	261167	1571197	1180897	390300	46838	14322	3318	32516	2537	39	99570
201611	1009002	150451	257968	256442	1543187	1159453	383734	46050	14082	3262	31968	2494	38	97894
201612	991590	151140	254070	252584	1516577	1142730	373847	44862	13718	3178	31144	2430	37	95369
201701	1017994	161587	261096	259472	1535260	1179581	355679	42686	13065	3023	29621	2312	36	90743
201702	943025	150842	241188	239821	1488878	1093867	395011	47397	14488	3358	32909	2568	40	100760
201703	984352	167748	252388	250817	1510262	1152100	358162	42977	13142	3044	29835	2328	36	91362
201704	946238	159239	242642	241132	1458357	1105477	352880	42341	12950	2294	29391	2294	0	89270
201705	966069	161666	247490	245927	1474606	1127735	346871	41625	12734	2255	28891	2255	0	87760
201706	918887	154768	234188	232921	1431650	1073655	357995	42960	13142	2327	29818	2327	0	90574
201707	930231	160201	237423	236170	1442196	1090432	351764	42208	12908	2286	29300	2286	0	88988
201708	945533	159885	239455	238226	1448370	1105418	342952	41154	12590	2229	28564	2229	0	86766
201709	903477	148803	230610	229378	1416445	1052280	364165	43700	13368	2367	30332	2367	0	92134
201710	939340	162638	239548	238226	1441769	1101978	339791	40776	12477	2209	28299	2209	0	85970
201711	922299	156334	233918	232675	1439306	1078633	360673	43276	13236	2344	30040	2344	0	91240
201712	955603	159615	258961	257681	1466173	1115218	350955	42117	12889	2281	29228	2281	0	88796
201801	946887	162963	256958	255665	1453495	1109850	343645	41239	12616	2234	28623	2234	0	86946
201802	916626	168008	245846	244630	1436194	1084634	351560	42193	12907	2285	29286	2285	0	88956
201803	969884	185222	260490	259158	1476485	1155106	321379	38569	11798	2089	26771	2089	0	81316
201804	941259	179667	254989	253694	1452241	1120926	331315	39763	12170	2154	27593	2154	0	83834
201805	938825	177723	253898	252641	1433694	1116548	317146	38061	11643	2061	26418	2061	0	80244
201806	901587	162309	240739	239776	1382578	1063896	318682	38247	11699	2071	26548	2071	0	80636
201807	902579	168549	240999	239999	1377097	1071128	305969	36722	11234	1989	25488	1989	0	77422
201808	904599	171106	270673	269678	1355521	1075705	279816	33583	10283	1819	23300	1819	0	70804
201809	864902	161234	258164	257311	1322812	1026136	296676	35597	10893	1928	24704	1928	0	75050
201810	920610	171479	272120	271242	1376216	1092089	284127	34099	10440	1847	23659	1847	0	71892
201811	910720	165322	268259	267403	1386883	1076042	310841	37300	11416	2020	25884	2020	0	78640

Inquiry period from April 2016 to April 2023

YYMM	BASIC	D.A	EDU. Allow	CONV/CC A Allow	Appl. EPF wages	Basic wage + DA	Payable wages	EEPF A/c 01	ER PF A/c 01	A/c 02	Pension A/c 10	INS Con. A/c 21	Ins. Adm. A/c 22	Total
201812	915468	167768	269942	269166	1373690	1083236	290454	34858	10672	1888	24186	1888	0	73492
201901	910627	163961	267652	266892	1382975	1074588	308387	37002	11323	2005	25679	2005	0	78014
201902	871203	174765	255455	254770	1377984	1045968	332016	39848	12201	2158	27647	2158	0	84012
201903	897964	189209	264182	263420	1366100	1087173	278927	33469	10228	1813	23241	1813	0	70564
201904	886983	187778	262167	261412	1352697	1074761	277936	33349	10192	1807	23157	1807	0	70312
201905	896887	192206	265922	265135	1345046	1089093	255953	30714	9387	1664	21327	1664	0	64756
201906	869520	178327	256113	255577	1330435	1047847	282588	33913	10371	1837	23542	1837	0	71500
201907	887423	183901	260590	260139	1330385	1071324	259061	31088	9504	1684	21584	1684	0	65544
201908	880905	203638	259288	258835	1323355	1084543	238812	28667	8781	1552	19886	1552	0	60438
201909	880604	201001	258739	258304	1328960	1081605	247355	29692	9090	1608	20602	1608	0	62600
201910	851364	188323	248290	248070	1270421	1039687	230734	27694	8477	1500	19217	1500	0	58388
201911	853468	191661	250835	250396	1308316	1045129	263187	31590	9661	1711	21929	1711	0	66602
201912	854114	195017	250064	249619	1271504	1049131	222373	26690	8171	1445	18519	1445	0	56270
202001	864393	200212	253920	253480	1296577	1064605	231972	27846	8531	1508	19315	1508	0	58708
202002	795860	195917	232424	232033	1262787	991777	271010	32520	9941	1762	22579	1762	0	68564
202003	821775	205974	238976	238854	1232257	1027749	204508	24543	7523	1329	17020	1329	0	51744
202005	410144	102507	122520	122304	735911	512651	223260	26790	8187	1451	18603	1451	0	56482
202006	782432	189990	226219	225766	1196927	972422	224505	26948	8246	1459	18702	1459	0	56814
202007	759957	190441	222492	222252	1153509	950398	203111	24375	7467	1320	16908	1320	0	51390
202008	675164	151879	188567	188522	1004322	827043	177279	21279	6521	1152	14758	1152	0	44862
202009	797759	202930	231785	231349	1231569	1000689	230880	27707	8468	1501	19239	1501	0	58416
202010	772392	190918	222231	221877	1168732	963310	205422	24659	7541	1335	17118	1335	0	51988
202011	781077	190372	225329	224923	1240808	971449	269359	32319	9879	1751	22440	1751	0	68140
202012	762587	183638	217226	216979	1166030	946225	219805	26384	8067	1429	18317	1429	0	55626
202101	670023	123942	188286	188231	972166	793965	178202	21384	6544	1158	14840	1158	0	45084
202102	831826	197505	248728	248347	1253578	1029331	224247	26910	8232	1458	18678	1458	0	56736
202103	701727	114031	192170	192181	1001853	815758	186095	22331	6846	1210	15485	1210	0	47082
202104	776289	135788	213038	212874	1127025	912077	214948	25798	7901	1397	17897	1397	0	54390
202105	734140	152662	212807	212600	1123359	886802	236557	28390	8687	1538	19703	1538	0	59856
202106	707531	138710	204207	204045	1075387	846241	229146	27495	8414	1489	19081	1489	0	57968
202107	688730	135981	197763	196997	1037470	824711	212759	25531	7816	1383	17715	1383	0	53828
202108	555362	62763	154296	152346	820701	618125	202576	24304	7436	1317	16868	1317	0	51242

Inquiry period from April 2016 to April 2023

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202109	782379	201804	241300	239412	1285232	984183	301049	36123	11048	1957	25075	1957	0	76160
202110	773187	187274	235778	233909	1253864	960461	293403	35202	10762	1907	24440	1907	0	74218
202111	780968	186591	238017	235137	1265348	967559	297789	35730	10928	1936	24802	1936	0	75332
202112	644894	120154	198246	195141	1052578	765048	287530	34497	10550	1869	23947	1869	0	72732
202201	614662	94226	192706	189635	1000596	708888	291708	35002	10707	1896	24295	1896	0	73796
202202	822776	210947	257648	255103	1345311	1033723	311588	37398	11443	2025	25955	2025	0	78846
202203	626412	111095	196619	193819	1038466	737507	300959	36113	11045	1956	25068	1956	0	76138
202204	604371	99479	189922	186615	1008100	703850	304250	36509	11165	1978	25344	1978	0	76974
202205	623802	96919	193731	191655	1029997	720721	309276	37113	11350	2010	25763	2010	0	78246
202206	612266	94906	191019	188882	1021167	707172	313995	37673	11518	2041	26155	2041	0	79428
202207	597009	95573	186201	184065	999554	692582	306972	36834	11262	1995	25572	1995	0	77658
202208	616096	97453	191860	189723	1022795	713549	309246	37107	11345	2010	25762	2010	0	78234
202209	633930	114226	196983	194848	1059006	748156	310849	37302	11406	2021	25896	2021	0	78646
202210	603822	103471	189640	186749	1025987	707293	318694	38239	11687	2072	26552	2072	0	80622
202211	637551	101237	201191	199046	1076814	738788	338026	40559	12399	2197	28160	2197	0	85512
202212	638508	103811	200558	200470	1078770	742319	336451	40372	12345	2187	28027	2187	0	85118
202301	623248	82036	197500	197495	1042512	705284	337228	40468	12370	2192	28098	2192	0	85320
202302	655470	93749	205618	205593	1092034	749219	342815	41136	12575	2228	28561	2228	0	86728
202303	636611	86943	201019	201011	1048721	723554	325167	39021	11937	2114	27084	2114	0	82270
202304	662197	94539	207918	207903	1107104	756736	350368	42039	12853	2277	29186	2277	0	88632
Total							25042954	3005205	919270	171767	2085935	162781	450	6345408

BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,

Regional PF office, Nashik

In the matter of proceeding under section 7-A of the Employees Provident Fund & MP Act, 1952 against:

Name of the Establishment	: M/s. Sudal Industries Ltd., A-5, MIDC Industrial Area, Ambad, Nashik-422010.
PF Code No	: KD/NSK/22450
Diary No	: 222/2024
Period of Inquiry	: April-2016 to April 2023
Enforcement officer	: Shri Sunil T Shinde
Date of hearing	: 10-12-2024

This has reference to the establishments M/s. Sudal Industries Ltd submission dated 16-09-2024 deposition submitted in 7A proceedings; :

The deposition was submitted the PF and allied dues were shown was 62,81,465.00 (Rs. Sixty Two Lakh Eighty One Thousand Four Hundred Sixty Five Only) dues to the calculations error the dues shown less. The correct dues for the inquiry period Rs 6367644.00 (Rs. Sixty Three Lacks Sixty Seven Thousand Six Hundred Forty Four Only) The PDF format Monthly calculation 3 (Three) pages and employee wise details of 239 Pages was already forwarded to the employer on mail.

Point No 1: No coments.

Point No 2: The averments made by the establishment is false and baseless as establishment provided the documents at the time of visit of Enforcement officer. The deposition submitted on the basis of records produced by the establishment such as Balance sheets, Salary, wages registeres soft copies and hard copies, establishment clarification regarding excluded employees and Apprentice/Trainees. The dues statement in details employees wise was already forwarded to the establishment.

Point No 3: The averments made by the establishment is false and baseless as establishment. The dues calculated all the identified employees there Employee ID (token Nos) and Name as recorded in the statement which was provided by the establishment. All the Identified employees whose dues are calculated as per the EPF Act, 1952. The dues statements with name of the employees and applicable PF Salary, PF deducted of PF salary, outstanding PF dues statement was already forwarded to the employer.

Point No 4: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The dues was calculated during the period they was working in the establishment. The establishment has having the PF_Nos, UAN and Employees name.

Point No 5: The detail list of the employees monthwise was already forwarded to the establishment..

Point No 6: The detilas was already forwarded to the establishment.

Point No 7: as per Sr. No 6.

Point No 8: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The submission is proper as per the law and useful to the establishment.

Point No 9: The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The inquiry period is April 2016 to April 2023 , deposition submitted on the basis of records produce by the establishment is available in office record while submission of report by earlier Enforcement officer. The calculation was made on basic+DA+CCA+Education allowance of class of employees paid uniformly in percentage basis. The basic wages amount for PF deduction consider by the establishment only on Basic and Dearness amount(if applicable). Establishment had remitted the PF dues on only Basic + DA (Workmen) only.

Point No 10: The individual employees wise details are submitted.

Point No 11: on submission of the depositions all the facts was mentioned and detail outstanding dues calculation was forwarded to the employer,.

Point No 12: No Comments.

Point No 13: No Comments.

Point No 14: At the time of submission of deosition under Section 7-A of the Act all records which are collected from the establishment are submitted and in possion Compliance section of RO, Nashik .

Point No 15: : The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. As there is no complaints from the employees. The records is made available with the establishment and PF Department complaice section,

Point No 16: No Comments.

Point No 17: No Comments.

Point No 18: As per Point No 9, The allowances are paid by the employer to the employees during his working. These allowance are paid uniformly to all the employees and these are not reimbursement made by the employees. Therefore, the allowances are considered the part of Basic wages as provided u/s 2(b) of the EPF Act, 1952.

f
2

Point No 19: : The argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected. The required documents was provided by the employer in relation to the establishment no arbitralily documents are taken on records.

Point No 20: Already submitted on report dated 29/08/2024. The deposition was submitted carefully considering the facts the argument presented by the respondent/establishment is not tenable under the law and is liable to be rejected.

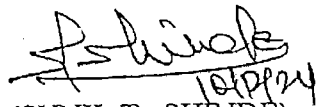
Point No 21: Report has been prepared on the basis of documents/records produced by the establishment. As per the provision U/s. 7Q and 14B of the Act the interest and penalties are applicable to the establishment for delayed in the remittances from the date of remittances of PF and allied dues accordengly.

Point No 22: Records was produced by the establishment and hence available with Establishment and Office Records.

All points have been addressed as per the employer's submission dated 11th July 2024, and no additional issues remain in the matter. The conveyance allowance/CCA and Education allowance were paid by the employer to the employees for only avoid the PF and allied dues liabilities under the EPF Act, 1952.

Therefore, Rs 63,67,644.00(Rs. Sixty Three Lacks Sixty Seven Thousand Six Hundred Forty Four Only) for the period from April 2016 to April 2023.

It is requested that the assessing officer conclude the inquiry for the period from April 2016 to April 2023 for assesing the amount of Rs 63,67,644.00(Rs. Sixty Three Lacks Sixty Seven Thousand Six Hundred Forty Four Only).


(SUNIL T. SHINDE)
Enforcement Officer,
Circle-C, R.O. Nashik.

Date: 10-12-2024

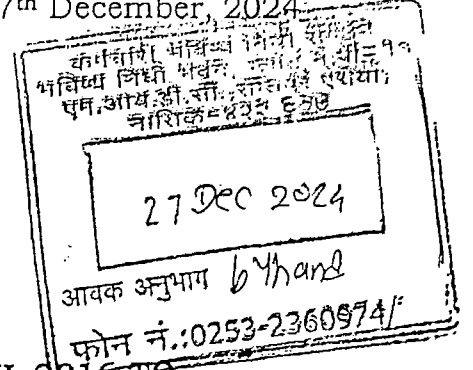
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Exh-A16

Date: 27th December, 2024



✓ To,
Assistant PF Commissioner
Regional Office, Nashik,
Plot No.P-11, Bhavishya Nidhi Bhavan,
MIDC Satpur, Nashik - 422007

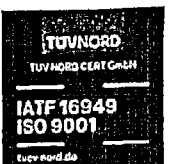
SUB:- (1) 7A ENQUIRY FOR THE PERIOD APRIL 2016 TO
APRIL 2023

(2) DIARY NO.222/2024

Respected sir,

- 1) The aforesaid enquiry was fixed on 24th December, 2024 when the Shri Manoj Gujar, Advocate, appeared for and on behalf of Establishment and requested for 2 weeks' time. The Establishment had filed Application dated 16th September, 2024 thereby requesting the Hon'ble Authority to direct the Enforcement Officer to make available certain details and documents in support of his statement / report filed in this Enquiry. It is undisputed fact the said documents, details as requested was made available only on 09-10-2024 and counter reply to the Application was filed on 10-12-2024. The Enforcement Officer almost taken months to supply the documents, as requested and filed counter reply to the Application. At that time there was no urgency pointed out from

Manufactured by Sudal Industries & Components, Non-Ideal Authority. The proceeding
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• Central : 9223192842 • Pune : 9223192800 • Vadodara : 9223192804 • Delhi : 9313623303 • South : 9223192825
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was adjourned at the request of Enforcement Officer in the month of October, 2024 and November, 2024 and Roznama Order shall reveal the said fact. However, when Establishment requested for 2 weeks' time, this Hon'ble Authority was pleased to adjourn the proceeding by 2 working days only. This clearly demonstrates that "*reasonable opportunity*" for defending in the 7A Enquiry would not be extended to the Establishment.

- 2) We have attended the personal hearing fixed before your goodself through our representative / authorized person from time to time and filed our reply dated 16-09-2024 before this Hon'ble Authority and pointed out that the proceeding is untenable in law or on facts. It is also stated that the accounts for the enquiry period are concluded at the office of EPFO and most of the employees have left their employment from the Company. No deficiency in filing returns of deficiency in paying contributions was pointed out after filing the returns by our establishment qua its employees. Interest on the balances standing to the credit of respective members was also granted.
- 3) We draw attention of the Hon'ble Authority that the RPFC (Central), New Delhi has issued guidelines for initiation of Enquiries under section 7A on and after order passed by

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Hon'ble Supreme Court in the case of Vivekanand Vidyamandir decided on 28th February, 2019. The present 7A Enquiry is against the said guidelines issued by RPFC (Central), New Delhi. The Establishment is relying upon the said guidelines in support of its contentions. It is also explained that various allowances paid to employees according to their skill, education qualification and designation, nature of work and their performance and also by way of reimbursement. There is no uniformity in payment of allowances nor is it paid across the board.

- 4) As the 7A enquiry is in progress over a period of last 1 year, Enforcement Officer filed his statement and report before this Hon'ble Authority in support of contentions of the PF Department. We desire to **cross-examined** the Enforcement Officer in respect of his statement and report to bring the factual details to the notice of this Hon'ble Authority, as per law. This Hon'ble Authority has power u/s. 7A(2) to enforce attendance of any person or examine him on oath. The Enforcement Officer has filed his statement / report and rejoinder to Application dated 16th September, 2024. Hence Enforcement Officer is required to be cross-examined to bring

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truth before this Hon'ble Authority. It is therefore just, proper and legal that direction to remain present in the enquiry to the Enforcement Officer be issued and permit the establishment to cross-examined the said EO in the interest of justice, fair play and equity.

- 5) It is submitted that it is legal right vested with establishment in a quasa judicial proceedings to cross-examine the Enforcement Officer who have filed statement / report in this enquiry in the interest of justice, fair play and equity.
- 6) We record that the statement / report dated 24-05-2024 considers several documents. The statement / report of Enforcement Officer is silent as to how he has calculated the purported "Basic Wages" for the enquiry period. The definition of "Basic Wages" has not been amended till date. Therefore, recalculation stated by the Enforcement Officer is contrary to EPF Act.
- 7) We desire to cross-examine Enforcement Officer on the statement / report dated 24-05-2024. It is humbly prayed that the Enforcement Officer be called upon to remain present and make himself available for cross-examination in the interest of



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- 8) In 7A proceedings this Hon'ble Authority is vested with the powers of a Civil Court for recording evidence. The Hon'ble High Court Bombay in the case of *Sarah Exim Pvt. Ltd. Vs. The Assistant Provident Fund Commissioner in Writ Petition (ST) No.97150 of 2020 dated 13th January 2021* held that in para 4 as under :

"4. In my opinion, it cannot be said the proceedings are unduly delayed that even an opportunity of cross-examination cannot be given to the Petitioner. The report dated 17th march 2020 to serve on the Petition only on 28th October 2020. In this circumstance, the interest of justice with a view to give one opportunity to the Respondent to cross-examine to Enforcement Officer, the Petition deserves to be allowed...."

- 9) It would be just proper and legal to permit the establishment to cross-examine the said Enforcement Officer who has submitted the statement / report dated 24-05-2024 before this Hon'ble Authority in the 7A Enquiry.

We anticipate your co-operation in above respect.

Thanking you,



FOR SUDAL INDUSTRIES

(AUTHORISED SIGNATORY)

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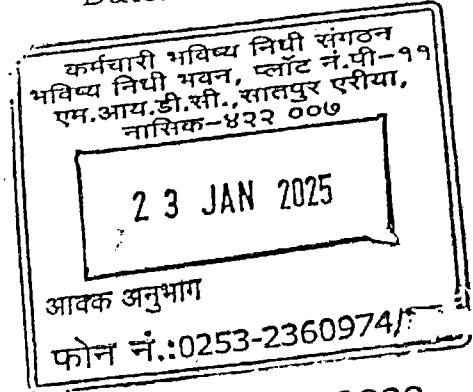
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Exh - R.17

Date: 23rd January, 2025

To,

The Assistant P.F. Commissioner,
Authority under EPF & MP Act
Employees' Provident Fund Organization
Nashik - 422 007.



SUB:- (1) 7A ENQUIRY FOR THE PERIOD April, 2016 to April, 2023
(2) DIARY NO. 222/2024

Respected sir,

We are filing following documents in the aforesaid 7A proceedings.
These documents are relevant in the above inquiry and shown to the
EO during his cross examine.

- | | | | | | No. |
|----|--|----|--------|---------|-----|
| 1) | Copy | of | notice | bearing | |
| | KD/NSK/0022450/000/ENF501/Damages/132 dated 18/05/2023 | | | | |
| | for the period 01/04/2015 to 30/04/2023. | | | | |
| 2) | Copy of order dated 02/06/2023 determining damages & interest of Rs. | | | | |
| | 21,775/- | | | | |
| 3) | Challan showing payment of Rs. 21,775/- along with acknowledge copy | | | | |
| | of the letter. | | | | |
| 4) | Copies of settlement exhibited with permanent workers valid for the | | | | |

period 01/04/2019 to 31/03/2023 dated 27/01/2021

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- 5) Copy of 28/08/2019 and 14/02/2020 circular issued by addition central PF Commissioner New Delhi.

The aforesaid documents kindly taken on record and marked as Exhibit.

Thanking you,



FOR SUDAL INDUSTRIES LTD.


(AUTHORISED SIGNATORY)

Cross examination of Shri. Sunil T. Shinde, EO in the diary No. 222/2024 by Shri. Manoj Gujar, Adv of M/s. Sudal Industries Limited, Plot No. A-5 MIDC, Ambad, Nashik-422010 PF Code No. KD/NSK/22450 under section 7-A of the EPF & MP Act, 1952 for the inquiry period 04/2016 to 04/2023.

Que 1. Is it correct that your office has issued show cause notice towards damages and interest for the period 02/2016 to 12/2022 on 18/05/2023 ?

Ans: Not Known

Que 2. Now I have shown notice bearing noKD/NSK/0022450/000/ENF501/DAMAGES/132 dated 18.05.2023 for the period 01/04/2015 to 30/04/2023 ?

Ans: Yes I Identify

Que 3. Before sending this notice did you check entire records for the said period?

Ans: Not pertains to me

Que 4. Your office determines damages and interest after determining contributions under 7A?

Ans: No relation with 7A. Damages notice issued on the basis of belated remittance of contribution and charges made by the establishment for the said period.

Que 5. Your department has vouched the contribution and remittance for the aforesaid period and only thereafter damages and interest were levied upon the establishment? What you have to say.

Ans: Contribution and admin charges remitted after due date. The notice for that period issued regarding damages and interest by department.

Que 6. Before this notice dated 18.05.2023 no show cause notice or summons for 7A was issued to the establishment? is it correct.

Ans: Yes

Que 7. Order dated 02.06.2023 was issued to the establishment determining damages and liability for the aforesaid period? Is it correct.

Ans: Yes

Que 8. Letter dated 25.05.2023 showing compliance of speaking order of damages and interest and release of payment Rs 21,775/- did the department receive the same?

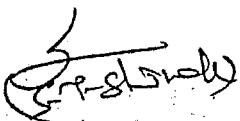
Ans: Yes

Que 9. Up to NCLT issue your department did not issue any letter or communication intimating establishment that there is non-compliance of both contribution to the EPFO? is it correct.

Ans: Yes

Que 10. Since when are you looking after compliance of this establishment as EO ?

Ans: Since 08/2023



Que 11. Who was looking after prior to you the compliance of this establishment?

Ans: Shri Nandkumar Bakare, Retired EO. I cannot tell since when he was looking after compliance of this establishment.

Que 12. As an EO who has visited the establishment during the period 04/2016 to 04/2023?

Ans: I cannot tell at present.

Que 13. Can you please take inspection of your departmental file until any EO or earlier inspector visited the establishment during aforesaid period and file his visit remarks or report before this Hon'ble Authority?

Ans: No

Que 14. Are you aware that employees in this company are paid wages and salary as per settlement executed with them periodically since last more than 20 years?

Ans: I am not aware

Que 15. The establishment is complying EPF scheme and EPS scheme by contributing amount payable as Basic wages and DA to the EPFO since last 20 years?

Ans: I am not aware

Que 16. Since 2012-13 filing of returns by establishment on online basis has become mandatory it is correct?

Ans: Yes

Que 17. Since 2014 UAN number is made mandatory to each member under EPFO. Is it correct?

Ans: Yes

Que 18. Can you go through the ECR made by the establishment and confirm to this Hon'ble authority next date as to the establishment has made compliance on basic wages and DA from 2013 onwards?

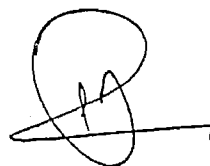
Ans: I have checked the compliance from 04/2016 onwards and in that Basic and DA considered for the contribution.

Que 19. There is no variation or amendment carried out under EPF & MP Act for definition of Basic Wages since 03/2019 onwards. Do you Agree?

Ans: No Changes in definition

Que 20. Due to judgement of Vivekanand Vidyamandir EPF & MP Act has not been amended?

Ans: No changes in definition



Cross examination of Shri. Sunil T. Shinde, EO in the diary No. 222/2024 by Shri. Manoj Gujar, Adv of M/s. Sudal Industries Limited, Plot No. A-5 MIDC, Ambad, Nashik-422010 PF Code No. KD/NSK/22450 under section 7-A of the EPF & MP Act, 1952 for the inquiry period 04/2016 to 04/2023.

Que 21. Report dated 24.05.2024 shown to EO and please confirm as to whether you have not seen registers, documents, wage statement of the company prior to submitting this report of the inquiry period?

Ans: The photocopies of records such as Balance sheet, Salary statements for the inquiry period was submitted by the establishment which is available in office. On the basis of records, report/deposition dated 24.05.2024 submitted.

Que 22. From where the amounts shown at Page no 4 and 5 in Tabular format calculating dues and remittance of your report dated 24.05.2024 are derived?

Ans: The dues are calculated from copy of Salary/wage statement and soft copy of Salary /wages statement and remittances are taken from the establishment Ledger on the basis of online remittances made by the establishment available in EPFO system.

Que 23. You have not mentioned in your report that you have derived remittances from Online Process available with EPFO in your report dated 24.05.2024?

Ans: Yes. It is not mentioned in the report

Que 24. Attention of EO is drawn to the case law mentioned in his report dated 24.05.2024 in the case of Vivekanand Vidya Mandir decided by the Hon'ble Supreme Court on 28.02.2019, is it correct in that judgement the dues for the past period to be assessed of the establishment's including the establishment involved in this direction is not given to that effect?

Ans: The judgement of Vivekanand Vidya Mandir dated 28.02.2019 Passed by the Hon'ble Supreme Court which was earlier decided by the Hon'ble High Court in the year 2011.

Que 25. Two circulars dated 28.08.2019 and 14.02.2020 issued by New Delhi filed on records are shown to EO. Kindly confirm that these circulars are binding on you and your department.

Ans: Yes

Que 26. By circular dated 28.08.2019 issued by Add CPFC – HQRs (Compliance) have called upon to withdrawn notices when there is no Prima Facie evidence of Bifurcation of wages with intention to avoid EPF liability and stopped action of roving enquiries/stopped investigation.

Ans: I cannot say at this stage. I follow the procedure as per Circular.



Que 27. Attention is drawn to circular dated 14.02.2020 issued by Add CPFC (Compliance) particularly Para 2, 3 and 4 of the said circulars, the present inquiry is contrary to the said guidelines. What you have to say?

Ans: The intimation received from IBBI and inspection assigned through SSP for verification of the records of the establishment to then EO Shri N V Bakare. Accordingly, the then EO Shri N V Bakare submitted his report dated 26.06.2023 and the establishment has submitted their letter dated 14.07.2023 whereby they have requested to initiate 7A inquiry.

Que 28. This establishment is no more in NCLT and functioning through its Board of Directors. Is it correct?

Ans: As on date it is not in NCLT. The intimation received from IBBI and inspection assigned through SSP for verification of the records of the establishment to then EO Shri N V Bakare. Accordingly, the then EO Shri N V Bakare submitted his report dated 26.06.2023 and the establishment has submitted their letter dated 14.07.2023 whereby they have requested to initiate 7A inquiry.

Que 29. As the establishment is not in NCLT in the year 2024, the claim made by the department before IRP is not proper after stopping of NCLT Proceeding?

Ans: This question is irrelevant to present proceeding.

Que 30. Table shown on Page 7 how would you have derived at?

Ans: There is some corrections in the report. The corrected portion is recorded at Page 7.

Que 31. Is it correct that after variation of claim figures of dues allegedly payable from the establishment no separate Show Cause Notice after variation of dues is issued?

Ans: Not pertains to me

Que 32. This report dated 24.05.2024 is not final if something comes further for the inquiry period I can revised this report?

Ans: On the basis of records, the report is final but if any additional evidence/complaint is received in future the case will reopen under section 7C of the EPF & MP Act, 1952.

Que 33. During the inquiry period 04/2016 to 04/2023 approximately 200 to 230 cover employees have resigned, retired, left the employment and settle their PF account in your office. Are you aware?

Ans: The issue of the settlement of claims of resigned, retired, left employees not pertains to this inquiry.

Que 34. Similarly, there are employees drawing salary more than Rs 15000/- per month. Are you aware?

Ans: The dues of employees who were drawing salary more than 15000/- are not considered in the report as per Para 2 (f) of EPF Scheme.

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Que 35. In your deposition/report you have not identified the resigned, retired, left employees properly?

Ans: In my report, all eligible employees are identified on the basis of Salary/wages statement provided by the establishment.

Que 36. Are you aware that the employees employed in the establishment are paid wages and allowances to the employees as per the memorandum of settlement executed with CITU Nashik Workers Union?

Ans: This question is irrelevant to present proceeding.

Que 37. You have taken into account Conveyance and Education Allowance while calculating dues of the establishment. Is it correct?

Ans: Yes. up to the ceiling limit of Rs 15000/-.

Que 38. Is it correct if both allowances + Basic and DA is taken into account, these employees would be excluded employees as per the EPF Scheme?

Ans: As per the Para 34 and 2 (f) of EPF Scheme if they fulfil the condition then they will be excluded employees.

Que 39. I put it to you that conveyance allowance is paid to the employees for commuting to the workplace by way of reimbursement as their expenses as per the demand of the union functioning in the company?

Ans: The conveyance allowance paid to the employees uniformly and there is no reimbursement.

Que 40. I put it to you that education allowance is paid to the employees to facilitate their children to avail the facility of education as per the demand of the union functioning in the company?

Ans: The education allowance paid to the employees uniformly.

Que 41. Is it correct that the definition of Basic Wages under section 2 (b), conveyance and education allowance doesn't fall?

Ans: Basic wages includes both the allowances

Que 42. Is it correct that the department never informed in writing prior to conducting of 7A inquiry to the establishment that the conveyance and education allowance is a part of Basic wage?

Ans: In ECR, allowances i.e. Education Allowance and Conveyance allowance not shown. Therefore, there is no need to inform.

Que 43. I put it to you that the basis of your report dated 24.05.2024 is judgement of Vivekanand Vidya Mandir as mentioned at Page No 6 of your report?

Ans: Yes

Que 44. I put it to you that your report/deposition dated 24.05.2024 is improper and incorrect?

Ans: Report/deposition is proper and correct.

Signature



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Date: 27th January, 2025

कार्यालयी भविष्य निधी संगठन
भविष्य निधी भवन, प्लॉट नं. सी-११
एम.आय.डी.सी., सातपुर परीया,
नाशिक-४२२ ००७

By hand/
28/01/2025

आवक अनुभाग

फोन नं.: 0253-2360974/-

To,
Assistant PF Commissioner
Regional Office, Nashik,
Plot No.P-11, Bhavishya Nidhi Bhavan,
MIDC Satpur, Nashik - 422007

SUB:- (1) 7A ENQUIRY FOR THE PERIOD APRIL 2016 TO
APRIL 2023

(2) DIARY NO.222/2024

Respected sir,

- 1) We are filing list of employee's along with this letter as one of the document. The said list of employees shows UAN number of respective member and his date of leaving employment of Company. Thereafter, the said employee has settled his individual PF Account with EPFO. The said list may kindly be taken on record for identification purpose. This list has been tallied with documents on record field by Enforcement Officer who has proposed contributions as "EPPF", "ER PF" and "Pension" in the said Chart.
- 2) We are also filing list of the person in a summary form whose names in appearing in majority of the pages of the said Chart filed by EO. As all these employees has left employment, their KYC norms and UAN Number no more valid qua the Establishment after their leaving the job. The contributions claim qua these employees over 110 employees is totally improper and unwarranted.

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CIN L21541MH1979PLC021541

- 3) Our Shri Manoj Gujar, Advocate before your good self on 23-01-2025 and conducted cross-examination partly. The cross could not be completed as the Office timing was over and it was agreed before your good self that our Advocate shall furnish balance questions to put to Enforcement Officer in writing. The said balance questions are attached herewith to be ask to the Enforcement Officer as further cross-examination on behalf of Establishment.
- 4) We humbly request to this Hon'ble Authority to kindly record the said questions in the 7A Enquiry and please see that answers of the Enforcement Officer are recorded below each questions.
- 5) After securing answers from the Enforcement Officers and recorded as part and parcel of this enquiry, the Company records that the cross-examination of EO is completed in this enquiry.
- 6) In the interest of natural justice, fair play and equity the above request kindly be considered by this Hon'ble Authority.

Thanking you,



FOR SUDAL INDUSTRIES


(MANGESH JAGTAP)
HR - MANAGER

Encls. as stated above

cc : TO EO, EFO, Suprv.

G:\My Drive\SUDAL-INDUSTRIES-LTD\COVERING LETTER FOR QUESTIONS - 25-01-2025.docx

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Corporate Office : 26A Nariman Bhavan, Opp. NCPA, 227 Nariman Point, Mumbai 400 021, (INDIA)
• Phone: 91-22-22023845, 61577100, 61577177 • E-mail : mumbai@sudal.co.in • www.sudal.co.in



BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,
Regional PF office, Nashik
In the matter of proceeding under section 7-A of the Employees Provident
Fund & MP Act, 1952 against:

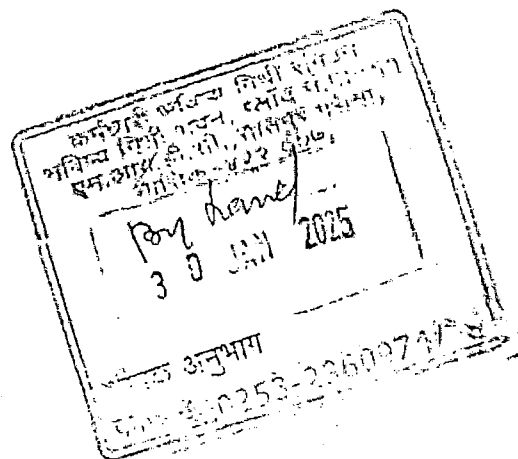
Name of the Establishment	: M/s. Sudal Industries Ltd., A-5,, MIDC Industrial Area, Ambad, Nashik-422010.
PF Code No	: KD/NSK/22450
Diary No	: 222/2024
Period of Inquiry	: April-2016 to April 2023
Enforcement officer	: Shri Sunil T Shinde

This is with reference to the submission made by M/s. Sudal Industries Ltd. dated 27th January 2025, received on 28th January 2025, as per the letter from the establishment's advocate, which includes 12 questions regarding the completion of the cross-examination.

As per the direction given during the hearing on 28th January 2025 the answers to the 12 (twelve) questions are enclosed herewith

(Signature)
 (SUNIL T. SHINDE) 29/1
 Enforcement Officer,
 Circle-C, R.O. Nashik.

Date: 29-01-2025



Questions to be ask to Mr. S.T. Shinde, Enforcement Officer as further cross-examination.

1. Having assessed damages and interest vide Show Cause Notice dated 18-05-2023 for the period 01-04-2015 to 30-04-2023 at earlier stage, the question of assessing dues u/s.7A for the same period i.e. April, 2016 to April, 2023, once again, is not legally sustainable action under EPF & MP Act, what you have to say?

Ans.: It is to emphasize that the provisions of the EPF & MP, 1952 distinctly govern inquiries pertaining to damages and interest under Sections 14B & 7Q, and inquiries for determining moneys due from employers under Section 7A.

The assessment of damages and interest under Sections 14B and 7Q pertains to instances of delayed remittances of contributions and is penal in nature. On the other hand, an inquiry under Section 7A is a quasi-judicial proceeding aimed at determining the quantum of provident fund, Administration charges, pension fund, and insurance fund contributions payable by an employer in respect of all employees as mentioned u/s 2(f) of the Act. Section 2(f) reads as-

(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of 6[an establishment], and who gets his wages directly or indirectly from the employer, 7[and includes any person—

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]

The present Section 7A inquiry is not a reassessment but a statutory determination of dues, which is legally sustainable under the Act. The existence of an earlier Show Cause Notice does not preclude the jurisdiction of the EPFO to conduct an inquiry under Section 7A.

2. Are you aware that earlier E.O. Mr. N. V. Bakare has submitted his Report dated 26-06-2023?

Ans.: Yes, Mr N V Bakare, EO has submitted his report dated 26/06/2023 against the allotted Shram Suvidha Inspection.

3. It is correct that Mr. N. V. Bakare, E.O. did not recorded the number of persons/employees concern in the employment in respect of present 7A enquiry in his report dated 26-06-2023?

Ans.: Incorrect. Mr. N V Bakare, Enforcement Officer, submitted his report based on the salary/wages statements provided by the employer for verification purposes. The report submitted by Mr. N. V. Bakare was based on employer-provided salary and wage records, which inherently contain the details of employees.

EPFO relies on documentary evidence, such as payroll records, bank statements, Audited Balance Sheets, attendance registers, and other official documents, to determine the number of employees and dues. The absence of an explicitly enumerated list does not invalidate the report's findings.

4. It is correct that Mr. N. V. Bakare, E.O. did not identify beneficiary employees in his report dated 26-06-2023?

Ans.: The assertion is incorrect. The report was prepared based on salary/wage statements provided by the employer, which inherently contain the details of covered employees. The process of identification is integral to wage verification, and no separate list was necessary. The process of identifying covered employees is primarily reliant on documentary evidence, such as payroll records, bank statements, and attendance registers, which were examined during the course of the inspection.

5. Do you agree your Report / Deposition Statement dated 24-05-2024 and Mr. N. V. Bakare's Report / Statement dated 26-06-2023 are identical word to word?

Ans.: No, the reports are separate and distinct in their nature.

Mr. Bakare's report was based on the Shram Suvidha Inspection and My report is based on an independent statutory inquiry under Section 7A.

While there may be some similarities in the subject matter—since both reports pertain to the same establishment—there are fundamental differences in scope, methodology, and legal standing.

6. Please see both reports dated 26-06-2023 and 24-05-2024 and confirm the above fact?

Ans.: While the underlying subject matter, i.e., assessment of statutory dues, remains the same, there are differences in the calculations, methodology, and basis of assessment due to computational aspects and totalization discrepancies.

7. Why did you submit your Report / Deposition Statement dated 24-05-2024 despite report dated 26-06-2023 of earlier Enforcement Officer is available on record?

Ans.: The report submitted by Mr. Bakare was pursuant to a Shram Suvidha Inspection, whereas my deposition is under Section 7A, which is a quasi-judicial proceeding.

The submission of a deposition under Section 7A is a statutory requirement and is independent of any prior inspection reports. The inquiry under Section 7A ensures that employer liabilities are judicially determined, making it legally necessary.

8. See chart submitted by you in respect of employees employed in the Company and covered under EPF Scheme, 273 pages (originally un-numbered) which was submitted after your report dated 24-05-2024, please confirm which employees from the said Chart has been resigned /retired/left employment and settled their individual PF Accounts?

Ans. The salary/wage statements provided by the employer do not contain specific notations indicating whether an employee has resigned, retired, or otherwise left employment.

Under the EPF Scheme, 1952, it is the responsibility of the employer to maintain accurate employee records, including exit details, and to ensure timely processing of settlement claims. The determination of employees who have exited employment requires a separate verification process, including scrutiny of Form 10, settlement records, and employer confirmations.

The EPFO relies on employer-provided data, and the onus lies on the employer to furnish accurate employee records.

9. Kindly see the list of employees, now filed today and confirm these employees have left / resigned / retire on different dates still they are forming part of your assessment of dues why?

Ans.: The assessment of dues pertains to the period from April 2016 to March 2023. During this period, the employees in question were engaged and employed by the establishment

As provided u/p 29 of the EPF scheme the contributions payable by the employer under the scheme on Basic wages, dearness allowance (including the cash value of food concession) and retaining allowance payable to each employee. The employer shall pay the equal to the contribution payable by the employer in respect of such employees.

Therefore, the assessment of dues for such employees remains legally valid.

10. I put it to you that the dues as assessed in your report to the tune of Rs.62,68,676/- is improper?

Ans.: The quantification of PF dues has been conducted strictly in accordance with the provisions of the EPF & MP Act, 1952, and is based on employer-provided records. The amount assessed represents the statutory dues payable by the employer and is legally enforceable.

11. I put to you that the alleged claim of Rs.62,68,676/- is bad-in-law?

Ans.: Disagree with this question, the assessment is legally valid and has been carried out in compliance with the provisions of the Act. The employer is liable for the assessed dues, and any objections must be raised through the appellate mechanism provided under the Act.

12. I put it to you that the present 7A Enquiry is improper and unwarranted ?

Ans.: Disagree with this question, The inquiry under Section 7A is legally justified and has been conducted in accordance with statutory provisions. The employer was given ample opportunity to present records and evidence. The inquiry has followed due process, ensuring adherence to the principles of natural justice. Any challenge to the inquiry must be pursued through the appropriate legal channels, as prescribed under the Act.

S. T. Shinde
29/11
(S. T. Shinde)
30

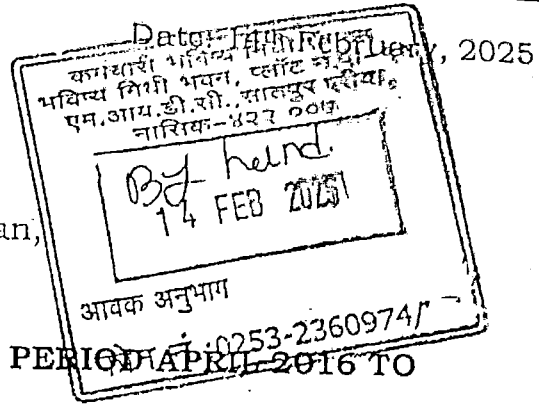
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SUDAL INDUSTRIES LIMITED

Certified for ISO 9001:2015, IATF 16949:2016, ISO 14001:2015 & ISO 45001:2018
CIN L21541MH1979PLC021541

Exh - A21

To,
Assistant PF Commissioner
Regional Office, Nashik,
Plot No.P-11, Bhavishya Nidhi Bhavan,
MIDC Satpur, Nashik - 422007



Ref.:- (1) 7A ENQUIRY FOR THE PERIOD APRIL 2016 TO APRIL 2023

(2) DIARY NO.222/2024

- Sub.:-(1) Filing of Affidavit in lieu of Examination in Chief of the Establishment through its HR-Manager Shri Magesh Jagtap, Authorized Signatory
- (2) Written Notes of Arguments on behalf of Establishment and list of judgments in support of its Contentions

Respected sir,

- 1) We are thankful for grating opportunity of cross-examination and recording the same in Question Answer form in this enquiry. The answers recorded of Shri Shinde, Enforcement Officer in the 7A Enquiry are relevant and support the submissions made by the Establishment.
- 2) That the Establishment has filed its submissions vide letters dated 14th July, 2023, 11th July, 2024 and 16th September 2024 as well as pointed out the judgments rendered by Hon'ble Supreme Court as well as High Courts situated in India. We reiterate and confirm the contents of said letters / submissions

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CIN L21541MH1979PLC021541

/ averments by this communication. We deny the contrary submissions made by the EO in his report as well as by filing submissions in this enquiry.

3) We are filing Affidavit in lieu of Examination in Chief of Shri Mangesh Jagtap, HR Manager in the aforesaid proceedings alongwith this Letter. Kindly accept the same on records and exhibit it in this 7A Enquiry.

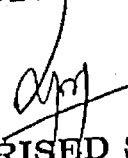
4) We are also filing our Written Notes of Arguments alongwith list of judgments in support of our contentions made before your honour. The said submission and legal judgments are tendered in defense by the Establishment.

5) We humbly pray that the aforesaid letters, Affidavit and Written Notes of Arguments may kindly considered while deciding the controversy involved in the above enquiry.

Thanking you,



FOR SUDAL INDUSTRIES


(AUTHORISED SIGNATORY)

Encls. as above stated

WRITTEN NOTES OF ARGUMENTS

- 1) That the Establishment is covered Establishment and comply the EPF Scheme since 1984 onwards that is almost last 40 years. Though there are financial difficulties faced by the Company, business activities dwindled, recession occurred and market conditions change over a period of time, etc. Company made all efforts to pay statutory dues and contributions to the Authorities including PF Contributions to EPFO Funds.
- 2) That the Establishment has filed its submissions vide letters dated 14th July, 2023, 11th July, 2024 and 16th September 2024 to RPFC, Nashik Regional Office during pendency of 7A Enquiry and clarified all factual details. We reiterate and confirm the contents of said letters / submissions / averments made in the said correspondence by this communication to avoid repetition and for sake of brevity. The same may kindly be permitted in the interest of justice, fair play and equity.
- 3) It is submitted that Show Cause Notice dated 28th February, 2024 came to be issued to the Establishment which was duly replied. The matter ought to have been stop there and there only. However, subsequently summons to appear in person dated 19th March, 2024 and documents were called upon to produce by the very summons. In the said Show Cause Notice and Summons there is no mention of 2 Circulars issued by Additional PF Commissioner, Central, New Delhi is reflected. Thus the summons dated 19th March, 2024 was issued for extraneous reasons and nothing else. By producing the documents as demanded establishment has complied its compliance. Till then there was nothing on record with the RPFC Nashik Office against the Establishment much less monetary liability which can be determine against it.

4) It is contentions of the Company Management that all contributions due and payable from the Company has been paid over to EPFO Funds regularly and punctually including for the enquiry period. It is pertinent to note that there is no communication, letter or memo addressed from RPFC, Nashik Regional Office intimating the Company that contributions remitted for enquiry period is improper or deficit amounts were remitted by Company Management or establishment not complied EFP Scheme fully qua its employees. Kindly see all ECR filed by the Company Management and letters available in the file as well as on PF web-portal. In view of the above undisputed circumstances, question of proceedings further and making any decision in this 7A Enquiry is unwarranted and uncalled. We point out that EO in his cross-examination recorded on 07th January, 2025 answer the Question No.6 & 9 in affirmative and admitted that prior to 18th May, 2023 no Show Cause Notice or Summon was issued to the Establishment. The EO has also confirmed in his cross-examination that he has not gone to the file maintain in the Office for the Establishment nor seen the visit remarks / report of the earlier EO. Thus, the EO was not aware of the factual details pertaining to Establishment and therefore his report, as filed in this enquiry cannot be believed as true and correct.

5) The Company record that it has filed letter dated 27th January, 2025 with list of employees in rebuttal to the Computation Sheet submitted by the EO in this Enquiry. In the said list, it was pointed out that 110 employees have left, resigned and/or retired from the services of the Company whose names are appearing in Computation Sheet filed by EO. These 110 employees ceased to be an employee of the Company and therefore the Company Management cannot be pay contribution on their behalf nor employer's contributions would be

demand / claim. The tabular chart submitted in this respect by the EO in his report dated 24th May, 2024 is improper and said claim thereof ought to be deleted forthwith.

- 6) It is further submitted that for the period 01st April, 2015 to 30th April, 2023 RPFC, Nashik Office has already issued Composite Notice u/s. 14B & 7Q to the Establishment. The Authority had quantified amount of damages and interest against the Establishment. The said assessment made under interest and damages of Rs.21,775/- was paid to EPFO and order was passed by the Ld. Authority. The Enforcement Officer was cross-examined on this aspect and documents were pointed out such as said Notice dated 18th May, 2023, Challan showing payment of Rs.21,775/- and Order dated 02nd June, 2023. The EO has admitted the said compliance in his cross-examination. Question No.2, 7 & 8 shows the answer in affirmative and EO has duly identified those documents. The present 7A Enquiry is pertaining to for the very said period i.e. April, 2016 to April, 2023 amounts to re-opening of the case without verifying the above details and reassessment without any basis. The present 7A enquiry is also bad in law as the contributions for the very period being found correct and proper while assessing damages and interest and now contrary report is filed that there are money dues pending. Such action is unsustainable in the eyes of law and causes prejudice and hardship to the Establishment as well as required to face enquiry unnecessarily. It is pertinent to note the RPFC, Nashik Regional Office has held by passing Order dated 02nd June, 2023 that contributions were paid properly but records shows it was paid beyond the schedule date in the scheme. On this count also the present 7A Enquiry is untenable in law or on facts.

- 7) It is submitted that after decision of Vivekanand Vidyamandir case by the Hon'ble Supreme Court on 28th February, 2019

several Show Cause Notices on untenable counts were issued to the employers by various Regional Offices. The said notices were brought to the notice of Central Provident Fund Commissioner, New Delhi and representation was made by the Employers Association. Based on the said representation 2 Circulars came to be issued from Additional PF Commissioner dated 28-08-2019 and 14-02-2020 and guidelines were issued to all Regional PF Commissioner. As per the said guidelines prescribed in the circulars, the present Enquiry is unwarranted and vitiated and amounts to making fishing and rowing enquiry. The said circulars are filed on records and brought to the notice of EO on 23rd January, 2025. As per guidelines no prior permission sought from New Delhi Office for starting 7A Enquiry nor guidelines provided in the Circular abided the EO has admitted existence of 2 Circulars dated 28th August, 2019 and 14th February, 2020. However, he has stated that he cannot say at this stage. There is no mention of IBBI and Inspection assigned through SSP to any of the EO. Attention of the Hon'ble Authority is drawn to question No.25, 26 &, 27 on Page 3 & 4 of cross-examination. The said Circulars are having binding effect on this Hon'ble Authority being issued from Office of the Additional PF Commissioner Central, New Delhi and it is a clarification after the decision of Vivekanand Vidyamandir decided by Hon'ble Supreme Court. As the said Circulars not followed by the Ld. Authority or by EO, the present 7A Enquiry is nothing but "*fishing and rowing enquiry*" and hence unsustainable in factual matrix. There are catina of judgements holding the field that Circulars issued by Head Office is binding on Sub-ordinate Offices. The both circulars were issued by Additional Central PF Commissioner and therefore it has a binding effect upon RPFC Nashik. On this count also the enquiry ought to be closed. The said 2 Circulars are attached herewith for ready reference.

- 8) It is submitted that there is no default committed by the Establishment while paying contributions to EPFO and also other Social Beneficial Welfare Authorities. The Establishment had paid all contributions on the amount on which Provident Fund is payable and wages and allowances were payable as per the settlement executed with Union namely Nashik Workers Union. It is undisputed fact that basic wage and DA was taken into account for more than 30 years in the Establishment and that practice is followed meticulously. The RPFC Nashik Regional Office has accepted the said procedure throughout without any protest or grievance being raised for all these years. Suddenly by issuing summons 7A enquiry started for the period April, 2016 to April, 2023 and contributions demanded on the amount of allowances allegedly payable on the amount of allowances paid to the employees to meet their expenses by treating the same as Basic Wages. The allowances paid to the employees does not fall under the definition of "Basic Wages" as defined u/s. 2(b) of EPF Act. The said allowances were paid to the employees by way of reimbursement or by way of executing settlement u/s. 2(p) of the ID Act. There is no hidden agenda while paying the said amount nor the employees were kept in dark the settlement copy is filed on record and it is self-explanatory document. The bifurcation of the amount into Basic Wages, DA and other allowances was not with a view to escape the PF liability as sought to be made out by the EO in this Enquiry. The allowances were not paid universally to all the employees across the board and allowances were dependent upon the performance, experience and education qualification and it was paid on a grade basis. The conclusion drawn in report dated 24th May, 2024 by the EO is therefore baseless, unwarranted and cannot be made applicable in facts of this case. In the circumstances the Establishment denies the total liability as quantified by EO of Rs.62,68,676/- in his report.

- 9) In any event employer cannot be called upon to pay contribution of all employees and shown in Account No.1 column qua the employees. If the Ld. Authority has power than they can summon the said employees for recovering the said amount. In that event the said employees would be proper party. Hence quantification to the tune of Rs. 30,05,205/- shown in Account No.1 (**Page 10**) is totally improper. The said amount ought to be deleted forthwith. Secondly, about 110 employees are ceased to be an employee and they are not in control of the Company. Their KYC Norms cannot be filed in and there were about is not known. As such on behalf of such unknown person's identification is must. Without identification the amount cannot be assessed.
- 10) The attention of the Hon'ble Authority is drawn to the case of *Sandeep Dwellers Pvt. Ltd. vs Union of India* reported in 2007 (3) BOM CR 898, High Court Bombay and *Himachal Pradesh State Forest Corporation Vs. RPFC* reported in 2008 (3) SCC Pg. 247 wherein law is laid down on the point of *identification of beneficiaries is must for granting benefits under EPF Act.*
- 11) The said claim is to the tune of Rs.9,85,915/- qua the said 110 employees and employer contributions is Rs.9,85,915/-. These amounts ought to be deleted by considering these submissions.
- 12) It is submitted that the RPFC Regional Office Mumbai was a party in Civil Appeal No.353 of 2020 filed in Hon'ble Supreme Court and Writ Petition No.325 of 2017 filed Hon'ble High Court Bombay. In the presence of RPFC, Regional Office Mumbai in the case of *Pawan Hans Ltd. Vs. Aviation Karmachari Sanghatna* reported in *AIR 2020 SC Pg. 564* the Hon'ble Supreme Court, the laid down law in the aforesaid case inter-alia is :

- a. The period for which contribution can be assessed and recovered is 3 years i.e. from date of institution of the proceeding;
 - b. Employees Contributions for the period under Enquiry is required to be deposited by the employee concern. In other word payment of employees contributions cannot be foisted upon the employer;
 - c. No contribution can be recovered or is payable by an employee who has ceased to be in employment either on account of resignation, superannuation or retirement;
- 13) The Law expounded by the Hon'ble Supreme Court in Pawan Hans Ltd. case has been accepted and implemented by RPFC Regional Office Mumbai in all respect.
- 14) The RPFC being a statutory authority has to implement the law uniformly to all establishments required to maintain Provident Fund. There cannot be arbitrary implementation of the law laid down by the Supreme Court qua the Establishment involved in this matter. If contrary stand is now taken in this case / enquiry than it would amount to breach of Article 14 of the Constitution of India i.e. Equality before Law.
- 15) As pointed out during the cross-examination around 110 employees, list of employees was submitted alongwith letter dated 27th January, 2025 have ceased to been employment of the Company as on date of institution of proceedings. Hence the claim of Rs.9,85,915/- as contribution payable in respect of employees who has ceased to be employment will have to be deleted in toto. The purported claim, as submitted before Ld. Authority is improper and does not deserve any attention.

16) The law that no contribution is payable in respect of employees who have ceased to be an employment is the ratio of the judgments in the case of :

i) **Shoopoorji Nussewanji & Co. Vs RPFC reported in 1968 II LLJ Pg. 739 Bombay High Court Div. Bench**
held that "..... having regard to the purpose of the Scheme if the employees left the employment, the Scheme cannot be implemented....."

ii) **K. R. Subbaier Vs. RPFC**
I LLJ Pg 23 / 1963 AIR Mad. High Court Pg. 112

The Hon'ble High Court held that :

"..... The gist of this provisions is such as to make than operative only on and from the point of time when the authorities hold that a particular unit is within the ambit of the Act and make a consequential demand in terms of the Act and the Scheme. Any demand for back period appears to be not merely illogical and oppressive, but plainly inconsistence with the terms of the enactment which are manifestly prospective in their operation."

17) The EPF Act being an act of parliament, the decision rendered by any High Court in India is binding upon the EPFO and its Regional Offices situated in India.

18) The claim for employees contribution amounting to Rs.9,85,915/- in respect of 110 employees cannot be recovered from the employer in that view of the matter the said claim will have to be deleted in toto. RPFC, Nashik Regional Office may call upon the concerned employees to contribute as per ratio of Pawan Hans Ltd. case.

19) It has also been held in Civil Appeal No.9284 of 2013 between Assistant Provident Commissioner Vs. G4S Security Services Ltd. that once the EPF Act contents a specific provision defining the word Basic Wages u/s, 2(b), then there was no occasion for the PF Department to expect the Court the have travel to the Minimum Wages Act to give different connotation or expansive

definition. On that count the Order passed u/s. 7A by APFC was quashed and set aside. The said Case law was followed in the case of Durable Doors and Windows Vs. APFC decided on 21st October, 2020 in WP (C) No.8281 of 2020. All these case laws are applicable in the facts of this case as the report of EO is contrary to the various judgments. There is no independent proof to show that conveyance allowances and education allowance was paid to the employees to avoid PF liability. There are employees who were drawing salary of more than 15,000/- during enquiry period and they were covered under EPF Act and Scheme Framed thereunder. The Report of Mr. Bhekare, EO is also contrary to the above coated judgments and therefore both reports are perverse and unsustainable in the eyes of law.

- 20) Thus, there is no amount due from the Company Management which can be determine in this enquiry. The 7A Enquiry is initiated on unwarranted and baseless cause and hence such enquiry ought to be close down by filing report to that effect without any liability being saddle upon the Establishment.
- 21) The List of judgments relied upon in support of this above contentions is attached herewith as ANNEXURE - A.

It is prayed accordingly.

Place : Nashik

Date : 13-02-2025

FOR SUDAL INDUSTRIES LIMITED


(AUTHORISED SIGNATORY)

BEFORE THE ASSISTANT PROVIDENT FUND COMMISSIONER,

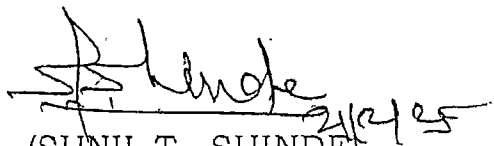
Regional PF office, Nashik

In the matter of proceeding under section 7-A of the Employees Provident Fund & MP
Act, 1952 against:

Name of the Establishment	: M/s. Sudal Industries Ltd., A-5, MIDC Industrial Area, Ambad, Nashik-422010.
PF Code No	: KD/NSK/22450
Diary No	: 222/2024
Period of Inquiry	: April-2016 to April 2023
Enforcement officer	: Shri Sunil T Shinde

The letter dated 14-02-2025 submitted by the employer in relation to the establishment for the inquiry period from April-2016 to April 2023 against the deposition submitted by the undersigned enforcement.

The details report is attached herewith for information and It is requested that the assessing officer conclude the inquiry for the period from April 2016 to April 2023 for assessing the amount of Rs.6345408/- (Rs. Sixty three lacks forty five thousand four hundred eight only).


(SUNIL T. SHINDE)
Enforcement Officer,
Circle-C, R.O.
Nashik.

Date: 21-02-2025.

Pointwise reply to the final submission dated: 14/02/2025 made by the establishment

1. It is the statutory duty of the Establishment to comply with the mandatory provisions of the EPF Act, irrespective of its financial condition. The plea of financial hardship is a blatant attempt to evade its statutory obligations. The EPF Act is a social welfare legislation, and no plea of financial incapacity can absolve the Establishment from its legal mandate. The Hon'ble Supreme Court in a catena of judgments has categorically held that financial difficulty is not a valid defence for non-compliance under the EPF Act. The Establishment's failure to discharge its statutory duty constitutes a gross violation of the Act, warranting strict action.
2. The submissions made by the Establishment through letters dated 14th July, 2023, 11th July, 2024, and 16th September, 2024, are self-serving and devoid of any legal merit. The Establishment was afforded sufficient opportunities to present its case, which were duly considered during the enquiry proceedings. The Establishment's attempt to use these submissions as a shield against its statutory liability is nothing but an afterthought, which deserves outright rejection.
3. The Establishment's contention that the issuance of summons dated 19th March, 2024, was for extraneous reasons is a baseless allegation, devoid of any factual or legal merit. The issuance of Show Cause Notice dated 28th February, 2024, and subsequent Summons dated 19th March, 2024, is strictly in exercise of the statutory powers conferred under Section 7A of the EPF Act. The EPFO is vested with the authority to summon documents and direct the personal appearance of representatives of the Establishment in the course of enquiry proceedings. The absence of any reference to internal administrative circulars in the Show Cause Notice or Summons does not vitiate the statutory proceedings initiated under Section 7A. The Establishment's attempt to discredit the statutory process by terming the summons as arbitrary or extraneous is nothing but a desperate ploy to derail the enquiry proceedings. Mere production of documents cannot be equated with discharge of statutory obligations, and the Establishment's claim of compliance is a deliberate misrepresentation of facts.
4. The Establishment's assertion that all contributions due and payable from the Establishment have been regularly and punctually paid is nothing but a bald, self-serving statement, devoid of any credible supporting evidence. The Establishment's attempt to rely on the absence of communication from the RPFC, Nashik Regional Office, as a defence is legally untenable. The statutory obligation to remit proper and full contributions lies solely with the Establishment, and the lack of prior intimation from the EPFO cannot absolve it of its default. The EPFO is under no statutory obligation to intimate every defaulting establishment before initiating enquiry proceedings. The onus lies entirely on the Establishment to demonstrate full compliance by producing documentary evidence such as ECRs, payment challans, and wage registers. The Establishment's reliance on cross-examination of the Enforcement Officer is wholly misconceived. The assertion that the EO did not inspect the file or visit remarks is irrelevant to the assessment of dues under Section 7A. The Establishment's attempt to discredit the EO's report is nothing but a desperate ploy to derail the enquiry proceedings and deserves outright rejection.
5. The Establishment's plea regarding cessation of 110 employees is a calculated and deceitful attempt to evade liability. The EPFO is fully justified in relying on the Enforcement Officer's findings, which are based on objective verification of records and field inspections. The tabular

chart submitted by the EO in his report dated 24th May, 2024, is based on thorough scrutiny of records and field verification, which cannot be discredited on the basis of mere self-serving statements. The claim for deletion of 110 employees is nothing but an afterthought and deserves to be rejected in toto. All of the 110 employees are identified employees and are having Universal Account Number (UAN). There is no provision in the EPF Act & Scheme to delete the dues of left employees.

6. The Establishment's contention that the present enquiry amounts to reopening the case is legally untenable, factually misconceived, and devoid of any merit. Proceedings under Sections 14B and 7Q pertain exclusively to delayed remittances, whereas the present enquiry under Section 7A is for the assessment of short payments. Both proceedings are entirely distinct, and there is no bar under the EPF Act on initiating a fresh enquiry under Section 7A for assessment of dues not determined earlier. The mere payment of damages and interest does not absolve the establishment from its liability to pay the correct contributions. The cross-examination of the EO does not support the establishment's plea, as the EO has merely identified documents without making any conclusive admission regarding the correctness of contributions. The establishment's argument is nothing but a deliberate attempt to mislead the Hon'ble Authority and deserves to be rejected outright.
7. The Establishment's reliance on the Circulars dated 28th August, 2019, and 14th February, 2020, is wholly misplaced. These circulars are merely clarificatory and cannot curtail the statutory powers of the RPFC under Section 7A of the EPF Act. The present enquiry is based on statutory mandate and cannot be termed as a fishing or roving enquiry under any circumstances.
8. The Establishment's contention that allowances paid to employees do not form part of basic wages under Section 2(b) of the EPF Act is wholly misconceived, misleading, and devoid of any legal or factual merit. The Establishment's bifurcation of wages into basic, DA, and allowances is a deliberate and fraudulent subterfuge to evade statutory liability. The Enforcement Officer's report dated 24th May, 2024, meticulously scrutinizes the Establishment's records and correctly concludes that the allowances paid by the Establishment form part of basic wages. The Establishment's plea that allowances were paid on a grade-wise basis is nothing but a ruse to circumvent statutory obligations. The quantification of dues by the Enforcement Officer is based on a sound legal premise and deserves to be upheld in toto.
9. The Establishment's contention that the EPFO should summon individual employees for recovery of contributions is wholly misconceived and contrary to the scheme of the EPF Act. The primary obligation to remit contributions rests squarely on the employer. The EPFO is under no statutory obligation to pursue individual employees for recovery of contributions. The quantification of Rs. 30,05,205/- in Account No. 1 is based on meticulous scrutiny of records and is fully justified in law. The Establishment's plea is nothing but a desperate attempt to evade statutory liability and deserves to be rejected outright.
10. All the employees whose Social Security benefits are being assessed under this inquiry are identified employees and registered with the EPFO. All employees in question have been duly registered with the EPFO, and their Universal Account Numbers (UANs) are valid. The identification and registration process are crucial to the correct implementation of the EPF Act, and the Establishment must ensure ongoing compliance with these requirements.

11. Merely sighting reason that the 110 employees have presently ceased to be an employee under the establishment, establishment can not deny to discharge its statutory duties. The 110 employees are identified employees and are entitled for the benefits which they have earned.

Further, for sake of more clearance, Para 29, Para 30 & Para 36 of the EPF Scheme is reproduced hereunder-

29. Contributions-

(1) The contributions payable by the employer under the Scheme shall be at the rate of [ten per cent] of the [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] payable to each employee to whom the Scheme applies:

Provided that the above rate of contribution shall be [twelve] per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding [ten per cent] or [twelve per cent], as the case may be, of his basic wages, dearness allowance and retaining allowance (if any) subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act;

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

36. Duties of employers

(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employees:

Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NIL' return.

12. The Establishment's reliance on the Pawan Hans judgment is misplaced and legally incorrect. The facts and circumstances in that case are entirely different from those at hand. In the present case, the facts and legal issues do not align with the principles laid down in the case of *Pawan Hans*

Ltd. Vs. Aviation Karmachari Sanghatana. Therefore, the Establishment's attempt to use this judgment as a defence is legally untenable and irrelevant.

PAWAN HANS LIMITED AND OTHERS VS AVIATION KARAMCHARI SANGHATAN [Civil Appeal No.353 of 2020]

Pawan Hans Limited is a company with the Government of India holding a share of 51%. The company had 840 employees on its rolls, of which 270 were enrolled on a 'contractual' basis. The company has instituted a provident fund trust to provide provident funds for its employees and framed the 'Pawan Hans Provident Fund Trust Regulations' (hereinafter referred to as PF Trust regulations). The provisions of the regulation stated that the rules contained therein would apply to all the corporation's employees. An employee was defined as: Employee means any person who is employed for wages/salary in any kind of work, monthly or otherwise, in or in connection with the work of the corporation and who gets his wages/salary directly or indirectly from the corporation and excludes any person employed by or through a contractor or in connection with the work of the corporation but does not include any person employed as an apprentice or trainee.

The company implemented the PF trust regulations only for their regular employees even though the above definition of 'employee' included persons engaged directly or indirectly. Further, the company claimed exemption under section 16 of the EPF Act. Subsequently, the Central Government issued a notification under section 1(3)(b) in 2001 notifying a scheduled head, "*An establishment of aircraft or airlines other than the aircraft airlines owned or controlled by the Central or State Government.*" The respondent union represented the company to extend the benefit of PF Trust regulations as the company directly employs them and has been working for a long time. The company did not respond to the representation. Aggrieved, the union filed a writ petition in the High Court with a prayer to direct either the company to extend the benefits of PF Trust regulations or extend the benefits under the EPF and MP Act. High Court, taking a liberal interpretation, directed the company to enrol the contractual employees under the EPF Act from the date of their joining till they are employed. The company approached the Supreme Court against the order of the High Court.

The petitioner company argued that the notification of the scheduled head itself had excluded the airlines owned or controlled by the central government, and since the Central Government has a 51% stake in the company, it is out of the purview of the EPF Act. Further, the company's Board of Directors are appointed by the Ministry of Civil Aviation and is governed under the guidelines issued by the Department of Public Enterprises. Secondly, the petitioner contested the retrospective application of the EPF Act, given that many workers have superannuated, resigned or died.

The respondent union contended that these contractual workers were directly engaged by the company and hence covered under the definition of the 'employee' in the PF Trust regulations. Also, they are covered under the definition of 'employee' under the EPF Act. Also, since the Board of Directors controls the company and not the central government, it is covered under the notified scheduled head.

The Supreme Court relied on the judgment of *RPFC vs Sanatan Dharm Girls Secondary School* [(2007) 1 SCC 268], where a twin test was laid down to check whether an establishment was exempted from the purview of the EPF Act,

The first test of whether the establishment was 'owned by or under the control of the Central Government' was satisfied in this case, as 51% of the shares were held by the Central Government. The second test is the question as to whether the employees are entitled to a contributory provident fund or old age pension in accordance with any scheme or rules framed by

the government. The court observed that the benefits of PF Trust regulations were extended to only 'regular' employees, and the Central Government did not frame such regulations.

It was held that the case did not pass the second test, so the exclusion under section 16 is not applicable.

The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

The Court was seized of the fact that the retrospective application of the EPF Act caused a disadvantage to the fund from an actuarial point of view. Accordingly, it was held that the benefits did not apply to employees who superannuated, resigned or died as of the date of the judgment.

Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company.

But it was clearly stated that, The Court held that the contractual employees were also eligible for benefits under the PF Trust regulations as these employees were directly engaged and drew wages from the company. Further, the contractual employees also qualify for benefits under the EPF Act as they are covered under the definition of 'employee' under the Act.

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Also, the benefits under the EPF Act will be made available to the contractual workers from the date of filing of the Writ Petition before the High Court to December 2019 (the date of the judgment of the Supreme Court). After that, the contractual employees are to be enrolled under the Provident Fund Trust regulations to ensure uniformity of service conditions for all employees of the appellant company reveals that, the contractual employees were not at all the members / subscribers of the EPF Scheme, 1952.

In the instant case, the contention of the establishment is nothing but misinterpretation of the judgement pronounced by the Hon'ble Supreme Court. No where it is mentioned in the order that, benefits should not be given to the employees who were already members / subscribers of the EPF Scheme, 1952.

However, it is observed in the instant case that, the employees engaged by the establishment were all permanent employees having their UAN numbers (UNIVERSAL ACCOUNT NUMBER) linked to their PF Account Number and updated KYC details also. therefore all the employees of the establishment were identifiable permanent employees.

The Establishment's reliance on the Pawan Hans judgment is misplaced incorrect and legally untenable.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The

ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

13. To Avoid duplications the Information at Para 12 may be refereed to.

14. To Avoid duplications the Information at Para 12 may be refereed to.

15. The Establishment's plea regarding cessation of 110 employees is a calculated and deceitful attempt to evade liability. The EPFO is fully justified in relying on the Enforcement Officer's findings, which are based on objective verification of records and field inspections. The tabular chart submitted by the EO in his report dated 24th May, 2024, is based on thorough scrutiny of records and field verification, which cannot be discredited on the basis of mere self-serving statements. The claim for deletion of 110 employees is nothing but an afterthought and deserves to be rejected in toto. All of the 110 employees are identified employees and are having Universal Account Number (UAN). There is no provision in the EPF Act & Scheme to delete the dues of left employees.

The relevant provisions of the Act and Schemes, 1952 are reproduced below

Para:- 26. Classes of employees entitled and required to join the fund. -

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and member of the fund from the day this paragraph come into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph come into force in such factory or other establishment, if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry of cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become member of the Fund forthwith

(2) After this paragraph come into force in a other establishment every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory or establishment

(3) An excluded employee employed in or in connection with the work of a factory or other establishment to which scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or 27-A to join the Fund or on the expiry of cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as member of the fund shall, on joining a factory or other establishment to which this scheme applies, become a member of the Fund forthwith.
- (6) Notwithstanding anything contained in this paragraph an officer not below the rank of an assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this scheme applies and his employer enroll such employee as a member or allow him to contribute on more than {fifteen thousand rupees} of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled the benefits and shall be subject to the conditions of the Fund, Provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.}

J.P. TOBACCO PRODUCTS VS UNION OF INDIA AND OTHERS (1996) 1 LLJ 822 SC

On November 1, 1990, a notification was issued by the Central Government amending Paragraph 26(2) of the Employees' Provident Funds Scheme, 1952. This amendment required all employees, except those expressly excluded, to become members of the Provident Fund from the moment they joined their respective establishments. The legal validity of this amended Paragraph 26(2) was challenged in the case of

Khemchand Motilal Tobacco Product Ltd. vs Union of India [1995 (II) CLR 360]

before the Madhya Pradesh High Court. The challenge to the notification was primarily based on four grounds:

1. The contention is that the amendment to Paragraph 26(2) violated Section 7(2) of the EPF Act.
2. The argument that the mandatory contributions amounted to a denial of minimum wages.
3. Claims that the amendment was unworkable and impracticable.
4. Allegations that the amendment conflicted with the EPF Act and Articles 14 and 19(1)(g) of the Indian Constitution.

The Madhya Pradesh High Court ruled in favour of the validity of the amendment, and the Supreme Court subsequently upheld this decision in the case of J.P. Tobacco Products vs Union of India and others. The Supreme Court determined that the amendment to Paragraph 26(2) of the Scheme was valid, and the requirement of compulsory contributions to the provident fund did not constitute a denial of minimum wages. Additionally, the Court found that the amendment was practical and workable and did not violate the EPF Act or Articles 14 and 19(1)(g) of the Indian Constitution.

Consequently, there is no differentiation between temporary or permanent employees or contract and casual employees engaged by contractors under the Act. Furthermore, there are no eligibility conditions or qualifying services for the enrollment of employees. All employees or workers falling within the definition of 'employee' under Section 2(f) of the EPF Act are obligated to become members, and the provisions of the EPF Act and Schemes apply to such employees.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as member of the fund shall, on joining a factory or other establishment to which this scheme applies, become a member of the Fund forthwith.
- (6) Notwithstanding anything contained in this paragraph an officer not below the rank of an assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this scheme applies and his employer enroll such employee as a member or allow him to contribute on more than {fifteen thousand rupees} of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled the benefits and shall be subject to the conditions of the Fund, Provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.}

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Consequently, there is no differentiation between temporary or permanent employees or contract and casual employees engaged by contractors under the Act. Furthermore, there are no eligibility conditions or qualifying services for the enrollment of employees. All employees or workers falling within the definition of 'employee' under Section 2(f) of the EPF Act are obligated to become members, and the provisions of the EPF Act and Schemes apply to such employees.

It is also clarified to the establishment representative that Hon'ble Supreme Court Judgements are binding on all courts in India and they are considered as source of law. The ratio of any Hon'ble Supreme Court judgements is considered precedents and are binding while deciding any similar cases with identical facts and issues.

Hence, the contention of the establishment is not tenable under the law provision is rejected.

16. To Avoid duplications the Information at Para 15 may be refereed to.
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19. It is imperative to state that the PF & allied dues calculated are based on allowances as per salary sheets provided by the employer, which indicates the allowances earned by the employees. Further, the calculation of PF & allied dues were in accordance with the laws laid down by the Hon'ble Supreme Court, vide Judgment dated 28/02/2019 – Vivekananda Vidya Mandir, Surya Roshni, Manipal University, ors.
20. The claim that no amount is due from the Company Management is not supported by the facts and records available. The EPF Act mandates the employer's obligation to remit contributions as specified under Section 6 of the Act, including contributions for both the employer and the employee. It is not sufficient to merely claim no dues without substantiating this claim with proper documentation. A failure to provide the required evidence leaves room for non-compliance, thereby necessitating the continuation of the enquiry.
The argument that the enquiry is baseless and should be closed down is legally and factually unsustainable. The statutory duty of the employer to remit contributions must be assessed, and the enquiry under Section 7A is the correct process for this determination. Therefore, the enquiry should continue as mandated by law, and the Establishment must produce the necessary documentary evidence to refute any claims of outstanding dues. Any attempt to prematurely close the enquiry without fulfilling the statutory process is improper and should be rejected.