



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday the 6<sup>th</sup> day of September 2021)

**APPEAL No.480/2019**

(Old ATA No. 485(7)2016)

Appellant

M/s. Kims Bellerose Institute of  
Medical Sciences (P) Ltd.  
Thoothutty Junction, Kudamaloor P.O.,  
Kottayam – 686017

By Adv. Ajith S Nair

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Thirunakkara, Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 19/04/2021 and  
this Tribunal-cum-Labour Court on 06/09/2021 passed the  
following:

**ORDER**

Present appeal is filed from order No.KR/KTM/1034233/  
APFC/Penal damage/2014/16629 dated 13/01/2016 assessing  
damages under Section 14B of EPF and MP Act 1952  
(hereinafter referred to as the 'Act') for belated remittance of  
contribution for the period from 07/2014 to 11/2014.

The Total damages assessed is Rs.5324/- (Rupees Five Thousand Three hundred and Twenty Four only). The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a company incorporated under provisions of Companies Act and is engaged in the business of Health Care Management. The appellant is covered under the provisions of the Act. The appellant has taken over a hospital which was functioning earlier and was in a very bad shape. After taking over, the appellant was trying to bring the hospital as a viable institution by providing quality services. The appellant applied for a PF code number. The respondent failed to provide the same. The appellant registered the hospital and got a code number on 22/10/2014. The User ID and password were provided on November 2014 only. The respondent issued a notice alleging delay in remittance of contribution. The appellant attended the hearing and explained the circumstances. Without considering the submissions made by the appellant, the respondent issued the impugned order. The reason for delay is the delay in allotment of PF code number by the respondent. The respondent has no case that the appellant

can remit contribution without a PF code number. Hence the respondent ought to have calculated the delay from the date of allotment of code number. The respondent issued the impugned order mechanically and therefore the opportunity provided to the appellant was only an empty formality.

3. The respondent filed a reply denying the above allegations. The appellant has not raised any mitigating circumstances in this appeal. The claim of the appellant that they applied for PF code number in July 2014 and respondent delayed allotment of code number is false. The respondent authority has clarified the above allegation in the impugned order itself. The appellant can directly apply online for code number in the OLRE portal. However appellant approached office of the respondent and furnished details relating to the hospital supported by certain documents for online registration. However the details furnished by the appellant was incomplete as the PAN No. of the manager of the appellant establishment was not furnished along with the documents for online registration. The details were made available to the respondent only on 13/10/2014 and the respondent allotted a code number on 22/10/2014. Hence there is no justification for the belated

remittance by the appellant. The delay if any, in allotment of code number is due to the incomplete information furnished by the appellant and there was no delay on the part of the respondent in allotting the code number. The appellant recovered the employee share of contribution from July 2014 but the same was remitted to the appellant belatedly there by committing the offence of breach of trust. Hence there is an element of mensrea in belated remittance of contribution. The appellant suppressed the relevant records before the authority for the appeal. The appellant also failed to produce any documents in support of their claims in the appeal.

4. The only issue raised by the appellant in this appeal is the delayed allotment of code number by the respondent organisation. The respondent authority U/s 14 B itself has clarified in the impugned order that the allotment of code number is online and the appellant ought of have taken the code number online instead of approaching the respondent authority. The appellant approached the respondent organisation for a code number and submitted some documents for allotment of code number. However the crucial document such as PAN No. of the manager was missing in the application. The appellant

provided a complete set of documents on 13/10/2014 and the respondent organization allotted code number on 22/10/2014. The appellant cannot blame the respondent even if there is delay in allotment of code number as the information furnished by the appellant was incomplete. According to the learned Counsel for the respondent, the appellant had already deducted employee's share of contribution from the salary of the employees and the same was also not remitted in time by the appellant. According to him, the appellant having committed breach of trust cannot claim that there was no intentional delay or mensrea in belated remittance of contribution. It is not possible to accept the argument for the learned Counsel for the respondent as the contribution can be remitted in the present system only with a code number. Though the appellant is responsible for the delay in taking the code number, no mensrea can be attributed for the belated remittance of contribution.

5. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that the interest of justice will be met if the appellant is directed to remit 70% of the damages.

6. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge an order issued U/s 7Q of

the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **M/s ISD Engineering School Vs EPFO**, W.P(C) No.5640/2015(D) and also in **St. Marys Convent School Vs APFC**, W.P(C) No.28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

Hence appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 70% of the damages. The appeal against Section 7Q order is dismissed as not maintainable.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer