



सत्यमेव जयते

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

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

(Thursday the 21<sup>st</sup> day of January, 2021)

**APPEAL No.354/2018**

Appellant

M/s. Bombay Rayon Fashions Ltd  
Unit No.1 SDF -4,  
Kinfra International Apparel Parks,  
St. Xavier's College Po, Thumba  
Thiruvananthapuram-695586.

By Adv. Ajith.S. Nair

Respondent

The Regional PF Commissioner  
EPFO, Regional Office  
Fort Road, Kannur – 671321

By Adv. K.C Santhosh Kumar

This case coming up for final hearing on 07/01/2021 and this Tribunal-cum-Labour Court on 21/01/2021 passed the following:

**ORDER**

Present appeal is filed from order No. KR/ KNR/ 18791 / Enf.2 (3) / Damages / 2018-19/ 774 dt. 02/08/2018 assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter

referred to as 'the Act'.) for belated remittance of contribution for the period from 03/2012 to 11/2012. The total damages assessed is Rs. Rs.6,84,787/-. The appeal also challenged the demand of interest U/s 7Q of the Act for the same period.

2. Appellant is a company incorporated under the provision of Company's Act 1956. The appellant is engaged in the business of manufacture and exporting garments. The company was facing acute financial crisis due to various reasons. The manufacture and export of apparels was not expanding as expected and there was stringent competition in the market. The appellant company was finding it difficult even to meet day to day affairs of the company from 2012 onwards. The salaries of the employees were also in arrears during the relevant period. The respondent issued notice alleging delay in remittance of contribution. The appellant informed the respondent the circumstances leading to the delay in remittance of contribution. The respondent issued the impugned order without considering the circumstances pointed out by the appellant. Having been convinced that the appellant is passing through financial difficulties the respondent ought

to have reduced the damages. Various decision by Hon'ble High Court of Kerala and also Hon'ble Supreme Court of India held that mensrea is a must for imposing damages and financial difficulties are mitigating circumstances. The appellant specifically informed the respondent that the appellant company is under Corporate Debt Restructuring Scheme and finance of the company is controlled by the consortium of banks.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act. The appellant delayed remittance of contribution for the period 03/2012 to 11/2012. Hence a notice was issued to the appellant along with a delay statement. The appellant establishment was closed w.e.f 1/12/2012. Hence notice was also issued to all the 13 directors individually as to why damages shall not be levied for belated remittance of contribution. An opportunity for personal hearing was also afforded on 26/09/2019. A representative of the appellant attended the hearing and submitted that the establishment had remitted contribution and damages. He was therefore directed to produce proof of remittance and the

matter was adjourned to 26/10/2017 and further to 5/2/2018. The representative also submitted that there was financial difficulties in paying salary to the employees and the appellant establishment is under corporate debt re structuring scheme. The representative filed the details of restructuring packages approved by the Corporate Debt Empowered Group, Mumbai. The representative also submitted that the appellant establishment is under CDR Scheme since last 3-4 years and incurred huge cash flow constraints and provident fund could not be paid within the stipulated time. After verifying all the records produced by the appellant the respondent issued the impugned order. The financial constraints of the appellant cannot be a valid ground for delay in remittance of PF contribution. In **SH Salve Kadem Co Vs RPFC**, 1981 Lab IC 5678 ( Kant ) the Hon'ble High Court of Karnataka held that “ The Act is a social welfare legislation and its object is to promote the welfare of the employees. It requires the employer and employees to pay contribution to the fund of the employee at the prescribed rates. When it is obligatory for the employer to ensure payment of contribution to the fund of employee, the question of intention does not arise. If intention would be

necessary element, the object of the scheme would be frustrated". To achieve the objective of the provision of the Act and Schemes the employer is required to contribute to the fund and file returns in time. Any delay in remittance of contribution will affect the benefits that are extended to the employees such as Provident fund, Pension and Insurance. It is also pointed out that in restructuring package approved on 26/9/2013 by the CDR Empowered Group, one of the interim relief post COD, but prior to implementation is waiver of all liquidated damages /penal charges/ penal interest or excess interest on any of the facility from the cut-off date ie ; 1/4/2013 till the implementation of the package. The default is committed by the appellant from 3/2012 to 11/2012 when the appellant establishment was working normally. The Hon'ble Supreme Court of India in ***Euroka Forbes Limited Vs Allahabad Bank***, 2010(6) SCC 193 held that a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations.

4. The only ground pleaded by the appellant herein is that of financial difficulties and consequent lack of mensrea in

belated remittance of contribution. The appellant demonstrated before the respondent that the appellant company was facing severe financial crisis and the appellant has gone under a corporate debt restructuring package. The learned Counsel for the respondent also admitted that they produce a copy of the CDR Scheme which clearly indicates that the appellant establishment was under CDR package for the last three four years. The respondent also admitted the fact that the appellant establishment is closed w.e.f 1/12/2012. Having clearly demonstrated the financial difficulties the appellant is indeed is entitled for some relief in assessment of damages. Though it was pleaded that there was delay in payment of wages to the employees the same was not proved by the appellant before the 14B authority as well as in this appeal. The learned Counsel for the respondent pleaded that 50% of the contribution belongs to the employees' share of contribution deducted from salary of the employees and having failed to remit even the employees' share of contribution deducted from the salary of the employees in time, the appellant is not entitled for any relief as far as the assessment of damages is concerned. Non remittance of employees share of contribution deducted from

the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead any mensrea in belated remittance of the employee share of contribution which amounts of the 50% of total contribution.

5. Considering the facts, circumstances, evidence and arguments, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

6. Interest levied U/s 7Q is a statutory payment and no appeal is provided from a demand of interest U/s 7(I) of the Act. Hence the appeal against the interest demanded U/s 7Q of the Act is rejected.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70 % of the damages assessed U/s 14B of the Act. The appeal against the demand of interest U/s 7Q of the Act is dismissed.

Sd/-

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