



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 15th day of March, 2021)

APPEAL No.53/2017

Appellant

M/s. Bombay Rayon Fashions Pvt. Ltd
Kinfra Apparel Park ,
St. Xaviers College P.O
Thiruvananthapuram- 695 586.

By Adv. Ajith S. Nair

Respondent

The Regional PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on
11/02/2021 and this Tribunal-cum-Labour Court on
15/03/2021 passed the following:

O R D E R

Present appeal is filed from order No. KR/
TVM/16734/Damages Cell/PD/2017-18/3692 dt. 08.08.2017
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 04/2014, 06/2014 to 01/2015 and 06/2015 to 07/2016. The total damages assessed is Rs. 14,00,906/-.

2. The appellant is a company incorporated under the provisions of Companies Act, 1956. The appellant is engaged in the business of manufacturing and exporting of apparels. The appellant is covered under the provision of EPF and MP Act. The appellant company was struggling financially during 2012. The salaries of the employees were also in arrears during this period. The company was not regular in compliance due to financial difficulties. There was delay in remittance of contribution. The respondent initiated action alleging delay in remittance of contribution. The appellant filed written statement informing the respondent the circumstances leading to the delayed remittance of contribution. However without considering the submissions made, the respondent issued the impugned order. The respondent ought to have seen that there was no mensrea in the delayed remittance of contribution. The respondent ought to have seen the mitigating circumstances leading to the delayed remittance of contribution. When the very existence of the establishment is under threat it is not possible to protect

the welfare of the employees. It is not fair on the part of the respondent to impose penalty in a mechanical way in the guise of the welfare and statutory liability. The appellant informed the respondent that the appellant company is under the Corporate Debt Restructuring Scheme and finance of the company is controlled by a consortium of banks. In such circumstances the respondent ought to have reduced or waived the damages.

3. The respondent filed counter denying the above allegations. The appellant establishment failed to pay contribution in time during the relevant point of time which attracts damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt. 24/05/2017 was issued to the appellant. The appellant was also given a personal hearing on 13/06/2017. A representative of the appellant attended the hearing and requested for some time to verify the belated remittance. Time was granted and the representative of the appellant appeared before the respondent on 05/07/2017 and stated that he verified the details of belated payments and there is no dispute regarding the damages statement send across to the appellant. The representative of the appellant also submitted that the establishment is in financial crisis

and there was delay in payment of statutory contributions. On the basis of the available records the respondent found that the appellant is a chronic defaulter in payment of statutory dues and on many occasions in the past too, damages have been levied. The defaulted amount included employees' share of contribution deducted and retained by the appellant establishment for gaining undue benefits. The impugned order is challenged on the ground of financial difficulties. However the appellant cannot attribute financial difficulties for delayed remittance of employees' share of contribution deducted from the salary of the employees. The claim of the appellant that there is no loss to the fund is completely wrong. It is a fact that due to delay in payment of contribution by the employer the fund suffers loss of interest by not being able to invest the money in time. The appellant cannot claim that there was no mensrea in delayed remittance of contribution atleast to the extent of employees share deducted from the salary of the employees.

4. The only ground pleaded by the appellant for delayed remittance of contribution is that of financial stringency of the appellant establishment. The appellant failed to produce any evidence to support the claim of financial

difficulties before the respondent. The learned Counsel for the appellant submitted that the appellant establishment is under the corporate debt restructuring scheme and finance of the company is under control of the consortium of banks. He also pointed out that the relevant documents are produced as additional documents. The learned Counsel for the appellant also submitted that the appellant establishment is closed and Kinfra has taken over the leased premises since the appellant could not pay the lease amount. The learned Counsel for the respondent pleaded that the appellant has no claim that the wages of employees were not paid in time. Even if there is such a claim there is absolutely no evidence to substantiate the same. When the salary of the employees is paid, the employees share of contribution, which amounts of to 50% of the total contribution, is deducted from the salary of the employees. Even the employee share of contribution deducted from the salary of the employees, is not remitted by the appellant in time. Non-payment 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

claim that there was no mensrea in belated remittance of contribution atleast to the extent of employees share.

5. Considering the fact and circumstances of this case I am inclined to hold that interest of justice will be met if the appellant is direct to remit 60 % of the damage assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60 % of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer