



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
( Friday the 17<sup>th</sup> day of September, 2021)

**APPEAL No.650/2019**  
(Old No. ATA 308(7)/2013)

Appellant : M/s. Punalur Paper Mills Ltd.,  
Punaloor P.O,  
Kollam – 691 332.

By Adv. Pallichal S.K Promod

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Parameswar Nagar  
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer  
Adv. Megha A

This case coming up for final hearing on 20/04/2021  
and this Tribunal-cum-Labour Court on 17/09/2021  
passed the following:

**O R D E R**

Present appeal is filed from Order No.  
KR/KLM/2/PD/2012-13/5952 dt. 05/04/2013 assessing  
damages U/s 14B of EPF & MP Act,1952 (hereinafter referred  
to as 'the Act') for belated remittance of contribution for the

period 1/1987 to 9/1987. The total damages assessed is Rs. 7,73,139/-.

2. Appellant is an establishment covered under the provisions of the Act. The appellant received a notice from the respondent alleging that the respondent defaulted in payment of contributions for the period 01/1987 to 09/1987 and the same was remitted belatedly. It was also informed that the delay in remittance of contributions attracts damages U/s 14B of the Act. The appellant was also given an opportunity for personal hearing on 14/02/2013. A copy of the said notice is produced and marked as Annexure A1. On 14/02/2013 an authorised representative of the appellant appeared before the respondent authority and filed a detailed explanation and requested for waiver of damages. Copy of the explanation is produced and marked as Annexure A2. The main contention in Annexure A2 is that the appellant establishment was closed and was under the possessions of Receiver appointed by Bombay High Court since 1987. The dues were assessed U/s 7A on 19/07/2006, and the demand notice was issued on 21/08/2006. The determined amount was remitted on the same day. The new management has taken over the appellant company by entering into a share purchase agreement

dt. 14/05/2010. The appellant company is entitled for waiver of damages on that ground. When the company was under the earlier management there was huge accumulated arrears in and repayment of loan. Therefore the appellant company approached the BIFR for getting the company declared "sick" to get the liabilities re-structured. The reference is still pending. The respondent ought to have considered the fact that during the relevant period, the appellant company was under Receiver appointed by the Hon'ble High Court of Mumbai. Hence the appellant does not having any control over the affairs of the company. The present management came into picture only on 14/05/2010. The respondent ought to have considered the relief provided under Para 32B of EPF Scheme because there was change in management. The respondent also ought to have considered the pendency of reference before BIFR. The respondent failed to take notice that the appellant remitted the contribution immediately after assessment of dues. During the relevant period there was no work. But the wages pertaining to that period was paid by the new management. The respondent failed to notice that the appellant is not a chronic defaulter and the delay was due to reasons beyond the control of the appellant. The respondent

also failed to exercise the discretion provided U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. It is a statutory obligation on the part of the appellant to ensure remittance of provident fund contribution within the stipulated time. The appellant failed to remit the contribution in time for the period from 01/1987 to 09/1987. The delay in remittance of contribution will attract damages U/s 14B of the Act. Hence a notice dt. 29/01/2013 was issued to the appellant along with the statement specifying the amount of dues, due date of payment, actual date of payment and the delay committed by the appellant. The appellant was also given an opportunity for personal hearing on 14/02/2013. A representative of the appellant attended the hearing and filed a statement explaining the position that the appellant establishment has applied before BIFR for restructuring and declaring the unit "sick". It was also informed that the rehabilitation package is yet to be approved by BIFR. Copies of the proceedings of the BIFR were also filed during the enquiry. The appellant was informed that waiver of damages is within the purview of the Central Board of Trustees (CBT) on the recommendation by BIFR after approval

of rehabilitation package. In the present case, the BIFR proceedings were in the initial stages and rehabilitation package is yet to be finalized. There was a delay of 19 years in remitting the contribution and therefore the appellant cannot escape the liability to pay damages U/s 14B of the Act read with Para 32A of EPF Scheme. The claim of the appellant that they are entitled for waiver of damages under Para 32 B is not correct. The BIFR proceedings in respect of the appellant establishment is not finalized and no rehabilitation packages is approved by the BIFR. The waiver or reduction of damages can be considered by the Central Board of Trustees only after the BIFR recommends for reduction or waiver after finalization of the rehabilitation package. It is admitted by the appellant that the wages of the employees for the relevant period was paid by the appellant establishment after the new management took over. Assuming that the wages were paid in 2010 after take over by the new management, there is still a delay of more than 6 years in remitting the contribution which will attract damages. The predominant object of damages is to penalize a defaulter so that he may be thwarted or deterred from making further defaults.

4. The case of the appellant is that the appellant establishment was under closure and was under the management of Receiver appointed by the Mumbai High Court during the relevant point of time. It is also the case of the appellant that the appellant establishment was under BIFR and the rehabilitation package was about to be approved by the BIFR. The appellant produced a copy of the proceedings of BIFR in case no 50/1992 dt.15/5/2013 to substantiate their claim. It is not clear whether the appellant establishment has opted to move the NCLT under Bankruptcy Code within the time stipulated, since the “ Sick Industrial Companies (Special Provisions) Act 1985 is no more valid and is replaced by Bankruptcy Code 2016. The claim of the appellant that they are entitled for relief under Para 32B of the EPF Scheme is disputed by the learned Counsel for the respondent. As per Para 32B of EPF Scheme:

“ The Central Board may reduce or waive the damages levied under Section 14 B of the Act in relation to an establishment specified in the second proviso to section 14 B, subject to the following terms and conditions, namely :-

- (a) in the case of a change of management including transfer of the undertaking to workers' co-operative and in the case of merger or amalgamation of the sick industrial with any other industrial company, complete waiver of damages may be allowed.
- (b) in cases where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its scheme, in this behalf, recommends, waiver of damages up to 100 percent may be allowed.
- (c) in other cases, depending on merits, reduction of damages upto 50 percent, may be allowed.

From the above provision it can be seen that the Central Board of Trustees of the respondent organization is authorized to reduce or waive damages levied in relation to an establishment specified in second proviso of Sec 14 B subject to certain conditions.

As per the second proviso to Sec 14B :

*“ 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”.*

From the above said provision it is clear that the relief under Para 32B of EPF Scheme can be given only by the Central Board of Trustees and Central Board of Trustees can reduce or waive damages in relation to an establishment which is a “sick” industrial company and in respect of which a rehabilitation Scheme has been approved by BIFR. In the present case, the only claim of the appellant is that they moved BIFR and BIFR is in the process of declaring the appellant a sick unit. Since none of the conditions stipulated as per second proviso to Sec 14B and Para 32B of EPF Scheme are satisfied the appellant cannot and is not entitled for the relief under Para 32B of the Scheme. The learned Counsel for the appellant submitted that the appellant establishment was under Receiver appointed by the Hon’ble High Court of



Mumbai and the appellant cannot be held responsible for the delay. However the learned Counsel for the respondent argued that the appellant paid the salary of the employees and also the provident fund contribution and therefore, the appellant cannot escape the liability to remit the damages. The learned Counsel for the respondent also argued that when the appellant paid wages to employees the employee's share of contribution is deducted from the salary of the employees and same was not remitted with respondent in time. The delay in remitting employee's share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committing an offence of breach of trust appellant cannot plead that there was no mensrea, atleast to the extent of 50% of total contribution deducted from the salary of employees. The learned Counsel for the appellant also argued that there was undue delay in initiating the proceedings U/s 14B of the Act, and to that extent the appellant is entitled for some relief. In ***RPFC Vs KT Rolling Mills Pvt. Ltd.***, 1995 AIR (SC) 943 the Hon'ble Supreme Court held that " We do not therefore, think if the order merits to be struck down on the ground of delay, when it is also kept in mind that the delay in default related even to the contribution

of the employees, which money the respondent (after deducting the same from the wages of employees) must have used for its own purpose and that too without paying any interest, at the cost of those for whose benefit it was meant. Any different stand would encourage employers to thwart the object of the Act, which cannot be permitted". In ***M/s K. Street Lite Electric Corporation Vs RPFC***, 2001 AIR (SC) 1818 (SC2J) the Hon'ble Supreme Court held that the delay in initiating proceedings under 14B of the Act will not be a ground for waiving damages. In ***Hindustan Times Ltd Vs Union of India***, 1998 AIR (SC) 688 (SC2J) the Hon'ble Supreme Court held that there is no limitation provided under the Act for initiating proceedings U/s 14B and the delay only will facilitate the establishment/employer to utilize the provident fund money in their own business. Considering the above dictum laid down by the Hon'ble Supreme Court it is very clear that there is no limitation in initiating proceedings U/s 14B of the Act.

6. It is seen that the appellant establishment was in real financial strain during the relevant point of time. It is also pleaded that the appellant establishment was under Receivership as per the orders of the Hon'ble High Court of

Mumbai. It is further pointed out that there was a change in management during 2010 and the salary of the employees for the relevant period is paid by the appellant. Taking into account all the above facts it is felt that appellant is entitled for some relief with regard to the damages levied U/s 14B of the Act.

7. Considering all the facts, circumstances and pleadings, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 50% of damages assessed U/s 14B of the Act.

Hence the appeal is partially allowed the impugned order is modified and the appellant is directed to remit 50% of the damages

Sd/-  
**( V. Vijaya Kumar )**  
Presiding Officer