



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

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

(Thursday the 01<sup>st</sup> day of April, 2021)

**Appeal No.337/2019**

(Old No. ATA 197 (7) 2015)

Appellant : M/s.NSN Consulting (P) Ltd  
Door No. 34/139-A-3,  
Anchumana, Bye pass Road,  
Edapally, Kochi  
Kerala – 682 024

By Adv. C.B Mukundan

Respondent : The Regional PF Commissioner  
EPFO, Sub-Regional Office  
Kaloor , Kochi -682017

By Adv. Sajeev Kumar K. Gopal

This appeal came up for hearing on 25/02/2021 and this Industrial Tribunal cum Labour Court issued the following order on 01/04/2021.

**ORDER**

Present appeal is filed from Order No KR/ KR / KCH/ 27689/ Damages Cell / 2014/8700 dt. 14/11/2014 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 07/2011 to 08/2012. The total damages assessed is Rs. 2,14,127/-. The interest demanded U/s 7Q of the Act is also being challenged in this appeal.

2. The appellant establishment is covered under the provision of the Act. The appellant establishment had undertaken a Sub-Contract job of M/s Acropetal Technologies, Bangalore. As per the terms of contract M/s Acropetal Technologies are required to pay the provident fund contribution in respect of the employees who worked for them. M/s Acropetal Technologies failed to honour the commitment to remit their share of contribution. The financial position of the appellant establishment was also very bad and therefore they could not remit the contribution in time. M/s. Acropetal Technologies released the amount only on 15/09/2012. The appellant remitted the contribution immediately on receipt of the amount. The appellant also terminated the agreement with M/s Acropetal Technologies. While so the appellant received a notice dt.26/03/2014 from the respondent proposing to levy damages and interest alleging delay in payment of provident

fund contribution for the period from 7/2011 to 8/2012. The respondent was also offered an opportunity of hearing on 7/5/2014. An authorized representative of the appellant attended the hearing and explained the real circumstances which resulted in delayed remittance of contribution. The appellant also filed a representation explaining the delay in remittance of contribution which is produced and marked as Annexure A4. In Annexure A4 dt. 06/05/2014 the appellant informed the respondent that the service charges were received from M/s Acropetal Technologies on 15/9/2012 and an amount of Rs.27,03,287/- is remitted to EPF account on 28/9/2012. It was also informed that after termination of contract with M/s. Acropetal Technologies from 27/08/2012, the appellant establishment is not working and is paying only the minimum administrative charges. The appellant establishment had been running in heavy loss during 2011-12. The appellant unit had sustained a loss of Rs.6,23,174/-. The documents produced will go to reveal that the alleged delay were caused due to reasons beyond the control of the appellant. Therefore, there is no willful defiance of law or contumacious

conduct on the part of the appellant in delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of statutory contribution for the period from 07/2011 to 08/2012. Belated remittance of statutory contribution as provided U/s 6 of the Act, will attract penal damages U/s14B read with Para 32A of EPF Scheme. Hence the respondent issued notice dt. 24/3/2014 to show cause with documentary evidence as to why penal damages U/s 14B shall not be levied for belated remittance of contribution. A detailed delay statement showing the monthwise details of belated remittance for the period 7/2011 to 8/2012 was also forwarded to the appellant along with Annexure A3 notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed Annexure A4 replay dt. 6/5/2014. The representative also highlighted the delay in receipt of service charges from M/s. Acropetal Technologies with whom the appellant had a sub contract. The appellant did not raise any dispute regarding the delay statement. The appellant attributed delayed receipt of service

charges from M/s Acropetal Technologies Ltd, Bangalore as the only reason for the delay in remittance of provident fund contribution. The dispute between M/s Acropetal Technologies and the appellant is only their internal matter and the same cannot be pleaded as a ground for delayed remittance of contribution. The claim of the appellant that they remitted the contribution on 28/9/2012 is not correct. Major part of the contribution was remitted by the appellant establishment only on 22/10/2012. The provident fund contributions are of statutory nature which are required to be paid within the stipulated time irrespective of the financial condition of the establishment. The appellant cannot ignore the statutory liability cast upon an employer under Para 30 & 38 of EPF Scheme to remit the monthly contribution payable under EPF accounts invariably within 15 days of close of every month in respect of all the eligible employees on the roll. The damages U/s 14B does not go to state fund but goes to augment the EPF Trust Funds. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court while upholding the constitutional validity of Section 14B held that the reasons for introduction of Section 14B was to deter and

thwart employers from defaulting in forwarding contribution to funds, most often with ulterior motive of mis-utilizing not only their own but also the employees contribution. According to the Hon'ble Supreme Court the expression damages occurring Section 14B of the Act, is in substance, the penalty imposed on the employer for the breach of statutory obligation. The Hon'ble supreme Court also observed that the pragmatics of the situation is that if the stream of contribution were frozen by employers default after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of funds. Damages have a wider sociality semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provisions of a Civil Act and that the penalty is attracted as soon as contravention of statutory obligation as contemplated by the Act is established and therefore the intention of parties committing such violation becomes immaterial. In **Maharashtra State Co-operative**

***Bank Ltd Vs Assistant PF Commissioner and Others, 2009***

(10) SCC 123 the Hon'ble Supreme Court held that " any amount due from an employer " includes assessment U/s 7A, 7Q and Section 14B as the employer is liable to pay damages and interest when there is delay in remittance of contribution.

4. The order issued U/s 7Q of the Act is not appealable as there is no provision under 7(I) to file any appeal from an order U/s 7Q.

5. The learned Counsel for the appellant pleaded two grounds for delayed remittance of contribution. One of the ground pleaded by the appellant is with regard to the delay in receipt of the service charges from m/s Acro Petal Technologies, Bangalore, with whom the appellant had a sub-contract. The appellant failed to produce any documents to substantiate the claim that there was delay in receipt of money from M/s. Acropetal Technologies Ltd., Bangalore, though it cannot be a valid ground for delayed remittance of provident fund contribution. Another ground pleaded by the learned Counsel for the appellant is with regard to the financial difficulties. The appellant produced the Balance Sheet as on 31/3/2012. As per

the direction of this Tribunal the appellant produced a complete balance sheet, as the balance sheet produced along with the appeal was a summary statement of 2 pages. The learned Counsel for the respondent submitted that the balance sheet now produced in the appeal cannot by itself be taken as a proof to establish the financial difficulties of the appellant establishment. The Hon'ble Supreme Court in ***Aluminum Corporation Vs Their Workmen***, 1964 (4) SCR 429 held that the assets and liabilities reflected in the Balance Sheet cannot be treated as sacro sanct unless the figures are proved by a competent person before the authority. However the balance sheet produced by the appellant shows that the appellant was running under loss during the relevant point of time. The learned Counsel for the appellant also submitted that the appellant establishment is closed from 09/2012 due to financial difficulties. Though no supporting evidence is produced the claim of the learned Counsel for the appellant is not denied by the respondent.

6. Considering all the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of



justice will be met if the appellant is directed to remit 70% of the damages.

7. The learned Counsel for the respondent submitted that no appeal is maintainable against an order issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision 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 from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P(C) No. 234/2012 also held that an appeal against 7Q order is not maintainable.

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

Sd/-

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