



सत्यमेव जयते

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

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

(Wednesday the 15<sup>th</sup> day of September, 2021)

**APPEAL No.343/2018**

Appellant

M/s Hotel Victory International,  
Kunnamkulam,  
Thrissur – 680 503.

By Adv. Jimmy George

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Bhavihsynidhi Bhavan  
Kaloor, Kochi – 682 017.

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on  
15/9/2021 and this Tribunal-cum-Labour Court on the same  
date and passed the following:

**ORDER**

Present appeal is filed from order No. KR/ KCH/  
13912/Penal damages/2018/6361 dt.14/08/2018 assessing  
damages U/s 14B of EPF and MP Act, 1952 (hereinafter referred

to as 'the Act') for belated remittance of contribution for the period 01/04/1996 to 31/03/2014. The total damages assessed is Rs. 67,399/-. 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 proprietary concern in the business of running a bar attached hotel. The appellant establishment is covered under the provision of the Act. The appellant is facing severe financial crisis from the year 1996 onwards. The day to day management of the appellant establishment is run with the financial support of the banks. Due to huge financial loss the appellant establishment was closed during the year 2014. The total loss during the year 2004-05 is Rs.15,54,078.51. The profit and loss account for the year 2004-05 is produced and marked as Annexure-1. The profit and loss accounts for the subsequent years are not traceable. The appellant establishment was closed during the period from 01/04/2014 to 05/01/2015 and 01/04/2017 to 25/08/2017. The appellant received a notice dt.14/01/2015 from the respondent to show cause as to why damages as provided U/s 14B of the Act should not be imposed and was also provided an opportunity for a personal hearing on

26/02/2015. Due to some difficulty the appellant did not attend the hearing. Again the respondent issued notice directing the appellant to appear for personal hearing on 29/05/2018. The appellant could not attend the hearing and the enquiry was further adjourned to 24/07/2018 and a representative of the appellant attended the hearing and request for waiver of damages. Ignoring the contentions made by the appellant the respondent issued the impugned order. The respondent also issued another order demanding interest U/s 7Q of the Act. There was no willful omission or default on the part of the appellant that there was no contumacious conduct on the part of the appellant to violate the provisions of the Act. The respondent failed to consider the facts and circumstances of this case before issuing the impugned order. The delay in remittance of contribution will not automatically attract levy of damages and the respondent will have to consider the financial crisis on the part of the appellant and also see that the delay in remittance of contribution is due to reasons beyond the control of the appellant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the

provision of the Act. Admittedly there was delay in remitting provident fund contribution during the relevant point of time. Hence a notice was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed statement showing the due date of payment, the actual date of payment and delay in remittance of contribution was also communicated to the appellant. The appellant was also given an opportunity for personal hearing on 26/02/2015. Though the summons was received by the appellant none attended the hearing. Hence the enquiry was adjourned to 29/05/2018 on which date also there was no representation on side of the appellant and the enquiry was further adjourned to 24/07/2018. An authorized representative of the appellant attended the hearing and he pleaded that the delay in remittances was due to financial crisis of the appellant establishment during the relevant point of time. The Hon'ble Supreme Court in ***Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 688 held that bad financial condition is not a defense for delayed deposit of provident fund contributions. The Hon'ble High Court of Gujarat in ***C.P Kotak Balmandir Vs RPFC and another***, SCA No.3749 of 2011 held that mere

existence of financial hardship is not a sufficient explanation for default or delay in payment under the Act, unless it is shown that no salaries were paid to employees and no deduction were made during relevant period of time. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979(2) LLJ 416 held that the predominant objective of Sec 14B is to penalize a defaulter so that he may be thwarted or deterred for making any further default. The appellant has violated the statutory provisions under Para 30, 36, 38(1) of EPF Scheme and therefore cannot hold that there was no mensrea in the delayed payment of contribution. The Hon'ble Supreme Court of India in ***Chairman, SEBI Vs Sriram Mutual Fund***, AIR 2006 SC 2287 held that mensrea is not an essential ingredient for the contravention for the provisions of a Civil Act and that the penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore, the intention of parties committing such violation become immaterial.

4. It is also contented by the learned Counsel for the respondent that order U/s 7Q of the Act is not appealable.

5. The only contention made by the appellant before the respondent authority is that he had financial difficulties at the relevant point of time. It was also contended that the appellant establishment was closed during various spells from 01/04/2014 to 05/01/2015 and 01/04/2017 to 25/08/2017. It was specifically pointed out by the learned Counsel for the respondent that the assessment of damages is for the period 01/04/1996 to 31/03/2014 and the subsequent closure period 01/04/2014 without in any way impact the assessment. It was also pointed out by the learned Counsel for the respondent that though the appellant claimed financial difficulty no documents were produced before the respondent authority to substantiate the claim. The appellant produced the trading and profit and loss account for the year ended 31/03/2005 in this appeal. From this document, it is seen that the appellant had made a profit of Rs.30,53,714.09 for the year ending 31/03/2004. According to the appellant the loss for the year ending 31/03/2005 was Rs.15,54,078.24. According to the learned Counsel for the respondent, the appellant deliberately avoided proceeding proof of financial loss, since the appellant establishment was running in profit. In the absence of any valid

documents, it is not possible to accept the claim of the appellant regarding financial difficulty. The learned Counsel for respondent also pointed out that the employees' share of contribution is deducted from the salary of employees as and when the wages and salary were paid to employees. Any delay in remitting the employees' share of contribution deducted from the salary of 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 extend of 50% of total contribution deducted from the salary of employees.

6. The learned Counsel for the respondent pointed out that an appeal against an order issued U/s 7Q of the Act is not maintainable. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s7(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) No.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.

7. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

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