



सत्यमेव जयते

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

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

(Friday the 29<sup>th</sup> day of October, 2021)**Appeal No. 60/2019**

Appellant

M/s. Mangalam Web Media Pvt. Ltd.,  
: S.H. Mount P.O  
Kottayam-686 006.By Adv. V. Krishna Menon &  
Adv. Prinsun Philip

Respondents

The Assistant PF Commissioner  
: EPFO, Sub Regional Office  
Kottayam – 686001The Enforcement Officer ,  
EPFO, Sub Regional Office  
Kottayam – 686001

By Adv. Joy Thattil Ittoop

This case coming up for hearing on 28.07.2021  
and this Industrial Tribunal-cum-Labour Court issued the  
following order on 29/10/2021.

**ORDER**

Present appeal is filed from order No.KR/ KR/ KTM/15074/Enf-1(1)/2018/2905 dt.21.12.2018 U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') assessing dues for the period from 08/2016 to 05/2018. Total dues assessed is Rs. 37,84,313/-.

2. The appellant is a company registered under Company's Act 1956. The appellant establishment is covered under the provisions of the Act. The 1<sup>st</sup> respondent issued a notice dt.16/10/2018 U/s 7A of the Act for determining the dues payable by the appellant for the period 08/2016 to 05/2018. A copy of the notice is produced and marked as Annexure A1. The appellant appeared before the 1<sup>st</sup> respondent and raised a preliminary objection. The appellant also filed a written statement. The preliminary objection and written statement are marked as Annexure A2 & A3. The specific case of the appellant was that the delay in remittance

of contribution was due to the financial constrains. It was also pleaded that the appellant establishment is running under loss and the loss was more than its networth and the appellant was required to remit contribution only at 10%. To prove the financial position and also to prove that the networth of the company has completely eroded, the balance sheet for the year ending 31/03/2016, 31/03/2017 and 31/03/2018 are produced along with a certificate dt. 27/11/2018 from the Chartered Accountant. A copy of the balance sheet for the year ending 31/03/2016 is produced and marked as Annexure A4, for the year ending 31/03/2017 is produced and marked as Annexure A5 and the balance sheet for the year ending 31/03/2018 is produced and marked as Annexure A6. A copy of the certificate dt. 27/11/2018 issued by the Chartered Accountant is produced and marked as Annexure A7. Ignoring the above contentions the respondent issued the impugned order.

3. The respondent filed counter denying the above allegations. The appellant committed default in remittance of regular dues for the period from 08/2016 to 05/2018. The Enforcement Officer also reported the default. Hence an enquiry U/s 7A of the Act was initiated by issuing Annexure A1 summons. The appellant's representative did not raise any objection to the inspection report and admitted the default in payment of dues. A true copy of the daily order sheet of the hearing dt.27/11/2018 is produced and marked as Annexure R1. From Annexure R1 it can be seen that the appellant raised no dispute regarding the dues reported by the Enforcement Officer and there was no claim from the side of the appellant for reduced payment of contribution. The appellant had already filed a statutory return in Form 12A for the period from 08/2016 to 05/2018 wherein the appellant has admitted their liability to remit their contribution @ 12%. True copies of Form 12A for the period from 08/2016 to 05/2018 submitted by the appellant are produced and marked as

Annexure R2. The impugned order is issued on the basis of admitted liability and the appellant cannot dispute the same in this appeal.

4. The appellant establishment was in default for the period from 08/2016 to 05/2018. The appellant failed to remit the contribution on the plea that the appellant establishment is continuously under loss for the last few years. It is relevant to pointed out that the appellant even failed to remit the employees' share of contribution which is deducted from the salary of the employees for the said period. The 1<sup>st</sup> respondent therefore initiated action U/s 7A of the Act. The quantification of the provident fund and other liabilities by the Enforcement Officer was also made available to the representative of the appellant for confirmation. The 1<sup>st</sup> respondent also noticed that the quantification of provident fund liability tallies with the salary register of the appellant establishment. It is seen from Annexure R1 that the appellant never raised any dispute

regarding the percentage of contribution to be paid by the appellant during the course the Sec 7A proceedings. The 1<sup>st</sup> respondent produced Annexure R1, the daily order sheet of the 7A proceedings dt. 28/11/2018 to substantiate their contention that the appellant never raised any dispute regarding the percentage of contribution in the Sec 7A enquiry. Annexure R1 also shows that the provident fund liability as per the impugned order was admitted by the representative of the appellant. 1<sup>st</sup> respondent further produced the statutory return in Form 12A for the period 08/2016 to 05/2018 filed by the appellant to substantiate their claim that the statutory liability quantified as per the impugned order is admitted by the appellant by filing the statutory return. As per the existing instruction any establishment, which has, at the end of any financial year, accumulated losses equal to or exceeding its entire networth, is liable to remit contribution at the rate of 10%. The appellant produced balance sheets of the appellant company

for 2015-2016, 2016-2017 and 2017-2018 to prove that the accumulated loss of the company is more than the entire networth of the company. The learned Counsel for the respondent pointed out that the so-called balance sheets produced by the appellant is only a two page extract from which it is not possible to decide the networth of the appellant. It is seen from Annexure A4 to A6 that it is only a two page extract of the so called balance sheet and to that extent it is an incomplete document to decide the networth of the appellant. Further it is also pointed out that as per the settled law the balance sheet of a company cannot be accepted as proof of assets and liabilities unless a competent person proves the correctness of the figures of the balance sheets. The Hon'ble Supreme Court of India in **Aluminium Corporation Vs Their Workmen**, 1964 (4) SCR 429 held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The correctness of the figures as shown in the

balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by competent witnesses. The appellant also produced an Annexure A7 certificate from a Chartered Accountant dt.27/11/2018 which indicates that the net worth of the company is in negative figures for the period from 31/03/2012 onwards. The learned Counsel could not explain as to how the net worth of the company is arrived at. In the normal course the assets of the company such as current assets, investments, plant & machinery and intangible assets are taken as the assets of the company. The liabilities are taken as current liabilities and long term liabilities. It is not clear as to how the net worth of the company is calculated in Annexure A7 Certificate. Further it is seen that the contention regarding lower percentage of contribution was not at all taken before the Sec 7A authority and there was no decision rendered in the impugned order. Even in the reply filed by the 1<sup>st</sup> respondent, no stand is taken regarding the percentage of contribution that



the appellant is liable to pay. The 1<sup>st</sup> respondent has taken the plea that the liability to pay 12% contribution is admitted by the appellant in Annexure R1 and also in the statutory return in Form 12A filed by the appellant which is produced and marked as Annexure R2.

5. Considering the facts, circumstances pleading and evidence discussed above, I am inclined to hold that the percentage of contribution to be paid by the appellant during the relevant time is to be decided by the 1<sup>st</sup> respondent before quantifying the dues.

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the 1<sup>st</sup> respondent with a direction to decide the percentage of contribution that the appellant is liable to pay, before quantifying the dues. The respondent shall issue notice to the appellant and finally decide the matter and quantify the dues within a period of 6 months. If the appellant fails to appear or fails to produce the

documents called for, the 1<sup>st</sup> respondent is liberty to assess the dues according to the law. The pre-deposit made by the appellant as per the direction of this Tribunal U/s 7(O) of the Act shall be adjusted or refunded after finalization of the enquiry.

Sd/-

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