



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Thursday the 6<sup>th</sup> day of May, 2021)

**APPEAL No.462/2019**

Appellant

M/s. Rashtra Deepika Limited  
P.B. No.7, College Road  
Kottatam -686 001

By Adv. Jomy George

Respondent

The Assistant PF Commissioner  
EPFO, Thirunakkara,  
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 25.03.2021  
and this Tribunal-cum-Labour Court on 06.05.2021 passed  
the following:

**ORDER**

Present appeal is filed from order No. KR/KTM/ 70/  
APFC /Penal Damages / 14B / 2019-20 / 3668 d.t. 20/09/2019  
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 04/2018 to 1/2019. (i.e, remittance of EPF dues made during the period 11/8/2018 and 30/06/2018). The total damages assessed is Rs. 6,94,578/-.

2. Appellant is a public limited company registered under Company's Act 1956. The appellant was regular in compliance. From the year 2008 onwards, the company was running under heavy loss. In spite of heavy losses appellant did not fail in paying the wages on time or any default in paying statutory dues of its employees. The appellant establishment was incurring losses for several years. In the year 2016-17 the loss was Rs.1.72 crores and in 2017-18 it was Rs.3.57 crores. The accumulated loss of the company as on 31/3/2018 was Rs. 24.26 crores and the loss in the financial year ending March 2019 was Rs. 7.78 crores. Thus the total loss as on March 2019 is around 33 crores. The increase in news paper cost, flood of August 2018, decreased income from advertisement and other difficulties lead to the financial constraints of the appellant establishment. The copies of balance sheet for the accounting years 2016-17, 2017-18 & 2018-19 are produced and marked as Annexure A1 series. The

respondent issued notice dt. 13/08/2019 alleging delay in remittance of contribution for the period 2018-19 and to show cause why damages as stipulated U/s 14B of the Act shall not be levied on the appellant. The appellant attended the enquiry and explained the reasons for delay in remittance of contribution. The respondent, without considering any of the representations, issued the impugned order. The respondent failed to exercise his discretion provided U/s 14 B of the Act as well as under Para 32A of EPF Scheme. In ***RPFC Vs SD College Hoshiarpur***, 1997 (2) LLJ 55 the Division Bench of Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether he has the discretion to reduce percentage of damages. In ***Indian Telephone Industries Vs Assistant PF Commissioner***, W.P(C) No. 32515/2005 the Hon'ble High Court of Kerala held that the authority exercising powers U/s 14B has the discretion to reduce the damages. The delay in remittance of contribution was neither deliberate nor intentional and there is no contumacious conduct on the side of the appellant. The Division Bench of the Hon'ble High Court of Kerala in ***Harrison Malayalam Vs Regional PF Commissioner***, held that financial

constraints are to be considered as a valid reason for the purpose of delayed payment of contribution. The Division Bench of the Hon'ble High Court of Kerala in **Standard Furniture Vs Registrar EPF Appellate Tribunal and Other**, 2020 (4) KLT 105 held that levy of damages U/s 14B is not automatic and all circumstances which lead to delay in remitting provident fund contribution have to be factored by the authorities concerned before issuing an order U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of provident fund contribution for the period from 04/2018 to 1/2019. Any delay in remittance of contribution will attract damages U/s 14B read with Para 32A of EPF Scheme. The Hon'ble Supreme Court in **M/s Hindustan Times Case**, AIR 1998 SC 688 held that default on the part of the employer based on the plea of financial problem cannot be a justifiable ground for the employer to escape the liability. There is no explanation for the mounting debts clearly suggesting that the so called debts are just on paper. If at all there is any loss it is only due to mismanagement and the

appellant cannot take shelter under such fabricated loss to delay the remittance of contribution. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Case***, held that even if it is assumed that there is a loss as claimed it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over the different points of time. The Hon'ble High Court of Kerala in ***Calicut Modern Spinning and Weaving Mills Vs RPFC***, 1982 1 LAB IC 1422 held that Para 38 of EPF Scheme obliged the employer to make the contribution within 15 days of close of every month and Para 30 of the Scheme cast an obligation of the employer to pay both the shares payable by himself and on behalf of the member employed by him in the first instance. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 LAB IC 1261 pointed out that damages U/s 14B is meant to penalize the defaulting employers and it is a warning to the employers not to commit breach of statutory obligation U/s 6 of the Act.

4. The only ground raised by the appellant for delayed remittance of provident fund contribution is that of financial difficulties. According to the learned Counsel for the respondent though the appellant pleaded the financial difficulties before the respondent the same was not substantiated by the appellant. The appellant produced the annual reports for the year ended 31/03/2017, 31/03/2018 and 31/03/2019 to substantiate their claim of financial difficulties in this appeal. In the year 2016-2017 it is seen that the total revenue income of the appellant was Rs. 48.46 crores. For the year 2017-18 the revenue income was Rs.50.61 crores and for the year 2018-19 the revenue income was Rs.48.70 crores. It is also seen that for the year 2016-17, the appellant had paid salary and allowances to the tune of Rs. 10.31 crores and for the year 2017-18 Rs. 7.43 crores and for the year 2018-19 it was Rs.12.50 crores. It is also seen that contribution in provident fund is also accounted in all these years. As rightly pointed out by the learned Counsel for the respondent the financial difficulties as claimed by the appellant cannot be a reason for delayed

payment of provident fund contribution. However it was pointed out, that the appellant company was running under loss during these years. On a perusal of the profit and loss statement for the year ended 31/03/2017, the appellant has incurred a loss of Rs.1.72 crores and for the year ending 31/03/2018 the loss was projected as Rs. 3.57 cores and for the year ending 31/03/2019 the loss was projected as Rs. 7.78 crores.

5. According to the learned Counsel for the respondent the documents now produced by the appellant in this appeal cannot be accepted as a proof of financial difficulties. In ***Aluminum Corporation Vs Their Workmen***, 1964 (4) SCR 429 the Hon'ble Supreme Court held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. Further the correctness of the figures as shown in the balance sheet itself are to be established by proper evidence before the authority by a responsible person. According to the learned Counsel, in the absence of such validation, the

figures in the balance sheet cannot be taken as proof of financial difficulties of the appellant establishment. The learned Counsel for the respondent also pointed out that the appellant had no case that the wages of the employees were not paid in time. When the wages are paid, the employees' share of the contribution is deducted from the salary of the employees. Non-payment of the 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 offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution. In fact the appellant specifically pleaded in the appeal memo that "Inspite of heavy losses petitioner was paying wages and other statutory dues to the employees in time". However considering the financial difficulties, the appellant is entitled for some relief as far as damages U/s 14B is concerned.

6. Considering all the facts, circumstances, pleadings and evidence 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 levied under Sec 14B of the Act.

Hence the appeal is partially allowed the impugned order is modified and the appellant is directed to remit 70% of the damages.

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