

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL
JABALPUR

NO.CGIT/LC/EPFA-09-2019

Present : P.K. Srivastava

H.J.S. (Retd.)

M/s Sunpet Pack Jabalpur Pvt. Ltd.

781, Golbazaar,

Jabalpur(M.P.) - 482002

APPELLANT

Versus

Assistant Provident Fund Commissioner,

Jabalpur (M.P.)

RESPONDENT

(J U D G M E N T)

(Passed on this 22nd day of April 2024)

Under challenge in the present appeal is order dated 21.08.2018 passed by the respondent authority U/S. 7-A of the Employees Provident Fund & Misc. Provisions Act 1952 (in short the Act) and review order on 10.01.2019 passed by the respondent authority U/S 7-B of the Act, by which the respondent authority has held the appellant establishment liable to pay EPF dues of its employees for the period from 04/2012 to 03/2017 and has computed the amount at Rs. 29,65,583/-. Facts connected are mainly that the appellant establishment is covered under the Act and is under obligation to deposit the EPF dues of its employees. A complaint was filed by some of the employees with the respondent authority alleging that their EPF dues were not being deposited by the appellant establishment. The respondent authority directed the enforcement officer to visit the company premises. The enforcement officer filed its inspection note dt. 28.04.2016 stating that the appellant establishment was not making compliance of the provisions of the Act in letter and spirit. Enquiry was conducted by the respondent authority after issuing notice U/S. 7-A of the Act to the appellant establishment. The department through its Enforcement Officer and appellant establishment through its representative participated in the enquiry. It was found by the respondent authority that the EPF dues of the employees were not being deposited by the appellant establishment according to the Act. He also found that the claim of the appellant establishment that

the salary paid was inclusive of House Rent Allowance (in short HRA) and Conveyance Allowance (in short C.A.) was not substantiated from the records. Hence, he recorded a finding to this respect and held the appellant establishment liable to pay EPF dues to the tune of Rs. 29,65,538/- for the period under assessment vide order dt. 21.08.2018. A review petition filed by the appellant establishment against this order was also dismissed vide order dt. 10.01.2019. Hence this appeal.

Grounds of appeal, taken in the memo of appeal are mainly that the impugned findings are against law and facts, passed by the respondent authority in ignorance of evidence on record to the effect that the breakup of HRA and Conveyance Allowance was shown in the balance sheet and was not disputed by the complainant. The respondent authority also committed error in law in ignoring the fact of bad financial condition of the appellant establishment being the reason for not depositing the amount in time hence the delay was not intentional.

In its counter to the appeal, the respondent authority has taken a case that a written complaint was received in the office of the respondent on 28.03.2019 regarding not deposit of PF amount and non issuing PF slips by the appellant establishment. The Enforcement Officer conducted inspection of premises of the appellant and submitted his inspection note dt. 28.04.2016 mentioning that the appellant establishment itself admitted that it was not complying with the provisions of the Act. The Enforcement Officer submitted another report dt. 29.04.2016 stating that the appellant establishment failed to produce records required by him in this respect and despite extending opportunity to deposit the dues, it did not deposit it. Hence, a show cause notice dt. 06.06.2016 was issue to the appellant establishment. As there was no response from the establishment, summons dt. 07.09.2016 were issued U/S. 7-A of the Act directing to the appellant establishment to appear before the respondent authority with a relevant records on 04.10.2016. During enquiry the appellant establishment took a case that the column salary in the salary statement included Conveyance Allowance and HRA also on which no PF was due. It was found that no such allowance were earmarked in the salary sheets and even in the balance sheets there was no such classification. The respondent authority rightly recorded the finding that the EPF dues were to be paid on the whole amount mentioned in salary head in the salary sheets and held the appellant establishment liable to pay EPF dues accordingly after recording a finding that appellant establishment has faulted in depositing the EPF dues of its employees according to the Act. Hence, the finding of the respondent authority and the computation both cannot be faulted in law or fact.

No rejoinder has been filed by the appellant establishment.

I have heard argument of Mr. Anoop Nair, Senior Counsel for appellant establishment and Mr. J.K. Pillai for respondent authority. Both the sides have filed written statements which are part or record. I have perused the written arguments and have gone through the material on record as well.

On perusal of record in the light of rival arguments, following points come up for determination in the present appeal.

1. *Whether, there has to be a moratorium as provided U/S. 14 of IBC Act in the present matter because of pendency of insolvency proceedings before National Company Law Tribunal (in short NCLT) case no.- CP(IB) 28(MP) 2023 initiated by the secured creditor Axis Bank ?*
2. *Whether, the finding of the respondent authority that the appellants establishment is liable to pay EPF dues to be calculated on the basis of amount shown to have been paid as salary and wages in the salary sheets and balance sheets of the appellant establishment for the period under assessment ?*

Point for Determination No.-1 :-

Learned Senior Counsel has submitted that since corporate insolvency proceedings are pending before NCLT, details mentioned above, the proceeding before this Tribunal should be kept in abeyance.

Section 14 of the IBC Act is being reproduced as follows :-

Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(2A) *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]*

(3) *The provisions of sub-section (1) shall not apply to--*

(a) *such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

(b) *a surety in a contract of guarantee to a corporate debtor.*

(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Learned Senior Counsel as relied on following case laws –

1. ***Malayan Banking vs. Ushdeo International, 2019 SCC Online Bom 13062.***
2. ***Uni Liver Industries vs. Quality Limited, 2019 SCC Online, Cal 9126.***
3. ***Sundaresh Bhatt Official Liquidator vs. Central Board of Indirect Taxes.***

In all these cases it has been laid down the proceedings pending before other Forum will stand in abeyance only after NCLT passes such an order regarding moratorium U/S. 14 of the IBC. There is nothing on record to show that such a moratorium order has been passed by NCLT. Only pendency of insolvency proceedings before NCLT will not automatically operate as moratorium.

Hence, in the light of above discussion this argument from the side of appellant establishment fails and point for determination no.-1 is answered accordingly.

Point for Determination No.-2 :-

Learned Senior Counsel for appellant has submitted that by taking into consideration the HRA and Conveyance Allowance for calculation of EPF dues, the

respondent authority has committed error in law inspite of the fact that vide its letter dated 05.04.2018, the appellant establishment has specifically submitted the breakup of all the allowance. The respondent authority has thus committed error in law in recording the impugned finding ignoring the evidence on record.

Both the sides referred to Section 2-B of the Act which is as follows :-

2. (b) “basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

Respondent side has referred to Section 1 (3)(a) & 1 (3)(b) of the Act and has submitted that every employer is under compulsory liability to deduct provident fund from its employees and deposit it with its contribution, with the respondent authority. Learned Counsel further submits that according to Section 2-B of the Act, the EPF dues are to be deposited on basic wages excluding the allowances mentioned in it.

1. Short title, extent and application.— (1) This Act may be called the *Employees’ Provident Funds and Miscellaneous Provisions Act, 1952*.

(2) It extends to the whole of India

(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

4.....

Learned Counsel further submits that as per para 30 (3) of EPF Scheme, the employer cannot escape from this liability.

Also it has been submitted by the learned Counsel for respondent that since this Act is beneficial legislation to protect the interest of the workers it has to be interpreted in a manner giving full benefit to the employees. Learned Counsel has relied on judgment of Hon'ble Supreme Court in *CA No.- 6893/2009 in the matter of Maharashtra State Co-operative Bank Vs. APFC, Para 19*. He further refers to judgments of Hon'ble The *Supreme Court in RPFC vs. Shibu Metal Workers 1964-65 (27) FJR 491* holding that in interpreting provisions of the Act, the interpretation which helps the achievement and furtherance of the object of the Act should be preferred in case two views are reasonably possible. Defending the findings of the respondent authority that the salary head did not bifurcate itself into wage component and HRA/ CA component, learned Counsel had submitted that it has been recorded by respondent authority on the basis of evidence on record and it cannot be faulted in law or fact. As mentioned earlier the respondent authority has observed in the impugned order that there was no mention of HRA/CA in the salary head produced by appellant establishment inform of salary registers. Learned Senior Counsel for appellant has submitted that it was mentioned in the balance sheet and the breakup was given to respondent authority on their demand. The balance sheets of the appellant establishment have been filed as Annexure A/4. In these balance sheets there is column of salary and wages under the head employee benefit expenses. There is no mention of HRA and CA. As regards the breakup of HRA and CA which was shown by the appellant establishment before the respondent authority and was not disputed by the complainants, perusal of impugned order at page 8 shows that the complainant agreed only to the fact that the PF amount claimed to have been deposited was not incorrect. They never agreed that it was the complete amount which was required to be deposited by the appellant establishment under the Act. Since there was nothing before the respondent authority to enable him to decipher as to what amount was paid in salary head and what amount was paid under the head of HRA/CA, his finding on this point as mentioned above, cannot be faulted in law or fact. In absence of any such evidence before this Tribunal also, the impugned finding is liable to be affirmed and is affirmed accordingly holding the impugned finding correct in law and fact.

Point for determination no.-2 is answered accordingly.

No other point was pressed.

In the light of above discussion and findings, the appeal is held sans merit and is liable to be dismissed.

ORDER

The appeal is dismissed. Cost easy.

**(P.K. SRIVASTAVA)
PRESIDING OFFICER**

DATE: 22/04/2024

Judgment Signed, dated and pronounced.

**(P.K. SRIVASTAVA)
PRESIDING OFFICER**

DATE: 22/04/2024