BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. 607(4)2011

M/s. National Textile Corporation ….Appellant

Through:- Sh. S.K. Gupta, Ld. Counsel for the appellant.

Vs.

APFC, Delhi (North) …Respondent

Through:- Sh. Satpal Singh, Ld. Counsel for the respondent.

Order Dated:-22.05.2026

The appellant has assailed the order dated 21.07.2011 passed by the APFC, Delhi (North) under section 7A of the **Employees Provident Fund and Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act')**, whereby the respondent assessed the dues of Rs. 60,49,074/- for the period from 04/2006 to 02/2010. The appellant has assailed the order on several grounds, *inter alia,* the impugned order is *prima facia* contrary to the law and facts of the case; the respondent failed to consider all the legal objections raised during the enquiry under section 7A of the Act; the respondent didn't consider the notification no. S.O. no. 320(E) dated 09.04.1997. It is further stated that the provisions of the Act do not empower the respondent to increase the rate of contribution from 10% to 12 % after merger of the company. Therefore, the appellant has prayed that the impugned order be quashed and set aside.

Per contra, the respondent has filed its reply opposing the appeal. It has admitted Para no. 01 to 04 of the appeal. So far so Para no. 5 is concerned, it has agreed that for statutory rate of P.F. contribution is 10% in respect of those establishments who are exempted under the list in schedule II, as notified by the **Government of India vide notification No. S.O. 320. (E) dated 09.04.1997.** However, in reply to Para no. 09 of the appeal, the respondent has submitted that NTC, HC (bearing P.F.

code no. DL/2980) was not a sick unit as defined in the said notification, hence, the rate of P.F. Contribution remained 12% for the employees employed by the holding company. Further, consequent upon the merger of all NTC units with the petitioner company as per the order of the BIFR, all employees of the other units of NTC became the employees of the petitioner, and it became the liability of the petitioner company to extend P.F. benefits at statutory rate from the date of the merger. It is submitted that all the submissions of the appellant were duly considered and rejected in the impugned order. Hence, the respondent has prayed for dismissal of the appeal with costs.

I have heard the arguments advanced by both parties and perused the written submissions filed by both parties. Before parting the decision, the facts of the appeal are required to be reproduced in brief. NTC Ltd. is a Government of India undertaking, **having its office at 7, Lodhi Road, New Delhi-110003**, and is covered under the provisions of the Act. It is an exempted establishment under the meaning of 17(1) (a) of the Act as the appropriate government had granted exemption under section 17(1) (a) of the Act to the appellant's establishment, and therefore, the appellant maintains its own exempted PF trust as per the provisions of the Act.

The appellant has several units, one of the units, National Textile Corporation, (Delhi, Punjab & Rajasthan) (In short 'NTC (DP & R)) was separately covered under the PF code no. DL/3642, and had been declared a sick unit. Vide order dated 26.07.2007 of BIFR, it was merged with NTC holding along with eight other units. Earlier, as per the applicable law, 10% of the Provident Fund was deducted and deposited with the trust maintained by the appellant's establishment, and even after the merger of NTC (DP & R) with NTC Holding Ltd., it continued to deduct the PF share of the employees and equivalent share of employer to its trust, while the NTC holding Ltd. was deducting the share of its employees at the rate of 12%.

The crux of the appeal is whether the RPFC had adjudicated the issue in accordance with law after considering all the aspects and notification no. 320(E) dated 09.04.1997.

The Ld. Counsel for the appellant has placed reliance on a notification S.O. 320(E) issued by the Ministry of Labour dated 09.04.1997 wherein certain class of industries have been exempted from paying enhanced rate of contribution. He also drew attention of this Tribunal towards the clarification given about the enhancement of contribution rate. For better appreciation, the notification and clarification about enhancement of contributions under Employees' Provident Fund & M.P. Act are reproduced herein:

MINISTRY OF LABOUR
NOTIFICATION
New Delhi, the 9th April, 1997

S.O. 320(E).— In exercise of the powers conferred by the first proviso to section 6 of the *Employees' Provident Funds and Miscellaneous Provisions Act, 1952* (19 of 1952) and in supersession of the notifications specified in Schedule I to this notification, except as respects things done or omitted to be done before such supersession, the Central Government, after making necessary inquiry into the matter, hereby specifies with effect from the 1st day of May, 1997, every establishment and class of establishments other than those specified in Schedule II, to which the said proviso shall apply.

SCHEDULE I

(i) S.O. 360 dated the 17th May, 1989
(ii) S.O. 1837 dated the 29th June, 1990
(iii) S.O. 627(E) dated the 31st August, 1994
(iv) S.O. 126(E) dated the 1st March, 1995

SCHEDULE II

Establishments to which the first proviso to section 6 shall not apply

(i) Any establishment in which less than twenty persons are employed;

(ii) Any sick industrial company as defined in clause (o) of sub-section (1) of section 3 of the *Sick Industrial Companies (Special Provisions) Act, 1985* (1 of 1986) and which has been declared as such by the Board for Industrial and Financial Reconstruction established under section 4 of that Act, for the period commencing on and from the date of registration of the reference in the Board and ending either on the date by which the net worth of the said company becomes positive in terms of the orders passed under sub-section (2) of section 17 of that Act or on the last date of implementation of the Scheme sanctioned under section 18 of that Act;

(iii) Any establishment which has, at the end of any financial year, accumulated losses equal to or exceeding its entire net worth, that is, the sum total of paid-up capital and free reserves, and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year.

Explanation.— For the purposes of clause (iii), "cash loss" means loss as computed without providing for depreciation;

(iv) Any establishment in the—
(A) Jute industry;
(B) Beedi industry;
(C) Brick industry;
(D) Coir industry other than the spinning sector;
(E) Guar gum factories.

CLARIFICATIONS REGARDING ENHANCEMENT OF CONTRIBUTIONS UNDER THE EMPLOYEES' PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952

There have been constant enquiries from subscribers to the *Labour Law Reporter* seeking clarifications with regard to the rate of Employees' Provident Fund contributions.

It is hereby clarified that the Finance Minister, while presenting the Budget for 1997-98, declared that the rate of EPF contributions shall be raised to 10% for those establishments which had been depositing at the rate of 8.33%, and from 10% to 12% for those establishments which had been depositing at the rate of 10%.

Consequently, vide Notification No. S-35019/97-SS-II dated 9th April, 1997, issued by the Employees' Provident Fund authorities, the rate of EPF contributions has been enhanced from 8.33% to 10% in all establishments irrespective of the number of employees working therein.

As regards the rate of 12% for establishments already depositing at 10%, an amendment to the Act will be required, which will take some time. Thus, there is no change in the rate of EPF contributions for establishments which have been depositing at 10%; this shall remain the same for the time being.

The enhanced rate from 8.33% to 10% shall not be applicable to the following categories of establishments:

1. Any establishment employing less than twenty employees.
2. Sick industrial establishments.
3. Industrial establishments with accumulated losses exceeding their entire net worth.
4. Jute industry.

5. Beedi industry.
6. Brick industry.
7. Coir industry other than the spinning sector.
8. Guar gum factories.

The Ld. Counsel for the appellant further submitted that the appellant has still not come out of the clutches of 'sick industries' because its accumulated losses have not turned positive. According to him, the net worth only came positive in the year 2014. Therefore, the respondent was not right in passing the order directing the appellant to contribute the extra 2%, which it cannot. He has relied upon the judgment of Hon'ble Supreme Court of India in **'Marathwada Gramin Bank Karamchari Sanghatana and Another vs. Management of Marathwada Gramin Bank and Others, 2011 LLR 1130,**' whereby it was held that:

> ***27.*** *The respondent bank is under an obligation to pay provident fund to its employees in accordance with the provisions of the statutory Scheme. The respondent bank cannot be compelled to pay any amount in excess of its statutory liability for all times to come merely because the respondent bank formed its own trust and started paying provident fund in excess of its statutory liability for some time. The appellants are certainly entitled to provident fund according to the statutory liability of the respondent bank. The respondent bank has never discontinued its contribution towards provident fund in accordance with the provisions of the statutory Scheme.*

He submits that the facts of the aforesaid case squarely apply to the present case, as the appellant had been contributing the PF at the rate of 10%, which erstwhile appellant company had also been making contributions to its employees at the rate of 10%, which is applicable in the present case. Therefore, the appellant cannot be compelled to make excess payment at the rate of 12% which it had earlier given to its employees.

Per contra, the respondent has made the submission that M/s. National Textile Corporation is covered under the provisions of 'the Act' and is exempted from the operation of EPF scheme under section

17(1)(a) of 'the Act' by virtue of maintaining an in-house PF trust. It was further submitted that M/s. NTC (DPR) Ltd. covered under the provisions of 'the Act' vide code no. DL-3642, also an exempted establishment maintaining its own PF trust and the said establishment stood merged with the present establishment, namely M/s. NTC Ltd. bearing PF code no. DL-2980 (Holding Co.) w.e.f. 01.04.2006 pursuant to a scheme of merger approved by the BIFR. It was further submitted that M/s. NTC (DPR) Ltd., being a sick unit, had been contributing towards EPF at the reduced rate of 10% towards EPF in respect of its employees, whereas M/s. NTC Ltd. (holding company) had been contributing @ 12% in respect of its employees.

According to the respondent, once the company had been taken over and merged with the holding company, all the employees' identity became common, and the appellant could not maintain two separate identity of its employees, one belonging to the erstwhile company and the other to the holding company. Therefore, the PF commissioner was right in assessing the PF dues of the employees working in erstwhile M/s. NTC (DPR) Ltd. For buttressing his arguments, he referred to the communication dated 28.03.2011 issued by M/s. NTC Ltd., signed by GM (Finance), wherein it was informed that the Board of Directors of M/s. NTC Ltd. had taken a decision to implement the rate of 12% PF contribution with effect from 01.04.2011 in respect of all employees of M/s. NTC Ltd. including employees of erstwhile M/s. NTC (DPR) Ltd. In view of above submission, he submitted that the appeal be dismissed.

I have heard the arguments on behalf of both parties. Certain facts are not disputed. Both the appellant and respondent have accepted the notification S.O. 320(E) issued by the Ministry of Labour dated 09.04.1997 as well as its applicability. It is also not disputed that the appellant had been declared a sick unit before 1997. The appellant had been running nine mills, four each in Punjab and Rajasthan and one in Delhi, and had been paying matching PF contributions of 10% in respect of its employees. Subsequently, the appellant was merged with its parent company w.e.f. 01.04.2006 pursuant to the scheme of BIFR.

It is a settled principle that once a company merges with its parent company, the parent cannot be allowed to maintain two separate identities of its employees, one of the erstwhile company and the other of its own. By operation of law, all employees of erstwhile company became employee of the holding company and the holding company was required to extend the same benefits to them as that of its employees. Once any company was merged, any status of sick industry granted to it ceased to exist.

The facts of the case relied upon by the appellant's company is totally different. In the said case, after withdrawal of the status of exempted trust, the respondent company had been contributing much more than the statutory requirement continuously, therefore, it was held that the company was not under any obligation at any point of time to extend the enhanced contribution to its employees beyond the requirement of law. Here the appellant's company has not been given the statutory contribution and has sought shelter of exemption as per circular, which it cannot after the erstwhile M/s. NTC (DPR) Ltd. was merged with it.

Further, the aforesaid position has been admitted by the appellant company in its communication letter dated 28.03.2011.

Considering the above facts and circumstances on record, I find no merit in the appeal. Hence, the same stands dismissed. The order passed by the respondent authority under section 7A of the Act are hereby confirmed. The appellant is directed to deposit the assessed dues in terms of the impugned orders within three weeks from the date of receipt of this order. A copy of this order be sent to both the parties. Consign the record to the record room.

(Atul Kumar Garg)
Presiding Officer