

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936**

**WP(C).No. 1290 of 2015 (I)**  
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**PETITIONER(S):**  
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**M/S.STEEL INDUSTRIAL KERALA LTD.,  
SILK NAGAR, ATHANI P.O., MULANKUNNATHUKAVU-680 771,  
THRISSUR , REPRESENTED BY SRI D.RAMASWAMY,  
DY. GENERAL MANAGER (FINANCE).**

**BY SRI.K.ANAND, SENIOR ADVOCATE  
ADVS. SMT.LATHA KRISHNAN  
SRI.M.N.RADHAKRISHNA MENON**

**RESPONDENT(S):**  
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- 1. THE ASST. PROVIDENT FUND COMMISSIONER,  
EMPLOYEES PROVIDENT FUND ORGANIZATION,  
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, KALOOR,  
KOCHI-682 017.**
- 2. ASST. PROVIDENT FUND COMMISSIONER & RECOVERY OFFICER,  
EMPLOYEES PROVIDENT FUND ORGANIZATION,  
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, KALOOR,  
KOCHI-682 017.**
- 3. CENTRAL PROVIDENT FUND COMMISSIONER,  
EPF ORGANIZATION, BHIKAJI CAMA PALACE,  
NEW DELHI-110 066.**
- 4. SECRETARY,  
CENTRAL BOARD OF TRUSTEES,  
OFFICE OF CENTRAL PROVIDENT FUND COMMISSIONER,  
EPF ORGANIZATION, BHIKAJI CAMA PALACE,  
NEW DELHI-110 066.**
- 5. THE MANAGER,  
ANDHRA BANK, THRISSUR - 680 771.**

**R1-R4 BY DR.S.GOPAKUMARAN NAIR, SENIOR ADVOCATE  
ADV. SRI.A.RAJASIMHAN  
R5 BY SRI.ABRAHAM MATHEW (VETTOOR)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**WP(C).No. 1290 of 2015 (I)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXT. P1:-TRUE COPY OF THE PROCEEDINGS DTD 31/8/2006.**

**EXT. P2:-TRUE COPY OF THE PROCEEDINGS DTD 27/8/2014 OF AAIFR.**

**EXT. P3:-TRUE COPY OF ORDER DTD 25.02.2009 OF THE 1ST RESPONDENT.**

**EXT. P4:-TRUE COPY OF THE LETTER DTD 25/9/2014 OF THE 2ND RESPONDENT.**

**EXT. P5:-COPY OF THE LETTER DTD 30/9/2014 OF THE PETITIONER.**

**EXT. P6:-TRUE COPY OF ORDER U/S.8F OF THE EPF AND MP ACT.**

**RESPONDENT(S)' EXHIBITS:**  
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**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

**MsV/**

**K. VINOD CHANDRAN, J**

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**W.P(C) No. 1290 of 2015**  
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**Dated this the 05<sup>th</sup> day of March, 2015**

**J U D G M E N T**

The petitioner is aggrieved with the recovery proceeded with by the Employees Provident Fund Organisation as per Ext.P6. Ext.P6 is for recovery of damages under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act) as mulcted on the petitioner by Ext.P3 order. The short contention raised by the petitioner is that the petitioner has been registered as a sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Hence, no proceedings for recovery could be initiated under Section 22 of the Act of 1985.

2. The Provident Fund Organisation has filed a statement in which it is stated that, by mere registration with the BIFR, without any rehabilitation Scheme being

formulated, there could be no interdiction of the recovery especially in the context of Central Board of Trustees having not waived the penal damages imposed in Section 14B of the Act. The learned Standing Counsel would specifically refer to Ext.P1 to contend that an application made in 2006 is still pending for reason of the petitioner having not given the details before the BIFR.

3. The learned counsel for the petitioner however, would refute such allegation. Though the company was registered as a sick industrial company under the SICA 1985, later on, there was a sale proposed at one of the factories to the Central Government for establishing a coach factory of the Indian railways. The sale was a symbolic sale and the consideration of which as reflected in the balance sheet took the company out of the SICA. The sale did not crystallise and hence the petitioner filed an appeal before the appellate authority under the SICA. It was rejected and reconsidered as per Ext.P2, pursuant to the direction of this Court.

4. The Board was directed to consider the matter afresh, in accordance with law after hearing the parties. In such circumstance, the declaration of the BIFR as is indicated in Ext.P1 that the petitioner company had become a sick industrial company as on 31.03.2004 is revived. Section 22 applies with all force and the Provident Fund organisation could only take recourse to the provisions of sub-section (1) of Section 22 and approach the BIFR for proceeding with the recovery.

5. As for waiver, it is the submission of the learned counsel for the petitioner that the same could be sought for only on a rehabilitation package being implemented in the course of rehabilitation initiated by the operating agency under the BIFR. The damages under Section 14B could be sought for waiver before the Central Board of Trustees under the EPF & MP Act, only on a recommendation by BIFR as is indicated in the second proviso to Section 14 of the EPF & MP Act. In such circumstance, this Court finds that the proceedings

for recovery of amounts mulcted as per Ext.P3 cannot be proceeded with unless otherwise sanction is obtained from the BIFR. Leaving open such remedies, the writ petition has to be allowed. The Employees Provident Fund Organisation is interdicted from proceeding for recovery of amounts quantified as damages under Section 14B unless sanction as spoke of under Section 22 is obtained from the BIFR.

Writ petition is allowed. No costs.

Sd/-  
**(K. VINOD CHANDRAN, JUDGE)**

jma

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//P.A to Judge//