

CWP No.22297 of 2012

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.22297 of 2012
Date of decision:30.07.2015**

The Regional Provident Fund Commissioner ...Petitioner

Versus

M/s Shivon International and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Vishal Gupta, Advocate,
for respondent no.1.

Rakesh Kumar Jain, J.

This petition is filed by the Regional Provident Fund Commissioner (hereinafter referred to as the “RPFC”) being aggrieved against the order dated 15.09.2011 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi.

The Employees' Provident Fund & Misc. Provisions Act, 1952 (hereinafter referred to as the “Act”) provides the institution of Compulsory Provident Fund, Family Pension Fund and Deposit-Linked Insurance Fund for the benefit of the employees in factories and other establishments. The Act provides social security to employees working in any establishment engaging 20 or more persons on any day. It provides compulsory deduction

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of provident fund from employees and a contribution from the employer, which is deposited in the worker's account in the EPF office. The Act also provides for insurance and pensionary benefits to the employees. The provident fund and other contributions have to be deposited by the employer by the 15th of the next month in which the employee has worked in the establishment and the dues become payable to him because the worker has already performed the employment upto last day of the previous month. The contributions have to be deposited by the employer/establishment only after beneficiary worker has already worked and, thus, earned this amount in terms of the contract of employment and the provisions of the Act. In case of failure to deposit the legitimate dues of workers, the EPFO can initiate recovery action under Section 7A of the Act for the purpose of compelling the employer to deposit the legitimate dues of the worker, which are determined through a quasi-judicial process. The Act also provides for initiation of action to levy penalty and damages under Section 7Q and Section 14-B of the Act to provide for the interest on the delayed payment by the employer.

In the present case, the respondent-establishment is covered under the Act under Code No.HR/KNL/6414. The respondent-establishment failed to pay the provident fund contributions, the family pension/employees pension schemes contribution, the insurance fund contributions, the administrative charges of EPF Schemes, 1952 as required by law for the months of 08/1997, 10/1997, 12/1998 to 10/1999, 02/2000, 03/2000, 05/2000 to 08/2000 and 10/2000 to 05/2003 within the prescribed

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time limit. A show cause notice along with statement of late deposits was issued to the employer vide office letter No.Damages/HR/KNL/6414/879 dated 30.05.2009 for late deposit of provident fund dues. The respondent-establishment took the stand that the delay has been caused because of lack of funds and financial crisis.

The Assistant Provident Fund Commissioner, Karnal (hereinafter referred to as the "APFC") passed the order on 22.05.2009, holding the respondent-establishment liable for ₹12,82,342/- for damages under Section 14-B of the Act, for ₹5,33,537/- for interest under Section 7Q and it was held that the amount of damages and interest, totalling ₹18,15,879/- should be deposited in the respective accounts through a separate challan within 15 days of receipt of the order, failing which action would be initiated to recover the amount without further notice together with simple interest @ 12% per annum as provided under Section 7Q of the Act.

The said order dated 22.05.2009 was challenged by the respondent-establishment by way of an appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as the "Tribunal"). The said appeal was allowed on 30.06.2009, the order dated 22.05.2009 passed by the APFC was set aside and the case was remanded back to the EPF Authority to assess the liability @ 22% (inclusive of interest).

Aggrieved against the said order, the present petition has been filed in which it is averred that the Tribunal has erred in reducing the

liability @ 22% (inclusive of interest) because it has no such power as it only vests with the Central Board of Trustees in view of para 32-B of the Employees' Provident Funds Scheme, 1952, which reads as under:-

“32-B Terms and Conditions for reduction or waiver of damages- The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B, subject to the following terms and conditions, namely,--

- (a) In case of a change of management including transfer of the undertaking to worker's co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed.
- (b) In cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its Scheme, in this behalf recommends, waiver of damages up to 100 per cent, may be allowed;
- (c) In other cases, depending on merits, reduction of damages upto 50 per cent, may be allowed.”

It is also averred that the learned Tribunal has erred in setting aside the order of the APFC on the ground of financial problem, which is not available in view of the decision of the Supreme Court in the case of **Hindustan Times Ltd. vs. Union of India**, 1998(2) S.C.T. 256.

On the other hand, counsel for the respondent has submitted that the learned Tribunal has relied upon a decision of the Madras high Court in the case of **M/s Shanti Garments vs. RPFC**, 2003(1) CLR 228, in

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which it has been held that the financial crisis can also be a ground.

I have heard learned counsel for the parties and perused the available record.

There is no dispute that the contributions have to be made by the respondent-establishment by the 15th of next month in which the employee has been enrolled and the dues become payable to him. The petitioner has attached the statement showing the due date of the amount payable and the actual date of its deposit. Admittedly, the deposit is delayed. The only issue in this case is as to whether the financial crisis can be a ground to absolve the respondent-establishment from its liability under Section 7Q and 14-B of the Act. In this regard, the Supreme Court in **Hindustan Times Ltd.'s case (supra)**, while referring to the decision in the case of **Organo Chemical Industries vs. Union of India and others**, 1980 (1) SCR 61, has held that *“from the aforesaid decisions, the following principles can be summarized: The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable ground for the employer to escape liability....”*.

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In view of the decision of the Supreme Court in **Hindustan Times Ltd.'s case (supra)**, the judgment relied upon by the learned Tribunal in **M/s Shanti Garments's case (supra)** cannot be accepted.

In the present case, there are repeated defaults on the part of the respondent-establishment, who allegedly used the amount of contribution of the employees for its own purposes as there has been a considerable delay in depositing the same. For example, the contribution for the month of February 1999, which was due on 15.03.1999, was deposited on 28.03.2000, i.e. after a period of one year. The period of delay and its continuous repetition by the respondent-establishment cannot absolve it from its liability which has been rightly adjudged by the APFC and has been wrongly appreciated by the learned Tribunal only on the ground of financial crisis.

In view thereof, the present writ petition is hereby allowed, the order passed by the learned Tribunal is set aside and that of the APFC is upheld.

July 30, 2015
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(**Rakesh Kumar Jain**)
Judge