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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29.08.2019

\+ W.P.(C) 13217/2018

M/S KEE PHARMA LIMITED ..... Petitioner
Through: Mr. Abhishek Sharma & Mr. Parveen Kumar, Advs.

versus

UNION OF INDIA AND ORS. ..... Respondents
Through: Mr. Bhagwan Swarup Shukla, CGSC with Mr. Sarvan Kumar Shukla &Mr. Mukesh Kumar Pandey, Adv. for UOI
Mr. Abhishek Sharma & Mr. Parveen Kumar, Advs. for R-3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

<u>JUDGMENT</u>

<u>D.N. PATEL, CHIEF JUSTICE (ORAL)</u>

1. This writ petition has been preferred with the following prayers:

"a) Setting aside the provision of imposing 12% or more interest under Section 7Q of the EPF and MP Act, 1952;
b) Setting aside the order dated 07.09.2018 passed under Section 7Q of the EPF and MP Act, 1952 by the APFC, Delhi passed by the APFC, Delhi (Respondent 3 herein);
c) Any other relief for which this Hon'ble Court may deem fit and proper may be granted in favour of the Petitioner in view of overall facts and circumstances and also in the interest of justice."

2. Learned counsel for the petitioner submitted that Section 7-Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act, 1952") is unconstitutional, as it prescribes the rate of interest @ 12% p.a. or more, whereas the rate of interest prescribed for the subscribers as per Central Government communication dated 25th May, 2018, is 8.55% for the year 2017-18. It is also submitted by counsel for the petitioner that payment of damages has also been prescribed under Section 14B of the Act, 1952 and hence, Section 7-Q of the Act, 1952 is unconstitutional. It is also submitted by counsel for the petitioner that no provision for appeal is provided against an order under Section 7-Q of the Act, 1952.

3. We have heard the counsel for the petitioner and have looked into Section 7-Q of the Act, 1952, as well as Section 14B thereof, which read as under:

> *"**7Q. Interest payable by the employer**. - The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till date of its actual payment:*
>
> *Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.*
>
> ***<u>14B. Power to recover damages.</u>*** *- Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the*

Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

4. It appears that Section 7-Q of the Act, 1952 has been incorporated looking into the liability of the employer to make timely payment to its employees under the provisions of the Act, 1952 and if the same is not disbursed properly by the employer, then under Section 7-Q of the Act, 1952, the amount is to be recovered at the rate of 12% p.a. Merely because there is a communication by the Central Government dated 25th May, 2018 (Annexure P-14 to the memo of this writ petition) which prescribes payment of the interest @ 8.55% p.a. for the year 2017-18 to its employees, it cannot be said that interest @12% p.a. fixed under Section 7-Q of the Act, 1952 is unreasonably excessive.

5. For ready reference, communication dated 25th May, 2018 by the Ministry of Labour and Employment, Government of India, New Delhi reads as under:

"Dated: 25.05.2018

No. Interest I/CBT Agenda/ROI/2017-18/4153

To,
All Regional Provident Fund Commissioners,
Officers In Charge,
Regional Offices / Sub- Regional Offices,

Sub:- Declaration of Rate of Interest for the Employees Provident Fund Members Account for the Year 2017-18- regarding.

The Ministry of Labour and Employment Government of India has conveyed the approval of the Central Government under para 60(1) of Employees Provident (Funds Scheme 1957 to credit interest 8.55% for the year 2017 - 18 to the account of each member of the EPF Scheme as per the provision under para 60 of EPF Scheme 1952. You are accordingly requested to issue necessary instructions to all concerned for crediting the said interest to the members accounts.

(Authority Ministry of Labour and Employment Letter No. R-11018/1/2017 SS-11 dated 18 May, 2018)."

6. In view of the aforesaid communication dated 25th May, 2018, it appears that the aforesaid rate of interest of 8.55% is prescribed only for the year 2017-18, to be credited to each member's account who subscribe to the Employees' Provident Fund Scheme as per the provision under para 60 of the Employees' Provident Funds Scheme, 1952. This is an administrative instruction given by the Central Government. This administrative instruction varies from year to year. Merely because the administrative instruction specifies the rate of interest at 8.55% for the members of the Employees' Provident Funds Scheme, 1952, it does not mean that statute

cannot prescribe payment of interest at the rate of 12% p.a. by the employer, in case the arrears are not paid by the said employer in time. It ought to be kept in mind that there is a vast difference between an employer and an employee. If an error is made by the employer, it ought to be viewed strictly, and therefore, interest at the rate of 12% p.a. has been prescribed. It can be said that the said rate of interest is unreasonably excessive but the Parliament is vested with power, jurisdiction and authority for prescribing interest at the rate of 12% p.a. to be paid by the employer under Section 7-Q of the Act, 1952, in case of default of payment by the employer towards his contribution to the provident fund of the employees.

7. Payment of interest to the members of the Employees' Provident Funds Scheme, 1952 is one thing, and a higher rate of interest to be paid by the employer in case of default in payment towards contribution of the employer, is altogether another thing. Both rates of interest/percentages may not be the same; and depends upon the policy decision taken by the Government.

8. Moreover, looking to the provisions of Section 14B of the Act, 1952, which prescribes power to recover damages from the employer, we are of the view that this section has nothing to do with Section 7-Q of the Act, 1952. Both, Sections 7-Q and 14B of the Act, 1952, are working in different spheres. Section 14B is concerned with the recovery of the damages from the employer, whereas Section 7-Q of the Act, 1952 is concerned with payment of interest by the employer, compelling him to make the payment of the principal amount in case the employer has not contributed his share in time. The employer's contribution covers the provident fund. If any amount is to be paid within a stipulated period of time and is not paid within the said time, interest is bound to be paid by the said person. Thus, we find

no reason to quash and set aside Section 7-Q of the Act, 1952.

9. We are not in agreement with the contention of the petitioner that since appeal as a matter of right, is not provided to the employer, under Section 7-Q of the Act, 1952, it should be read down. Merely because a provision to appeal is not provided against the order under Section 7-Q of the Act, 1952, the Section 7-Q cannot be quashed. A writ petition is always tenable in law under Article 226 of the Constitution of India whenever no express provision to appeal an order is not provided for in the Act/Rule or Regulation. Moreover, under Section 7-Q of the Act, 1952, only the rate of interest is prescribed, which is @ 12% p.a., upon the amount which is to be paid by the employer covering the provident fund contribution by the employer. Thus, in fact nothing is to be decided under Section 7-Q of the Act, 1952. It is merely an applicability of interest @ 12% p.a. upon the amount which is legally payable by the employer. Thus, once an amount payable by the employer is determined by the appropriate authority under the Act, 1952, Section 7-Q of the Act, 1952 is made applicable, when the amount is not paid within the specified time by the employer. The dues which are to be paid by the employer will be assessed initially by the appropriate officer/authority, which is appealable under Section 7-I, of the Act, 1952. Thus, if any liability is imposed upon the employer, which requires any calculation under the provisions of the Act, 1952, concerning the provident fund, the said order is always appealable under Section 7-I, whereas Section 7-Q of the Act, 1952 prescribes simple mathematical calculation of interest, @ 12% p.a. upon the amount which is to be paid by the employer. Thus, merely because an express provision to appeal, is not provided for, against an order under Section 7-Q of the Act, 1952, we find no reason to quash and set aside Section 7-Q. In fact, the provisions of the

Act, 1952, especially Section 7-Q, cannot be said to be violative of any of the provisions of the Constitution and the Central Government has the power, jurisdiction and authority to enact the Act, 1952.

10. With the aforesaid observations, this writ petition is dismissed.

<u>CM APPL. 51316/2018 (*Stay*)</u>

11. In view of the order passed in W.P.(C) 13217/2018, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 29, 2019
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