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

\+ W.P.(C) 11095/2016 and C.M. Appl. 43389/2016

TECH MAHINDRA LTD ..... Petitioner

Through: Mr. J.P. Cama, Senior Advocate with Ms. Shally Bhasin, Mr. Chaitanya Safaya and Ms. Shruti Garg, Advocates

versus

REGIONAL PROVIDENT FUND COMMISSIONER-II AND ANR ..... Respondents

Through: Mr. Keshav Mohan, Advocate with Mr. Amit Vashist, Regional PF Commissioner (Legal)

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

<u>O R D E R</u>

% 02.12.2016

1. The petitioner has challenged the order dated 28th October, 2016 whereby the petitioner has been directed to deposit 30% of the amount determined by the Regional Provident Fund Commissioner i.e. Rs.2,44,83,06,748/-.

2. The petitioner is seeking complete waiver of the amount as a pre-condition for hearing of the appeal on the ground that petitioner has already contributed Rs.321.9 crores in respect of some employees in respect of which demand has been raised. That apart the petitioner is also disputing the liability in respect of employees earning more than the statutory ceiling of Rs.6500/- per month. The petitioner has also raised the contention that the employees deputed to non-SSA countries are not international workers within the meaning of para 83 of Employees Provident Fund Scheme, 1952.

3. According to the respondent, the Tribunal has rightly exercised the discretion by directing the petitioner to make a pre-deposit of 30% instead of the statutory limit of 75% prescribed in the Act. It is submitted that the employees of the five companies which amalgamated with the petitioner in 2012-13 were earlier covered under the Act and, therefore, the petitioner cannot dispute the liability to pay the contribution in their respect.

4. During the course of hearing, learned senior counsel for the petitioner on instructions agrees to furnish bank guarantee for Rs.50 crores to Employees Provident Fund Appellate Tribunal within a period of four weeks.

5. The writ petition is allowed to the limited extent that the pre-deposit in terms of para 6 of the impugned order is reduced from 75% to the bank guarantee of Rs.50 crores to be furnished by the petitioner within four weeks from today. Upon deposit of the bank guarantee for Rs.50 crores by the petitioner, the order dated 06th October, 2016 of the Regional Provident Fund Commissioner shall remain stayed till the disposal of the appeal.

6. The Tribunal would be entitled to encash the bank guarantee if the appeal is decided against the petitioner and the petitioner fails to make the payment of the amount determined by the Appellate Tribunal with Regional Provident Fund Commissioner within a period of two weeks of the judgment. The petitioner shall keep the bank guarantee alive till the two weeks after disposal of the appeal by the Appellate Tribunal.

7. The order of the Regional Provident Fund Commissioner shall remain stayed for a period of 30 days to enable the petitioner to furnish the bank guarantee for Rs.50 crores.

8. In the event of the failure of the petitioner to furnish the bank guarantee in terms of this order, this order shall automatically stand vacated and the Appellate Tribunal shall proceed in terms of the impugned order

dated 28th October, 2016.

9. Learned senior counsel for the petitioner submits that the Tribunal be directed to expedite the hearing of the appeal. Let this prayer be made before the tribunal.

10. Copy of this order be given *dasti* to counsels for the parties.

J.R. MIDHA, J.

DECEMBER 02, 2016
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