$~6

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

Date of Decision: 24th December, 2020

\+ **W.P.(C) 11008/2020 and CM APPLs. 34393/2020, 34394/2020**

M/S DENTSU ONE PVT. LTD. ..... Petitioner
Through: Mr. S.P. Arora and Mr. Rajiv Arora, Advocates. (M: 9899233114)

versus

REGIONAL P, F, COMMISSIONER-II DELHI (SOUTH) ..... Respondent
Through: Ms. Inderjeet Sidhu, Advocate. Mr. Krishnakumar, Assistant Provident Fund Commissioner, RO Delhi South

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.

2. The present petition challenges the impugned order dated 3rd December, 2020 passed by the Central Government Industrial Tribunal (*hereinafter "CGIT"*) by which the CGIT has, subject to the deposit of Rs.12 lakhs, stayed order dated 11th August, 2020 passed under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (*hereinafter "EPF Act"*) and admitted the appeal of the Petitioner against the same.

3. This is the second round of litigation by the Petitioner-Company. In the earlier round of litigation, the matter was remanded back by the ld. Division Bench of this Court for reconsideration vide order dated 24th January, 2019. The operative portion of the order reads as under:

"*17. Consequently, the Court sees no reason to interfere with the impugned order of the learned Single Judge in so far as remitting the matter to the Competent Authority for a fresh determination is concerned. For that matter, even the direction in the impugned order that the Appellant must be given four weeks" time to properly reply to the SCNs dated 22nd April 2014 and thereafter the Competent Authority should proceed afresh without being influenced either by its own earlier order dated 23rd January 2015 or of the order of the Appellate Authority does not call for any interference.*

18. The Court would like to add that in making a fresh determination, the Competent Authority will also not be influenced by any observation of the learned Single Judge including the observation that the circular dated 28th November 1990 does not have the force of law. The Competent Authority will also not be influenced by the observations on the merits of the case by this Court in the present order. In other words, all contentions of both parties are left open to be urged before the Competent Authority who will decide the matter afresh in the manner indicated.

19. The Court directs that the sum of Rs. 62,05,360/- deposited by the Appellant with the PF Authority shall be kept by the PF Authority in a fixed deposit with a nationalized bank initially for a period of six months and should be kept renewed during the pendency of the proceedings before the Competent Authority, who will issue appropriate directions in relation thereto at the time of final disposal of the SCNs.

20. The Appellant as well as the PF Authority are at liberty to place all the relevant facts and documents before the Competent Authority. The Appellant will file its reply to the SCNs dated 24th

> *April 2014 not later than 1st March 2019. The Competent Authority will hear the parties and endeavor to render its decision not later than 30th June 2019."*

4. Pursuant to this order, the authority has made a fresh determination vide order dated 11th August, 2020. The operative portion of the said order reads as under:

> "22. *I, Subrata Bhaumik, Assessing Officer, Regional Office, Delhi (South), apply my mind and in exercise of the powers conferred under Section 14B of the Act order for levy of damages (depending on period of default). I am of the considered opinion that the ends of justice will meet if damage are levied at the rate envisaged in Para 32A of the Employees Provident fund Scheme, 1952, Para 5 of the Employees' pension scheme, 1995 and Para 8A of the Employees Deposit Linked Insurance Scheme, 1976. Initially the two notices no. DS/NHP/0032004/000/enf 503/damages dated 13.03.2014 and no. DS/NHP/32004/000/Enf503/Damages/9997 dated 18.03.2014 were issued **amounting of Rs.1,93,51,713/- in respect of 14B & 7Q**. In response of these notices establishment submitted vide letter dated 10.03.2015 that the establishment has already made the payment of Rs.62,05,360. Same has been considered. The damages so levied have been worked out (Account-wise) on the basis of the Challans submitted by the establishment for the period from 01.04.1996 to 12.09.2014 having examined the facts of the case, submission/arguments made and in the light of the provisions of the Act and Scheme framed there under, and in exercise of the powers vested upon me under Section 14B of the Act, determine the following PF dues as payable by the employer in*

respect of the establishment:-

PF A/C Number	*Penal Damages U/s 14B*
Account No.-1	*8864824*
Account No.-2	*531666*
Account No.-10	*2736895*
Account No.-21	*218*
Account No.-22	*4*
	12133607

(Rs. One crore Twenty one lakh thirty three thousand six hundred and seven only)"

5. Submissions have been made on behalf of the Petitioner-Company and the Department by Mr. Arora and Ms. Inderjeet Sidhu, ld. counsels. The contention of Mr. Arora, ld. counsel for the Petitioner- Company is that there was no clarity as to whether deposits were to be made in respect of expat employees of the Petitioner-Company, which is a subsidiary of a Japanese company. From the time when the clarification was issued by the Department in respect of expat employees, the provident fund dues were deposited and wherever interest was liable to be paid even that deposit was made. It is submitted that the Petitioner-Company has more than 300 employees in respect of which there has been no default in deposit of provident fund.

6. On the other hand, Ms. Sidhu, ld. counsel for the Department submits that there is clear finding of *mens rea* in the Petitioner's case, which resulted in the imposition of damages under Section 7Q of the EPF Act, as is evident from a reading of the order itself, which shows that the Company had defaulted continuously on several occasions.

7. Without going into the competing contentions of the parties, since the

appeal is pending before the CGIT, the only question that is to be seen is as to whether the condition for grant of stay is to be interfered with or not. A perusal of the operative portion of the order extracted above, dated 11th August, 2020 shows that the total amount computed under Sections 14B and 7Q of the EPF Act is Rs.1,93,51,713/-. The admitted position is that a sum of Rs.62,05,360/- is lying with the Department which almost constitutes 1/3rd of the amount determined under Sections 14B and 7Q of the EPF Act. Though there is no doubt that the CGIT has the discretion in directing the conditions for grant of stay orders, since a substantial amount is lying deposited with the Department, this Court is of the opinion that the appeal of the Petitioner deserves to be heard without insisting upon the deposit of Rs.12 lakhs. Since the issue has been pending for some time, the CGIT is directed to decide the appeal at the earliest, on or before 30th April, 2021.

8. The petition along with all pending applications is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 24, 2020/*dk/T*