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

Date of decision: 21st October, 2020

+ **W.P.(C) 8281/2020 & CM APPLs. 26846/2020, 26857/2020**

M/S DURABLE DOORS AND WINDOWS Petitioner

Through: Mr. S.P. Arora & Mr. Rajiv Arora,
Advocates.(M:9899233114)

versus

ASSISTANT P. F. COMMISSIONER GURUGRAM..... Respondent

Through: Mr. B.B. Pradhan, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.
2. The present petition has been filed challenging the impugned order dated 12th October, 2020 passed by the Central Government Industrial Tribunal (*hereinafter, CGIT*) by which the Petitioner was directed to deposit Rs.1,00,000/-, which is 20% of the assessed amount of damages, within three weeks of the passing of the order, as a pre-condition for entertaining the appeal filed by the Petitioner.
3. The submission of Mr. Arora, ld. counsel for the Petitioner is that even the original order dated 18th October, 2019 passed by the Assistant Provident Fund Commissioner (*hereinafter as 'APFC'*), Gurgaon under Sections 14B and 7Q of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (*hereinafter 'EPF Act'*), was almost an *ex-parte* order as the Petitioner did not get adequate opportunity to file its documents before the APFC. Ld. counsel further submits that though the Authorised Representative of the Petitioner was appearing on various dates before the

APFC, the Managing Partner had to undergo by-pass surgery because of which various documents could not be filed. So, the assessment has been made by the APFC for Rs.5,24,224/- as damages and Rs. 2,80,344/- as interest for delayed remittance of EPF dues, without any documents having been placed on record.

4. Mr. Arora submits that *mens rea* being an essential condition for any order under Section 14B of the EPF Act to be passed, the original order dated 18th October, 2019 as also the order of pre-deposit in the impugned order dated 12th October, 2020 are not sustainable.

5. Mr. Pradhan, Id. counsel appearing for the Respondent submits that on 28th August, 2019, the owner of the Petitioner-Company had appeared before the APFC and time was sought. Thereafter, repeatedly the matter was adjourned and in fact the stand of the Petitioner was that due to financial difficulties, the deposit could not be made. It was only after taking these facts into consideration, that the original order dated 18th October, 2019 was passed.

6. Heard. A perusal of the order of the APFC dated 18th October, 2019 shows that no documents or written objections were filed by the Petitioner for various reasons including ill health of the Managing Partner of the Petitioner. Thus, in fact, the order was not an order on merits and question of *mens rea* has clearly not been considered. The impugned order of the CGIT, directing the deposit of Rs. 1 lakh, as a pre-condition was passed in the appeal challenging the order of the APFC.

7. The legal position in this regard is well settled. As per the judgement of the Supreme Court in ***McLeod Russel India Limited v. Regional Provident Fund Commissioner, Jalpaiguri and Ors. 2014 (142) FLR 406***

(SC), which was recently affirmed in *Assistant Provident Fund Commissioner EPFO and Ors. v. Management of RSL Textiles India Pvt. Ltd. 2017(153) FLR 214 (SC)*, the finding of *Mens Rea* is an essential condition required to be satisfied before passing of an order of damages under Section 14B. Under these circumstances, no useful purpose would be served in allowing the CGIT to again consider the matter, as the original order itself is not an order on merits but in effect only a dismissal due to default. It is accordingly directed that the impugned orders dated 18th October, 2019 passed by the APFC read with order of the CGIT dated 12th October, 2020 shall stand set aside.

8. The Petitioner shall be given one final opportunity to file its objections and the relevant documents before the Original Authority i.e. the Assistant PF Commissioner to defend its position. After going through the objections and after giving a hearing, the Assistant PF Commissioner may pass an order on merits under Section 14B of the EPF Act.

9. The APFC shall pass the final order, within four months from the date of the first hearing. List before the APFC on 9th November 2020.

10. The writ petition is allowed in the above terms. All pending applications are disposed of. Copy of this order be communicated to the Assistant Provident Fund Commissioner, Regional Office of Employees Provident Fund Organisation, Gurugram-II. Ld. Counsel for the Respondent to also communicate the present order to the APFC.

PRATHIBA M. SINGH
JUDGE

OCTOBER 21, 2020

dj/A