

ESI Application no. 10-2023

:- ORDER BELOW EXH.2 :-

1. Read the application, perused the record and heard the Ld. advocate for the applicant. Applicant has preferred an application under section 75 of ESI Act,1948 and challenged the order passed under section 45-A and recovery order under section 45-C to 45-I for an amount of Rs. 7,23,043/- dtd. 14-11-2022 by the Assessing Authority and to stay the execution of the order of Assessing Authority, the applicant has preferred this present application.
2. The notice to the opponent was duly served and the concerned officer for the opponent has given his presence. Ld. advocate for the applicant urged that the applicant had done the work of building modification and sheds of power stations through contract from 2016 to 2021 on different sites. But all the GSECL sites were outside the notified area of ESI and for that the provisions of ESI Act are not applicable. Further only one employee was working at Gandhinagar and his salary was more than 21000/- and for that no question had arisen for depositing the contribution amount. In spite of this the Assessing Authority passed the ad-hoc assessment and the assessment is arbitrary and the applicant was not heard by the Assessing Authority before passing the order. Further there is strong prima facie case in favour of the applicant as well as balance of convenience is also in favour of the applicant and if this application is not allowed then irreparable loss will be incurred to the applicant. Further, the provisions of ESI Act are not applicable to the applicant and the SBI Ac. no.30021693087, GIDC Branch, Gandhinagar and HDFC Ac. no. 01908140000076, Sector 16 Branch, Gandhinagar were freezed. Therefore, requested to grant the stay and to restrain the opponent from taking further

action in response to the said recovery order. Further the applicant has also filed a separate application for waving the pre deposit amount vide Exh.3.

3. On perusal of the record, it reveals that the Assessing Authority had calculated the amount of the contribution on an ad-hoc basis as the applicant had not taken the ESI Code or submitted the return. Further in view of Section 45 A of ESI Act, the Assessing Authority is empowered to determine the amount of contribution on the basis of information available to them. Further under Section 75 of ESI Act, this Court is empowered to adjudicate the dispute between a principal employer and the Corporation in respect of any contribution or any other dues and the principal employer can raise the dispute in the Employees' Insurance Court but he has to deposit fifty per cent of the amount due from him as claimed by the Corporation. Further the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited.
4. In this present case on hand, it is an undisputed fact that on the basis of information available, the amount of contribution was determined on an ad-hoc basis and not on merit. Therefore, there is a prima-facie case in favour of the applicant. Further if the opponent is not restrained from recovery at this stage then this will cause irreparable loss to the applicant and balance of convenience also appears to be in favour of the applicant. But the applicant of this case has not submitted any evidence which suggests that the provisions of ESI Act are not applicable to the applicant and has not also submitted any cogent evidence that he had not the sufficient employees or only one employee at that relevant point of time. Therefore, there is no reason to waive or reduce the amount as mandated in Section 75 of ESI Act.

In view of this, the present application is allowed and in the interest of justice, I pass the following order.

- : **ORDER** : -

- Present application is allowed on condition to deposit the 50% of Rs. 7,23,043/- towards the opponent corporation within 30 days from today.
- After deposition of above referred 50% amount towards the opponent corporation, both the freezed bank accounts are ordered to be defreezed.
- After deposition of above referred 50% amount towards the opponent corporation, the opponent corporation will be restrained to recover or to take any further action in respect of order passed dtd. 14-11-2022 till final disposal of this application.

In view of this order, the application Exh.3 stands disposed of.

Order passed and pronounced today on the 10th day of July 2025.

Dated :10-07-2025

Place : Kalol

(Rajender Singh)
Judge, Employees' Insurance Court,
Ahmedabad, sitting at Kalol
Judge Code: GJ 01085