

**Order Below Ex. 2 (Stay Application) in E.S.I. Application No.25 of 2021**

1 The applicant has filed the ESI Application No.25/2021 under Section 75 of the ESI Act, whereby the applicant has challenged the order dated 09.06.2017 passed by the opponent-Corporation under Section 45A of the ESI Act. Along with the main application, the applicant has also preferred the Ex.2 application to get the stay against the recovery proceedings initiated by the opponent Corporation with regard to the aforesaid order.

2 In this application at Ex.2, the applicant company has inter-alia stated that time would consume in the decision of the main application and the Corporation has already recovered Rs.1,00,000/- on dated 5<sup>th</sup> November, 2018. Thereafter, it has also issued C-26 on dated 15<sup>th</sup> November, 2018. It is also stated that the bank account of the applicant company is also attached by the Opponent-Corporation No.2. It is further stated that, the applicant company is closed and it has strong prima facie case, and if the stay is granted no loss is going to happen to the Opponent No.1, and if stay is not granted unnecessary financial burden would be faced by the applicant. Therefore, it is requested to grant stay against the recovery proceedings

initiated by the Opponent No.2 vide its order dated 9<sup>th</sup> June, 2017. The application is well supported by the affidavit at Ex.3. The applicant has also produced on record documentary evidence at exhibit mark 4/1 to mark 4/8 in the matter.

3 Upon receipt of the application in question, notice was issued to the opponent-Corporation and the opponent-Corporation has submitted its reply vide Ex.16 and it has opposed the contents of the application. It is also stated by the opponent-Corporation that, the Competent Authority has, after giving ample opportunities of personal hearing, passed the Speaking Order under Section 45A of the Act dated 09.06.2017 and the applicant is liable to pay contribution of Rs.3,53,925/- for the period May, 2012 to December, 2015. It is stated that, the Competent Authority has assessed the contribution on adhoc basis as he was not having any documentary evidence. So, the order passed by the Competent Authority under Section 45A of the ESI Act is legal and proper. Moreover, it is also stated that, the ESI Corporation has issued letters including show cause notice in respect of ESI Code No.37000267010001102 and it is fact that, the applicant has not paid any contribution for the period in question. Therefore, the applicant is liable to pay

the contribution as demanded in Order passed under Section 45A. It is further stated that, after the issuance of order under Section 45A, the applicant has not paid any contribution assessed, hence the opponent ESI Corporation has started recovery proceedings by issuing C-19 dated 12.10.2017 amounting to Rs.5,30,864/- followed by CP-2 Notice dated 21.11.2017 amounting to Rs.5,31,729. It is further stated that, the applicant has also filed the stay application before the Hon'ble Court and prays for the stay against the genuine demand of ESI Corporation. It is stated that, the opponents is having prima facie case and balance of convenience is also in favour of opponent. So, it is necessary and obligatory on a part of applicant to deposit 50% amount of total demand as mentioned in Section 77(2)(B) of the ESI Act. It is stated that, if such type of stay as prayed in stay application is given to the applicant the ESI Corporation has to bear irreparable loss which cannot be count in money. On the other hand, if stay is not granted to the applicant it will not be harmful for him by any way. So, it is requested to the Hon'ble Court to dismiss the stay application in the interest of justice.

4 Thereafter, this Hon'ble Court heard the argument advanced by the learned Advocate appearing on behalf of the either side. Learned Advocate

Mr. V.S. Patil appearing on behalf of the applicant company has argued that the applicant company has already deposited all the amount demanded by the opponent-Corporation. It is further argued that, the opponent-Corporation has also recovered Rs.1,00,000/- directly from the bank account of the applicant company. Therefore, now no amount is required to be paid by the applicant company. It is further argued that, the applicant company has also produced on record the copies of challans generated by the applicant at mark 22/1 to 22/35. Therefore, it is requested to allow the present application.

5 So far as the opponent-Corporation is concerned, its learned Advocate Mr. A. J. Bhatt appearing on behalf of the Corporation has argued that, the applicant has produced challans in this matter, but same are related to some other code number issued by the Corporation. Therefore, the say of the applicant company that, it has deposited all the amount through challan is not true. It is further argued that, challans of Code No.26701 were required to be produced, but the applicant company has produced challans of Code No.28305. It is fairly admitted by the learned Advocate for the opponent-Corporation that during the recovery proceedings of CP-2, the Corporation

has recovered Rs.1,00,000/- from the applicant. Therefore, it is requested to reject the application.

6 Now, upon going through the pleadings of the either party, it appears that the opponent Corporation has passed order dated 09.06.2017 under Section 45A of the ESI Act for the contribution amount of Rs.3,53,925/- and recovery proceedings are also initiated. It is also admitted position that, opponent Corporation has already recovered Rs.1,00,000/- from the applicant's bank account. As per the provision contained in Section 75(2B) while seeking the stay application one has to deposit 50% of the ordered amount, but the discretion is vested with the ESI Court to reduce or to waive the amount to be deposited under that section. In this connection, it is pertinent to state that, as per order under Section 45A, the applicant is directed to pay Rs.3,53,925/-. Therefore, as per the provision contained in Section 75(2B) of the ESI Act, the 50% of the said amount comes to Rs.1,76,962/- whereas Rs.1,00,000/- already recovered. Therefore, this Court has to decide as to whether, it would be justifiable to direct the applicant company to deposit remaining amount of Rs.76,962/-. In the connection, the applicant has produced on record the copy of challans of the 18<sup>th</sup> November,

2011 to November, 2014. Upon going through the order under Section 45A of the ESI Act, it appears that, the said order is passed against the Code No.267010001102, but the applicant company has produced on record challans of party Code No.283050001102. Therefore, the say of the applicant company that, it has deposited all the amount with the opponent-Corporation, does not appear to be correct one, but it also appears that party name mentioned in such challan is M/s. Chawla Restaurant and order under Section 45A was passed against M/s. Chawla's. Therefore, it appears that, there appears some kind of clarification in the matter and the same is matter of evidence also. But looking to the bona-fide on the part of the applicant company and when the opponent-Corporation has already recovered Rs.1,00,000/- from the applicant company, this Court would like to exercise its jurisdiction discretion vested under Section 75(2B) of the ESI Act. Accordingly, this Court is of the humble view that, if applicant is directed to deposit another amount of Rs.25,000/- in the matter, it would serve the interest of justice. Therefore, following order is passed:-

**ORDER**

- 1 The present application is hereby allowed and the opponent-Corporation is restrained from taking any action in recovery proceedings initiated against the applicant company with regard to the order dated 09.06.2017 passed under Section 45A by the Competent Authority of the opponent-Corporation subject to deposit of Rs.25,000/- (Rupees twenty five thousand only) with the opponent-Corporation, within the period of 30 days from the date of this order.
- 2 No order as to costs.

The order pronounced to-day i.e. on **5<sup>th</sup> March, 2025** in open Court.

**(R.G.Devdhara)**

JUDGE

Employees State Insurance Court,

Ahmedabad

GJ00442

Manoj