

**ESI Application no. 73-2023**

**:- ORDER BELOW EXH.2 :-**

1. Read the application, perused the record and heard the Ld. advocate for the respondent corporation. Applicant has preferred an application under section 75 of ESI Act, 1948 and challenged the recovery notice CP-26 for an amount of Rs. 11,43,083/- dtd. 14.08.2023 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 along with an advocate had given their presence. On perusal of the main petition, it reveals that in 2015 the applicant had started its establishment and only worked from January 2016 to April 2016 and at that time more than 10 employees had been working in the establishment of the applicant. Therefore, code no. was taken under ESI Act. Further in May, 2016 the economic conditions of the establishment became weak and for that all the employees were retrenched. Further, their establishment received a single order in a year and for that they completed their work through daily wagers. Further only for 4 months the applicant had run its establishment regularly and after that from the month of May, 2016, there was no employee in the establishment of the applicant. Further the respondent had issued a recovery notice CP-26 and calculations were made for the recovery of Rs. 11,43,083. Applicant in its ad-interim application submitted that 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. Therefore, requested to grant the stay and to restrain

the opponent from taking further action in response to the said recovery order.

3. On the other hand, Ld. advocate for the respondent corporation in his arguments submitted that the applicant had not deposited the amount of contribution and notices were duly served to the applicant. In spite of this the applicant was not present on the date of hearing. Further assessment order was passed and accordingly recovery notices were issued but the applicant had not complied with the notices. Further there is provision under law that before entertaining this application, the applicant has to deposit the 50% of the demand. Therefore, requested to direct the applicant first to deposit 50% of Rs. 11,42,983/- and if the applicant is not depositing the said amount then requested to reject the interim relief application.
4. 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 deposited the contribution amount. 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.
5. 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/ respondent corporation 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. On perusal of the record, the applicant has not submitted any cogent evidence that he had not the sufficient employees or no employee at that relevant point of time. Therefore, there is no reason to waive 50 % of total due as mandated in Section 75 of ESI Act but looking at the dispute and considering the facts and circumstance of the case if the applicant is directed to deposit the 50% of the amount of adhoc calculation then this will serve the justice .

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. 11,42,983/- towards the opponent corporation within 30 days from today.
- After deposition of above referred amount towards the opponent corporation, the opponent corporation will be restrained to recover or to take any further action in respect of recovery notice CP-26 dtd. 14.08.2023 till final disposal of this application.

Order passed and pronounced today on the 6<sup>th</sup> day of October 2025.

Dated :06-10-2025  
Place : Kalol

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