Order Below Exhibit 2 in E.S.I. Application No. 47/2024

1 The applicant has preferred E.S.I. application No. 47 of 2024 under section 75 of the Employees' State Insurance Act-1948 (hereinafter referred to as the E.S.I. Act) along with this application below Exhibit-2.

2 In its present application the applicant has stated that, the applicant's company is engaged the business in an aviation of services business and has to engage very high salaried engineers and staff for the carrying out the business activities. It is further stated that, the code number 37-00-113122-0000-999 was allotted by the opponent to the applicant. The applicant, put all possible efforts to have contract and to expand the work, but the same could not be achieved, hence the applicant was restrained to run the business with the employees having salary/wage of more than 21,000/- p.m. as a commissioning agent, and the applicant has only 4 to 5 employees. It is further stated that, since the contract, which was expected was not given to them, and the efforts for obtaining establishment code number the E.S.I. Act, was also of no use, but since once the Act is made applicable it continues to apply until the final closure of the business, and since the business of the applicant is not closed, the notice of hearing in form C-18 was issued, claiming ESI contribution right from the day of applicability. It is further stated that, the consultant engaged by the applicant was informed to attend the

hearing and to explain the facts with documents, but due to the gross negligence, and other reasons best known to him, he did not attend the hearing, and an order under section 45-A was passed ex-party. It is further stated that, the applicant has rushed to the opponents with an explanation and carelessness of a consultant, but all the efforts were in vain, and the applicant was advised to make the payment or to approach this Court for a relief as the opponents were not in a position to help in any manner as the order was already passed under section 45-A. It is further stated that, the applicant should not be made suffer due to the negligence of the consultant as the ultimate and final payment has to be made by the owner, and not by the consultant, the wages paid by them above the prescribed limit i.e. Rs.21,000/- p.m. It is further submitted that, the applicant has never engaged an employee, whose wages/ salary is less than Rs.21,000/- p.m. and since the applicant has employed highly paid engineers and staff (total 4 to 6 persons only) the contribution cannot be claimed on wages, which are beyond prescribed limit, as these employees are exempted employees as per section 2(10) of the E.S.I. Act, This being statutory provision, E.S.I. contribution is not leviable, and hence the order passed under section 45-A is void ab initio. Hence he has prayed that, be pleased to grant stay until the disposal of main application by restraining the opponents and/or officer, agents, recovery officers from taking any further action including recovery of the amount mentioned in the order as well as interest.

3 The opponent corporation has filed reply vide Exhibit-08 and it is submitted that, the applicant company is covered under section 1 (5) of the E.S.I. Act. The opponent corporation has issued C-18 notice and provided the opportunity to explain the default the payment, but the applicant failed to explain, and remain present for personal hearing. Hence, the subsequent issuance of C-18 (Ad-hoc) and upon failure at the behest of the applicant to explain the same the opponent corporation has passed the order under section 45-A dated 26/08/2022, amounting to 2,17,140/-. The applicant company has not paid the amount of contribution in respect of employees for the period November-2018 to April-2022, amounting of Rs.2,17,140/-, and was finally determined as arrears of contribution payable. It is further submitted that, the applicant has not paid C-18 Ad-hoc, and has not complied with the order under section 45-A till the date. The applicant has not put an effort to avail the legal remedy of challenging the order under section 45-A under the provision of 45-AA of the E.S.I. Act before the Appellate Authority, and only after the issuance of recovery notice. The applicant has approached this Hon'ble Court with the mala fide intention for escaping from he paying the legal dues of contribution amount under the provision of the Act. It is further stated that, the order under section 45-A as calculated by the opponent is to be recovered from the applicant as per the provision of the ESI Act. Hence, he has prayed to reject the stay application which is filed by the applicant-company.

4 The applicant has produced list of documents at Exhibit-4, vide mark 4/1 to 4/4 and also produced at Exhibit 10 vide mark 10/1. The opponent has submitted the list of document at Exhibit 9 vide mark 9/1 to 9/7. I have heard the parties. I have perused all papers on records.

5 The applicant has main contentions in his application that, the applicant has tried to expand the work but it has not succeeded, only 4 to 5 employees are working to look after the service business. Since the business of the applicant is not closed, the notice of hearing in form C-18 was issued claiming ESI contribution right from the day of applicability. The consultant engaged by the applicant was informed to attend the hearing and to explain the facts with documents, but due to the gross negligence and other reasons best known to him, he did not attend the hearing, and an order under section 45/A was passed Ex-party. In this connection it is pertinent to note that, the applicant has stated in his stay application that, he has made an application for an establishment code number in anticipation of some out-side work through a contract. Hence, it seems that, the applicant wants to run the business, for a longer period in the future. Further, the applicant has stated that, only 4 to 5 employees to look after the service business. But in my opinion without any evidence like salary slip, attendance register, bank statement etc., of the employees how can it believe that, only 4 to

5 employees are working, hence this facts can not be considered. The applicant has stated that, he is not received the order under section 45-A passed, which is ex-party. In support of this fact, the applicant has produced request letter dated 17/09/2024 regarding he needs a copy of order under section 45-A. But the as per the main application vide Exhibit-1 as well as stay application the application has stated that in main application para (5):- the consultant engaged by the applicant was informed to attend the hearing as per C-18 issued by the opponent and to explain the facts with documents, but due to the gross negligence and other reason best known to him, he did not attend the hearing and an order under section 45-A was passed EX-PARTEE. Hence, as per the C-18 notice it seems that, the applicant has having the fully knowledge, there is started the legal battle between him and E.S.I. Corporation and he had to appear before the E.S.I. Corporation on 08/07/22. Moreover, the opponent corporation has issued C-18 notice dated 13/06/2022 along with RPAD receipt on the same day at mark 9/2, and 9/6 as well as order under section 45-A 26/08/20202 and RPAD receipt also on the same day at mark 9/2 and 9/5. The applicant has also produced copy of balance sheet duly allotted at mark 4/4 and also Audit B/sheet at mark 10/1, but at this interim stage, theses documents can not be considered, these documents may be considered at the final disposal of the main application. So, at this juncture the contentions of the applicant can not be considered. The E.S.I. Act clearly shows that under section 75 (2) [2-B] is as under:-

> "No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the corporation"

Thus, if any applicant challenge contribution of E.S.I, the application is only maintainable if he deposited 50% of the disputed amount. At this interim stay application, the applicant has challenge the order under section 45-A contribution amount of Rs. 2,17,140/- the applicant has to deposit 50% amount i.e., Rs.1,08,570/- before the E.S.I. Corporation "OR" E.S.I. Court within a period of 30 days from the passing of this order, then the recovery proceeding may be stayed. So, in the interest of justice, I pass following order.

O R D E R

1 This Exhibit-2 application is hereby partly allowed. The applicant is hereby directed to deposit Rs.1,08,570/- (Rs. One Lac, Eight Thousand, Five Hundred Seventy only) before the E.S.I. Corporation "OR" E.S.I. Court within a period of 30 days. Further the opponent-corporation is hereby restrained to do any further recovery or proceeding towards this period till final disposal of the main application No.47 of 2024, if he fails to deposit above 50% amount i.e. Rs.1,08,570/- within a period of 30 days, the opponent corporation may proceed with the recovery of contribution.

2 No order as to costs.

Pronounced in open Court to-day i.e. 22/04/2026

(**H.A.Shah**)
JUDGE
Employees State Insurance Court,
Ahmedabad, GJ00550

kadri