

ESI Application no. 90-2025

-: 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 dtd. 22.07.2025 along with recovery order under CP-2 for an amount of Rs. 6,37,560/- dtd. 29-12-2021 by the Assessing Authority and to stay the execution of the order of Assessing Authority, the applicant has preferred this present application.
2. The Ld. advocate for the applicant urged that the recovery order was issued by the corporation and if urgent stay is not granted then the corporation might attach the bank account of the applicant and recover the whole amount. Therefore, before serving the urgent show cause notice or before hearing the other side, requested to pass an order for stay and willing to deposit the amount as directed by the court. Ld. advocate for the applicant further submitted that the applicant had not 138 employees as considered by the corporation and the contribution amount has been regularly deposited for the employees who were actually working. Further for the period from March- 2020 to August-2021, the adhoc calculation of Rs. 6,37,560/- was made by the respondent corporation and no opportunity was given to the applicant. Further the respondent corporation had passed the ad-hoc assessment which was 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. Therefore,

requested to grant the stay and to restrain the opponent from taking further action in response to the said recovery order.

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 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.
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. On perusal of the record, the applicant has not submitted any cogent evidence that he had not the number of employees as considered by the corporation 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. 6,37,560/- 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 order passed dtd. 22.07.2025 till final disposal of this application.

Order passed and pronounced today on the 15th day of November 2025.

Dated :15-11-2025
Place : Kalol

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