EXPARTE ORDER ON I.A.I & II

IA No.I filed by the Applicant under Sec.75 Act to stay the operation of the Orders passed by the Respondents viz.,

(i) Order passed u/s 45-A of ESI Act dated 04.12.2019 as per Annexure-S

(ii) Recovery notice of ESI Act dated 19.01.2022 as per Annexure- P claiming Rs.16,80,831/- till disposal of the above case.

IA No.II filed by the Applicant under Section 75(2-B) of ESI Act to waive off the amount to be deposited under Section 75 (2-B) of ESI Act.

Applicant's establishment is carrying on business of ready made garment manufacturing from 1st September 2014 and it was only on job work basis. The unit was covered under the ESI Act. The applicant has paid promptly the ESI contributions. Due the business drastically got reduced. The applicant kept minimum employees with the hope to get some business in future and also to maintain the plant. The applicant could not pay the ESI contributions due to severe cash crunch and business completely closed in the month of October 2018 itself due to the labour unrest. There are only 4 to 5 employees remained on roll. The respondent has issued notice dated 19.01.2022 for Rs.14,03,903/- and Rs.2,76,428/- interest in all Rs.16,80,831/- as per Annexure P and also issued order under Section 45-A of ESI Act. The respondent has not provided an opportunity to the applicant. At present due to financial loss the applicant is not in a position to pay the contribution. If the Orders passed by the respondents are not stayed and amount to be deposited not waived off, the Applicant will suffer great hardship and loss. Hence, prayed that IA No.I & II may be allowed.

Heard.

Perused the Records. The Applicant has filed the above case to set aside the Order passed by the Respondent under Section 75 of the ESI Act. As interim relief, the Applicant has sought for stay of impugned Order passed by the Respondent, to waive off the amount to be deposited under Section 75(2-B) of the ESI Act. Applicant has contended that at present due to financial crises, it is not in a position to pay the ESI contribution and only 4 and 5 employees are remained on roll in the establishment of the applicant and the order is perverse and not based on the facts of the case and the applicant is not liable to pay the contribution.

At this stage the applicant has filed the ECR and copy of the claim statement in Ref No.16/2019 before the labour court. From the said documents it goes to show that employees were laid off. Whether applicant is liable to pay the contribution can be adjudicated only after trial. At this stage, if Orders passed by the Respondent is not stayed, the purpose of filing the above case will be defeated. No hardship will be caused to the Respondent if the Order passed by the Respondent is stayed. Taking into consideration above said facts, it is just and necessary to grant relief to the Applicant as follows;

ORDER

Orders passed by the Respondent viz.,

(i) Order passed u/s 45-A of ESI Act dated 04.12.2019 as per Annexure-S

(ii) Recovery notice of ESI Act dated 19.01.2022 as per annexure P claiming Rs.16,80,831/- are stayed subject to condition;

The Applicant has to deposit Rs.4,00,000/- in respect of demand made for Rs.16,80,831/- within 15 days from the date of this order with the Respondent Corporation.

Issue Notice on Application, IA No.I & II and copy of stay order to the Respondents through RAPD if Applicant deposits the amount as per the Order.

Call on 04.04.2022.

JUDGE,
ESI Court, Mysuru.