

EXPARTE ORDER ON I.A.I & II

IA No.I filed by the Applicant under Sec.78 of ESI Act to stay the operation of the Orders passed by the Respondents viz.,

- (1) Order passed u/s 45-A of ESI Act dated 20.04.2021 as per annexure- A
- (2) Recovery order dated 07.10.2021 as per Annexure- B
- (3) Order of attachment of immovable property dated 06.01.2022, in all claiming Rs.16,15,721/- 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 has stated that Applicant's establishment is carrying out the business of electric transformer repair works. The respondent No.1 issued a show cause notice dated 25.01.2021, claiming contribution for 11 employees of Rs.3,30,966/- for the period from 01.02.2017 to 31.12.2020 and called for personal hearing. On 26.05.2020 the applicant factory was gutted by fire accident and suffered loss of 6 crores and the applicant has urged the said facts before the ESI Court, but his prayer fell on the deaf ears. The applicant has requested the ESI Court to waive off the contribution, but the respondent advised the applicant to pay some amount of contribution and remaining amount will be waived off. On that assurance the applicant has the contribution for the period from 10/2020 onwards. The respondent has passed order on 20.04.2021 claiming Rs.12,00,143/- for the period from 01.02.2017 to 31.12.2020. The respondent has passed recovery order dated 07.10.2021 directing to pay to recover from the applicant the ESI contribution of Rs.12,00,014/- and interest of Rs.3,76,400/- in all Rs.15,76,543/- as per Annexure B. The respondent corporation passed an order for attachment of property on 06.01.2022 for amount of Rs.16,15,721/- as per annexure-C which is illegal and improper. The respondent has calculated monthly contribution on the assumed wages. The respondent was not given an opportunity to establish that the applicant is not liable to pay the contribution. If the Order 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 and 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 On 26.05.2020 the applicant factory was gutted by fire accident and suffered 6 crores loss and the applicant had urged the said facts before the ESI , but his prayer fell on the deaf ears. The applicant had requested the ESI for waive off the contribution, but the respondent advised the applicant to pay some amount of contribution and remaining amount will be waived off. On that assurance the applicant paid the contribution for the period from 10/2020 on wards. The calculation made by the respondents is illegal, false, baseless and without any legal basis and thus among other grounds the applicant is not liable to pay ESI contribution. Hence, the applicant requested to waive of the amount.

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.,

- (1) Order passed u/s 45-A of ESI Act dated 20.04.2021 as per annexure- A
- (2) Recovery order dated 07.10.2021 as per Annexure- B
- (3) Order of attachment of immovable property dated 06.01.2022, in all claiming Rs.16,15,712/-, issued by the respondents 1 and 2 to the applicant are stayed subject to condition;

The Applicant has to deposit Rs.3,00,000/- in respect of demand made for Rs.16,15,712/- within 15 days from the date of this order with the Respondent Corporation.

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

Call on 30.03.2022

**JUDGE,
ESI Court, Mysuru.**