

EXPARTE ORDER ON I.A.I And II

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

(1) Order u/s 45-A of ESI Act dated 07.01.2019 for Rs.1,89,189/- as per Annexure A

(2) Garnishee order u/s 45-G of ESI Act dated 10.12.2021, for Rs.2,76,687/- as per Annexure-B till disposal of the main Petition.

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 the applicant establishment is a Social service NGO and covered under the ESI Act. The respondent no.1 issued show cause notice dated 07.01.2019 to the applicant for payment of contribution from July 2017 to June 2018 and called the applicant establishment for personal hearing on 24.09.2018 and on 12.10.2018. The applicant establishment has not appeared before the authority, but on 04.12.2018 the applicant submitted that she could not get tender and she has no business. The respondent has issued order u/s 45-A of ESI Act claiming Rs.1,89,189/-. The respondent claimed the contribution on the assumed wages, it is not fair and reasonable and not sustainable under law. The respondent has issued garnishee order for attachment of account of the applicant establishment. The order of the respondent is perverse. The respondent has not given an opportunity to establish that the applicant establishment is not liable to pay the above said 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 & 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 Orders passed by the Respondent and to waive off the amount to be deposited under Section 75(2-B) of the ESI Act.

Applicant has contended that the applicant establishment could not get any tender and hence it had no work and the opportunity was not given to the applicant to defend before the authority and the respondent is not liable to pay the ESI contributions.

Whether applicant is liable to pay the demanded amount or not can be determined only after trial. At this stage, if Order 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

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 is partly allowed.

IA No.I filed by the Applicant under Sec.78 of ESI Act to stay the operation of the Order of the Respondent viz.,

(1) Order u/s 45-A of ESI Act dated 07.01.2019 for Rs.1,89,189/-as per Annexure A

(2) Garnishee order u/s 45-G of ESI Act dated 10.12.2021 for Rs.2,76,687/- as per Annexure-B are stayed till disposal of the main Petition subject to the below mentioned condition;

The Applicant has to deposit Rs.50,000/- in respect of demand made for Rs.2,76,687/- 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 3.10.2022.

sd/-
JUDGE,
ESI Court, Mysuru.