

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 29.10.2021 as per Annexure A
- (2) Garnishee order u/s 45-G of ESI Act dated 27.04.2021/2022 as per annexure -B
- (3) Recovery notice dated 30.05.2022 as per Annexure C 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 it is the proprietary concern and IOCL dealer owning the petrol bunk. The IOCL company while issuing dealership puts an condition that applicant must obtain ESI code number, hence the applicant obtained ESI code for 11 employees. The applicant establishment could manage the work only with 4 employees, the applicant has engaged 11 employees since the establishment has obtained ESI code number for 11 employees. As the applicant could not entrust work for 11 employees on day to day basis 10 days work in a month for each employee was provided and paid ESI contribution for all the 11 employees as per wages paid to them. The petroleum dealers preferred an Appeal before the Hon'ble High Court of Karnataka about the conditions imposed by IOCL of getting ESI code, it was still pending. The respondent No.1 issued Show cause notice dated 27.07.2021 for payment of contributions for the period from 01.03.2018 to 30.06.2021 and also called for personal hearing on 06.09.2021 and the applicant has appeared before ESI authorities and prays time to file relevant documents, but it was rejected. The respondent No.1 passed an order u/s 45-A of ESI Act on 29.10.2021 as per Annexure-A determined the contributions of Rs.2,54,100/- for the period from 01.03.2018 to 30.06.2021 for 11 employees. The respondent No.2 issued garnishee order dated 27.04.2021/2022 for Rs.3,19,670/- as per Annexure-B. Further, the respondent No.2 has issued Show cause notice dated

30.05.2022 why a warrant should not be issued claiming amount of Rs.3,22,002/- includes interest and recovery charges as per Annexure-C. The respondent claimed the contributions on assumed wages. The contributions claimed does not attract the provisions of ESI Act. The respondent has not given an opportunity to establish that the applicant is not liable to pay the contributions. 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 Order 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 in order to fulfill the condition of IOCL for obtaining dealership the applicant has obtained ESI code number for 11 employees and the applicant is not liable to pay the contribution and the respondent No.1 has not given an opportunity to produce the relevant documents before the authorities.

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

I.A.No.II filed u/s 75 (2-B) is partly allowed.

I.A.No.I filed u/s 78 of ESI Act to stay the following Orders passed by the Respondent viz.,

(1) Order u/s 45-A of ESI Act dated 29.10.2021 as per Annexure A

(2) Garnishee order u/s 45-G of ESI Act dated 27.04.2021/2022 as per annexure -B

(3) Recovery notice dated 30.05.2022 as per Annexure C till disposal of the main Petition are stayed subject to condition;

The Applicant has to deposit Rs.50,000/- in respect of demand made for Rs. Rs.3,22,002/- 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 30.08.2022.

sd/-
JUDGE,
ESI Court, Mysuru.