

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 03.11.2021 as per Annexure A
- (2) Notice dated 01.02.2022 as per Annexure -B
- (3) Notice to show cause why a warrant of arrest should not be issued dated 21.04.2022 as per Annexure-C
- 4) Copy of order of attachment of immovable property dated 26.05.2022 as per Annexure D 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 institute is a small educational ensemble and in the year 2018 the applicant has engaged 16 employees which includes teaching and non-teaching staffs and subsequently the number of employees has reduced to 5 employees and they were paid wages between Rs.5,000/- to Rs.7,000/- per month. The applicant institute could not appear before the ESI corporation for the reason that the institute was closed due to Covid-19. The respondent No.1 of the ESI corporation has passed an exparte order u/s 45-A of ESI Act dated 03.11.2021 as per annexure-A determined ESI contributions of Rs.3,93,624/- for the period from 01.01.2018 to 30.06.2021 calculating against 16 employees on assumed wages of Rs.11,550/- and the applicant institution was closed from 3/2020 to 12/2021. The respondent No.2 passed an order dated 01.02.2022 claiming contribution of Rs.4,96,473/- for the period from 1/2018 to 6/2021 as per annexure-B. The respondent No.3 has issued notice to show cause why warrant of arrest should not be issued dated 21.04.2022 claiming contributions, interest and recovery cost in all Rs.5,16,722/- as per Annexure-C. The respondent No.2 has passed an order of attachment of immovable property dated 26.05.2022 as per annexure-D. The order of the respondent is perverse and not based on the facts of the case. 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 the applicant institution is closed due to Covid-19 pandemic from 3/2020 to 12/2021 and the applicant has reduced its employees to 5 from 11 and the applicant is not liable to pay the contributions. The respondent has calculated the contributions amount on the assumed wages.

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 03.11.2021 as per Annexure A
- (2) Notice dated 01.02.2022 as per Annexure -B
- (3) Notice to show cause why a warrant of arrest should not be issued dated 21.04.2022 as per Annexure-C
- 4) Copy of order of attachment of immovable property dated 26.05.2022 as per Annexure D till disposal of the main Petition are stayed subject to condition;

The Applicant has to deposit Rs.1,00,000/- in respect of demand made for Rs. Rs.5,21,439/- 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 01.9.2022.

**JUDGE,
ESI Court, Mysuru.**