

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 Order of the Respondent passed under Section 45-A of ESI Act for Rs.5,30,145/- dated 30.07.2021 as per Annexure -A 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 applicant is a Proprietary concern and applicant establishment is carrying out business of an erstwhile labour supply and the applicant establishment covered under ESI Act. The respondent No.1 issued a show cause notice and called upon the applicant to pay contribution for the period from August 2017 to February 2021 and also called for personal hearing, but the Proprietor of the applicant establishment has not appeared before the authority due to his personal inconvenience. The respondent issued order u/s 45-A of ESI Act calling upon the applicant establishment to pay contribution of Rs.5,30,145/-. The respondent No.1 without considering the genuine aspects and verifying the documents has determined contributions based on certain assumptions and presumptions wages. The respondent has not given an opportunity to the applicant and it is not liable to pay the contribution. The order of the respondent is perverse and not based on the facts of the case. 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 is ready to pay the interest amount on the delayed payment to the actual amount of contribution and not on assumptions and presumption wages and it is not liable to pay the contribution and the orders passed by the respondent is illegal and perverse.

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 is hereby allowed. The Order passed by the respondent dated 30.07.2021 under Section 45-A of ESI Act for Rs.5,30,145/--as per Annexure – A, is stayed until further orders subject to condition;

The Applicant has to deposit Rs.1,00,000/-(Rs.One Lakh only) in respect of demand made for Rs.5,30,145/- 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 25.10.2022.

sd/-

**JUDGE,
ESI Court, Mysuru.**