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 of the Respondent viz.

1. Order passed by the respondent dated 10.12.2021 under Section 45-A of ESI Act for Rs.4,08,870/-as per Annexure -A
2. Garnishee order dated 17.05.2022 for Rs.5,55,167/- as per Annexure-C
3. Notice to show cause why a warrant should not be issued dated 24.05.2022 for Rs.5,55,167/- as per Annexure-D
4. Order for attachment of immovable property dated 05.07.2022 as per Annexure-E for Rs.5,62,426/- 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 doing business of manpower supply both skilled and unskilled to various companies and the said establishment employed 12 employees and obtained ESI code. The said applicant establishment M/s Cadd Station is changed from proprietorship to Pvt Ltd., Company w.e.f., 17.04.2012 and has registered as Cadd Station Technologies Private Limited. The employees continued to work with the same establishment upto 2015 in order to complete the pending project and after completion of the project the applicant establishment has winding up completely, now the applicant establishment is not in existence. After winding up of applicant establishment all the employees of the applicant are transferred to the roll of Cadd Station Technologies Pvt Ltd. Some of the employees left the job and some of the employees continued the job. Cadd station technologies Pvt Ltd also obtained another ESI Code. The cadd Station Technologies Pvt Ltd requested the ESI Corporation to cancel the ESI code allotted to the applicant company and to withdraw the notice C-18 dated 19.08.2021 claiming contribution of Rs.4,98,870/- for the period from 01.01.2017 to 31.07.2021 for 12 employees. The respondent after going through the records assured to withdraw the notice, but it has not done so. The respondent passed order u/s 45-A of ESI Act as per Annexure A claiming contribution from 01.01.2017 to 31.07.2021 for 12 employees claiming contribution of Rs.4,08,870/- and also issued notice u/s C-19 claiming contributions and interest as per Annexure-B claiming Rs.5,44,316/-. Again the respondent passed garnishee order u/s 45-G of ESI Act as per Annexure C to transfer the amount of Rs.5,55,167/-. The respondent No.2 issued show cause why a warrant of arrest should not be issued as per Annexure D for Rs5,55,167/- as per Annexure D. The respondent No.2 passed an order of attachment of immovable property for Rs.5,62,426/- as per Annexure-E. 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(1) (g) 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 applicant establishment was winded up and all the employees of the applicant establishment were transferred to the roll of Cadd station technologies pvt Ltd, but the said fact was not informed to the respondent at the relevant point of time 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 filed u/s 78 of ESI Act to stay the following Orders passed by the Respondent viz.,

1. Order passed by the respondent dated 10.12.2021 under Section 45-A of ESI Act for Rs.4,08,870/-as per Annexure -A
2. Garnishee order dated 17.05.2022 for Rs.5,55,167/- as per Annexure-C
3. Notice to show cause why a warrant should not be issued dated 24.05.2022 for Rs.5,55,167/- as per Annexure-D
4. Order for attachment of immovable property dated 05.07.2022 as per Annexure-E for Rs.5,62,426/- are stayed until further orders subject to condition;

The Applicant has to deposit Rs.1,50,000/- in respect of demand made for Rs.5,62,426/- 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 29.09.2022.

sd/-

JUDGE,
ESI Court, Mysuru.