

EXPARTE ORDER ON I.A No.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 u/s 45-A of ESI Act dated 28.09.2018 for Rs.1,76,319/-as per Annexure A
2. Order of attachment of immovable property dated 20.01.2022 for Rs.4,33,892/-

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 till disposal of the main Petition.

Applicant establishment is a proprietary concern and carrying out the business of engineering industrial production and obtained the ESI code. The respondent No.1 has issued a show cause notice and called upon the applicant to pay contributions for the period of AUG-2016 to APR-2018 and also called for personal hearing and one Krishnegowda appeared before the authorities and submitted that the brother of the proprietor of applicant passed away and prayed for another date of hearing for production of documents on 07.09.2017 but on the said day the applicant could not produce the documents. The respondent passed order u/s 45-A of ESI Act claiming contributions of Rs.1,76,319/-. The order passed by the respondent is not fair, reasonable and sustainable under law. The applicant is ready to pay the interest amount on the delay payment to the actual contribution amount not on the assumption and presumption wages. The respondent has not given an opportunity to establish that establishment is not liable to pay the contributions. If the Orders passed by the respondents is not stayed and amount to be deposited not waived off, the Applicant will suffer great hardship and loss. Hence, prayed that IA No.I and II may be allowed.

Heard.

Perused the Records. The Applicant has filed the above case to set aside the Orders 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.

The applicant has contended that the applicant is ready to pay the interest amount on the delayed payment on the actual contributions amount and opportunity was not given to the applicant to establish that establishment is not liable to pay the contribution.

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.

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 28.09.2018 for Rs.1,76,319/-as per Annexure A
2. Order of attachment of immovable property dated 20.01.2022 for Rs.4,33,892/- are stayed until further orders subject to condition;

The Applicant has to deposit Rs.75,000/- in respect of demand made for Rs.4,33,892/- 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 Respondent through RAPD if Applicant deposits the amount as per the Order.

ESI.A.111/2022

Call on 20.12.2022

**sd/-
JUDGE,
ESI Court, Mysuru.**