

EXPARATE ORDERS 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 Order passed u/s 45-A of ESI Act by the respondent dated 16.03.2022 for Rs.3,67,117/- as per Anenxure-A.

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.

The Applicant has stated that applicant institute has engaged 8 to 13 employees for the year 2017 to 2021 and applicant institute is liable to pay ESI contribution of Rs.1,50,861/- for the period from 01.10.2017 to 30.09.2021 for 8 to 13 employees as it is varies from year to year. During the claim period, the applicant institute has not deducted ESI contributions from the wages of the employees and as such no ESI benefit given to the employees. Due to Covid-19, the applicant institute was closed completely in the year 2020 to 2021 and hence the management of the applicant institute could not collect full fees from the students. The respondent issued Show cause notice dated 29.12.2021 to the applicant for payment of contributions for the period from 01.10.2017 to 30.09.2021 as to show cause within 15 days as to why contributions as proposed should not be determined for the said period of default and called for personal hearing on 22.02.2022 and on 10.03.2022, the applicant has not appeared for personal hearing before the ESI authority due to personal inconvenience. The respondent passed an order u./s 45-A of ESI Act dated 16.03.2022 as per annexure-A for Rs.3,67,117/- for the period from 01.10.2017 to 30.09.2021. The amount claimed is on assumed wages. The order of the respondent is perverse. The respondent has not given opportunity to establish that the establishment is not liable to pay the contributions. If the Order passed by the Respondent is not stayed, the Applicant will suffer great hardship and loss and also prayed the amount to be deposited may be waived. 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 Order passed by the Respondent under Section 75 of ESI

Act. As interim relief, the Applicant has sought for stay of impugned Order passed by the Respondent and to waive the amount to be deposited under Section 75(2-B) of the ESI Act. The applicant has contended that the applicant is not liable to pay ESI contribution as claimed by the respondent and the applicant establishment was completely closed in the year 2021 to 2021 and hence it is not liable to pay the contribution. Whether applicant is liable to pay the contribution can be adjudicated only after trial. At this stage, if Orders 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 Order passed u/s 45-A of ESI Act by the respondent dated 16.03.2022 for Rs.3,67,117/- as per Anenxure-A is stayed until further orders subject to condition;

The Applicant has to deposit Rs.75,000/- in respect of demand made for Rs.3,67,117/- 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.

Call on 14.02.2023.

**JUDGE,
ESI Court, Mysuru.**