

ORDERS ON I.A.I & II

IA No.I filed under Section 78 of ESI Act by the Applicant to stay the operation of the order viz., Show cause notice of Warrant of Arrest at Annexure "C" dated 20.10.2021

IA No.II filed by the Applicant under Section 75(2)(B) of ESI Act to waive off the amount to be deposited before this court by the Applicant.

Applicant has stated that applicant is carrying out business of Electrical contractor on contract. The Applicant establishment employed only 3 to 5 employees for wages. The Applicant has not informed to the respondent about number of employees employed in the establishment and the applicant establishment allotted ESI code. The Respondent issued notice to the applicant on 16.05.2016 for personal hearing. Thereafter Respondent corporation issued notice on 03.10.2016 u/s 45-A of ESI Act claiming Rs.1,46,397/- as contribution at Annexure-A and also issued another notice u/s 45-A of ESI Act on 27.06.2017 claiming contribution of Rs.33,784/- at Annexure B. The Respondent has taken on record that the applicant establishment had employed 20 employees and paid average pay of Rs.8250/- for each employee and it is imaginary and not based on records. Further, the Respondent has issued show cause notice of arrest warrant on 20.10.2021 calling upon to pay a sum of Rs.3,66,599/-. It is further contended that applicant

establishment has a good case on merits and it is just and necessary to stay the order of the respondent passed on 20.10.2021 pending disposal of the application. If Application is not allowed irreparable loss and injury caused to the applicant establishment and no hardship or injury will be caused to the Respondent. The balance of convenience lies in favour of the applicant. Hence, prayed that IA No.I and II may be allowed.

Perused the Records. The applicant has filed the above case to set aside the Order dated 20.10.2021 under Section 75(1) (g) of the ESI Act. As interim relief, the applicant has sought for stay of impugned Order passed by the Respondents and to waive the amount to be deposited under Section 75(2-B) of the ESI Act. It is pertinent to note that the Applicant has contended that the applicant establishment had employed only 3 to 5 employees from the inception of the establishment. The applicant establishment has contacted some person to get Electrical work to be done in systematic manner, but its efforts went in-vain and the applicant is ready and willing to pay the contribution for the wages paid to the employees. If stay is not granted the very purpose of filing the application will be defeated. Considering the above said circumstances, if Stay is granted no hardship would be caused to respondents. As such, the Order passed by the Respondents is liable to be stayed. Accordingly, I pass the following,

ORDER

Order passed by the Respondent dated 20.10.2021 at Annexure C calling upon the Applicant to pay Rs.3,66,599/- is stayed subject to condition;

ESI.A.45/2021

The Applicant has to deposit Rs.75,000/- (Rs.Seventy Five thousand only) in respect of demand made for Rs.3,66,599/- within 15 days from the date of this order with the Respondent Corporation.

Issue Notice on Application, IA No.I to II and copy of stay order to the Respondents through RAPD if Applicant deposits the amount as per the Order.

Call on 30.12.2021

sd/-
Judge,
ESI Court, Mysore.