

IN THE EMPLOYEES' STATE INSURANCE COURT AT MUMBAI

APPLICATION (ESI) NO. 54 OF 2023

M/s. Schindler India Pvt. Ltd.,
Schindler House, Main St.,
Hiranandani Gardens, Sainath Nagar,
Powai, Mumbai-400 076.

...Applicant

Versus

1) The Director In Charge,
Employees' State Insurance Corporation,
Panchdeep Bhawan, Plot No.7, Road No.9,
MIDC, Andheri (E), Mumbai-400 013.

2) Shri Nischal Kumar Nag,
The Deputy Director,
Employees' State Insurance Corporation,
Panchdeep Bhawan, Plot No.7, Road No.9,
MIDC, Andheri (E), Mumbai-400 013.

...Opponents

CORAM: M. R. KUMBHAR, JUDGE.

Appearances: Shri. Abraham Mathew, Advocate for the Applicant.
Smt. Uttara Sawant, Advocate for the Opponents.

ORDER BELOW EX.2
(Declared on 28.03.2024)

1) This is an Interim Application filed by Applicant against Opponent Corporation for quashing and to set-a-side the order dated 28/09/2020 passed by the Deputy Director of Opponent Corporation under Section 45-A of ESI Act determining an amount of Rs. 2,40,83,580/- towards contribution for the financial year 2015-2016 and other relief prayed in the application.

2) In that regard, it is submitted that, to avoid repetition the statement averment and submissions made in the main application filed under Section 75, 76 of ESI Act to contains of main application be taken as a part and parcel of this application.

3) It is further submitted that, applicant has made out strong prima-facie case in his favor and balance of convenience lies in favor of the Applicant. If, interim relief is not granted then Applicant will suffer irreparable loss and prayed that interim relief application be allowed to prayed made their.

4) The interim relief application is supported with affidavit at Ex.3 and list of documents at Ex.4.

5) The opponent appeared by filing detailed reply at Ex.11 and raising strong objections for the stay of recovery proceeding and denied all the averments, contentions, statements, allegations made in the main application as well as the interim relief application. The Opponent further contended that, the Applicant approached this court with unclean hand engaged in the suppression of material facts from the court. Therefore, the Applicant is not entitled to get relief and prayed that to reject the interim relief application.

6) It is further submitted that, the Social security officer (in short SSO) of Opponent Corporation visited to the Applicant on 04/03/2020 and observed that, the Applicant has not remitted the contribution of Labour Cost (Sub Contracting) of Rs. 89,37,91,579/-. Therefore, the Opponent issued C-18 dated 07/09/2020 for the financial period 2015-2016 for Rs. 4,11,73,046/-. The Applicant was given

opportunity of personal hearing the Authorized Officer attended the personal hearing and submitted the written representation submission by letter dated 21/09/2020 along with some documents. After considering the documents the Quasi Judicial Authority found that the out of Rs. 65,54,97,422.22/- out of Rs. 51,93,18,941.22/- attracts ESI contribution dues and it is the payment to independent job work for that period to have gave own statutory obligation for payment of statutory dues along with administrative and maintenance expenses and profit margins, hence, the ESI dues from the exact amount is unreasonable.

7) Opponent lastly contended that, the Applicant making the compliance's under Section 40 of the ESI Act SIPL Court number read with Sub Contracts employees and nature of job is job contract work the action of Opponent is legal proper and valid. Therefore, an Applicant failed to made out strong prima-facie case in his favor and balance of convenience lies in favor of Opponent and prayed to reject the interim relief application.

8) From the rival pleadings of the parties, following points arise for my determination and my findings to them are as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether applicant has made out a strong prima-facie case in its favor?	...In the affirmative.
2)	Whether balance of convenience lies in favor of applicant?	...In the affirmative.
3)	Whether irreparable loss would be caused to	...In the affirmative.

	the applicant if interim relief is not granted?	
4)	What order?	..As per final order.

REASONS

9) Heard Shri. Mathew Abraham, Ld. Advocate for applicant and Smt. Uttara Sawant, Ld. Advocate for the opponent Corporation at length. Both of them submitted their case as per contentions and averments made in Ex.2 and Ex.11 respectively with the help of the copies of documents. It is prayed on behalf of applicant that, its interim relief application be granted. Now the contrary, it is prayed of Opponent that application for interim relief may be rejected.

10) I Am of view that to grant interim relief is a discretionary power and such discretion has to be exercised on well established principles of law. It is settled position of law that there are some parameters to grant the interim relief. To grant or refusal to grant interim relief in the application filed under Section 75, 76 of ESI Act is covered by three well established principles i.e.

(i) whether applicant has made out a strong prima facie case?,

(ii) whether balance of convenience lies in its favor?,

(iii) whether the applicant would suffer irreparable loss in absence of any interim relief?

11) The burden to prove these three points primarily lies on the applicant. The interim relief is not granted to the applicant if he is guilty of delay or engaged in suppression of material facts. The applicant establishments seeking interim relief must approach to the

ESI court with clean hands and the court has to see whether claim is bonafide and whether it is fair and substantial question is to be tried. At the same time it is also to be borne in mind the prejudice liable to be caused if interim relief is not granted in favor of applicant. In the light of all these well established principles of law, let us consider the case in hand and facts mentioned therein while deciding the interim relief application.

12) It appears that, applicant being aggrieved by the order of Deputy Director dated 28/09/2020 determining contribution of Rs. 2,40,83,580/- for the financial period 2015-2016 for head H. O. A. labour costs (Sub Contractor) approach Insurance Court and filed Misc. ESI Application No. 44 of 2020 seeking for complete exemption to raise the dispute against Opponent Corporation.

Applicant in support of his contention filed some copies of document list Ex.4 i. e.

1. A Photocopy of the List of 18 office/ branches across India of the Applicant establishment along with ESI Code Nos.
2. A Photocopy of Visit Note and Inspection Cum Observation Sheet dated 04/03/2020.
3. A Photocopy of Circular bearing No.P12(11)-11/83/05-Rev. II issued by the Headquarters Office of the Opponent Corporation.
4. A Photocopy of Show Cause Notice in Form C-18 (Ad-hoc) dated 07/09/2020.
5. A Photocopy of written representation dated 21/09/2020.

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6. A photocopy of impugned order dated 28/09/2020 passed by the Dy. Director u/s 45-A of the ESI Act.

13) From bare perusal of these documents, it appears that, applicant challenged the legality and validity of the 45-A order dated 28/09/2020 passed by the Deputy Director of the Opponent Corporation. The Misc. ESI Application No. 44 of 2020 filed by the applicant is decided on merit by judgment and order dated 19/06/2023 and said application was partly allowed. The Applicant were directed to deposit 10% of the amount against 45-A order dated 18/09/2020 for an amount of Rs. 2,40,83,580/- which comes with Rs. 24,08,358/- within the period of 4 weeks in this court. It appears that, Applicant along with application dated 14/08/2023, D. D. No. 796955 dated 10/08/2023 drawn from the Bank City Bank, branch Gardens Powai, Mumbai for an amount of Rs. 24,08,358/- in favor of the Registrar, Industrial Court, Mumbai and complied the order passed by this court as per Section 75 (2) (b) of ESI Act.

14) Now, it is apprehension of applicant that in spite of depositing an amount of Rs. 24,08,358/- if, the 45-A order dated 28/09/2020 is not stayed then Opponent Corporation may proceed with recovery and recover entire amount which is challenged and then very purpose of filing of application under Section 75 & 76 of ESI Act to challenge legality and validity of the order will be frustrated. Therefore, 45-A order needs to be stay. I find substance much substance in the submission made on behalf of Applicant. The applicant has deposited amount in the court as per direction and

adequate interest of opponent is already secured. During the course of argument when I asked Mr. Abraham Mathew, Ld. Counsel for the Applicant, how much time is required to complete the evidence on the part of Applicant. He made statement at Bar without seeking unnecessary adjournment, Applicant will proceed further and to complete its evidence within the period of 9 months. Therefore, if, implementation of 45-A order dated 28/09/2020 is stayed for the period of 9 months, after framing the issues in this matter, then no prejudice will be caused by other parties.

15) I find substance in the submission and therefore, matter needs to be expedited considering the nature of dispute and huge amount claim by the Opponent Corporation.

16) From the above discussion, and in the light of copies of document placed on record, I come to conclusion that, by depositing 10% amount in the Court, Applicant has made out strong prima-facie case in his favor and balance of convenience lies in favor of the Applicant. If interim relief is not granted then applicant will suffer irreparable loss. Therefore, order passed under Section 45-A needs to be stayed.

17) Therefore, all issues should be answered in the affirmative and I answer the same in the affirmative.

18) With this, I proceed to pass the following order.

ORDER

1) Interim Relief Application at Ex.U-2 is allowed.

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- 2) The implementation of order passed under Section 45-A dated 28/09/2020 is stayed for the period of 9 month after framing the issues in this matter.
- 3) Matter is expedited, both parties should co-operate the Court to decide matter as early as possible without seeking unnecessary adjournment.
- 4) Case adjourned for filing written statement on next date.

Sd/-

Dated: 28.03.2024

(M. R. Kumbhar)
Judge
Employees' Insurance Court,
Mumbai

Rahul Gejage.