

BEFORE SHRI R.K. KHOMANE, JUDGE,
EMPLOYEES INSURANCE COURT, AT MUMBAI.

Application (ESI)No.95 of 2022.
(CNR No. MHIC01-001397-2022)

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

... Applicant.

V/s.

1. The Employees' State Insurance Corporation,
Panchdeep Bhavan,
Plot No.7,Road No.9, MIDC,
Andheri(E),Mumbai-400 013.
2. Shri G. Gante,
The Dy. Director,
The Employees' State Insurance Corporation,
Panchdeep Bhavan,
Plot No.7,Road No.9, MIDC,
Andheri(E),Mumbai-400 013. ... Opponents.

Coram:-

Shri R.K. Khomane, Judge.

Appearances:

Shri A. Mathew, Ld.Advocate for
the Applicant.

Ms. Uttara Sawant,Ld. Advocate for
the Opponents.

O R D E R (Below Exhibit 2)
(07.07.2023)

01. By this application, the applicant is praying to stay
the Order dated 10.02.2022 under section 45-A of the ESI Act
by the Dy. Director of ESI Corporation.

02. Following points arise for my determination, to which the findings are given against them and the reasons for the said findings are as under:-

POINTS	FINDINGS
1) Whether the impugned order dated 10.02.2022 passed under section 45-A of the ESI Act by the Dy. Director of ESI Corporation, requires to be stayed?	Yes.
2) What Order?	The Application is allowed.

REASONS

As to Point No.1:-

03. Perused the application and say. Heard both sides Ld.Advocates.

04. The applicant is a Private Limited Company, incorporated under the Companies Act, 1956 and covered under the provisions of the ESI Act. The applicant manufactures elevators, escalators and moving walks. It supplies the said products to their customers and for installing the same, they do engage contractors, who are specialized in the respective jobs. On 07.12.2021, the Social Security Officer (SSO) from the ESI Corporation visited the Applicant's factory for verification of records. He observed that the applicant has not paid contribution of Rs.2,04,45,370/- under the heads miscellaneous expenses,

plant & machinery, building, repair and maintenance, leasehold improvement, business development, furniture and fixtures. Therefore, the Opponent Corporation issued notice C-18 dated 27.12.2021 for the period 2016-17 for contribution amount of Rs.2,04,45,370/-. After perusing the documents and written submissions of the applicant, the Dy. Director of ESI Corporation determined the contribution amount of Rs.27,12,384/- for the period January 2017 to March 2017 being due against the applicant and passed the impugned Order u/s. 45-A. Being aggrieved by the said impugned Order, the applicant has challenged the same in this matter.

05. Admittedly, the SSO of the ESI Corporation visited the office of the applicant on 07.12.2021. After verifying the records of the applicant, the Dy. Director has passed the impugned Order, determining the contribution amount of Rs.27,12,384/-. The said impugned Order is under challenge in the present matter.

06. My Ld. Predecessor, on 11.08.2022, was pleased to pass the Order on exemption application filed by the applicant and directed to deposit an amount @50% of 45-A Order i.e. Rs.4,06,857.60/- in this Court. The applicant has

complied the same and deposited the said amount. The opponents have not disputed this fact. Thus, as per the directions of this Court, the applicant has deposited the amount of Rs.4,06,857.60/-. The Ld. Advocate for the opponents, at the time of arguments, fairly admitted that as the applicant has deposited the amount as per the directions of this Court, therefore, they have no objection to stay the impugned Order passed u/s. 45-A of the ESI Act. Thus taking into consideration these facts, the impugned Order 10.02.2022 passed u/s. 45-A of the ESI Act deserves to be stayed. Therefore, I answer Point No.1 in **affirmative**.

07. In view of my finding on Point No.1 in affirmative, the application deserves to be allowed. Hence, I proceed to pass the following Order:-

ORDER

- i) The application is allowed.*
- ii) The execution and implementation of the impugned order dated 10.02.2022 passed under section 45-A of the ESI Act is stayed till the final disposal of the main application.*
- iii) The opponents shall not initiate any recovery proceedings in pursuance of the impugned order dated*

*10.02.2022 passed under section
45-A of the ESI Act, till the final
disposal of the main application.*

Date:-07.07.2023.

*(R.K. KHOMANE)
Judge,
Employees Insurance Court,
Mumbai*

Skn/-