

IN THE EMPLOYEES' STATE INSURANCE COURT AT MUMBAI

APPLICATION (ESI) NO. 73 OF 2023

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

...Applicant

Versus

1) The Employees' State Insurance Corporation,
Panchdeep Bhavan,
Plot No.7, Road No.9, MIDC,
Andheri (E), Mumbai-400 093.

2) Shri G. Gangte
The Deputy Director,
Employees' State Insurance Corporation,
Andheri (E), Mumbai-400 093.

...Opponents

CORAM: M. R. KUMBHAR, JUDGE.

Appearances: Shri. H. D. Pithadia, Advocate for the Applicant.
Smt. Uttara Sawant, Advocate for the Opponents.

ORDER BELOW EX.2
(Dated: 15.04.2024)

1) This is an application for interim relief filed by the applicant praying for stay the impugned order passed under Section 45-A dated 08.08.2022 by the opponent till final disposal of main application.

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2) The interim relief application is supported with affidavit at Ex.3 and list of documents at Ex.4 on various grounds as mentioned in the application at Ex.2.

3) The opponent by filing reply at Ex.10 denied each and every contentions, averments and statements made in the interim relief application and prayed to reject the interim relief application.

4) The opponent corporation objected for stay and prayed to direct for balance 50% bank guarantee of the whole claim of opponent corporation would be secured. The 45-A order is passed after giving the ample opportunity of being heard followed by principles of natural justice and therefore order passed under Section 45-A dated 08.08.2022 is legal, fair and valid and prayed to reject the interim relief application.

5) In view of rival pleadings of the parties, following points arise for my consideration 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 the applicant if interim relief is not granted?	...In the affirmative.
4)	What order?	..As per final order.

REASONS

6) The applicant in support of interim relief application placed on record some copies of documents with list Ex.4 comprising of list of various offices of applicant located across the country, visit notes dated 25.01.2022, 07.02.2022, 24.02.2022, 10.03.2022, 28.03.2022, 11.04.2022, 25.04.2022, 06.05.2022, 25.05.2022 & 26.05.2022, list of concerned sub contractors with their addresses, show cause notice in Form C-18 (Ad-hoc) dated 28.06.2022, applicant's written representation dated 29.07.2022 and order under Section 45-A dated 08.08.2022.

7) On the contrary, in support of reply, no copies of documents are placed on record.

8) It is submitted on behalf of applicant that applicant being aggrieved with the impugned order passed under Section 45-A dated 08.08.2022 by the Dy. Director of opponent corporation determining the contribution amounting to Rs. 74,81,718/- for the financial year 2017-2018. According to applicant, the impugned order passed under Section 45-A dated 08.08.2022 is illegal and bad in law which suffers from grave non application of mind to the relevant facts. It is further submitted that applicant filed application under Section 75 of the ESI Act and challenged the legality and validity of the impugned order. It is further submitted that apart from office at Powai, Mumbai, applicant is having around 18 branch offices across the country. The office of applicant at Mumbai is covered under the provisions of the ESI Act.

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Applicant was allotted code number for compliance. According to applicant, the various branch offices are also covered under the provisions of the ESI Act. The appropriate regional / sub regional offices of the corporation have allotted the separate code number and applicant remitted the contribution regularly.

9) Shri. H. D. Pithadia, Ld. Advocate for the applicant vehemently submitted that applicant is engaged in manufacturing of elevators, escalators and moving walks. Applicant supply the said products to their customers and for installation and for installing the same used to engage contractors who are specialized in respective jobs. He further invited my attention towards the visit note filed along with list Ex.4 dated 25.01.2022 and submitted that the SSO of opponent corporation visited for verification on various dates, prepared visit note. It is not the case of opponent that the amount paid to the sub contractor and compliance made on salary is not rationalized in nature. He further submitted that the contributions are to be paid only on wages and not on the other expenses incurred by the applicant. As per provisions of Section 41(1A) of the ESI Act, the contractors are required to maintain only registers of employees employed by or through them as provided in the regulation and submit the same to the principal employer before settlement of any amount to the contractor.

He invited my attention towards the copy of C-18 (Ad-hoc) dated 28.06.2022 by which opponent proposed to determine an amount of Rs. 3,99,02,497/- towards the contribution on an amount of

Rs. 61,38,84,574/- claimed under various heads. Applicant attended the personal hearing and filed written submissions and therefore passed order.

10) He lastly submitted that applicant approached to the ESI court intending to raise the dispute against the opponent corporation and filed Misc. Application (ESI-Ex)No. 01/2023 for seeking complete exemption from depositing 50% amount so determined by the opponent. The exemption application was decided on merit by judgment and order dated 18.10.2023 and applicant was directed to deposit 15% of amount against the 45-A order. Therefore applicant deposited an amount of Rs. 11,22,258/- in the court and complied the mandatory provisions under Section 75(2-B) of the ESI Act and made out a strong prima-facie case. The balance of convenience lies in favor of applicant. If interim relief is not granted, applicant will suffer irreparable loss and prayed to allow the interim relief application.

11) On the contrary, Smt. Uttara Sawant, Ld. Advocate for the opponent corporation vehemently submitted in detail as per the reply filed on record. She invited my attention towards the copies of documents filed by the applicant itself wherein after completion of visit by the SSO of opponent corporation, prepared visit note dated 26.05.2022 followed by C-18 show cause notice dated 28.06.2022. Applicant was granted an opportunity of personal hearing. Applicant filed his reply dated 29.07.2022 and attended the persona hearing. Considering the reply, the Dy. Director of opponent corporation

proceeded to pass order under Section 45-A dated 08.08.2022 which is legal, fair and proper.

12) She lastly submitted that mere depositing the 15% amount in the court, it does not imply that applicant has made out a strong prima-facie case in his favor and the balance of convenience lies in favor of applicant. Therefore applicant is not entitled to get any relief as claimed for and prayed to reject the interim relief application.

13) Having heard the oral submission of both Ld. Advocates. I have gone through the ground raised by applicant which are denied by opponent in the reply. Considered the documents on record. I am of opinion 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?

14) 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.

15) Prima-facie it appears that applicant is covered under the provisions of the ESI Act. Therefore, applicant required to pay the contribution in accordance with Section 40 read with Regulation 29 and 31 of the Employees State Insurance (General) Regulation framed under the Act. It further appears that the social security officer of opponent corporation visited to the applicant on various dates, prepared the visit note and submitted to the opponent corporation. Relying on the visit note, the opponent corporation issued C-18 (Ad-hoc) dated 28.06.2022 proposing to determine an amount of Rs. 39,90,2,497/- for the period from 04/17 to 03/18. It further appears that the personal hearing was granted on 19.07.2022 wherein applicant failed to attend but sent e-mail dated 19.07.2022. Therefore further date of personal hearing was fixed on 29.07.2022. The Senior Manager (Legal-COC) appeared for personal hearing and submitted written representation. Considering the submissions, the Dy. Director

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proceeded to pass the order under Section 45-A determining an amount of contribution of Rs. 74,81,718/-.

16) It should not be ignored that applicant approached this court to challenge the legality and validity of the 45-A order and filed the exemption application bearing Misc. Application (ESI-Ex)No. 01/2023 seeking for complete exemption from depositing 50% amount. It further appears that the said application was decided by this court and was partly allowed. The applicant was directed to deposit 15 % amount against the 45-A order.

17) It appears that applicant by an application dated 19.12.2023 filed along with D. D. No. 881018 dated 14.12.2023 drawn from the Citi Bank, Gardens Powai Mumbai Branch, an amount of Rs. 11,22,258/- in favor of the Registrar, Industrial Court and complied the direction of this court. By depositing the said amount in the court, the adequate interest of opponent corporation is already protected. Therefore, I am of the opinion that applicant has made out a strong prima-facie case in his favor and the balance of convenience lies in favor of applicant. In spite of depositing the 15 % amount against the 45-A order in the court, if opponent proceed further to recover the amount as per the impugned order passed under Section 45-A dated 08.08.2022, definitely applicant will suffer great hardship. Therefore, I come to the conclusion that applicant succeeded to show that it has prima-facie case in his favor and the balance of convenience lies in favor of applicant. If interim relief is not granted, applicant will suffer great hardship.

18) Therefore, all issues are required to be answered in the affirmative and I answer the same in the affirmative. With this, I proceed to pass the following order.

ORDER

- 1) The application for interim relief is allowed.
- 2) The impugned order passed by the Dy. Director of opponent corporation under Section 45-A dated 08.08.2022 is hereby stayed till final disposal of the main application.
- 3) Opponent is hereby restrained from initiating any further recovery proceeding in pursuance of 45-A order dated 08.08.2022.
- 4) No order as to costs.

Sd/-

Dated: 15.04.2024

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

ams/-