

MHIC090000542020

Exh.O-



BEFORE THE ESI COURT AT KOLHAPUR

APPLICATION (ESI) NO. 03/2020

Shree Samarth Associates

.. Applicant

V/s

ESI Corporation, Pune & Ors.

.. Opponents.

: ORDER BELOW EXH. 2 :

(Dictated in Open Court on 11.04.2023)

1. The applicant has filed present proceeding challenging thereby order dtd. 30.01.2020 u/s. 75 of the Employees State Insurance Act.
2. It is contended that the applicant is a propitiatory concern mainly providing contractual employees to various companies establishments for house keeping and other allied activities. At present it is providing nearly 400 such employees. The applicant maintains PF accounts and ESI Code. As per impugned order dtd. 30.01.2020 the respondents claimed amount of

Rs.10,98,448/-.. The said recovery is towards period January 2017 to September 2017. The applicant through letter dtd. 02.10.2020 informed the opponents that it is already deposited required contribution and thus no dues are payable.

3. The establishment of applicant was allotted sub code on 01.09.2017. The Deputy Director Revenue-II as per letter dtd. 13.02.2017 has given guidelines regarding rate of contribution. As per the same it is directed to pay contribution @4% for newly registered establishments after 06.10.2016 for period of 2 years. Employees registered between 01.04.2016 to 05.10.2016 are required to pay full contribution till 05.10.2016 and thereafter at reduced rate for 2 years. The applicant is made applicable ESI Act from 01.09.2017, therefore, it is required to pay contribution @4% and not 6.5%. Suddenly it received notice dtd. 26.09.2019 and was asked to pay Rs.8,45,816/- as contribution for January 2017 to September 2017 plus interest Rs.2,52,582/-, in total Rs.10,98,448/-. From August 2019 to November 2019 there was heavy flood in Kolhapur City. In spite of that the applicant replied on 02.10.2019 that the calculations are incorrect. In spite of such reply, recovery

notice dtd. 30.01.2020 came to be issued. Thus, it is urged to stay the same during the pendency of present proceeding.

4. The application is opposed by the respondents through say vide Exh. 37. The respondent denied all the adverse contentions of the applicant. It is contended that as per Sec. 75(2B), it is necessary for the applicant to deposit 50% of the claimed amount, before any relief can be granted. It is further contended that C-18(Actual) dtd. 26.09.2019 for Rs.8,45,816/- for the period January 2017 to September 2017 came to be issued. Therefore, the applicant ought to deposit Rs.4,22,908/-. He has deposited only Rs.75000/- and obtained ad-interim relief. Thus, the applicant must deposit Rs.3,47,908/-.

5. It is contended that the applicant generated code w.e.f. 01.09.2017. The applicant failed to comply with direction to submit copies of muster cum wage register. The applicant never intimated that his employees are working in newly implemented area. The compliance is made on principle code. There was short contribution for January 2017 to September 2017. Therefore, C-18(Actual) was issued on 26.09.2019. Thereafter, recovery certificate in Form C-19 dtd. 20.01.2020 was issued. The applicant submitted letter dtd.

02.10.2019. As the said communication was without any documentary evidence, it cannot be considered. Therefore, rate of contribution @4% is not applicable to the applicant. Thus, notice in Form CP-2 came to be issued. Thus, it is urged that the applicant has not made out any case for grant of any relief.

6. On the basis of rival contentions, the following points arise for consideration and findings are given below for reasons to follow:

	POINTS	FINDINGS
1.	Whether the applicant has made out case for grant of interim relief?	Partly yes.
2.	What order?	As per order.

REASONS

As to Point No.1

7. The Ld. Counsels for the litigating parties canvassed oral arguments in support of their respective contentions. Heard the Ld. Counsels and perused the papers.

8. As per the applicant, it is registered under ESI Act after the same is made applicable to the newly introduced area. Therefore, for the relevant period, contribution @4% is payable by it to the respondent. It is claimed that the applicant has remitted such contribution and there is no arrear. On the other hand, as per

respondent, the applicant is required to pay contribution at old rates. In the present matter, the demand towards recovery is made on the basis of C-18(Actual). Although the applicant has stated that in 2019, there was heavy flood but thereafter the applicant had ample opportunity to submit such documents. My Ld. Predecessor directed applicant to deposit Rs.75,000/-. As per Sec. 75(2B), the ad-interim waiver came to be granted. Considering the facts of the case, it is contended by respondent that applicant has to deposit 50% of the amount while preferring such proceedings. In the facts and circumstances of the case, this Court finds that it is necessary to protect the interest of the opponents during the pendency of the present application. Therefore, the applicant is liable to deposit Rs.1,50,000/- with the Court for continuation of interim relief. Hence point no. 1 is answered accordingly.

As to Point No. 2:

9. In the premise of above facts and circumstances, the application is liable to be partly allowed. Hence the following order is passed.

ORDER

1. The application Exh. 2 is partly allowed subject to applicant depositing Rs.1,50,000/- (Rs. One Lac Fifty Thousand only) within a period of 01 month from today with this Court.
2. The effect and operation of the impugned order dated 30.01.2020 is stayed during the pendency of the proceeding.
3. In case of non-compliance of such directions, the interim order shall automatically vacate after 1 month from date of order.
4. The application to proceed further

Kolhapur
11.04.2023
RSS/-

(S.S. Khandekar)
Judge, ESI Court, Kolhapur