

**BEFORE THE MEMBER EMPLOYEES' INSURANCE COURT, AT  
SANGLI**

**Application (ESI) No.06 Of 2023**

(CNR No.MHIC100000922023)

M/s Crown Soaps  
Plot No.17/196 (B),  
Vasantdada Industrial Estate,  
Sangli.  
Through its Partner.

..Applicant

V/s

- 1) Dy. Director,  
Sub-Regional Office,  
Employees' State Insurance Corporation,  
Panchdeep Bhuvan, Bibwewadi,  
Pune 411 037 and Anr.

..Opponents

CORAM : D.M. Patil, Member

APPEARANCE : Shri. S.S. Mutalik, Advocate for the Applicant  
Shri.U.R. Jadhav, Advocate for the Opponents

**Order Below Ex.C-2**

(Date : 15<sup>th</sup> March 2024)

This is an application seeking interim stay against order dt.5/01/2023 passed by opponent No.1 u/s 45-A of Employees State Insurance Act, 1948.

2. The case of the applicant in short that,

The applicant is the closed unit since 14/10/2017 and accordingly surrendered / cancelled its Factory Act license. According to applicant its power supply connections are also disconnected by MSEDCL and production has been stopped since October 2017. The applicant has submitted letter to M.P.C. Board Sangli on 18/11/2017

informing about closure of its unit. Since 14/10/2017 there is no any employee in its employment. Despite that the opponent Corporation raised demand of contribution from the applicant for the period December 2017 to March 2017 vide notice C-18 (ad-hoc) dt.30/11/2022. According to applicant, it has given intimation about closure of business to the opponent. However, without taking into consideration the said fact the opponent hurriedly passed order u/s 45-A of Employees State Insurance Act, 1948. According to applicant he has submitted numerous documents with intimation about closure of its company. However, without taking note of said fact and without considering the documents, the opponent Corporation has passed an ex-parte order u/s 45-A of Employees State Insurance Act dt.05/01/2023 determining contribution of an amount of Rs.3,83,634/-. According to applicant the action of opponent is prima facie illegal and bad in law and he is not liable to pay any contribution. Hence it is prayed to stay the order dt.05/01/2023 passed u/s 45-A of Employees State Insurance Act, 1948.

3. The opponent Corporation has filed written statement at **Ex.R-4** but opponent did not file any say on this interim application filed by the applicant till today. Hence the written statement filed by the opponent Corporation is treated as say to interim application. The opponent came with the case that action taken by opponent Corporation is legal and proper. According to opponent, the grounds

raised by the applicant in its application are misleading and devoid of any substance. The applicant was under obligation to pay the contribution for the period December 2017 to March 2022. Since the contribution for the said period remained unpaid notice C-18 (ad hoc) dt.30/11/2022 was issued to the applicant. The applicant was granted reasonable opportunity of hearing on 16/12/2022. The applicant vide its letter dt.05/12/2022 has just informed that its unit is closed w.e.f.October 2017. However, no supporting documents were furnished. Hence one more opportunity as per principles of natural justice has been granted on 04/01/2023, but the applicant neither attended nor submitted any representation or documentary evidence showing closure of unit. Hence the opponent Corporation constrained to pass ex-parte order u/s 45-A dt.05/01/2023. The said order is well reasoned. In absence of supporting record and documents opponent is not in a position to decide issue of closure as contended by the applicant. The applicant just sent one letter dt.05/12/2022 informing closure but failed to substantiate its stand by way of corroborative evidence. Hence the order passed u/s 45-A of ESI Act is in consonance with provisions of law and principles of natural justice. Hence the interim application deserves to be rejected.

4. Considering rival contentions of parties following points arise for my determination and I record my finding with reasons thereon as follows -

<b><u>Points</u></b>	<b><u>Findings</u></b>
(1) Whether the applicant has made out strong prima facie case ?	In the Affirmative
(2) Whether balance of convenience lies in favour of applicant ?	In the Affirmative
(3) Whether the applicant will be put to great hardship if interim relief is rejected ?	In the Affirmative
(4) What Order ?	As Per Order Below

### **Reasons**

5. **As to Point No.1 to 3** :- Heard learned learned advocate Mr.S.S. Mutalik for applicant and learned advocate Mr.U.R. Jadhav for opponent Corporation. It is submitted on behalf of applicant that unit has been closed prior to period of demand as stated in order u/s 45-A of Employees State Insurance Act. It is submitted that during the period of demand from December 2017 to March 2022 the applicant company was closed down. After receipt of Notice C-18 (Ad hoc) from opponent, the applicant has intimated the opponent about closure of its unit. It is submitted that the opponent could have deputed any inspector for inspection of the company to verify closure of the applicant. However, the opponent Corporation proceeded to pass ex-parte illegal order u/s 45-A of Employees State Insurance Act. According to applicant said order is *ex facie* illegal and requires to be stayed.

6. *Per contra*, the learned advocate for opponent submits that if at all the applicant has closed its unit in the year 2017 it was duty of

applicant to inform this fact to the opponent Corporation. The applicant did not take any pain even to submit documentary evidence in that respect at the time of personal hearing. The applicant cannot be absolved from the liability just by giving one letter. On the contrary, the applicant was granted opportunity as per principles of natural justice. The applicant admits receipt of letters of personal hearing. Therefore, the applicant cannot allege that no opportunity was granted to him. It is therefore submitted that applicant has no prima facie case in his favour and hence applicant is not entitled to interim relief as prayed for.

7. I have gone through the documents put on record by the applicant alongwith list **Ex.C-4**. On perusal of said documents it appears that the applicant company has informed to the Dy. Director of Factories as well as Regional Office, M.P.C. Board, Sangli, Superintending Engineer, MSEDCL on 18/11/2017 that its factory has been closed. The applicant has received notice C-18 dt.30/11/2022 from opponent Corporation in which amount of Rs.3,83,634/- was proposed to be determined against the applicant for the period December 2017 to March 2022. It appears that vide letter dt.05/12/2022 the applicant has informed to the opponent that applicant establishment has been closed since October 2017 and requested not to initiate any action as proposed in Notice C-18. There is another letter dt.01/01/2023 in which the applicant appears to

have submitted documents of no attendance, wage record, balance sheet, bank statement, ITR for the period mentioned in notice C-18. It can be seen that this second letter of producing documents reached to the opponent on 4/01/2023. However on the very next date i.e. 05/01/2023 the order u/s 45-A of Employees State Insurance Act, 1948 came to be passed. On bare perusal of the order passed u/s 45-A of Employees State Insurance Act, 1948 it prima facie shows that opponent did not take into consideration letter dt.05/12/2022 nor the documents submitted alongwith letter dt.01/01/2023 and the said order passed ex-parte by confirming the contribution as proposed in Notice C-18. On prima facie consideration of said documents it appears that the applicant had intimated the closure of its unit to the opponent but the said aspect was not taken into consideration by the opponent Corporation. No doubt it is true that the applicant was under obligation to intimate closure of its company immediately after closure, but fact remained on record that the company was closed since October 2017 i.e. prior to demand of contribution. No doubt fact of closure of unit is required to be proved by the applicant by leading appropriate evidence at later stage. However, from the documents produced on record it can be prima facie seen that the unit was closed prior to period of demand of contribution.

8. Vide order passed in Misc.(ESI) No.01/2023 dt.04/07/2023

exemption application of applicant was allowed partly and applicant has already deposited amount of Rs.75,000/- in court. Therefore, interest of opponent is adequately protected and no irreparable loss would be caused to the opponent if interim application is allowed. Hence I answer point Nos.1 to 3 in the affirmative and proceed to pass following order.

### **Order**

- (i) Application is allowed.
- (ii) The order passed u/s 45-A of Employees State Insurance Act,1948 dt.05/01/2023 by the opponent Corporation is hereby stayed and the opponent Corporation is directed not to proceed with recovery against the applicant till the decision of main application.
- (iii) With consent of parties matter is expedited.
- (iv) Dictated and pronounced in the Open Court.

Sangli.

Date : 15<sup>th</sup> March 2024.

(D.M. Patil)  
Member,  
Employees Insurance Court,  
Sangli