

**BEFORE THE EMPLOYEES INSURANCE COURT, MAH., AT
SANGLI**

Application(ESI) No. 8 Of 2022

M/s. Swastik Enterprises,
Plot No. H- 431, Main Road, Ulhasnagar
Kupwad, Sangli, Applicant
Through it's Proprietor

V/s

1. Deputy Director,
Sub Regional Office,
Employee State Insurance Corporation,
Panchdeep Bhavan , Pune
2. Recovery Officer,
Mr. Sunil K. Dede,
Sub Regional Office, Opponents
Employee State Insurance Corporation,
Panchdeep Bhavan , Pune
3. Branch Manager ,
Corporation Bank,
Merged and name changed to
Union Bank of India,
Savali Road, Tal- Miraj,
Dist- Sangli.

CORAM : D.M. Patil, Member

APPEARANCE : Adv. S. S. Mutalik, for the petitioner
Adv. U.R.Jadhav, for the respondent

ORDER BELOW EXH C- 2

(Date : 21th July 2023)

1. This is an application for interim relief filed u/s 75 of ESI Act. It is prayed to stay order passed by Opponent No. 1 u/s 45-A

of ESI Act, dt 05/10/2021, Order u/s 85-B dt. 8/6/2021 and prohibitory order dt 14/9/2022 issued by opponent ESI Corporation. The case of the applicant in short is that, the applicant firm is duly registered under ESI Corporation Act having Code No. 33000534230001099. The applicant firm is paying contribution to the opponent in respect of employee till September 2016 but for the period October 2016, November 2016 no work was available with the applicant hence the applicant has not engaged any worker nor paid wages to them. Hence, contribution for the said period is not payable. The applicant has engaged workers since Dec 2016 onwards and contribution as per record of the applicant was payable amounting to Rs.32,547/-. However, the opponent corporation has issued notice C-18 on Adhoc basis claiming contribution for the period Oct 2016 and Sep 2019 demanding contribution of Rs 69,021/- even though the amount of due was actual of Rs.32,547/- only . The delay to pay of contribution for the period 1/7/2016 to 31/10/2020 was intentional and the levi of damages by the opponent corporation is illegal and without application of mind. Order u/s 45-A was passed ex-parte without affording opportunity, thereafter C-19 and prohibitory orders were passed . Vide prohibitory order dt. 14/9/2022 total amount of Rs

1,15,562/- was claimed from the applicant. According to applicant this amounts to legal harassment of the applicant hence the applicant prayed for interim relief claiming prima facie to strong case in his favor.

2. The opponent has filed say at **Exh- R- 9** against application for interim relief and resisted the application stating that the order u/s 45-A, 85-B as well as prohibitory order are in consonance with principal of natural justice and the same were passed after following due process of law . According to opponent said order do not suffer from any kind of infirmity. Therefore, applicant do not have any prima facie strong case hence the application deserve to be rejected.

3. Considering rival contentions of both the parties. following points arise for my determination. My answers to them with reasons thereon are as under-

<u>Points</u>	<u>Findings</u>
(1) Whether the Applicant has made out strong prima facie case for the grant of interim relief?	In the Affirmative
(2) Whether the balance of convenience lies in favour of the Applicant ?	In the Affirmative
(3) Whether the irreparable loss will be caused to the Applicant of interim application is not granted?	In the Affirmative
(4) What order ?	As Per Final Order

Reasons

4. **As to Point No.s 1 To 3:-** Heard Ld. Adv. S. S. Mutalik for the applicant and Ld. Adv. U. R. Jadhav For the Opponent at length. On perusal of record and the documents placed by the both parties before the court it can be seen that the opponent has Issued notice C-18 (Adhoc) dt 19/6/2021 to the applicant for proposed contribution of Rs 59,021/- for the Period Oct 2016 to Nov 2016 and Sep 2019. The opportunity of personal hearing was granted to the applicant. However, on perusal of order passed u/s 45-A dt 5/10/2021 it appears that the applicant did not appear before the authority for personal hearing and hence the said order was passed ex-parte, thereby contribution of Rs. 59,021/- was determined finally for the period 1/10/16 to 31/11/16 and 1/9/19 to 30/9/2019. There is separate order u/s 85-B was passed by opponent corporation claiming damages for delay in depositing contribution for the period 1/7/16 to 31/10/2020 amounting to Rs.2,781/-. The opponent has also issued prohibitory order dt.14/9/2022 to the bankers of applicant claiming amount of Rs. 1,15,562/- . The breakup of the amount is given in the said order in which contribution of Rs.66,339/- is shown along with interest, Amount of Damages, Post requisition. However,as per order passed u/s 45-A contribution of Rs.59,021/-

was determined hence, nowhere it is clarified as to why amount of contribution of Rs.66,339/- has been claimed in prohibitory order.

5. The applicant has already deposited amount of Rs 40,000/- in court in pursuance to ad-interim order passed in misc ESI Application Exemption 3/2022. Therefore this amount which is already deposited is more than 50% of the amount claimed in order u/s 45-A. Hence, it appears that the interest of the opponent is adequately protected. Therefore I do not think it necessary to allow the opponent to proceed further with recovery against the applicant. Hence I answer point no. 1 to 3 in the affirmative.

6. During the course of argument both the parties agreed to expedite main application and to get it decided within 4 months. Under such circumstance I proceed to pass following order.

ORDER

- (i) Interim application stands allowed.
- (ii) Opponent corporation is hereby restrained from proceeding with any kind of recovery and from affecting prohibitory order and taking coercive steps against the applicant till the final decision of main complaint
- (iii) The opponent corporation is also directed to defreeze the

bank account of the applicant, if freezed by virtue of prohibitory order.

- (iv) Main application to proceed further.
- (v) Dictated and pronounced in open court.

Date : 21th July 2023.

Place : Sangli.

(D.M. Patil)
Member
ESI Court, Sangli