

MHIC120004092021



**IN THE INSURANCE COURT AT PUNE**  
**Presided Over by SHRI. K. N. GAUTAM**

**Application ESI NO. 47 OF 2021**

Varad Enterprises  
Pune 311 052

... Applicant

VERSUS

Employees State Insurance Corporation  
Bibwewadi, Pune 411 037

... Opponent

**COMMON ORDER BELOW EXH. C-2 & C-4**  
**( Dated : 14.10.2024 )**

Heard ld. Counsel for the applicant and opponent.  
Perused reply of the opponent at Exh. E-5 and Exh. E-6. I have also gone through the case record.

2. It is the contention of the applicant that it is an establishment engaged in the services of machine repairing. It has appointed 20 employees and obtained ESI code in May 2017. It is contended that it having no work order during the disputed period and hence, it terminated the services of employees appointed by it. It is contended that the applicant was allotted one part project by principal employer and hence it paid salary to its employees in the month of May 2017 and thereafter terminated services of all the 20 employees employed by it in June 2017. It is contended that it got

knowledge about the proceedings of ESI contribution after receipt of order under Section 45A of the ESI Act. However, the applicant was deprived of opportunity to defend its case. In such circumstances, the applicant is constrained to file the application. The applicant prayed by way of interim relief that the order under Section 45A of the ESI Act dated 31.08.2020 may be stayed till final disposal of the main application. It also prayed that waiver may be granted from payment of contribution claimed.

3. The opponent contended that the applicant has not complied the provisions of Section 75(2B) of the ESI Act which is mandatory, hence application is not maintainable. It is contended that the ESI corporation claimed amount of Rs. 1,57,808/- towards contribution for the period from 16.5.2017 to 31.3.2018 vide order under Section 45A of the ESI Act dated 31.8.2020. It is contended that the applicant was allotted ESI code vide letter in Form C-11 dated 29.5.2017 and since then it failed to pay contribution. Hence, letter dated 19.7.2018 was issued to the applicant but even then contribution was not paid. Hence, notice in Form C-18(Adhoc) dated 22.6.2020 was issued and an opportunity of personal hearing was given to the applicant on 22.6.2020. However, the applicant neither attended personal hearing nor furnished any representation. So, one more opportunity of personal hearing was afforded to the applicant on 26.8.2020, but of no avail. Hence, order under Section 45A dated 31.8.2020 was passed. Lastly, it is contended that the applications may be rejected.

4. In the instant case, the applicant has deposited amount of

Rs. 78,904/- and subsequently deposited Rs. 37,000/- vide demand draft dated 7.8.2024. Thus, the applicant deposited total amount of Rs. 1,15,904/- which is 50% amount claimed by the ESI Corporation vide notice of recovery in Form C-19 dated 8.7.2021. As per Section 75(2-B) the applicant is required to deposit 50% of amount due from him as claimed by the opponent otherwise he is not entitled to raise the matter before this Court.

5. The opponent has not disputed said fact. In view of the fact that about 50% amount already deposited with the ESI corporation, hence question of waiver does not arise. Hence, I pass the following order :-

**ORDER**

- 1) The application [Exh. C-2] is allowed.
- 2) The application [Exh. C-3] is rejected.
- 3) The execution and operation of orders under Section 45A of the ESI Act dated 31.08.2020 and notice of recovery in Form C-19 dated 8.7.2021 are hereby stayed till final decision of the main application.
- 4) No order as to costs.

Pune  
Date : 14.10.2024

( K.N. Gautam )  
Judge, Insurance Court, Pune.

*nsp/-*