

MHIC120004642021



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

Application ESI NO. 55 OF 2021

M/s SIS Facility India Pvt. Ltd. ... Applicant

VERSUS

Employees State Insurance Corporation
Bibwewadi Pune 411 037 ... Opponent

ORDER BELOW EXH. C-2
(Dated : 22.09.2022)

Heard ld. Counsels for the applicant and opponent. Perused reply of the opponent at Exh. E-3. I have also gone through the case record.

2. It is the contention of the applicant that it is a small establishment engaged in the services of manpower supply. It was incorporated in April 2016 and obtained ESI code and thereafter complied with the provisions of ESI Act. The applicant is provided manpower services in both implemented and non-implemented area. Its half of the total manpower strength was working in non-implemented area. It is contended that ESI department vide Notification dated 22.7.2016 made ESI Act applicable to all non-implement areas of Pune. The ESI department issued notification dated 6.10.2016 for newly implemented area and stated that

contribution applicable to newly implemented area is 4%. Accordingly, the applicant deducted the amount of contribution as per the guidelines of the ESI corporation. The applicant is liable to make contribution @ 4% for newly implemented area instead of @ 6.5%. However, the opponent overlooked the factual position and calculated the ESI dues @ 6.5% for the period from 1.10.2016 to 31.7.2018 claiming contribution of Rs. 4,59,169/- which is erroneous. The opponent has issued notice in Form C-19 but not received by the applicant. The applicant is not given opportunity to present its case. It is, therefore, prayed that the execution of recovery proceeding and notice of demand of default in Form CP-2 be stayed till final disposal of the application.

3. The opponent contended that the postal address of the applicant is of Royal Park, Alandi Road, Dighi, Pimpri, Pune which it has submitted in Form O-1. The Alandi Road, Dighi is old implemented area and the applicant is required to pay contribution as per Rule 51 as specified in Notice C-18 dated 26.9.2019. In absence of any information furnished by the applicant and in absence of documentary evidence, the applicant is not entitled for payment of contribution @ 4%. The claim was raised by the opponent vide notice in Form C-18 dated 26.9.2019 for the period September 2016 and from April 2017 to July 2018 followed by recovery certificate in Form C-19 dated 23.6.2021 for Rs. 4,59,169/- is in consonance with the laid down provisions. The recovery proceedings initiated by the opponent as per CP-2 dated 6.7.2021 is legal and the applicant has defaulted in making compliance of the same. Lastly, it is contended that the application may be rejected.

4. The Ld. Advocate for the applicant submits that the applicant has already deposited 50% of amount of contribution i.e. Rs. 2,40,000/- vide Challan dated 22.11.2021 with ESI Corporation and said fact is admitted by the opponent in its reply at Exh. E-3. 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 submitted that the applicant has deposited 50% of amount of contribution. Hence, I pass the following order :-

ORDER

- 1) The application [Exh. C-2] is allowed.
- 2) The execution of recovery proceedings and CP-2 notice dated 6.7.2021 is hereby stayed till final disposal of the application.
- 3) No order as to costs.

Pune
Date : 22.09.2022
nsp/-

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