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Appl (ESI) No. 34 of 2015

BEFORE SHRI. S.V. SURYAWANSHI, JUDGE,

EMPLOYEES INSURANCE COURT AT PUNE

APPLICATION (ESI) NO. 34 OF 2015

Tata Ficosa Automotive Systems Pvt Ltd

Tal. Mulshi, Pune.

....Applicant

V/s.

Employees State Insurance Corporation

Pune 411 037

....Opponent

- : COMMON ORDER BELOW EXH. C-2 AND C-8 :-

(Dated : 28.08.2017)

The applicant has filed original proceeding u/s 75 of the E.S.I. Act 1948 against the order passed by the Opponent Corporation u/s 45A of the ESI dated 30.9.2015. According to the applicant, the applicant is a company registered under the Companies Act having its factory at the address mentioned in the title clause. Previously, Office of the Opponent Corporation conducted the inspection of the applicant factory on 12.6.2007. The said inspection was made unilaterally. In pursuance to the Inspection Report of the said inspection, the Opponent issued notice dated 26.5.2009 and demanded huge amount of Rs. 16,64,311/- in respect of 12 items mentioned in the said show cause notice. In pursuance to the said show cause notice, personal hearing

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was given wherein, the applicant appeared and pointed out specifically as to how the payments made to the parties listed at item no. 1 to 12 of said show cause notices were the independent vendors who used to supply finished material to the applicant company. It was also shown to the Opponent Corporation that most of those vendors are either having their own code number or provisions of ESI are not at all applicable to those vendors. In spite of this, the Opponent Corporation passed order dated 22.12.2009 u/s 45-A of the ESI Act, 1948 fixing liability on the applicant by treating 60% of the amount paid to those members as the wages. The said order was illegal. Hence, the applicant filed the application before this Court u/s 75 of the ESI Act. The said application came to be allowed on 9.12.2014 by virtue of which the order of the Opponent Corporation dated 22.12.2009 was quashed. In the said order, the liberty to re-hear and re-verify and to make appropriate order was given to the Opponent.

2. After said order, the company again submitted the entire details of the vendors alongwith the ample evidence giving details of each and every vendor. However, without taking into consideration the evidence filed by the applicant the then Assistant Director – Mr. A.K. Katoch unilaterally and arbitrarily passed order dated 30.9.2015 u/s 45-A of the ESI. He reduced the liability of applicant in respect of some companies.

However, the rest of the vendors liability was again fixed upon the applicant. Hence, the applicant has filed this application for setting aside said order on various grounds as mentioned in the application.

3. By virtue of the application below Exh. C-2, the applicant has prayed for stay to the recovery on the basis of said impugned order dated 30.9.2015. By virtue of application below Exh. C-8, the applicant has prayed for waiver from the pre-condition of depositing 50% of the claim.
4. Notice of the present application alongwith the interim application was duly served upon the Opponent. The Opponent Corporation appeared in the matter and filed its written statement below Exh. U-2. Reply to the application for interim relief and waiver is also filed below Exh. E-4 and E-3 respectively wherein the Opponent Corporation has denied all the adverse allegations. As per the Opponent Corporation, the order passed by it is just, legal and proper. The Opponent Corporation has given personal hearing to the applicant on various dates. However, the applicant did not produce sufficient documents in support of its stand and hence the order passed by the Opponent Corporation which is based upon personal hearing and the documentary evidence produced for consideration is just, legal and proper. No interference is required at the hands of this Court. The

Opponent further strongly opposed the application for waiver stating that there are no sufficient grounds.

5. Heard both the ld. Advocates. Perused entire Record and Proceedings. Following points are arising for my consideration to decide this application and my findings thereon for the reasons given here-in-below are as follows:-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the applicant is entitled for stay to the execution of the order u/s 45-A dated 30.9.2015 till decision of the main application ?	Yes
2) Whether the applicant is entitled to waiver the amount as claimed vide order dated 30.9.2015 ?	Partly affirmative
3) What Order?	As given below.

REASONS

AS TO POINT No.1 AND 2 :-

6. Both the points are interlinked and interdependent to each other. It has to be noted that this is a second round of litigation. The first round of litigation was initiated after the order dated 22.12.2009 passed u/s 45-A of the ESI Act by the Respondent Corporation. Previously this Court has declared the said order as illegal and the same is quashed and set aside. While disposing off the earlier

application, this Court gave liberty to the Opponent to re-hear and re-verify and to make proper order. As per said order, after re-hearing the applicant, the Opponent passed the impugned order. In the present application ranging from para 10 to 15 applicant has given details of each and every vendor. As per applicant, the applicant cannot be held responsible for the payments made to those vendors. The Opponent Corporation also in its written statement given reply in respect of each and every vendor. To substantiate its stand as to how the applicant is liable for the amounts paid to those vendors. However, when I perused the impugned order dated 18.12.2015 passed u/s 45-A, the said order is very short.

7. Bare perusal of the said order does not reflect the application of mind. The Opponent Corporation is absolutely silent on the basis of which the liability is being fixed. There is no whisper about the submissions or the documents filed by the applicant. Said order being quasi-judicial order, it was obligatory upon the appropriate authority to pass the reasoned order so that the Court can infer about the foundation on the basis of which the order is being passed. The said authority ought to have discussed upon the evidence produced by the applicant and how the said evidence is not acceptable. Thus, prima facie order passed by the Opponent Corporation appears to be illegal. Bare perusal of the order shows that the Opponent has imposed interest as

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well as penal interest from the year 1989. Thus, the interest component is more than the principle amount fixed by the Opponent Corporation. The ld. Advocate for the applicant pointed out to me that the amount of Rs. 33,356/- is already deposited in this Court. In my humble opinion, considering the strong prima facie case whatever amount deposited by the applicant is substantiated compliance. There are sufficient grounds to waive condition of depositing 50% amount of the claim. An attempt to substantiate the order by taking defence in the written statement is not acceptable. Hence, my answer to Point No. 1 and 2 is in the affirmative. Hence, I proceed to pass following order :

ORDER

1. Application below Exh. C-2 and C-8 stands disposed of.
2. Pending hearing and final disposal of this application, execution and operation of the impugned order dated 30.9.2015 is stayed.
3. Condition to deposit 50% amount of the claim stands waived as per section 75 (2B) of the Act.
4. No order as to the costs. Sd/-

Place : Pune

(S.V.Suryawanshi)
Judge

Date : 28.08.2017

Employees Insurance Court, Pune