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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 70/2022**

EMPLOYEES STATE INSURANCE CORPORATION..... Appellant
Through; Mr. Anuj K.Sinha, Advocate.

versus

M/S G. TECH SPLICING Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

% **ORDER**
22.03.2022

CM APPL.13863/2022 (exemption)

Exemption is allowed subject to all just exceptions.

CM APPL. 13862/2022

The Supreme Court by its orders 23.03.2020, 27.04.2021 and 10.01.2022 in Suo Motu Writ Petition (Civil) No.3 of 2020 had suspended the period of limitation in view of the ongoing pandemic. Accordingly, there is no delay in filing the appeal.

The application is disposed of.

FAO 70/2022 & CM APPL. 13861/2022

1. Appellant – Employee State Insurance Corporation impugns order dated 20.02.2021 whereby the petition filed by the respondent under Section 75 of the Employees State Insurance Act impugning



orders dated 20.05.2014 and 04.12.2014 has been allowed and appellant has been directed to refund a sum of Rs.52,300/- deposited by the respondent pending the appeal.

2. Learned counsel for the appellant submits that the Trial Court has erred in not appreciating though respondent was a proprietorship concern, it had filed the petition claiming itself to be a private limited company.

3. Learned counsel submits that both the proprietorship concern as well as the company, though having same name, had different ESI registrations.

4. Learned counsel submits that when this objection was taken in the written statement by the appellant there was a candid admission that inadvertently the petition had been filed in the name of the company.

5. Learned counsel further submits that the allegation of the Respondent was that 39 employees of the proprietorship concern were transferred to the company and their contribution had also been transferred to the company's credit. He submits that no evidence qua the same was produced before the Trial Court and further that a proprietorship concern and a private limited company are two separate legal entities in law and the claim was against a proprietorship concern but the petition was not filed by the proprietorship concern but by a private limited company which is a separate entity all together.



6. Issue notice, returnable on 11.10.2022.
7. In the meantime, operation of order dated 20.02.2021 shall remain stayed.
8. Digital copy of the Trial Court record be requisitioned.

SANJEEV SACHDEVA, J

MARCH 22, 2022

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