

---

**(2007) 02 DEL CK 0076**

**In the Delhi High Court**

**Case No :** WP (C) No. 9590-91 of 2005 and CM No"s. 7046 of 2005 and 3108 of 2006

Imageware International and Another

APPELLANT

Vs

The ESI Corporation

RESPONDENT

---

**Date of Decision :** 01-02-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
Employees State Insurance Act, 1948 — Section 75(1)(G)

**Citation :** (2007) 02 DEL CK 0076

**Hon'ble Judges :** Kailash Gambhir, J

**Bench :** Single Bench

**Advocate :** Rajiv Tyagi and L.N. Swarn, for the Appellant; K.P. Mavi, for the Respondent

---

## **Judgement**

Kailash Gambhir, J.—. In the present writ petition the petitioner has challenged the validity of two show cause notices bearing Nos.

D/D.O./N.N./Ins.-II/11- 35651/1230 and D/D.O./N.N./Ins.-II/11-35651/483 dated 23.03.2005 and also has challenged the order dated

06.05.2005 passed by the Employees" State Insurance Court dismissing the application of the petitioner moved u/s 151 CPC in ESI Suit No.

10/2005. In fact similar show cause notices were also issued by the respondent earlier also and vide orders dated 05.10.2004 and 08.12.2004 the

respondent Corporation had upheld the demand. Feeling aggrieved the petitioner had filed a suit u/s 75(1)(G) of the Employees States" Insurance

Act, 1948 before the Employees" State Insurance Court challenging the orders passed by the respondent vide orders dated 05.10.2004 and

08.12.2004 In the said petition the petitioner has not only challenged the validity of orders on its merits but also challenged jurisdiction of the

respondent to raise any demand against the petitioner on the ground that the petitioner was neither running any factory nor the petitioner was involved in any manufacturing process which can attract the relevant provisions of the ESI Act. In the said petition vide order dated 26.02.2005 the ESI Court has given direction to the petitioner to deposit 50% of the disputed amount and the recovery of the remaining demand in respect of the two orders dated 05.10.2004 and 08.12.2004 were directed to be stayed till further orders. Counsel for the petitioner submits that the order dated 26.02.2005 was fully complied with by the petitioner within the time granted by the ESI Court. Subsequent to the filing of the said petition further demand was raised by the respondent for subsequent quarters and the petitioner had challenged the said demands by moving an application u/s 151 of the CPC before the ESI Court in the said suit. The ESI Court, however, did not entertain the said application and dismissed the same vide orders dated 06.05.2005 on the ground that further demand raised by ESI Corporation constituted separate cause of action and, Therefore, no order with respect to the separate cause of action could be passed in the said proceedings. Aggrieved with the said order dated 06.05.2005 passed by ESI Court as well as the subsequent demand raised through show cause notices dated 23.03.2005 the petitioner has preferred the present writ petition.

2. After hearing some arguments both the counsels have agreed that let the petition which is pending before the ESI Court, wherein all the legal and factual objections have been taken by the respective parties, can be decided at the first instance and thereafter, if necessary, the parties will seek their remedies. The matter before the ESI Court is at the evidence stage and the next date before the ESI Court is 16.07.2007. Counsel for the petitioner states that he is prepared not to press this petition if the subsequent demands as raised by the respondent are stayed at least till the final disposal of the petition which is pending before the ESI Court.

3. On the other hand, counsel for the respondent states that if early decision is taken by the ESI Court then only he can agree for not pressing the impugned demands till the final decision of the said case before the ESI Court. The matter is already at the evidence stage and it is expected that the ESI Court will decide the case bearing ESI Suit No. 10/2005 within a period

of six months from the date of this order. Both the parties will render their assistance and cooperation in taking all steps for the progress of the case so that the ESI Court is able to expedite the hearings and decide the case within the expected period of six months.

4. Both the parties shall present themselves before the ESI Court on 08.02.2007 and on that date parties will make a request to the Court for preponement of the case from 16.07.2007 to some earlier date.

5. The present writ petition is disposed of with the directions to the ESI Court to decide the said case bearing ESI Suit No. 10/2005 within a time

bound period preferably within six months from the date of this order. Till the final decision of the said case the subsequent demands in respect of

which already this Court had granted stay vide orders dated 10.03.2006 shall remain stayed.

6. Both the parties shall render active and effective assistance so as to expedite the proceedings before the ESI Court.

7. The writ petition stands disposed of. The parties are left to bear their own costs.