

(2011) 07 DEL CK 0260

In the Delhi High Court

Case No : Writ Petition (C) 10481 of 2005

India Tourism Development Corporation Ltd.

APPELLANT

Vs

Director General Esic and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Employees State Insurance Act, 1948 — Section 39(5), 75, 75(2B), 93A

Citation : (2011) 07 DEL CK 0260

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Karunesh Tandon, for the Appellant; Bhupesh Narula, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—The counsel for the contesting Respondent ESIC appears and seeks time to file reply. However since none had appeared for the Respondent ESIC also on 23rd September, 2010 when the petition was dismissed for non-prosecution, need is not felt to call for the reply. The counsel for the Petitioner states that costs imposed of Rs. 5,000/- have been deposited. For the reasons stated in the application, the same is allowed. The writ petition is restored to its original position.

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2. The petition impugns the order dated 4th June, 2005 of the Presiding Officer, ESI Court directing the Petitioner to deposit 50% of the outstanding amount. The said order was made in exercise of powers u/s 75(2B) of the Employees' State Insurance (ESI) Act, 1948. The said Section 75(2B) is as under:

(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed

by the Corporation: Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Sub-section

3. Notice of the petition was issued and vide order dated 17th June, 2005 which continues to be in force, coercive steps for recovery of outstanding amount from the Petitioner were stayed.

4. The Petitioner had approached the ESI Court u/s 75 of the Act upon receipt of notices dated 19th October, 2004 & 11th March, 2005 from the Respondent ESIC and its Recovery Officer calling upon the Petitioner to pay/deposit a total sum of `22,74,606/- which comprised of a sum of `11,53,291/- towards contribution for the period January, 1991 to December, 1999 and a sum of `11,21,265/- towards interest u/s 39(5)(a) of the Act.

5. It is inter alia the case of the Petitioner that the said claim pertains to its unit/undertaking namely Hotel Ashok Varanasi and which has been sold/transferred by the Petitioner on 30th May, 2002 to M/s Mall Hotels (P) Ltd. together with all liabilities including the liability if any towards ESIC. It was thus the case of the Petitioner that the demand against it was misconceived and the demand should be against M/s Mall Hotels (P) Ltd. In fact from the notice dated 11th March, 2005 it appears that demand was sent by the Respondent ESIC to the said M/s Mall Hotels (P) Ltd. also.

6. The Petitioner, while approaching the ESI Court had claimed waiver/reduction of the amount to be deposited under the proviso to Section 75(2B) supra.

7. The order dated 4th June, 2005 of the ESI Court does not give any reason whatsoever for refusing the waiver or reduction of the deposit amount as claimed by the Petitioner. The proviso to Section 75(2B) empowers the ESI Court to, for the reasons to be recorded in writing, waive or reduce the amount. Conversely it follows, that if the ESI Court refuses such waiver or reduction claimed, reasons therefore should be recorded and which has admittedly not been done.

8. The recovery from the Petitioner as aforesaid is stayed under interim orders of this Court for the last six years. I have enquired from the counsel for the Respondent whether proceedings against M/s Mall Hotels (P) Ltd. are underway for recovery or not. The counsel for the Respondent states that the said order of this Court was construed as stay of recovery from M/s Mall Hotels (P) Ltd. also.

9. The order of this Court was specific; recovery against the Petitioner only was stayed and not recovery against M/s Mall Hotels (P) Ltd. From the documents produced by the Petitioner before this Court it prima facie appears that pursuant to the Policy of Disinvestment, while disinvesting the Hotel Varanasi Ashok, the disinvestment price was fixed on the premise that the liabilities were also being transferred. If the Petitioner were to be directed to deposit the amount in the ESI Court or with the Respondent as directed, the Respondent would become further lax in recovering the monies from M/s Mall Hotels (P) Ltd. who, prima facie appears to be liable therefor.

10. Further, considering that the Petitioner is a government company, it is deemed expedient to waive the deposit u/s 75(2B) and to direct the ESI Court to decide the matter at the earliest. It is further clarified that the Respondents are at liberty to take steps against M/s Mall Hotels (P) Ltd. also in as much as it is felt that if payments are realized from M/s Mall Hotels (P) Ltd., the occasion for recovering the same from the Petitioner would not arise. The counsel for the Respondent has also contended that u/s 93A of the Act the Respondent is entitled to recover the dues both from the Transferor & Transferee. It shall remain open for the ESI Court to consider the said argument of the Respondent.

11. The petition is accordingly disposed of. No order as to costs.