

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

Ins.APP.No. 71 of 2011 ()

**(AGAINST THE ORDER IN EIC.NO. 50/2004 OF EMPLOYEE'S INSURANCE COURT,
KOZHIKODE DATED 25-03-2009)**

APPELLANT/RESPONDENT:

**THE REGIONAL DIRECTOR,
EMPLOYEE'S STATE INSURANCE CORPORATION,
THRISSUR.**

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT/APPLICANT:

***M/S.SUDARSAN CHITS (INDIA) LTD.,
SUDARSAN BUILDING, CALICUT-673 011,
REPRESENTED BY ITS DIRECTOR, P.SUNDARAM. (AMENDED)**

***THE CAUSE TITLE OF THE RESPONDENT IS AMENDED BY SUBSTITUTING
OFFICIAL LIQUIDATOR IN THE PLACE OF DIRECTOR P.SUNDARAM, WHO
WAS SHOWN AS REPRESENTING THE COMPANY CASHIER AS PER ORDER
DATED 14/11/12 IN I.A.NO.2782/2012**

BY ADV. SRI.K.MONY (OFFICIAL LIQUIDATOR)

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD
ON 03-08-2015,ALONG WITH Ins.APP.NO.NO.76 OF 2011 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.B.SURESH KUMAR, J.

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Ins.Appeal.Nos.71, 76, 78 & 79 of 2011

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Dated this the 3rd day of August, 2015.

J U D G M E N T

Since a common issue is raised in these appeals, they are disposed of by this common judgment.

2. The appeals are preferred challenging the common order in the applications filed by the respondent before the Employees' Insurance Court, Kozhikode under Section 77 of the Employees State Insurance Act ('the Act' for short). The Regional Director of the Employees State Insurance Corporation ('the Corporation' for short) is the appellant in the appeals.

3. The respondent was an establishment covered under the Act. It was a Company engaged in chit business. Since they did not pay contributions in respect of their employees, proceedings have been initiated against them by the Corporation under Section 45A of the Act, for

determination of the contributions payable by them. Pursuant to the said proceedings, separate orders have been passed by the Corporation against the respondent in respect of different periods. The orders passed by the Corporation under Section 45A of the Act were challenged by the respondent before the Employees' Insurance Court. The case of the respondent in the applications was that the respondent was ordered to be wound up by this Court as per order dated 13.10.1981 in C.P.Nos.8, 9 and 49 of 1981; that the respondent is being administered thereafter as per an interim order passed by this Court in M.F.A.Nos.518, 519 and 520 of 1981 and that therefore, the proceedings initiated against them by the Corporation under Section 45A of the Act is hit by the provisions contained in Section 446 of the Companies Act. The said case of the respondent has been accepted by the Insurance Court and the applications were accordingly allowed, holding that the provisions of the Act do not apply to the respondent. The Corporation is aggrieved by the said decision of the Employees' Insurance

Court and hence these appeals.

4. Heard the learned counsel for the appellant as also the learned Standing Counsel for the Official Liquidator, who is presently representing the respondent in these proceedings.

5. As noticed above, the case of the respondent before the Employees' Insurance Court was that the proceedings initiated by the Corporation against them under Section 45A of the Act is hit by the provisions contained in Section 446 of the Companies Act. Section 446 of the Companies Act provides that when a winding up order has been made or the Official Liquidator has been appointed as Provisional Liquidator, no suit or other legal proceedings shall be commenced. It is now settled that the bar under Section 446 of the Companies Act does not apply to assessment proceedings. The proceedings under Section 45A of the Act is in the nature of assessment. As such, the bar under Section 446 of the Companies Act does not apply to a proceedings under Section 45A of the Act. The bar

under Section 446 of the Companies Act would apply only against proceedings for recovery of any sum payable by a Company under liquidation including, contributions under the Act. The view of the Insurance Court that the proceedings initiated by the Corporation against the applicant under Section 45A of the Act is hit by Section 446 of the Companies Act is, therefore, unsustainable.

6. The learned Standing Counsel for the Official Liquidator pointed out that the last date fixed by the Official Liquidator for preferring claims against the Company expired during the pendency of these appeals, the amounts covered by the orders which were impugned before the Employees' Insurance Court cannot now be recovered. Since the last date fixed for preferring claims against the Company expired during the pendency of these appeals, I deem it appropriate to permit the Corporation to prefer their claims for the statutory dues before the Official Liquidator in relaxation of the outer limit prescribed by the Official Liquidator.

In the result, the appeals are allowed. The impugned orders are set aside and the applications filed before the Insurance Court are dismissed. It is made clear that if claims are preferred by the Corporation for the dues payable by the respondent under the Act within eight weeks from today, the same shall be considered on merits by the Official Liquidator, relaxing the outer limit prescribed by him for the said purpose.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

Kvs/-

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PA TO JUDGE.

Ins.Appeal.Nos.71, 76, 78 & 79/2011