

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10110 OF 2016

M/s. C. Mahendra Exports Ltd.

..Petitioner

Versus

**Employees State Insurance Corporation
and another**

..Respondent

Mr. M. A. Shukla for the Petitioner.

Mr. H. V. Mehta for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 30th AUGUST, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 18.06.2016 passed by the Learned Judge of the Employees' Insurance Court, Mumbai, by which order, the Petitioner was directed to make a deposit of Rs.50,00,000/- in the Court. The impugned order has been followed by the order dated 22.06.2016, by which order, the Petitioner was granted four weeks time to deposit the said amount of Rs.50,00,000/- i.e. till 20.07.2016.

2 The Petitioner is a company involved in diamond export and manufacturing. An order came to be passed against the Petitioner under Section 45-A of the ESI Act, 1948 assessing the liability of the Petitioner to the tune of Rs.2 crore and 66 lakhs as its contribution payable under

the ESI Act, 1948. In terms of Section 39-5(a), the interest at the rate of 12% is payable on the said amount and therefore the total amount came to Rs.4 crore and 10 lakhs. Upon the assessment order dated 18.06.2016 being passed by the concerned ESI Authority i.e. Deputy Regional Director, the Petitioner filed Misc. Application No.13 of 2016 under Section 75 of the ESI Act, 1948 for challenging the said order before the Employees State Insurance Court. In terms of Section 75-2(b) of the ESI Act, 1948, the employer is required to deposit an amount to the extent of 50% of the assessed amount as a pre-condition to approach the Employees State Insurance Court. The Petitioner had therefore filed the said Misc. Application No.13 of 2016 for being exempted from making the said pre-deposit. The parties were heard in the said matter and the Learned Judge of the Employees' Insurance Court, Mumbai though of the view that the amount of Rs.25% would come to Rs.66,00,000/- directed the Petitioner to deposit an amount of Rs.50,00,000/- as and by way of pre-deposit for entertaining the Petitioner's challenge to the order passed under Section 45-A of the ESI, Act, 1948. The Petitioner thereafter filed a further application Exh.7 for seeking extension of time of four weeks to deposit the said amount of Rs.50,00,000/-. On behalf of the Petitioner, a pursis dated 21.06.2016 came to be filed to the said effect. The Learned Judge of the Employees' Insurance Court, Mumbai, accordingly granted

four weeks time to deposit the said amount of Rs.50,00,000/- which time expired on 20.07.2016. It is an undisputed position that as of date the Petitioner has not deposited the said Rs.50,00,000/- as directed by the order dated 18.06.2016. In view of the fact that the said amount has not been deposited that a show-cause notice came to be issued to the Managing Director of the Petitioner Shri. Mahendra Chandulal Shah asking him to show case why a warrant of arrest should not be issued (under Rule 73(1) of Second Schedule of Income Tax Act, 1961). This has given cause for Petitioner to file the above Writ Petition. The Learned Counsel appearing on behalf of the Petitioner Mr. M. A. Shukla made a valiant attempt to demonstrate the Petitioner's financial incapacity to deposit the said amount of Rs.50,00,000/-. The Learned Counsel sought to draw this Court's attention to the fact that the accounts of the Petitioner's with the concerned Bank declared as NPAs and Petitioner's properties have also been attached.

3 In my view, it is not possible to accept the contentions urged by the Learned Counsel for the Petitioner, attractive as they may appear with a view to gain sympathy. It is required to be noted that the orders passed by the Authorities under the ESI Act, 1948, are of recent origin and therefore the factual position cannot be said to have changed since the order dated 18.06.2016 was passed or the subsequent order dated

(904)-WP-10110-16.doc.

22.06.2016 was passed. In spite of indulgence being shown by the concerned Court, the Petitioner has failed to abide by its commitments. A Writ Court obviously cannot show indulgence to such a litigant. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]