

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

WRIT PETITION NO. 13936 OF 2016

M/s. MOMS Outdoor Media Solutions Pvt. Ltd.	... Petitioner
V/s.	
The Regional Director, ESI Corporation & Anr.	... Respondents

Mr. S.C. Naidu a/w Abraham Mathews i/b Mohan Shukla for the
Petitioner.
Mr. P. M. Palshikar for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 20/12/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 226 of Constitution of India, the Petitioner is challenging the order dated 30.09.2016 passed by Member, Industrial Court, Mumbai in Misc. Application (ESI Exemption) No. 36 of 2016 dismissing the petitioner's application under Section 75-2B of the Employees State Insurance Act, 1948 (hereinafter will be referred as 'the said Act') for exemption of predeposit of amount.

3 In the present proceeding, the Deputy Director of Employee's State Insurance Corporation by order dated 29.01.2016 called upon the Petitioner to deposit a sum of Rs. 7,89,04,055/- under Section 45-A of the said Act. The said order challenged by the Petitioner before the Employee's Insurance Court at Mumbai. In that proceeding, they

preferred application for Exemption in depositing 50% amount as required under Section 75-2B of the said Act. That application was rejected by the Employee's Insurance Court. Hence, the present Writ Petition.

4 The learned Counsel for the Petitioner submits that they placed relevant documents before the Employees' Insurance Court for seeking exemption from depositing amount as required under Section 75-2B of the said Act. He submits that in their application, they specifically stated that in order to satisfy the Dy. Director that no amount was payable by them towards the contribution as claimed by him, they shown their willingness and readiness to produce the relevant documents. Paragraph 6 of the said application reads thus:

“6. The Applicant states that in order to satisfy the Dy. Director that no amount is payable by them towards contributions as claimed by him, they carried all the documents, such as bills, vouchers, etc., in a tempo. The Applicant has recorded the said fact in para 7 of their letter dated 1/3/2016. The said para No.7 reads as under :

“ We further say that we brought all these documents in a Tempo, which is parked on the Ground of this office building. In the event this Hon'ble Authority is desirous of verifying these documents, we will produce the same in your Chamber itself. As the documents / records are the originals, we cannot keep / retain them here for long. In the event, this Hon'ble Authority is not inclined to inspect, verify and carry out the inspection today, please be good enough to fix another date for the verification; or in the alternative, depute a Social Security Officer to our establishment with prior appointment”.

5 The learned Counsel for the Petitioner submits that even they relied on Judgment of the Apex Court in the matter of Bharat Heave Electricals Ltd. (BHEL) V/s. ESIC reported in 2008 AIR SCW 1494. He submits that to that effect, they made averments in paragraph 12 of their application. He submits that without considering this fact, the Employee's Insurance Court passed the impugned order rejected their application.

6 After arguing for some time, the learned Counsel for the Petitioner after taking instructions from his client made a statement that they are ready and willing to deposit sum of Rs.50,00,000/- with ESIC as precondition under Section 75-2B of the said Act. To that effect, the petitioner filed undertaking dated 19.12.2016 duly affirmed by Deep Kumar Sanyal, Finance Director of the Petitioner Company. Same is taken on record and marked "X" for its identification.

7 The learned Counsel for the Respondent vehemently opposed the present Writ Petition. He submits that there is precondition for filing the Appeal under Section 75-2B that the Appellant has to deposit 50% amount as to the order under challenge. Hence, there is no question of entertaining the present Writ Petition.

8 I heard both the sides at length. It is to be noted that in the present proceeding, the Petitioner in application for exemption from depositing 50% amount specifically made statement in paragraph 6 of their application that they are ready and willing to place on record the relevant documents to show that said amount is not payable by them.

He further relied on judgment of the Apex Court in the matter of Bharat Heave Electricals Ltd. (BHEL).

9 Considering these facts and as the Petitioner is ready and willing to deposit sum of Rs.50,00,000/- within six weeks from today, I am satisfy that Petitioner has made out case for allowing the present petition in following terms.

a) Operation and implementation of order dated 29.01.2016 passed by the Dy. Director Employees' State Insurance Corporation calling upon the Petitioner to pay contribution of Rs.7,89,04,055/- is stayed for six weeks on condition that Petitioner to deposit sum of Rs.50,00,000/- within that period with Employee's Insurance Court, Mumbai, failing which Respondent Corporation is entitled to execute the said order according to law.

b) Six weeks period is granted to the Petitioner to deposit amount as precondition to file the Appeal.

c) If amount is deposited within stipulated time as stated herein above, the Employee's Insurance Court at Mumbai to hear the Petitioner's application on its own merits.

d) Writ Petition is disposed of accordingly.

(K.K.TATED, J.)