

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 30th August, 2017

Date of decision : 01st September, 2017

W.P.(C) 2388/2017

DIRECTOR IN CHARGE ESI CORPORATION
AND ORS

..... Petitioner

Through Mr. A.K. Verma, Advocate

versus

M/S DELKAN BUILDTECH (P) LTD

..... Respondent

Through Mr. Gopi Chand, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The writ petition bearing W.P. (C) 2388/2017 has been filed by the petitioners Director-In-Charge, ESI Corporation, Recovery Officer, ESIC and Regional Director, ESIC, whereby they have assailed the impugned order dated 04.11.2016 of the ASCJ/JSCC/G. Judge (East), Delhi whereby the petitioner's application under Order 6 rule 17 CPC, 1908 as amended was dismissed observing to the effect that merely because one of the Directors of the petitioner was also the owner of another Proprietorship concern, had no relevance to the

liability of the petitioner.

2. Through the petition, it has been submitted that the respondent company had submitted 01 Form with the list of employees applying for the registration of the company under the ESI Act indicating 20 coverable and 02 exempted employees.

3. The petitioner has asserted that the respondent company applied for the registration under the ESI Scheme by submission of the application dated 29.07.2009 and was also allotted code No. 11-30-107966 (which now has no. 10001079660001001) w.e.f. 23.06.2009 vide C-11 dated 11.08.2009 by the petitioner. The petitioner further submitted that consequent upon default in payment of the contribution by the respondent no. 3, a notice dated 28.02.2013, No. C-18(adhoc)/notice for the claim of ESI contribution for the period from May, 2011 to December, 2012 an amount of Rs.2,14,500/- was issued and as the respondent company defaulted in attending the date of personal hearing on 20.03.2013 to explain its case and did not submit any written representation in response thereto.

4. The petitioner *inter-alia* submitted that subsequent to the assessment order, the respondent company through a letter dated

16.05.2013 submitted the NIL returns for the period from April, 2011 to September, 2011, October, 2011 to March, 2012, April, 2012 to September, 2012 and October, 2012 to March, 2013 which did not amount *per se* to permanent closure of the respondent company. It was further submitted by the petitioner that the recovery certificate dated 04.09.2013 for non compliance of assessment order dated 16.04.2013 for Rs.2,14,500/- was issued against the respondent company and apart from the advance deposit nothing was paid.

5. The petitioner further submitted that the post-assessment intimation of closure of the company forwarded to the petitioner / ESI Corporation could not be accepted lawful discontinued operation.

6. It has been submitted further in the petition that the respondent company filed a petition in the District / EI Court challenging the assessment order dated 12.04.2013 for Rs.2,14,500/-.

7. The petitioner further submitted that it learnt in 2015 that one of the Directors of the respondent company had a proprietorship concern since 1999 and was engaged in the same business and was conducting its operations from the same address and thus an application for amendment of the written statement on gaining such knowledge was

filed by the petitioner before the District Court / EI Court, which application was dismissed vide the impugned order. The petitioner has thus assailed the impugned order dated 04.11.2016 of the ASCJ/JSCC/G. Judge (East), Delhi whereby the application under Order 6 rule 17 CPC filed by the petitioner herein as respondent in ESIC – 03/15 was dismissed contending that the said dismissal was erroneous and illegal and that the Court concerned ought to have lifted the corporate veil to come to the conclusion that the respondent herein was in fact running the proprietorship concern in the name of M/s. Aggarwal Construction of which the Director of the respondent herein and of M/s. Aggarwal Construction were the same and that they were running their business from the same place where the respondent herein M/s. Delkan Buildtech (P) Limited was running the business. It was also contended on behalf of the petitioner that the nature of the work done by the respondent M/s. Aggarwal Construction was the same and that thus the petitioner had sought to incorporate in para 4 of the Preliminary Objections to the effect : -

***“That the Petitioner Shri Sanjeev Aggarwal Director of
M/S Delkan Buildtech (P) Ltd had started another***

company in the name and style of M/s. Aggrawal Construction and Shri Sanjeev Aggrawal himself is Proprietor and the nature of the work and Registered Office of the two firm is also same. That the Petitioner to evade himself from the liability from the ESI dues has started another firm.”

to contend that the respondent had flouted the norms for causing loss of the statutory ESI contribution to the petitioner.

8. On behalf of the respondent, no counter affidavit was sought to be filed.

9. Oral arguments have thus been addressed on behalf of either side.

10. Learned counsel for the petitioner urged that the corporate veil ought to have been lifted by the Trial Court concerned and that the prayer made seeking amendment in para 4 of the Preliminary Objections of the written statement ought to have been allowed as it would not have changed the nature of case in any manner. It was further submitted on behalf of the petitioner that the amendment sought was necessary for the effective adjudication of the case and

that no malafides could be attributed to the petitioner in bringing on record the amendment sought.

11. On behalf of the respondent, the petition has been vehemently opposed by the learned counsel for the respondent submitting to the effect that the permission as sought on behalf of the respondent has been rightly rejected.

12. A bare perusal of the averments made in the petition and in the impugned order dated 04.11.2016 of the ASCJ/JSCC/G. Judge (East), Delhi makes it very clear that M/s. Delkan Buildtech (P) Limited of which Mr. Sanjeev Aggarwal was one of its Directors and M/s. Aggarwal Construction of which also the same Mr. Sanjeev Aggarwal was a proprietor, are both separate legal entities, separate from each other.

13. The respondent company had claimed before the trial court concerned that it was involved in the business of construction of the buildings which work had closed down on 31.01.2011 and thus there was no liability incurred by M/s. Delkan Buildtech (P) Limited w.e.f. 31.01.2011 to 2013. The learned Trial Court also held that merely because one of the Directors of M/s. Delkan Buildtech (P) Limited i.e.

the petitioner herein was also the owner of the separate proprietorship concern named M/s. Aggarwal Constructions had no reliance to the liability of the petitioner. In these circumstances, it is apparent that it was rightly not considered appropriate by the trial court to lift the corporate veil to attribute any common liability to the respondent company herein common to that of M/s. Aggarwal Construction company.

14. In these circumstances, it is held that there is no infirmity in the impugned order dated 04.11.2016 of the ASCJ/JSCC/G. Judge (East), Delhi and thus the W.P.(C) 2388/2017 is dismissed.

ANU MALHOTRA, J

SEPTEMBER 01st, 2017/mk