

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.442/2017**

% **14th November, 2017**

M/S PRITHA OFFSETS PVT. LTD. Appellant

Through: Mr. Yog Verdhan, Advocate.

versus

EMPLOYEE'S STATE INSURANCE CORPORATION & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.41026/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

FAO No.442/2017 and C.M. No.41027/2017 (stay)

2. This first appeal under Section 82 of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') is filed by the appellant/petitioner impugning the judgment of the Trial Court dated 24.8.2017 by which the ESI Court has dismissed the petition filed by the appellant/petitioner under Section 75 of the Act and

whereby the appellant/petitioner had sought setting aside of the demand for Rs.63,814/- and had also sought a direction for not raising further demand after 31.3.2013.

3. The case of the appellant/petitioner was predicated on the averment that the appellant/petitioner had closed down its operation from 31.3.2013 and since the business of the appellant/petitioner company has closed down, and its employees had resigned, appellant/petitioner had no longer any liability for payment of the ESI premium under the ESI Act. Trial court in this regard has noted that the appellant/petitioner though claimed that his business was closed and it had informed the labour department and factories inspector, however, no document was placed on record to show the same. Similarly the appellant/petitioner failed to file any document that he had disposed of the plant and machinery. Appellant/petitioner also failed to produce any documents to show that the appellant/petitioner had closed its bank account and was not running the business. Appellant/petitioner had also failed to file any document to show that he informed the Registrar of companies that the appellant/petitioner company had stopped its business.

4. I put a pointed query to the counsel for the appellant/petitioner to show to me the list of employees submitted by the appellant/petitioner in the year prior to the date of closure as also of the year of the closure, and which was necessary to know the total strength of the employees of the appellant/petitioner company and that each and every employee had resigned, however, indubitably the list of employees of the appellant/petitioner company of the year immediately before the closure and year of closure was not filed before the ESI court below.

5. The relevant paras of the judgment of the ESI Court below for holding that the appellant/petitioner has failed to prove that it had stopped its business are paras 13 and 14 and these paras read as under:-

“13. During the cross examination of sole witness Sh. Sanjay Jain, Managing Director of petitioner company has stated that he had informed the concerned government department like labour department and factories inspector about the closure of the business. He admitted that he had not placed on record any document to show the same. He further admitted that he had not placed any document on record to the fact that he has disposed of the plant and machinery of his factory. Though he stated that he can produce the same but no such document was placed/proved on record subsequently. He also admitted that he has not filed any document showing that the bank account of the company has also been closed. He also admitted that he has not informed the Registrar of Companies regarding the closure of his business. He admitted that the company is alive.

14. The perusal of the letter of handing over of possession of premises, could at the best establish that the premises on which the business was carried out has been vacated. It nowhere shows that the business has been closed. No document which is lawful and valid in the eyes of law has been filed on record to show that the company has actually stopped its operation. The document Ex. PW 1/4 shows that these letters have been written by the employees to the petitioner company stating that they are resigning and their accounts be settled. No where in any of the resignation letter, it is stated that owing to the closure of the company's business, these resignations are being made or they are retrenched from the company due to its operation being shut down. The petitioner company is a private limited company and is governed by Companies Act, 1956. No compliance with respect to the closure of the business as required to be done before the ROC has been shown to be done by the petitioner company. The petitioner has failed to even bring on record an oral testimony of any of its employee which could show that the operation of the company were closed on given date. There is no document on record to show that the company has been liquidated indeed. The witness himself has admitted that the company is alive. The onus was on the petitioner to prove the same. Apart from alleging that the operation of company has been stopped, no objection challenging the orders under 45A or 45 AA of ESI Act has been taken. There is no objection with respect to the calculation of amount. Though it is mentioned that the amount of Rs. 16,000/- has been paid out of the amount of Rs. 21,310/- as per the calculations of the petitioner company. However, since the calculation has been done by the respondent company have not been challenged, this pleading has become insignificant. The plea of the petitioner company that its operation has been closed has not been proved. Therefore, the orders passed by respondent under section 45A and 45AA of ESIC Act are perfectly legal and are in consonance with law. Therefore, this issue is decided in favour of respondents and against the petitioner."

6. I do not find any fault whatsoever with the discussion and reasoning contained in the impugned judgment. Dismissed.

NOVEMBER 14, 2017
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VALMIKI J. MEHTA, J