

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2206 of 2016

&

C.M.P. No. 15710 of 2016

Sai Mirra Innopharm Private Limited
Formerly known as "Sai Mira
Pharmaceuticals (P) Ltd.",
No.25, 12th Cross Street, Sastri Nagar,
Adyar, Chennai 600 020
rep. by its Authorised Signatory

(Cause title accepted vide order of Court
dated 17.08.2016 by TMJ and made in
C.M.P. 12322/2016 in C.M.A. SR No.
51206/2016.)

..Appellant

Vs.

The Employees State Insurance Corporation,
143, Sterling Road, Chennai 600 034.

..Respondent

Prayer:

Civil Miscellaneous Appeal to set aside the fair and
decretal order dated 20.06.2016 passed in EIOP No. 93 of 2004 on
the file of Employees Insurance Court (Principal Labour Court),
Chennai.

For Appellant :: Mr.C. Manohar Gupta for
M/s. Gupta & Ravi

For Respondent :: Mr.G. Bharadwaj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed as against
the order of Employees' State Insurance Court confirming the
order passed by the respondent Corporation under Section 45A of
Employees' State Insurance Act, 1948 (hereinafter referred to as
'the Act') dated 02.12.2003 by which the respondent claimed

contributions from the appellant for the period 1992-1994 and 1996-1999 in respect of the business taken over by the appellant from one M/s. Softcaps Private Limited at No.155/41, Medavakkam Road, Keelkattalai, Chennai - 117.

2. M/s. Softcaps Private Limited which is a pharmaceutical company was taken over by the appellant on 14.04.2000 and it entered into an agreement of sale with the appellant on 30.06.2000 to sell land and building, plant and machinery and other fixed assets. The workers, who had been employed by the said pharmaceutical company were continued in employment by the appellant. On 02.09.2000, an inspection was conducted and the appellant was called upon to furnish records pertaining to the years 1992-1994 & 1996-1999. However, the appellant informed the ESI authorities that they had come into existence only with effect from 21.03.2000 and had purchased land, building, plant and machinery from M/s. Softcaps Private Limited vide agreement dated 30.06.2000 and hence, the question of retaining the documents does not arise and asked them to approach the erstwhile company. While so, the respondent passed the order dated 02.12.2003 under Section 45A of the said Act calling upon the appellant to pay a sum of Rs.14,24,220/- followed by notice dated 11.03.2004 calling upon the appellant to pay a sum of Rs.16,24,012/- being the contributions payable in respect of the employees engaged for the periods from 1992-1994 & 1996-1999.

3. The order dated 02.12.2003 was challenged before the ESI Court. On contest, the ESI Court found that, as per Section 93A of ESI Act, in case of transfer of establishment and the person to whom the factory or establishment is so transferred is jointly and severally liable to pay the amount due in respect of any contribution or any of the amount payable under this Act in respect of the period upto the date of such transfer. Though the appellant contended that the employees of the erstwhile company were not taken over and that they had purchased only land and building, plant and machinery and other fixed assets, the appellant, after taking over, had applied to the Employees' State Insurance Corporation stating that they had taken over all the employees of M/s. Softcaps Private Limited and had requested for allotment of new ESI Registration Number for the very same employees as per Ex-P7 and by communication dated 29.06.2000, marked as Ex-P9, the Corporation advised the appellant to continue to pay the contribution under the very same code number namely (51-15726-34) allotted to M/s. Softcaps Private Limited as the same employees were employed by the appellant.

4. When such is the position, if really, there had been a change in the number of employees engaged, the appellant should have challenged the said order. But, the appellant accepted the

said advice given by the Corporation and continued to pay ESI contribution under the code number that was allotted to M/s. Softcaps Private Limited. Moreover, the ESI Court found that as per clause 30 of the manufacturing agreement between the appellant and M/s. Softcaps Private Limited, marked as Ex-P4 and available at page No. 36 of the typed set, the manufacturer shall have to comply with all applicable laws, rules and regulations from time to time in force. Further clause 33 of the said agreement shows that the appellant is responsible for all the employees or the workmen employed in its premises and all applications with respect to such employees/workmen shall be discharged by the manufacturer at its own cost. Further, as stated above, the appellant had written to the Corporation on 16.05.2000 stating that they had taken over all the employees of M/s. Softcaps Private Limited working at their factory at No. 155/41, Medavakkam Main Road, Keelkattalai, Chennai - 117 and the said letter is extracted hereunder:

"With reference to the above, we wish to inform you that we have recently promoted a new Private Limited Company under the name Sai Mirra Pharmaceuticals Private Limited which have entered into manufacturing agreement with M/s. Softcaps Private Limited (ESI Code No.51-15726-34) with effect from 14.04.2000 wherein we have taken over all the employees of M/s. Softcaps Private Limited working at their factory at No. 155/41, Medavakkam Main Road, Keelkattalai, Chennai - 600 117."

When that is the admission made by the appellant unequivocally, it is too late for the appellant to deny that they have not taken over the employees. As rightly found by the ESI Court, the liability of the appellant has been categorically spelt out under Section 93A of the Act. Therefore, the impugned order passed by the ESI Court confirming the order passed by the Corporation under Section 45A of the Act is sustainable. Hence, the appeal fails and the same is dismissed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar (CS VIII)
//True Copy//

Sub Assistant Registrar

nv

To

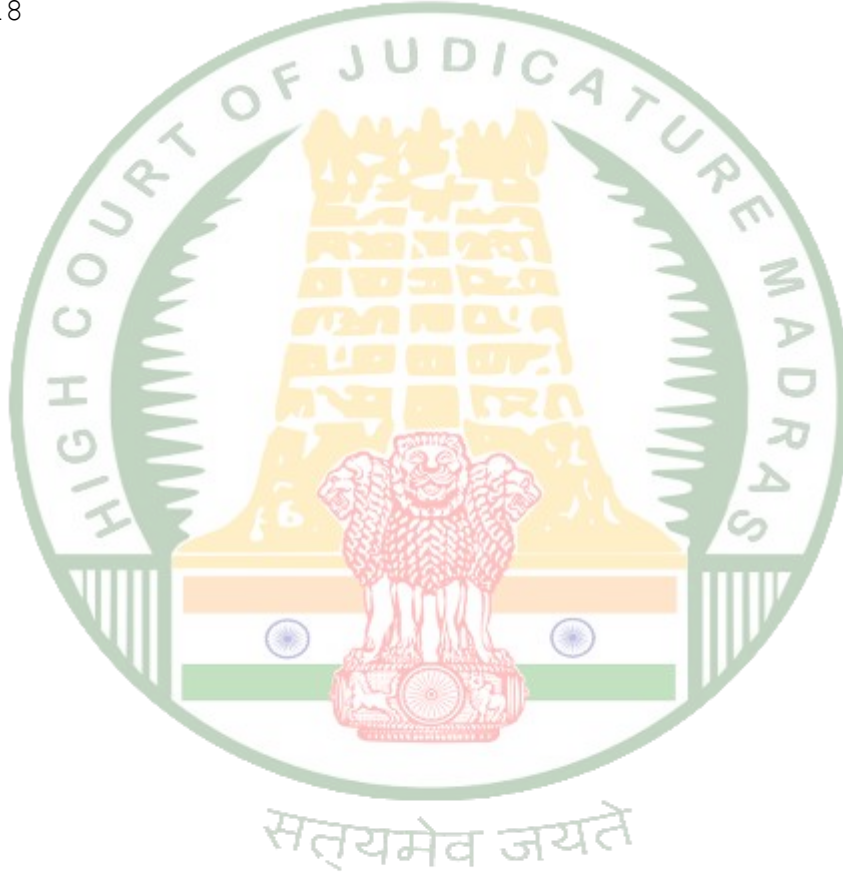
1. The Employees Insurance Principal Court,
Chennai.

+1cc to M/s.Gupta & Ravi, Advocate, S.R.No.19639

+1cc to Mr.G.Bharadwaj, Advocate, S.R.No.19991

C.M.A. No. 2206 of 2016

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