

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

**CIVIL APPLICATION NO. 186 OF 2016
IN
FIRST APPEAL NO. 90 OF 2016**

Ashwath Infotech Private LimitedApplicant
V/s.
Employees State Insurance CorporationRespondent

Mr. Drupad Patil a/w. Mr. Kaustubh Thipsay for the applicant.
Mr. H.V. Mehta for respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19th AUGUST, 2019**

P.C.:-

. The applicant herein has sought stay of execution and implementation of the impugned judgment and order dated 06/11/2015 passed by the Employees State Insurance Court, Solapur in Application (ESI)No.03/2010 thereby confirming the order dated 03/10/2010 passed by the Employees State Insurance Corporation.

2. Heard the learned counsel for the respective parties. The applicant had filed an application under Section 75 of ESI Act. The order was passed under Section 45-A of the ESI Act calling upon the applicant to pay contribution of Rs.60,060/- for the period from 01/08/2008 to 30/09/2009 within a period of 15 days from the date of the order.

3. The order under Section 45(a) has been passed mainly on the ground that the applicant / company is engaged in sale and purchase and hence, it is an establishment within the meaning of section 1(5) of the Act.

4. The applicant filed an application under Section 75 of the ESI Act disputing its liability to pay the said contribution. The main contention of the applicant was that it is a computer training institute imparting training in computer science and being an educational institute, it is not covered under Section 1(5) of the ESI Act.

5. The learned Judge, ESI Court has recorded a finding that the object as mentioned in the Memorandum of Association of the applicant / company makes it clear that the applicant / company is engaged in sale and purchase of services as well as material. It is also engaged in the production activities and as such, it is an establishment or a 'shop' within the meaning of section 1(5) of the ESI Act. The ESI Court has also recorded a finding that the license under the Bombay Shops and Establishment Act, 1948 shows the nature of business as IT training, software training, hardware, etc., sales and services. The learned Judge has held that the onus was on the applicant /company

to show that it is engaged only in the activities of imparting training in the computer field. The ESI Court held that the applicant had not discharged the onus and hence, dismissed the application under Section 75 of the Act. Being aggrieved by the said order, the applicant has filed this appeal under Section 82 of the Act and has sought interim relief during the pendency of this appeal.

6. The records prima facie indicate that the Insurance Inspector had visited the unit of the applicant/company on 22/10/2008 and had submitted the visit note which is annexed at Exhibit – A. A perusal of the said visit note indicates that the employer had furnished the information and documents referred to at serial nos.1 to 5 of the said note. The Inspector had mentioned the nature of the business carried out in the said unit as under :-

- A) Ground floor A/c office, Lab-I, Theory room-1
- B) First Floor – Reception, Lab-II, Theory room-3
- C) Second Floor – Lab No.III, Theory room-3

7. The report prima facie does not indicate that any activity of selling, consultation or other economic activity was going on in the said unit. The applicant / company vide its reply dated 07/01/2010 had informed the Assistant / Deputy Director of the Corporation that it

is engaged only in training and education centre and that being an educational institute, it is not covered under the Act.

8. There is no dispute that an educational institute is not covered under the Act. It is only on the basis of the object mentioned in the Memorandum of Association that the respondent-Corporation has alleged that the applicant was engaged in economic activities. There is no prima facie evidence on record to indicate that the applicant – company is actually carrying out the business activities as mentioned in the Memorandum of Association. Even otherwise, the issue raised in the appeal needs consideration on merits.

9. Under the circumstances and in view of discussion supra, the execution and implementation of the impugned judgment and order is stayed till further orders, subject to deposit of the amount.

10. Civil Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)