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

% *Decided on: 24.02.2020*

+ W.P.(C) 2780/2019 & CM APPL. 12839/2019

INDIAN RAILWAY CATERING AND TOURISM

CORPORATION

..... Petitioner

Through: Mr. Rajat Malhotra, Mr. Sunil Malhotra, Mr. Vivek Kr. Karn, Mr. Iliyas N. And Mr. Sourish Bagchi, Advocates.

versus

EMPLOYEES STATE INSURANCE CORPORATION AND ORS.

..... Respondents

Through: Mr. V.K. Singh, Mr. Prachi Singh and Mr. Nisha Hans, Advocates for ESIC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns an order dated 26.02.2019 and the Notice of Demand dated 08.03.2019 passed by the Employees' State Insurance Corporation. The petitioner was supposed to pre-deposit 25% i.e. Rs. 11,72,920/- of the impugned amount of Rs. 46,91,680/-, as computed under section 45 A of the Employees' State Insurance Act, 1948. The petitioner being aggrieved by the initial assessment preferred an appeal under section 45 AA of the Employees' State Insurance Act, 1948, which was received in the Office of the Appellate Authority on 22.01.2019, but without the requisite deposit of the 25% of the assessed amount.

2. Statutorily, the amount could have been deposited only till 27.01.2020. The petitioner did endeavor to deposit it before the expiry of the said date but instead, it got deposited only on 31.01.2019 i.e. four days later. Notably though, the Demand Draft for the said amount of Rs. 11,72,920/- had been prepared on 24.01.2019. In other words, the petitioner's account had been deducted by the said amount on the said date. Therefore, its commitment to pursue the appeal is clearly established.

3. The learned counsel for the petitioner submits that ESIC is a large corporate body with hundreds of cases pending against it and a minor anomaly in not attaching the Demand Draft or in not filing it within the prescribed time limit should not be so visited upon the petitioner, so as to render it remediless. Therefore, the appeal may be heard on merits, subject to such terms as may be imposed by this Court.

4. In the aforecontext, the petitioner's contention is valid. The appeal had already been filed within the time, only there was a delay of four days in depositing the DD, therefore in the interest of justice, the delay of 4 days is condoned, subject to payment of Rs. 15,000/- as costs to respondent no. 1.

5. In view of the above, the impugned order is set aside. The petitioner's appeal shall be disposed-off on merits.

6. The petition is allowed and disposed-off in terms of the above.

NAJMI WAZIRI, J

FEBRUARY 24, 2020

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