IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7041 OF 2022

Property Guards Security Services Pvt. Ltd.
through Authorised Representative
Mr. Subodh Kumar Sharma ...Petitioner
V/s.
Union of India through Ministry
of Labour and Employment and Anr. ...Respondents

Mr. Cherag Balsara a/w. Mr. Yogesh Patil, for the Petitioner.
Ms. Shehnaz V. Bharucha a/w. Mr. A. A. Ansari, for the Respondent No.1.
Mr. P. M. Palshikar, for the Respondent No.2.

CORAM : C.V. BHADANG, J.
DATE : 30 AUGUST 2022

P.C.

. Rule. Rule made returnable forthwith. The learned counsel for the Respondents waive service. Heard finally by consent of parties.

2. The challenge, in this petition, is to the order dated 11 April 2022, passed by the learned Employees State Insurance Court (ESI Court) at Mumbai in Misc. Application (ESI-Ex.) No.5/2022. By the impugned order, the application is partly allowed, directing the Applicant, to deposit amount of

Rs.18,34,458/- which is equivalent to the 30% of the contribution amount of Rs.61,14,859/-. The net result is that the Petitioner has been granted exemption to the extent of 20% of the claim so far as statutory pre-deposit is concerned.

3. I have heard the learned counsel for the parties. Perused record.

4. The Petitioner is into the business of providing security services since the year 2001. According to the Petitioner, he has been regularly paying the ESIC contribution of the employees covered under the Employees' State Insurance Act, 1948 ('ESI Act', for short). The Petitioner had paid contribution for the month of October 2010, November 2010 and December 2010 of Rs.68,780/- Rs.62,272 and Rs.62,635/- respectively about which there is no dispute.

5. It appears that the Competent Authority had passed an order under Section 45-A of the said Act determining the amount of contribution, which was challenged by the Petitioner, initially before this Court, in Writ Petition No.3176/2021 which was disposed of on 1 September 2021 relegating the Petitioner to file appeal to the Competent Authority. The Petitioner accordingly approached the Appellate Authority and the appeal came to be disposed of on 8 November 2021 principally on the ground of limitation. In other words, the Appellate Authority

had found that there is no case for condonation of delay made out. The Petitioner sought to challenge this order before this Court in Writ Petition No.8794/2021 which was disposed of on 22 December 2021 again relegating the Petitioner to avail remedy provided under Section 75 of the said Act. After this, the Petitioner approached the ESI Court in Misc. Application (ESI-Ex.) No.5/2022 and sought waiver of the pre-deposit. It was contended that the impugned order is grossly illegal and secondly it was also contended that on account of Covid 19 Pandemic conditions, the business of the Petitioner had suffered and on account of his financial condition, he was unable to make pre-deposit. The Petitioner sought waiver of 100% of the pre-deposit. The statutory pre-deposit is to the extent of 50%.

6. The ESI Court by the impugned order has restricted the exemption to 20%, directing the Petitioner to deposit 30% of the contribution which brings the Petitioner to this Court.

7. I have heard the learned counsel for the parties. Perused record.

8. Mr. Balsara, the learned counsel for the Petitioner has strenuously urged that there is 'No Dues Certificate' which was issued by the Deputy Director of ESIC on 9 October 2015 taking note of the ESIC contributions made by the Petitioner upto August 2015. It is submitted that this 'No Dues Certificate', was

only subject to two disputed claims for the period from June 2000 to September 2002 and April 2007 to March 2008, both under Section 85-B of the said Act. It is thus submitted that the Respondents could not have made a demand of the amount of Rs.61,14,859/- for the disputed period which is from January 2011 to September 2011.

9. The learned counsel has also referred to the computation which is at page 145 and 146 of the compilation. It is pointed out that the computation at page 145 pertains to the period from October 2010 to December 2010 which is not in dispute. It is submitted that as per computation at page 146 the contribution for the period from January 2011 to September 2011 comes to Rs.5,37,353/- which is already deposited.

10. The learned counsel also submitted that there was a complaint made against the concerned officer about an illegal demand to settle the dispute, in respect of which, a trap was arranged which was successful and the concerned officer of the Employees State Insurance Corporation is facing prosecution before the Competent Court.

11. The learned counsel for the Respondents, after taking instructions from the concerned officer, states that amount of Rs.5,37,353/- has not been deposited towards the contribution. It is submitted that said amount is deposited towards 'omitted

wages' which is a distinct head. He therefore submitted that the ESI Court has already exercised the discretion by granting waiver of 20% of the pre-deposit which does not require interference.

12. The learned counsel for the Petitioner has disputed that amount deposited was towards omitted wages. He submits that there was no ESIC contribution due and payable for the disputed period.

13. I have considered the rival contentions and the submissions made.

14. It is undisputed that the Petitioner has already complied with the impugned order and the amount of 30% of the contribution amount of Rs.61,14,859/- has already been deposited before ESI Court on 11 June 2022. It appears that there is a genuine dispute which needs to be tried by the ESI Court in the application under Section 75 of the said Act. Presently, I am only concerned with the waiver of the pre-deposit. It can be seen that there is 'No Dues Certificate' issued on 9 October 2015 which is only subject to the disputed amount for the period from June 2000 to September 2002 and April 2007 to March 2008, both of which are claimed under Section 85-B of the said Act. There is also a dispute as to whether amount of Rs.5,37,353/- which is alleged to be deposited by the Petitioner is towards the ESIC contribution as claimed on behalf of the

Petitioner or towards the 'omitted wages', as claimed on behalf of the Respondents. Considering the over all circumstances, I find that it would be appropriate to direct deposit of Rs.6 Lakhs which would be approximately 10% of the amount of the claim and the exemption can be to the extent of about 40%.

15. In that view of the matter, the petition is partly allowed. The impugned order is hereby modified. The ESI Court shall retain the amount of Rs.6 Lakhs towards the pre-deposit and the balance amount alongwith interest, if any, shall be returned to the Petitioner, within a period of six weeks from the receipt hereof.

16. It is made clear that the observations herein are only for the limited purpose of deciding the issue of pre-deposit. The rival contentions of the parties, on merits, are left open, to be gone into by the ESI Court.

17. Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.