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W.P.No.31258 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 14.02.2024

ORDER PRONOUNCED ON: 05.04.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.31258 of 2023

and

WMP.Nos.30874, 30870 & 35645 of 2023

M/s.HG WALLS INDIA PVT. LTD.,
Rep. by its Director S.Hari Ganesh,
S/o.A.Shankar,
C-15, Thiruvika Industrial Estate,
Guindy, Chennai-600 032.

...Petitioner

Vs.

1.The Regional Director,
E.S.I. Corporation, Regional Office,
143, Sterling Road,
Nungambakkam, Chennai-600 034.

2.The Recovery Officer,
E.S.I. Corporation, Regional Office,
143, Sterling Road,
Nungambakkam, Chennai-600 034.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records



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on the files of the Respondent in the order No.TN/RECY/45-G/51 51001159750000999/CCR-VARIOUS Dated 18 Jul. 2023 U/s. 45-G of the ESI Act, 1948 for Rs.33,82,628/- and quash the same and to direction in directing the 2nd Respondent to grant Order of **defreezing of petitioners'** Axis bank A/c.No.921020005731563, Alandur branch, Chennai 600088, IFSC:UTIB0001567 pending disposal of the above writ petition.

For Petitioner : Mr.G.Babu Rajendran

For Respondents: Mr.K.Prabakar

ORDER

Writ petition is filed against the attachment order dated 18.07.2023 passed under Section 45-G of the ESI Act, 1948.

2.The petitioner company is located at Chennai and has less than 10 employees. According to the petitioner, there are two companies in the same premises one by name HG Walls owned by a proprietrix having ESI Code No.51-00-115975-000-0999 and other is the petitioner company (ie) HG Walls Private Limited which is owned by directors and not covered under the ESI Act. According to the petitioner, the 2nd respondent passed



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the impugned order for Rs.33,82,628/- against the proprietrix concern M/s.HG Walls, but wrongly attached the bank account of the petitioner company M/s.HG Walls Private Limited, therefore according to the petitioner the attachment order was illegal, void and the same deserved to be set aside.

3. On the other hand the case of the respondents was that the company HG Walls proprietrix concern was covered under the ESI Act with Code No.51-00-115975-000-0999 with effect from 01.04.2016. The respondents stated that the Sole proprietrix of HG Walls defaulted for an amount of Rs.33,82,628/- towards ESI contribution. She was also one of the directors in the petitioner company, which has two directors, the other being her husband, the petitioner herein. The Sole proprietrix of the defaulting company RupaHariganesh was also one of the authorised signatories of the petitioner company (ie) HG Walls Private Limited. The respondents further case was that the petitioner company and proprietrix concern were functioning in the same premises and were also involved in



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the same business of manufacturing, Architectural designing, Facade glazing, ACP Cladding etc. The respondents stated that the official e-mail ID of the two companies in the website of HG Walls, viz., “https://www.hgwalls.in” is shown as info@hgwalls.in and hariganesh@hgwalls.in. Both the company's share the same e-mail address and further the website reads that HG Walls is one of the few companies in Chennai which specialised in ACP Cladding, Stick glazing, Facade glazing and Toughened glass building projects. The respondents therefore stated that the contention of the petitioner that the two entities were different was made with a malafide intention to evade the payment of statutory dues. The respondents therefore stated that both the entities shared the same business of manufacturing and were functioning in the same premises. The respondents further stated that the petitioner did not approach the Court with clean hands and therefore the writ petition deserved to be dismissed at the threshold.



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4.I have heard the learned counsels and I have perused the materials placed before me.

5. It is seen from the affidavit filed by the petitioner that petitioner has suppressed the fact that HG Walls which is a proprietrix concern belongs to his wife, RupaHariganesh. The petitioner also suppressed the fact that RupaHariganesh was also a director of the petitioner company along with the petitioner and an authorized signatory of the petitioner company. The petitioner further suppressed the fact that the petitioner Company was involved in the same business of manufacturing, Architectural designing, Facade glazing, ACP Cladding etc., as that of the defaulting Company. The petitioner projected as though the petitioner Company had no relation with the defaulting Company except sharing the premises. In my view the averments in the writ petition do not contain the real facts and the facts are qualified to suit the petitioner's stand. Therefore, it is clear that petitioner has come to Court with unclean hands. On this short ground, the petition can be rejected at the threshold. This Court as



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also the Hon'ble Supreme Court have in umpteen cases held that, a person who approaches the Court with unclean hands is not entitled to any equitable and discretionary relief under Article 226 of the Constitution of India. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court in *K.D.Sharma vs Steel Authority of India Limited.& Ors*, reported in 2008 (12) SCC 481. It was held as follows:

"38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the court knows law but not facts".



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39. *If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”*

6. Having found that the writ petitioner has approached the Court with unclean hands, let me now consider if there are any merits in the case otherwise also. It is seen that the petitioner company and the defaulting company are functioning in the same premises and further the nature of business and manufacturing activity of both the companies are one and the same. The Sole proprietrix of the defaulting company is also a director of



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the petitioner company along with the petitioner who is none else than her

husband. It is further to be noted here that both the entities were registered in the year 2017. The defaulting company conducted its business, manufacturing process from the year 2017 to 2019 failed to pay ESI contributions and thereafter the petitioner company registered its business under the GST and continued the same business in the very same premises with the common name HG Walls and with common functioning and structure. The aforesaid facts though pleaded in the counter affidavit were not denied by the petitioner and therefore the same is deemed to be admitted. It is further pertinent to note here that when the attachment notice dated 18.07.2023 under Section 45-G was issued by the Bank Manager, Axis Bank, Guindy Chennai for the recovery of the amount of Rs.33,82,628/- from M/s.HG Walls, the bank marked the lien in the relevant bank account of HG Walls Private Limited as RupaHariganesh (PAN- ASJPR9486N) was also a authorised signatory of the account. From the aforesaid facts, it is clear that the petitioner company is also liable for the dues of HG Walls, as one of the two directors of the petitioner company



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is also the Sole proprietrix of the defaulting company and further the business of both the entities are carried out in the same premises, the business and manufacturing activities are also one and the same. As there is structural, manufacturing, business and functional integrality and commonality, the petitioner company is liable for the dues of the defaulting company.

7.It is also pertinent to note here that the defaulting company HG Walls has till date not challenged the 45-A order and it is only the 45-G order that is challenged by the petitioner company. As there is functional unity and integrality between the two entities, in my view the petitioner company is liable for the ESI dues of HG Walls and therefore, without challenging the 45-A order, the writ petition challenging the 45-G order, which is only consequential in nature cannot be entertained.



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8.In view of the above discussions, the writ petition is dismissed. No

Costs. Consequently, connected WMPs' are closed.

05.04.2024

dsn

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation:YesNo



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To

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E.S.I. Corporation, Regional Office,
143, Sterling Road,
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N.MALA.J.

dsn

PRE-DELIVERY ORDER IN

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ORDER DELIVERED ON

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