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

% ***Date of decision: 24th July, 2024***

+ CM(M) 2998/2024, CM APPL. 41338/2024 & CM APPL.41339/2024

ANIL WILLIAM THOMAS PROPRIETOR OF M/S 3354 / ANIL
WILLIAM THOMAS SECURITY AGENCYPetitioner

Through: Mr. Prabhat Chaurasia, Mr. Rajpal
Singh & Mr. Yugantar Singh,
Advocates

versus

EMPLOYEES STATE INSURANCE CORPORATION..Respondent

Through: Mr. Shlok Chandra, Standing
Counsel, ESIC along with Mr. Sankalp
Sharma and Ms. Sahiba, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL.41339/2024 (exemption)

Exemption allowed subject to all just exceptions.

CM(M) 2998/2024 & CM APPL. 41338/2024

1. Petitioner filed an application under Section 75 of Employees State Insurance Act, 1948 (*in short 'ESI Act'*) with the following prayer: -

- (i) *Declare that the Applicant has complied and paid its contributions in accordance with law in terms of ESIC Code No. Code No. 10001197830001018 (Real ESI Code) and the Applicant has no concern or relation whatsoever with the ESIC Code No. 10001197810000999 (Fake ESI Code);*
- (ii) *quash/set aside the proceedings arising out of letter dated 24.09.2019 issued by the Respondent and Application dated 14.10.2020 to the Recovery Officer, by the Respondent under section 45C to 45 I of the ESI Act and all consequential*



- proceedings arising therefrom.*
- (iii) *quash/set aside the demand letter dated 02.07.2021 for Rs. 5,41,078/- and Letter dated 17.01.2022 thereby attaching the bank account of the Applicant both issued by the Recovery Officer of the Respondent.*
- (iv) *pass any other order as may be deemed fit and proper in the facts and circumstances of the case.*

2. Along with aforesaid application, he also moved an application under Section 75 (2B) ESI Act seeking waiver of deposit of the amount as claimed by the respondent.

3. Said application did not find favour with the learned Trial Court and it directed the petitioner herein to deposit 50% of the amount in question which is stated to be approximately Rs. 5,00,000/- (Rs. Five Lakhs).

4. The grievance raised in the present petition is very concise.

5. According to the petitioner, he had been duly registered with Employees' State Insurance Corporation and was given ESIC Code no 10001197830001018. However, the demand in question is with respect to one another ESIC code no. 10001197810000999.

6. It is contended that there is a fraud played by someone and he never got himself registered under that Code and never applied for any such Code ending with digits 999. Moreover, since he was already registered and had already been allotted code ending with digits 018, ESI could not have, even otherwise, allotted him another Code in view of Regulation 10B (d) of the Employees' State Insurance (General) Regulations, 1950.

7. Since according to the petitioner, it was a fake Code got generated by some third person in fraudulent manner, keeping in mind the specific stand



taken by the petitioner, learned Trial Court should have waived off the deposit in terms of proviso attached with Section 75 (2B) of ESI Act.

8. During course of arguments also, learned counsel for petitioner states that as per instructions, petitioner never applied for the other Code ending with digits 999. Petitioner is also present in Court and reiterates the same before this Court.

9. Amount in question is not very high.

10. Moreover, it can only be established during the proceedings of the aforesaid matter whether a fraud was played upon and whether someone, in a fraudulent and mischievous manner, obtained another Code, *albeit*, in the name of the petitioner herein.

11. Undoubtedly, the hardship or financial handicap cannot be the sole criteria for reduction in the pre-deposit or for that matter waiver thereof and keeping in mind the facts placed before this Court and the stand taken by the petitioner, the amount could have been waived off. Undoubtedly, the things would become clear only when the details and particulars of the concerned party, who applied and was given said Code ending with 999, are placed before the learned Trial Court by the Corporation.

12. Viewed thus, the present petition is disposed with the direction that the entire amount allegedly due from the petitioner herein is waived.

13. Needless to clarify, this Court has not given any observation with respect to the merits of the competing claims as the same would stand established during the trial whether the aforesaid Code in question was



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applied by someone else in a fraudulent manner or was applied by the petitioner himself.

14. The learned Trial Court would proceed further with the matter in accordance with law, without getting influenced by the observations made herein.

15. Petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

JULY 24, 2024/dr