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W.P. No.17392 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.17392 of 2022

and

W.M.P. Nos.16701 and 16702 of 2022

M/s. Empee Distilleries Limited,
represented by its Chief Executive Officer,
Mr. P.K. Das,
having office at 72, Greams Road,
Thousand Lights, Chennai - 600 006. .. Petitioner

vs.

1. The Additional Commissioner & Regional Director,
Regional Office,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
143, Sterling Road, Chennai-600 034.

2. The Assistant Director,
Regional Office,
Employees' State Insurance Corporation,
Panchdeep Bhawan, 143, Sterling Road,
Chennai-600 034. .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records of the impugned order of the 1st respondent dated 14.03.2022 bearing No.TN/Ins-VI/51-00-083624-000-0606/D-18 and the impugned order of the 2nd



W.P. No.17392 of 2022

respondent dated 14.03.2022 bearing No.51000836240000606/2142022125

and quash the same.

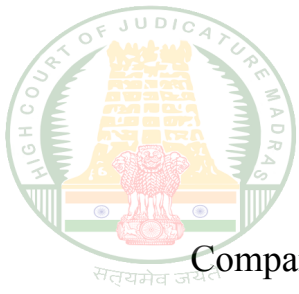
For Petitioner : M/s. AR. Karthik Lakshmanan

For Respondent : Mr. S. Jayakumari
for Employees State Insurance
Corporation.

ORDER

This Writ petition has been filed by the petitioner to quash the order passed by the 1st respondent in No.TN/Ins-VI/51-00-083624-000-0606/D-18 dated 14.03.2022 and the impugned order of the 2nd respondent dated 14.03.2022 bearing No.51000836240000606/2142022125.

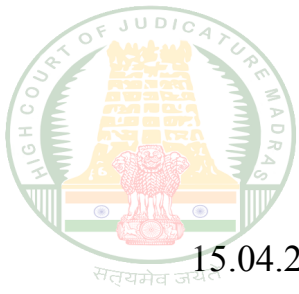
2. The learned counsel appearing for the petitioner would submit that the petitioner is a Company duly incorporated under the Companies Act, carrying on business of manufacturing liquor. The petitioner company went through a Corporate Insolvency Resolution Process at the instance of Union Bank of India in the National Company Law Tribunal at Chennai. Thereafter, an Insolvency Resolution Professional was appointed and called for Resolution Plans from interested bidders. The Resolution Plan submitted by M/s. SNJ Distilleries for a sum of Rs.475 crores was approved by the Committee of Creditors and the same was also approved by the National



W.P. No.17392 of 2022

WEB COPY

Company Law Tribunal through an order dated 20.01.2020. Pursuant to the approval of the Resolution Plan, the petitioner company has cleared all the payments towards contributions to the extent mentioned in the Resolution Plan without any default. While so, the 1st respondent issued a notice to the petitioner company on 31.03.2021 stated that the petitioner company has failed to pay the contributions and made a default. Therefore, it was proposed to determine and recover damages from the petitioner company as per the Provisions of 31C of the ESI (General) Regulations, 1950 read with Section 85(B)(1) of the ESI Act. The 2nd respondent issued another notice on the same day i.e., on 31.03.2021 calling upon the petitioner company to pay interest of Rs.3,47,883/- for the period from November 2018 to November 2020. The said notices were received by the petitioner on 07.04.2021 and he also sent a reply on 09.04.2021 to the 1st respondent. In fact that company went into CIRP and was taken over by the present Management only on 20.01.2020 and could not have, at any rate, paid the contributions for the period from 2018 to 2020 before 20.01.2020. Since the petitioner company was taken over by the present Management, in the month of March 2020, the petitioner company undertook to pay damages @ Rs.22,639/- and interest for delayed payment at Rs.15,142/- for the period from April 2020 to November 2020 alone and the same was also remitted by the petitioner company on



W.P. No.17392 of 2022

15.04.2021. Thereafter, the 1st respondent passed an order dated 14.03.2022 under Section 85(B) of the ESI Act read with Regulation 31(C) and levied predetermined damages at Rs.7,15,850/- and after deduction of the amount of Rs.22,639/-, demanded Rs.6,93,211/-. The petitioner company immediately addressed the 1st respondent and brought to the attention of proviso to Regulation 31-C for waiver of damages, but the 1st respondent did not consider the same and passed the impugned order. Therefore, the order passed by the 1st respondent is not in consonance with the Proviso of Regulation 31-C and the same is liable to be set aside.

3. The learned counsel appearing for the respondent would submit that the petitioner company failed to pay contributions within time and thereby, they levied damages as per the Provisions of the Act and there is no any procedural violations and the 1st respondent after hearing both sides only passed the order. As per the Regulation 31(C), there is Proviso to waive damages for the delay in remittance of contribution. The petitioner is seeking benefits of the Proviso Clause. Though the Authority has not mentioned about the specific provisions in respect of the Proviso Clause, once the Authority passed an order, it is deemed to be presumed that the Authority declined to exercise discretionary power to waive damages. Therefore, the respondents



W.P. No.17392 of 2022

WEB COPY

have passed a reasoned order and the present Writ petition is liable to be dismissed.

4. Heard both sides and perused the entire materials available on record.

5. The main contention of the respondent is that the erstwhile company was under liquidation and thereafter, based on the order passed by the National Company Law Tribunal, the present petitioner company took over the management of the Company, therefore, they are not liable to pay any interest for the delayed payments prior to the liquidation proceedings.

6. On perusal of records, it is seen that two orders have been challenged in this petition. One is against the order passed under Section 85(B)(1) of the ESI Act and another one is recovery notice in respect of the interest. As far as the damages are concerned, as per the Proviso to Regulation 31-C of ESI (General) Regulations, 1950, which reads as under:

31-C.....

.....

Provided that the Corporation in relating to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 may:



WEB COPY



W.P. No.17392 of 2022

(a) Waive upto 50 percent of the damages levied or leviabale depending upon merits of the case;

(b) In exceptional hard cases, waive either totally or partially the damages levied or leviabale".,

7. As per the Proviso to Regulation 31-C of the ESI (General)

Regulations, the Corporation in relating to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency & Bankruptcy code may waive upto 50% of the damages levied or leviabale depending upon merits of the case and in exceptional hard case, waive either totally or partially the damages levied or leviabale.

8. There is no dispute that that the erstwhile company, for which a Resolution Plan was sanctioned by the National Company Law Tribunal under the Insolvency and Bankruptcy Code and the period also covered under the said plan. Therefore, the Authority ought to have exercised its discretionary power, but without exercising the discretionary power and without discussing about the Proviso in Clause 31(C) of the Regulations of ESI Act, passed the impugned order. Therefore, it is appropriate to set aside the order passed by the 1st respondent and remand back the matter for a fresh consideration and to pass orders for waiver by considering the Proviso in Clause 31-C.

9. As far as another impugned order in respect of recovery of interest



W.P. No.17392 of 2022

WEB COPY

for the delayed payment of contribution is concerned, that is also covered for the sick period and the 2nd respondent quantified the amount to the tune of Rs.3,32,741/-, but the 2nd respondent has passed a two line order without passing any speaking order.

10. The learned counsel appearing for the petitioner has relied upon judgment in ***Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and others reported in (2021) 9 Supreme Court Cases 657***, wherein the Hon'ble Supreme Court in Para No.102, held as follows:-

102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I & B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I & B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the



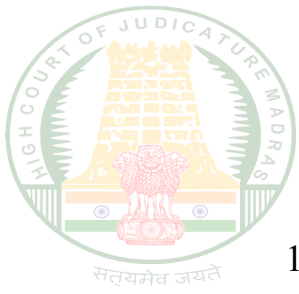
W.P. No.17392 of 2022

*date on which the adjudicating authority grant its approval under
Section 31 could be continued.*

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11. On a careful perusal of the above said judgment, it is clear that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grant its approval under Section 31 could be continued.

12. In the case on hand, the Authority has not passed a speaking order as about the calculation of interest and it is the duty of the Authority to decide the case after passing a speaking order. Therefore, the order passed by the 2nd respondent, without any speaking order, is liable to be set aside and the matter is remanded back to the 2nd respondent for passing fresh orders in accordance with law.



W.P. No.17392 of 2022

WEB COPY

13. In view of the above said discussions, the Writ petition is allowed and the order of the 1st respondent dated 14.03.2022 bearing No.TN/Ins-VI/51-00-083624-000-0606/D-18 and the order of the 2nd respondent dated 14.03.2022 bearing No.51000836240000606/2142022125 are set aside and the matters are remanded back to the concerned Authorities respectively to pass a fresh order after affording opportunity to both the parties as indicated above.

14. Accordingly, this Writ petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

27.06.2025

Index : Yes/No
Speaking order/non-speaking order
mjs

To

1. The Additional Commissioner & Regional Director,
Regional Office,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
143, Sterling Road, Chennai-600 034.

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WEB COPY



W.P. No.17392 of 2022

P. DHANABAL, J.,

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W.P. No.17392 of 2022

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