

C.M.A.No.634 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 24.02.2026

Pronounced on: 10.04.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No. 634 of 2022 and C.M.P. No.4503 of 2022

1. Employees' State Insurance Corporation,
Represented by its Regional Director,
143, Sterling Road, Chennai 600 034.

2. The Recovery Officer,
Employees' State Insurance Corporation,
143, Sterling Road, Chennai 600 034.

... Appellants

vs.

M/s. Sterling Holiday Resorts (India) Limited,
Taurus Towers,
No.25, 1st Main Road,
United India Colony,
Kodambakkam, Chennai 600 024

Represented by its Vice President Mr.R. Mohan

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 82(2) of the ESI Act, against the order of the Employees State Insurance Court (Principal Labour Court), Chennai, dated 30.11.2021 made in E.I.O.P. No.37/2008.



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For Appellants : Ms. G. Narmadha
For Respondent : Mr. K. Balamurali
for Mr. Shivakumar & Suresh

JUDGMENT

The appeal is directed against the order of the Employees State Insurance Court (Principal Labour Court), Chennai, dated 30.11.2021 made in E.I.O.P. No.37/2008.

2. The facts leading to the filing of this appeal are as follows:

2.1. The respondent is a public limited company. The 1st appellant handed over a notice to the respondent under Section 45G of the ESI Act claiming dues of Rs.5,25,738/- pertaining to M/s. Sterling Healthcare Limited for the period from May 1996 to March 2002, wherein it has been mentioned that one P.N.Mohan was the Managing Director of M/s. Sterling Healthcare Limited and Director in the respondent's/petitioner's company. On 13.08.2007 another notice was served by replacing the name of P.N. Mohan with the name of Mr. R. Subramanian. In spite of their contention that they are nothing to do with M/s. Sterling Healthcare Limited, based upon 45-G order, the appellants proceeded to attach the amount of Rs.5,26,933/- from the account of the respondent in HDFC Bank. Against the said action, the



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respondent has sent a letter to the Bank on 23.08.2007 and thereafter, a legal

notice was also issued to the 2nd appellant. According to the respondent,

M/s.Sterling Healthcare Limited is a public limited Company having different ESI code and the appellants illegally recovered a sum of Rs.5,26,933/- from their account. Therefore, filed E.I.O.P. No.37/2008 to set aside the attachment order passed against the respondent and also prayed to direct the appellant/ESIC to refund the recovered amount.

2.2. The appellants filed their written statement by contending that the respondent is covered under ESI Act with a distinct Code No.51-36654-11 and M/s. Sterling Healthcare Limited, a sister concern of the respondent, who is engaged in the manufacturing of pharmaceutical products, dietary foods and healthcare products, is covered under another code No.51-58879-09. C-18 notice dated 21.03.2002 and 09.02.2002 were issued to M/s. Sterling Healthcare Limited for the period January 1998 to September 2001 and October 2001 to March 2002. The factory was closed in the year 1998. Thereafter the appellants invoked power under Section 45A for determination of contribution on 05.08.2003 and 11.08.2003. Since there was no compliance of the direction, the appellants issued C-19 notice. Since the respondent /



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petitioner being the promoter company, the appellants proceeded against the respondent under Section 45G for the dues of M/s. Sterling Healthcare Limited and hence, according to them, their action is legal and valid and prayed for dismissal of the petition.

2.3. The Employees Insurance Court, after framing necessary issues, vide its order dated 30.11.2021, allowed the petition filed by the respondent and set aside the order of attachment made by the appellants by holding that there is no functional integrity between M/s. Sterling Healthcare Limited and the respondent so as to enable the appellants to attach the petitioner's bank account and directed the appellants to refund the amount of Rs.5,26,933/- to the respondent within 3 months from the date of the order, failing which, the respondent is entitled to have interest at the rate of 12% per annum.

2.4. Aggrieved over the same, the present Civil Miscellaneous appeal is filed by the appellants.

3. The learned counsel for the appellant /ESI would contend that there is functional integrity between the M/s. Sterling Healthcare Limited and the respondent and also some of the Directors are same in M/s. Sterling



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Healthcare Limited and the respondent Company and that the respondent

being the promoter of M/s Sterling Healthcare Limited, the attachment and the consequential recovery are all within the contour of the ESI Act. While so, the ESI Court had erred in ordering refund of sum of Rs.5,26,933/-. As per Regulation 40, the contribution paid under the erroneous belief only may be refunded with interest. But in the present case, in the letter produced before the ESI Court, M/s. Sterling Healthcare Limited have stated that the said company was promoted by the respondent and further the respondent had admitted in the said letter that the contributions of M/s. Sterling Healthcare Limited is paid along with their contributions and therefore, the amount due from M/s. Sterling Healthcare Limited was recovered by attaching the bank account of the respondent under Section 45G of the Act. The learned judge having failed to take into account the admission made by the respondent in the documents marked on behalf of the appellants, more particularly in Ex.R1, R2 and R19, had erred in setting aside the order of attachment dated 13.08.2007 and consequently ordering refund of Rs.5,26,933/- which had been recovered by the appellants after following due process and provisions under the ESI Act. Hence, prayed for setting aside the order passed in EIOP No. 37/2008 dated 30.11.2021 by the ESI Court.



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4. On the other hand, the learned counsel for the respondent would contend that, even according to the appellants / ESIC, M/s. Sterling Healthcare Limited and the respondent Company are having two distinct ESI Code. Further it is submitted that, the appellants have miserably failed to prove functional and financial integrity of both the companies. It is further stated that, the respondent is not the promoter company of the said M/s. Sterling Healthcare Limited. The learned counsel would further submit that, in the absence of any evidence establishing the unity of ownership, functional integration, interchangeability of employees or inter dependability between the two companies, it cannot be presumed that the two are deemed to be one and the same. Therefore, the respondent company cannot be held liable to the dues recoverable from Sterling Healthcare Limited merely on the ground that they are sister concerns sharing the same registered office or having accounts in the same bank, while the two entities have been incorporated as distinct entities. The learned counsel further submitted that, the ESIC can recover the dues from the defaulting Company only from the assets of the said Company. Therefore, the recovery by the ESI Corporation from the respondent is totally illegal and perverse and the respondent is entitled to get the refund of the

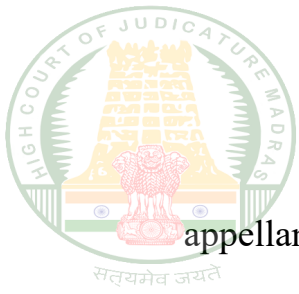


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amount recovered by the ESIC. His further contention is that, an individual or

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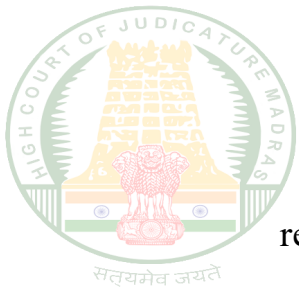
a group of people who come up with the concept of starting a business are the promoters of a company. They carry out the required process to establish the firm. A promoter is not the owner of the company and he only helps to establish and run the company, but the company's shareholders are actual owners of the company. A promoter cannot be considered a trustee, employee or agent of a company. The role of the promoter ceases when the company is established and is handled by the Board of Directors and the company management. Therefore, a promoter is not liable for ESI dues simply by virtue of being a promoter. His further submission is that there is no law which prohibits a father and a son from carrying on two separate and independent business from the same premises. What has to be considered is whether there is functional integration or there is no proximity in the two businesses. There is no functional integrity in the matter of ownership, control and supervision in the affair of the business of the two entities. The prima facie test for determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. In the present case, the



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appellants / ESIC failed to produce any evidence to establish that the respondent is the alleged promoter company. To support his contentions he has relied upon the following judgments.

1. Judgment of the High Court of Delhi dated 13.08.2013 in CS(OS) No.312/2005 in the case of ***Maharishi Solar Tech Pvt. Ltd., vs. ICICI Bank Ltd. and others.***
2. Judgment of the High Court of Judicature at Bombay, dated 10.07.2024, in First Appeal No. 731 of 2992, in the case of the ***Employees State Insurance Corporation, Bombay vs. Dinendra Ratansi and others.***
3. Judgment of the High Court of Karnataka dated 22.10.2008 in First Appeal Nos.6344 of 2003 and 1391 of 2004 in the case of ***Regional Director, ESI Corporation, Bangalore and others vs. The Management of Shagil Precision India, Mangalore.***
4. ***E.S.I.C. vs. Ved Prakash Gupta*** reported in ***2008 SCC OnLine Del 1426.***
5. Judgment of the High Court of Madhya Pradesh dated 10.01.2006 in M.A. 658 of 1998 in the case of ***Regional Director, ESI Corporation, vs. Ram Kumar Suresh Kumar Timber Merchant.***
6. ***Balwant Rai Saluja and another vs. Air India Limited and others***



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reported in (2014) 9 SCC 407.

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5. In reply, the learned counsel for the appellants / ESIC would submit that, by virtue of the admission by the Employer itself that both the establishments had been paid under one code number by the respondent, the general requirements to establish unity of establishments as per the guidelines laid down in *Maharishi Solar Tech Pvt. Ltd., vs. ICICI Bank*, relied by the respondent is not applicable in the present case. She would further contend that in the case of *ESIC vs. Dinendra Ratansi and others*, the issue was whether the Director of a company can be held personally liable for the dues of the establishment. In the case on hand, the individual Directors have not been burdened with any personal liability and therefore, reliance placed on this judgment is baseless and irrelevant. She would further contend that, the case of *Balwant Rai Saluja vs. Air India Limited*, is in respect of a decision rendered under the Factories Act and the same cannot be relied upon to determine the relationship of employer – employee under the ESI Act as the latter prescribed the definition of employee which is of wider ambit. Further the said decision deals with the employees of an outside contractor, which is not the issue in the present case and more so, the respondent having admitted



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that it had paid previous dues of Sterling Home Products, which is a division of Sterling Healthcare, have by its own action, committed to the financial responsibility for any subsequent dues as well. The learned counsel for the appellants / ESIC further submits that, in the case of ***ESIC vs. The Management of Shagil Precision India***, the issue was whether the principle employer can be held liable for payment of contribution towards the employees of a contractor. It is in this context, that the nature of relationship between the employer and employee, as well as the necessity for supervision was discussed. The said judgment has no relevance to the facts and circumstances of the present case as Sterling Healthcare is not an independent contractor but a division promoted and run by the respondent itself.

6. Heard on both sides. Records perused.

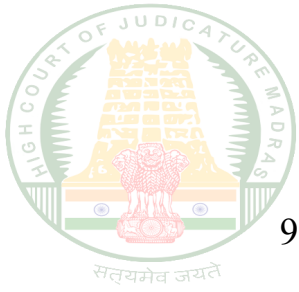
7. The present Civil Miscellaneous Appeal is filed by the appellants / ESIC against the order dated 30.11.2021 passed by the ESI Court in ESI OP No. 37/2008 filed by the respondent Company against the appellants / Corporation , seeking to quash the Demand Notice dated 13.08.2007 issued by the appellants / Corporation to the respondent under Section 45G(3) (1) of the



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ESI Act and to direct the appellant corporation to return the amount of Rs.5,26,933/- deducted from the respondent's bank account for non payment of contributions by another entity Sterling Healthcare Limited.

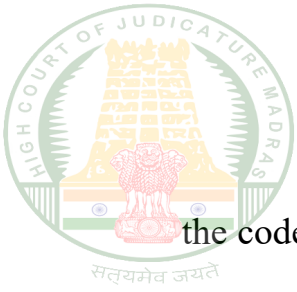
8. It is the case of the appellants that one M/s. Sterling Healthcare Limited is a sister concern promoted by the respondent company. According to the appellants Corporation, the said M/s. Sterling Healthcare Limited having ESI No.51/58849 failed to pay the ESI contribution for May 1996 to December 1997 and also for the period January 1998 to September 2001 and October 2001 to March 2002. An order under Section 45A of ESI Act was passed against the said company to pay a sum of Rs.2,50,965/- for the dues from 1.1.1998 to 30.09.2001. Since the said company failed to pay, notices were issued to ex-Directors of the said company. Since payments were not made by the said company, the appellants corporation issued notice under 45G on 13.08.2007 claiming a sum of Rs.5,25,738/- and another notice was issued under 45G on 20.08.2007 claiming a sum of Rs.5,26,933/- from the respondent company. Despite refuted by respondent company, the same was recovered from the respondent's bank by invoking garnishee order.



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9. The claim of the appellants corporation was resisted by the respondent company stating that the two entities are independent and that the respondent company is engaged in business of running holiday resorts in many places in India and having separate ESI code number 51-36654-1114. One Mr.P.N. Mohan, mentioned in the notice of appellants corporation, ceased to be the Director of the respondent company long back and the respondent company has nothing to do with M/s. Sterling Healthcare and therefore, the recovery made from the respondent's bank by the appellants corporation is illegal.

9.1. The first and foremost contention of the respondent company is that, it is a company engaged in the business of running holiday resorts having separate code number 51-36654-1114. The Sterling Healthcare Limited has been allotted code No.58849. The respondent company never defaulted in paying the contribution as per Section 2(4) of the ESI Act to the Corporation. Though the Sterling Healthcare Company had defaulted in making the payments to the corporation, the respondent company is not liable to pay the contributions to the Corporation. Therefore, the issuance of notice by the appellants corporation under 45G of the Act to the respondent company with



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the code number of 58849, which is not allotted to the respondent company, is illegal.

9.2. On a perusal of records it is seen that, the appellants corporation failed to establish the unity of ownership, functional integration, interchangeability of employees or inter dependable between the two entities. Therefore, it cannot be presumed that the two entities are deemed to be one and the same. Having the same registered office address for the two entities, that alone cannot be sufficient to legally club the two entities together. The two entities have been incorporated as distinct entities. Therefore, the respondent company cannot be held liable to the dues recoverable from Sterling Healthcare Limited on the ground that they are having accounts in the same bank. Any dues by the defaulting company can be recovered only from the assets of the said company. As rightly pointed out by the learned counsel for the respondent company, a promoter is not the owner of the company and also cannot be considered as a trustee, employee or agent of a company. In fact, the appellants corporation failed to establish that the respondent company is the alleged promoter company. Even assuming that the respondent compenay is a promoter company of Sterling Healthcare



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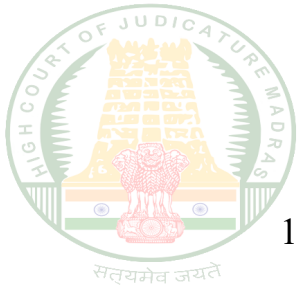
Limited, they cannot be made liable to pay the ESI dues of the said company.

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The appellants corporation failed to establish about the functional integration of the two entities and proximity in the two businesses. There is nothing on record to show that the employees of the two firms were being interchanged.

The ESI Court, on the basis of the materials on record, rightly concluded that the respondent company and the defaulted company are two separate and independent entities having no functional or business relations with each other.

The ESI court has rightly held that, the commonality of the Directors in two different companies will not make those companies to become liable for the dues of other company, as both the companies are two different judicial persons as per the Companies Act. Therefore, the ESI Court directed the appellants Corporation to proceed against M/s. Sterling Healthcare Limited for recovery of dues by invoking appropriate provisions under the Companies Act and directed the appellants corporation to refund the amount recovered from the respondent's company account. No perversity or infirmity is found in the said findings of the ESI Court, which warrants any interference.



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10. In the result,

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i. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

ii. The order of the Employees State Insurance Court (Principal Labour Court), Chennai, dated 30.11.2021 made in E.I.O.P. No.37/2008, is upheld.

10.04.2026

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

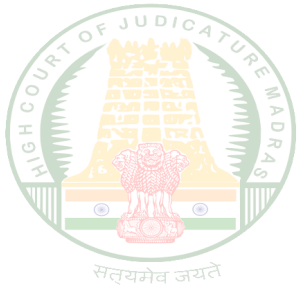
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Represented by its Vice President Mr.R. Mohan



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K.GOVINDARAJAN THILAKAVADI, J.

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**Pre-delivery Judgment made in
C.M.A.No. 634 of 2022 and
C.M.P. No.4503 of 2022**

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