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CMA No. 3404 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
27.03.2026

PRONOUNCED ON
30.04.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CMA No. 3404 of 2021
and CMP.No.19645 of 2021

M/s.Iykot Hi-tech Toolroom Ltd.,
19, Block I, SIDCO Electronics Complex,
Thiru-vi-ka Industrial Estate, Guindy,
Chennai-600032.
Represented by its Joint Managing Director

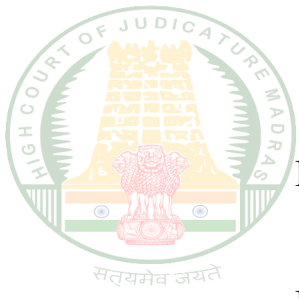
..Appellant(s)

Vs

1. The Deputy Director
Employees State Insurance Corporation, 143,
Sterling Road, Chennai-34.
2. The Recovery Officer
Employees State Insurance Corporation, 143,
Sterling Road, Chennai-34.
3. The Branch Manager
State Bank Of India, Broadway Branch,
Chennai

..Respondent(s)

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of the Employees' State Insurance Act, to Set aside the order and decree of Employees State Insurance Court, Principal Labour Court, Chennai dated 02.03.2021 in EIOP No. 123 of 2009.



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CMA No. 3404 of 2



For Appellant(s):

Mr.Haroon AL.Rasheed
for M/s.T.S.Gopalan and Co

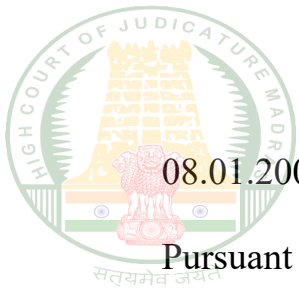
For Respondent(s):

Mr.S.P.Srinivasan for RR1 and 2
R3 - Given Up

JUDGMENT

The present Civil Miscellaneous Appeal has been filed challenging the Award dated 02.03.2021 made in EIOP No. 123 of 2009 on the file of the Principal Labour Court, Chennai.

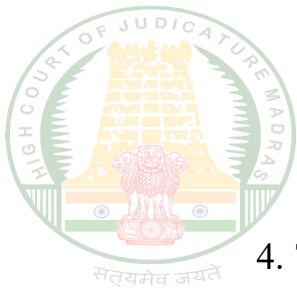
2. The facts giving rise to the present *lis* are that the appellant company is engaged in the manufacture of dyes and plastic components, which commenced its operations in the year 1994. The appellant had been regularly remitting contributions under the Employees' State Insurance Act, 1948 (hereafter referred to as ESI Act). However, due to financial stringency from the year 2000 onwards, the appellant was unable to remit the contributions within the prescribed time period. Consequently, the first respondent had initiated proceedings under Section 45A of the ESI Act in the year 2002, pursuant to which orders dated 18.12.2002 and 24.12.2002 came to be passed determining interest and damages to be paid, respectively. Meanwhile, on account of accumulating financial losses, the appellant company was declared a Sick company by the Board for Industrial and Financial Reconstruction (hereafter referred to as BIFR), New Delhi. The BIFR *vide* its proceedings dated



08.01.2007 passed a Sanctioned Scheme to revive the appellant company.

Pursuant to the aforesaid Sanctioned scheme, the total ESI dues payable by the appellant company, wholly comprising of contribution, interest and damages arrears, as on 31.03.2006, after giving effect to the waivers granted thereunder, was determined to be a tune of Rs.2,26,353/-. The appellant had duly discharged the said liability as six monthly instalments, as agreed with the first respondent.

3. Consequently after the implementation of the Sanctioned scheme, the net worth of the appellant company became positive and the BIFR *vide* its order dated 21.04.2008 held that the appellant company was no longer a sick company. Thereafter the second respondent issued summons to the appellant claiming the total ESI dues, including the contribution, interest and damages stood at Rs.7,66,364/- as on 31.03.2008. The appellant had brought it to the notice of the first respondent that the aforesaid claimed amount also comprises of the ESI dues up to the year 2006, which had already been fully remitted by the appellant as per the terms stipulated under BIFR proceedings dated 08.01.2007 (*supra*) and had requested that all further proceedings to be dropped. However the first respondent authorised the second respondent to proceed with the recovery of the aforesaid amount *vide* the recovery proceedings dated 08.04.2009. Aggrieved by the same the Appellant filed a petition in EIOP.No.123 of 2009 before the Employees State Insurance Court, Principal Labour Court, Chennai.



4. The ESI Court on the basis of the pleading made on both sides framed the following issues;

1. *Whether the petitioner is entitled to a declaration that the petitioner is not liable to pay contribution, interest and damages for period upto 31.03.2006?*
2. *Whether the impugned recovery proceedings dated 08.04.2009 is liable to be set aside as null and void?*
3. *To what relief the petitioner is entitled?*

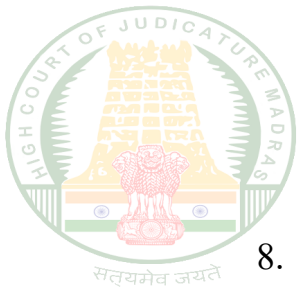
5. The ESI Court, after hearing both sides and upon perusal of the materials available on record, held that the petitioner/appellant therein had neither challenged any of the respondents' orders nor the notices issued demanding interest and damages. On the whole the petitioner had not taken any legal steps to question or oppose the said claims of the respondents, but had approached the Court only challenging the recovery notice stated to have been issued on 08.04.2009. The Court further held that the petitioner had not produced any material to establish that it was not liable to pay interest and damages. The ESI Court further held that, since the petitioner company was no longer a sick company and PW1, examined on the side of the petitioner, having admitted that the company was functioning well, the petitioner was liable to pay



the arrears of contribution, interest and damages. Accordingly, the ESI Court, *vide* its order dated 02.03.2021 had dismissed the petition in EIOP. No.123 of 2009. Aggrieved by the said order, the petitioner has preferred the present appeal.

6. Heard Mr.HaroonAL.Rasheed for M/s.T.S.Gopalan and Co., appearing on behalf of the appellant and Mr.S.P.Srinivasan, learned counsel appearing on behalf of the respondents 1 and 2.

7. Mr.HaroonAL.Rasheed, the learned counsel appearing on behalf of the appellant submitted that the ESI Court had failed to appreciate that the appellant company had duly implemented the Sanctioned Scheme and had complied with the terms of the order dated 08.01.2007 passed by the BIFR. It is further submitted that the Court below failed to take note of the proceedings of the BIFR dated 08.01.2007 and 21.04.2008, which are binding on the respondents, inasmuch them being the parties to the said proceedings. The learned counsel would contend that the respondents had erred in not appreciating the fact that the appellant had already discharged the ESI dues which was reflected in the orders dated 18.12.2002 and 24.12.2002, including its past arrears, during the period of 23.09.2006 to 24.07.2007, in terms of the BIFR order dated 08.01.2007.



8. He further submits that the impugned recovery proceedings include arrears of ESI contribution, interest and damages pertaining to a period which has already been covered under the sanctioned scheme. It is further contended that the recovery proceedings initiated by the second respondent are unsustainable in law, contrary to the principles laid down by the Hon'ble Apex Court. In view of the above, the learned counsel seeks the indulgence of this Court to set aside the impugned order.

9. *Per Contra*, countering the above arguments Mr.S.P.Srinivasan, the learned counsel appearing on behalf of the respondents would submit that the appellant company was bound to remit both the employer's and employee's contributions, and that the appellant had committed defaults for various periods. It is submitted that the ESI Court *vide* the impugned order herein, has rightly held that the appellant is liable to pay the arrears of contribution along with interest and damages. He would further submit that, though the BIFR had granted certain reliefs in respect of interest and damages under the Sanctioned Scheme, such relief pertains to a period different from the subject period in the present recovery proceedings, and therefore, the respondents are entitled to recover the same from the appellant. It is contended that the period covered under the Sanctioned Scheme and the period for which damages have been levied are distinct, and hence the order for recovery under Section 85B of the



ESI Act 1948 was passed.

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10. It is further contended that the proceedings before the BIFR are not binding on the respondents, as the Employees' State Insurance Corporation (ESIC) was not a party thereto and the recommendations made therein are not mandatory in nature. The learned counsel would also submit that the ESI Court has rightly concluded that the appellant is liable to pay the arrears, particularly in view of the admission of PW1 that the appellant company is no longer a sick company and is functioning well. It is further submitted that the appellant had remitted only a portion of the contribution amount for the period from 04/2000 to 03/2002 and had also failed to discharge the dues towards interest and damages, therefore the impugned recovery proceedings were initiated only in respect of the balance amount. In view of the above, the learned counsel prays that the present appeal be dismissed as devoid of merits.

11. I have heard both the sides and have perused the material available on record before me.

12. The primordial contention of the appellant is that the second respondent has initiated recovery proceedings on 08.04.2009 for recovery of arrears towards ESI dues, namely contribution, interest and damages, which include periods already covered under the Sanctioned Scheme framed by the



BIFR vide its proceedings dated 08.01.2007. The facts of the present case disclose that the appellant company, owing to financial distress, was declared a “Sick Industrial company” as defined under the Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985. Thereafter, the competent authority, namely the BIFR, vide its proceedings dated 08.01.2007, had Sanctioned a rehabilitation scheme, for revival of the appellant’s company.

13. Under the said Sanctioned scheme, the total ESI dues payable by the appellant company as on 31.03.2006 was determined after granting waiver of interest and damages for the relevant period, as set out in Clause No.8.2(d) therein. For better appreciation, the relevant portion of the sanctioned scheme is extracted hereunder:

“8. **Rehabilitation Scheme**

....

8.2. *IHTL has assumed the cut of date as March 31, 2006 and all the liabilities and assets have been restructured on this date. In the revival scheme the company has envisaged following reliefs and concessions from following parties.*

....

d. **ESI Dues:**

<i>Particulars</i>	<i>Rs.</i>
<i>ESI payable till 31.03.2006</i>	<i>235869.00</i>
<i>Damages & Interest claimed by ESI for the period 2002-03</i>	<i>329228.00</i>
<i>Total demand as on</i>	<i>565097.00</i>



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<i>31.03.2006,</i>	
<i>Less: Total damages and interest which needs to be</i>	<i>338684.00</i>
<i>Net amount (net of reliefs) to be payable by the company</i>	<i>226413.00</i>

*As per the above, it is requested that the entire amount of interest and damages claimed by the ESI authorities amounting to Rs.338684/- (of which only. Rs.9456/- has been paid by the company) may be waived and only an amount of **Rs.2,26,413/-** be payable in convenient installments within 6 months.....”*

From the above extract of the Sanctioned Scheme, it is evident that the BIFR had determined the ESI dues payable by the appellant company as on 31.03.2006 to a tune of Rs.2,26,413/-, after granting waiver of the entire interest and damages amounting to Rs.3,38,684/-. The said amount was directed to be paid in convenient instalments within a period of six months, and the appellant has duly complied with the same. It is further noted that the recovery proceedings initiated by the respondents include ESI dues pertaining to a period which has already been covered under the sanctioned scheme.

14. It is pertinent to note that the respondents have not disputed either the proceedings of the BIFR dated 08.01.2007 or the Sanctioned Scheme framed thereunder, and they have accepted the payments made by the appellant company towards ESI dues as per the terms of the said scheme. The very object



of framing a Sanctioned Scheme under the BIFR proceedings is to facilitate the revival of sick companies. In the present case, it is evident that interest and damages were wholly waived and the ESI dues payable for the particular period was determined at a substantially reduced amount when compared to the original liability as indicated therein. The implementation of the sanctioned scheme has evidently facilitated the revival of the appellant company, as reflected in the order of the BIFR dated 21.04.2008, wherein it has been declared that the appellant company had ceased to be a sick company.

15. Therefore, in view of the foregoing discussion, this Court is of the considered opinion that the initiation of recovery proceedings for ESI arrears, including dues pertaining to a period which has been already determined under the Sanctioned Scheme and settled thereafter, amounts to an unwarranted intrusion with the proceedings of the BIFR dated 08.01.2007 and the Sanctioned Scheme framed thereunder. This Court further holds that permitting such interference would defeat the very object of revival of a sick company as contemplated under the Sick Industrial Companies (Special Provisions) Act, 1985.

16. Therefore, in light of the above, this Court is of the considered view that the impugned order dated 02.03.2021 passed in EIOP.No.123 of 2009 is to be set aside and as sequel the recovery proceeding initiated against the appellant



is set aside. Accordingly, the present Civil Miscellaneous Appeal stands allowed. Consequently, the connected miscellaneous petition stands closed. No costs.

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30.04.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA

To

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2. The Recovery Officer
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K.KUMARESH BABU, J.

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