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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.400 OF 2012**

1. The Director, Employees' State Insurance Corporation, Sub-Regional Office, Panchdeep Bhavan, Bibvewadi, Pune – 411 037
 2. The Recovery Officer, Employees' State Insurance Corporation, Sub-Regional Office, Panchdeep Bhavan, Bibvewadi, Pune – 411 037
- ...Appellants

Versus

M/s. Jolly Steel Industries Pvt. Ltd.,
32/1A & B Nagar Road,
Pune – 411 014

...Respondent

Mr. Sujeet Kurup for the Appellants.
None for the Respondent.

**CORAM : JITENDRA JAIN, J.
DATE : 23 FEBRUARY 2026**

JUDGMENT:

1. This appeal under Section 82 of the Employees' State Insurance Act, 1948 (ESI Act) was admitted on 10 April 2012. However, no substantial question of law was framed. Therefore, following substantial question of law is framed at the time of final hearing :-

“Whether, the ESI Court was justified in holding that the respondent-M/s. Jolly Steel Industries Pvt. Ltd. is not liable to pay contribution for the period April 1992 to August 1993 ?”



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2. I have heard learned counsel for the appellants-Corporation.

Briefly undisputed facts are as under:-

3. Prior to 1980, the factory was run by the respondent. After 1980, the factory was leased out and handed over to Gupta Steel Industries for a period of three years. Since Gupta Steel Industries did not vacate after the expiry of three years, respondent initiated civil proceedings for recovering the possession. The civil proceedings ultimately landed in the High Court and consent terms dated 9 April 1995 were filed between the parties, wherein it was agreed that Gupta Steel Industries will pay all the dues during the period of lease.

4. In the order under Section 45-A of the ESI Act, the Corporation has raised a demand on the respondent for the period April 1992 to August 1993 by relying on Section 93-A of the said Act. The order under Section 45-A was also sent to Gupta Steel Industries.

5. Section 93-A of the ESI Act reads as under :-

93A. Liability in case of transfer of establishment.—Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

6. In my view, provisions of Section 93-A are not applicable to the facts of the present case, for the simple reason that the order under



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Section 45-A is for the period April 1992 to August 1993. The respondent had handed over the possession of the factory to Gupta Steel Industries under a lease in the year 1980 for a period of three years. Since Gupta Steel Industries did not vacate, respondent initiated civil proceedings and ultimately under the consent order passed by this Court, the possession of the factory was handed over to the respondent in the year 1996.

7. Section 93-A provides for joint and several liability in respect of the periods up to the date of transfer by way of sale, gift, lease or licence. In this case, liability admittedly is not for the period prior to 1980 but it is for the period post 1980, when respondent was not running the factory. Therefore, on a plain reading of Section 93-A of the ESI Act, respondent cannot be liable for the contribution for the period April 1992 to August 1993.

8. However, it is made clear that this order will not preclude the appellants to take appropriate steps for recovery of the amount due from the Gupta Steel Industries who was running the factory for the period for which the demand is raised.

9. In view of above, appeal is dismissed with liberty to take steps for recovery against Gupta Steel Industries.

[JITENDRA JAIN, J.]