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Date: 14.09.2018

To
Mr. Soham Modi,
Managing Director,
Modi Properties and Inv. Pvt., Ltd.,
M.G.Road, Secunderabad.

Sub: Legal Opinion

BRIEF FACTS AND QUERIES:

Your Legal Officer, Mr. M.A. Lateef, briefed me that some of the workmen/employees employed by third party/labor contractor are deployed to your site and such workmen are working at your site, and sought my opinion whether your company shall be the principal Employer in such case, if so whether your company is liable for payment of ESI and EPF contributions to such employees of the labor contractor who are working at your premises/project?

The said contract with the contractors includes material and personnel. In such event, how to compute the wage component out of the total invoice value, whether the company is liable for payment of ESI and EPF contributions on only such wage component or on total invoice amount?

OPINION:

The company is liable to pay ESI and EPF contribution to all the employees working in your premises/project, irrespective of such employees being the employees of the company or the employees of the labor contractor.

If the employees of the labor contractor who works at his premises, the company is not liable for payment of ESI and EPF contributions to such employees.

As per para 30(3) of EPF scheme 1952, It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.



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ADVOCATE
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As per Section 40, of ESI Act, 1948, The Principal employer to pay contributions in the first instance. — (1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

Therefore it is the responsibility of the principle employer to ensure the coverage of Employees employed by the labor contractor under ESI and EPF scheme and also to ensure compliance/timely remittance of the contributions under ESI and EPF scheme by the labor contractor for the employees employed by him. Otherwise the principle employer shall be liable to pay both the employer and employee contributions and also shall be liable for payment of interest and damages both under the provisions of EPF and ESI Act in the event of delaying of payment of such contributions.

As regards, the wage component and material component in case of a contract between the company and the labor contractor, which includes execution of job with own material of the contractor and employees employed by the contractor and where a contractor raises an Invoice for the whole job, the company is required to demand a detailed invoice from the labor contractor segregating the amounts payable for the material and as well for the manpower/labor charge supported by the bills. In such event, it would be easy to identify the wage component for the purpose of liability of payment of contributions under EPF and ESI Scheme.

I hope your query is clarified, if not feel free to seek further clarifications, if any.



M. RADHAKRISHNAMURTHY
Advocate

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1-8-639, Vidyanagar,
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LEGAL

Date:07-09-2018

OPINION OF ADVOCATE RADHA KRISHNA MURTHY WITH REGARD
TO PF and ESI

Since the contract work includes provision of execution of work. The liability of company towards the contractor is only to pay the amount specified by him for all the 3 aspects namely,

- 1.Men
- 2.Material
- 3.Execution of work

If the contractor is executing the work in his workshop than the company is not liable to pay PF and ESI to the labors but whereas if the work is executing at ^{Site}sight of the company in such circumstances the company is liable to pay PF and ESI to the labors of the contractor and in some events the contractor to avoid his personnel liability can claim in future that he is just an supervisor to the work and not liable for the damages if any occurred during the course of work, in such event the company to protect itself from future claims have to pay the PF and ESI to the labors and it would be better if a contract in writing is entered prior to the commencement of work with the contractor.

Regards



M.A.Lateef