

IN THE HIGH COURT OF JUDICATURE AT PATNA

Company Appeal (DB) No.6 of 2015

IN

COM PET 7 of 2011

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1. Daya Concrete Limited (Formerly : Daya Concrete Private Limited), a company incorporated constituted under the Companies Act, 1956, having its registered office at Dobhi Road, Rampur, P.S. Civil Lines, Gaya, Bihar-823001.

.... Appellant/s

Versus

1. GPT Casting Limited (Formerly Greenfield Casting Pvt. Limited), a company incorporated under the Companies Act, 1956, having its registered office at Jeewansatya, "DD-6", Sector-1, Salt Lake City, Kolkata-700064 through its constituted attorney Harjeet Singh, Son of Late Mohan Singh resident of Flat No. 305, Vrindawan Garden, Ram Nagri More, Ashiana Digha Road, P.O. Ashiana nagar, P.S. Rajeev Nagar, District Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate
With Mr. Ram Akwal Singh

For the Respondent/s : Mrs. Manju Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 16-08-2016

Mr. Umesh Prasad Singh, learned Senior Counsel, appearing on behalf of the appellant has, at the very outset, pressed I. A. No. 5608 of 2016, for disposal of the present appeal in terms of the compromise entered into between the parties herein. To this submission, learned counsel, appearing on behalf of the respondent, has no objection.

2. This appeal arises out of an order passed by learned Company Judge, dated 13.11.2014, in Company Petition



No. 7 of 2011 (GPT Castings Limited Vs. Daya Concrete Ltd). The respondent herein had filed the said Company Petition for winding up of the appellant Company in terms of Section 433(e) of the Companies Act, 1956, inasmuch as the amount of debt claimed by him, which was liable to be paid by the Company to him was not being paid despite repeated demands. The respondent herein is said to have raised a bill of Rs. 34,75,402/- (Thirty four lacs, seventy five thousand and four hundred two) for supply of 40,000 pieces of SGCI Inserts against which payment of Rs. 2.00 lacs only was made on 03.09.2009 and since no further payment was made, the said Company petition, in question, was filed for winding of the Company since the Company was unable to pay its debts.

3. Learned Company Judge taking into account the stand of the parties arrived at a conclusion that the Company was unable to pay admitted debt of Rs. 27,75,402/- and, accordingly, directed winding up of the Company by the order under appeal.

4. When this appeal was taken up by this Court, on 31.03.2015, an interim order of stay of judgment, under appeal was, granted subject to the condition that the appellant deposits to the credit of the Company petition, a sum of Rs. 10,00,000/- within four weeks with effect from 31.03.2015 and another sum of Rs. 10,00,000/- within four weeks thereafter and gave liberty

to the respondent to withdraw the amount without furnishing security.

5. Mr. Umesh Prasad Singh, learned Senior Counsel, has submitted that the appellant Company deposited the said amount of Rs. 20, 00,000/-, at a time, within the time granted, by this Court through two Bank Drafts, with the learned Registrar of this Court, which were received by the respondent Company and had been encashed on 30.04.2015. It has been stated in the said petition that the appellant had admitted a claim of Rs. 20,95,402/- out of which Rs. 20.00 lacs had already been paid in pursuance of this Court's order, dated 31.03.2015, and the remaining amount of Rs. 95,402/- has been paid through Bank Draft, dated 01.07.2016. It is stated in the petition that the parties have settled their disputes through their various representatives and have no existing claim against each other. This is to be noticed that the Official Liquidator, vide letter, dated 25.03.2015, invoking Section 456 read with Section 468 of the Companies Act, 1956, proposed to take possession of the registered office of the Company on 30.03.2015. It appears that the room of the registered office of the Company has been put under lock and key by the official liquidator. Bank operations of the company are sought to be stopped through said communication, dated 25.03.2015.

6. In the above background, it has been jointly

submitted by the parties in I. A. No. 5608 of 2016, as follows:-

"(i) Both parties humbly pray that the order dated 13.11.2014 (impugned order under appeal) be set aside, the company petition No. 7 of 2011 be dismissed and the appeal may be allowed without cost;

(ii) The Official Liquidator (respondent no.2 attached to this Hon'ble Court) be directed to recall the letter dated 25.3.2015 and unlock the room and/or quash the letter issued by the Official Liquidator stopping the Bank operation, etc."

7. Considering the facts and circumstances as noted above and the stand taken on behalf of the parties that the dispute between them has been fully settled, this appeal is allowed and the order, under appeal, dated 13.11.2014, is hereby set aside.

8. Company Petition No. 7 of 2011 stands dismissed. Letter, dated 25.03.2015, issued by the Official Liquidator, in pursuance of the order under appeal, dated 13.11.2014, passed by the learned Company Judge stands quashed. Consequence of the present order shall accordingly follow.

9. The appeal stands allowed but without costs.

(I. A. Ansari, CJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	