IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No. 239 of 2017

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1. Ishwar Chandra Choudhary,
2. Bishnu Chandra Choudhary,
3. Triloki Nath Choudhary, All sons of Sri Onkar Nath Choudhary, Resident of Ashiana Garden, 11, Balsom Lane, Sonari, P.S.- Sonari, Jamshedpur, District- East Singhbhum, (Directors of Ex-Management of M/s Jaiswal Engineering Works Pvt. Ltd., in Liquidation).

... ... Petitioner/s

Versus

1. The Official Liquidator, M/s Jaiswal Engineering Works Pvt. Ltd. (In Liquidation), Mauryalok Complex, A-Block, 4th Floor, Dak Bunglow Road, P.S.- Kotwali, District- Patna.
2. M/s Facor Steels Ltd., a Company having its registered office at 46-A & B, MIDC, Industrial Estates, Nagpur, Maharashtra.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Arjun Kumar, Adv.
For the Respondent/s: Mr. Alok Kumar Agarwal, Adv.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 01-11-2017

I.A. No. 5743 of 2017

Heard learned counsel for the petitioners and the respondents.

This interlocutory application has been filed for condoning the delay of about 153 days in preferring the present civil review application.

No counter affidavit has been filed on behalf of the Official Liquidator, i.e., respondent no. 1.

For the reasons mentioned in this interlocutory application, we are satisfied that the petitioners were prevented from sufficient cause from preferring this civil review within time.

As a result, this interlocutory application is allowed and the delay in filing this appeal is hereby condoned.

Civil Review No. 239 of 2017

We have heard parties for the purpose of final disposal of this application on their consent having been given.

This application has been filed for review of the order dated 19.12.2016 passed in Company Appeal (D.B.) No. 10 of 2015 assailing the order passed by the learned Company Judge on 23rd April, 2015 in Company Petition No. 17 of 2004 whereby the draft sale notice and the terms and conditions of the same were approved with a direction that sale notice must be published in two newspapers, one in Hindi and one in English.

Learned counsel for the petitioners has stated before us that they may be in a position to pay the entire debt, however, subsequently no such assurance could be given by him after taking instruction from the petitioners. It is also stated that Rs. 5,00,000/- (Five Lacs) were already deposited by them. Two orders of learned Company Judge have been produced at the time of hearing dated 18.12.2014 and 23.04.2015 passed in Company Petition No. 17 of 2004.

Vide order dated 18.12.2014, learned Company Judge, considering all the aspects and on assurance given by the counsel for the Directors of the Ex-management, namely, Ishwar Chand Choudhary, Bishnu Chand Choudhary and Trilok Nath Choudhary that entire dues of Rs. 13,00,000/- (Thirteen Lakhs) of the Official Liquidator and rest of Rs. 14,00,000/- (Fourteen Lakhs) payable to the petitioner company will be paid on or before 15th March, 2015. It has also been noticed that the above named Directors were required to produce bank draft of Rs. 13,00,000/- (Thirteen Lacs) in the name of official liquidator on or before 8th January, 2015 and another bank draft of the remaining amount of Rs. 14,00,000/- (Fourteen Lacs) in the name of the petitioner company on or before 15th March, 2015. However, it was also recorded in the order that non-payment of aforementioned amount by the above named three Directors would not only lead to rejection of their prayer of rehabilitation of the company under liquidation but its three Directors would be held guilty of committing contempt of this Court in view of violation of their undertaking given before the Court. In the order dated 23.04.2015, it has been noticed that three Directors named above having taken this Court to ride for some time, were liable for some exemplary punishment, however, in the facts and circumstances of the case, non-depositing the amount despite repeated undertaking given by them was condoned and they were warned to remain vigilant. Finally, in the facts and circumstances of the case, the official liquidator was directed to publish sale notice in two newspapers. This order was under challenge in the Company Appeal (D.B.) No. 10 of 2015.

It appears that in the company appeal also on 30.06.2015, the Division Bench granted indulgence to the appellant Directors and stayed the order on condition that the petitioner would deposit a sum of Rs. 5,00,000/- (Five Lacs) to the credit of the Company Administration within two weeks. The said amount was not paid. However, again the time was extended by order 06.08.2015 and the appellant claims that the said amount was paid. However, when the matter was taken up on 19.12.2016, none had appeared on behalf of the appellant Directors and the Division Bench, which was in seisin of the matter, passed the order after noticing the submission made on behalf of the official liquidator that the order on winding up petition was passed on 31st July, 2009 already and a provisional liquidator was appointed. The Official Liquidator has taken over the assets of the company in liquidation but the officers in charge of the company defaulted in submitting the statement of affairs though the same was filed retrospectively. The officers in charge of the company now in liquidation have also not paid the dues of the security services etc. The Division Bench also considered that the learned Company Judge has also noticed that the appellant Directors were not serious regarding rehabilitation of company and in absence of any positive steps of rehabilitation of the company there was no other option than to sell the assets of the company in liquidation and, accordingly, the appeal was dismissed finding that the same does not warrant any interference.

Learned counsel for the petitioner Directors tried to take up the entire matter afresh so that we could start hearing the matter de novo in review matter.

Having regards to the fact that the review has very limited scope, however, on undertaking of the learned counsel that Directors may now be able to pay the entire dues, he was directed to seek instruction and give firm date on which the same could be paid, however, no firm assurance could be given by the learned counsel even after consultation with the petitioners.

Thus, in our view, this Civil Review petition does not have any merit and the judgment under review does not warrant any interference.

In the result, this Civil Review is dismissed.

(Dr. Ravi Ranjan, J)

(Dinesh Kumar Singh, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2017
Transmission Date	NA