

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.707 of 2021
In
Civil Writ Jurisdiction Case No.5628 of 2020

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1. The Patna Municipal Corporation represented through the Municipal Commissioner, Maurya Lok Complex, Buddha Marg, Bihar, Patna- 800001.
 2. The Chief Municipal Engineer, Patna Municipal Corporation, Maurya Lok Complex, Buddha Marg, Bihar, Patna- 800001.

... .. Appellant/s

Versus

1. M/s Ensol Multiclean Equipments Private Limited having its registered office at 401, Nellkanth, Opp. Shankar Bhawan, Bhawani Singh Road, Jaipur- 302001 represented through its Managing Director, namely, Arun Sharma, Gender-male, aged about 47 years, Son of Laxmi Shankar Sharm, Resident of Flat no.1141, 11th Floor, Block no. 11, Rangoli Garden, Maharana Pratap Marg, Kanakpura, Panchyawla, Jaipur, Rajasthan- 302034.
2. The State of Bihar represented through the Chief Secretary, Government of Bihar, Secretariat, Patna.
3. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prasoona Sinha
For the Respondent/s : Mr. Shankar Kumar

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

4 15-12-2022

Re: **Interlocutory Application No. 01/ 2022**

The present Interlocutory Application has been filed for condoning the delay of 1 year and 177 days in preferring the present memo of appeal.

For the reasons stated in the Interlocutory



Application, the delay in preferring the appeal is condoned.

The Interlocutory Application No. 01/2022 is allowed.

L.P.A. No. 707/2021

Heard Mr. Prasoon Sinha, the learned Advocate for the appellant and Mr. Shankar Kumar, the learned counsel for the State.

The writ petitioner, who has been impleaded in the present appeal as respondent no. 1, has also appeared *suo motu*.

By order dated 27.05.2020, the learned Single Judge in C.W.J.C. No. 5628 of 2020 noted that the respondent no. 1/ writ petitioner had supplied six numbers of truck Mounted Suction-cum-Jetting Machine of 4000 litres capacity and six numbers of truck Mounted Super Sucker Machine along with two Dump Tanks to the appellant / Patna Municipal Corporation, regardless of the fact that such purchases were beyond the approved D.P.R.

It is the contention of the appellant that this was done to address water logging at war footing.



The learned Single Judge has also observed that a supplementary D.P.R. suggesting the need of such purchase was also formulated / prepared and communicated to the Urban Development and Housing Department, Govt. of Bihar, which had to release the funds after ratifying the supplementary D.P.R.

The Bench, on coming to the conclusion that the machinery was supplied by the respondent no. 1 to the appellant, the appellant was required to make payment of the same without any delay and the appellant was also obligated to pay interest on the delayed payment as per Gem Rules.

In that context, the learned Single Judge has observed that if payment is not made within one month from the date of passing of the order, 10% interest on the amount so payable shall be saddled on the Commissioner of Patna Municipal Corporation in his individual/personal capacity.

Mr. Prasoon Sinha, the learned Advocate for the appellant / Patna Municipal Corporation submits that in



anticipation of the approval of the supplementary D.P.R., those purchases were made and the machinery was put to effective use. Since no ratification of the supplementary D.P.R. was made for a long time, the Corporation was almost forced to make payments as otherwise it would have incurred litigation for accepting machinery without making payments to the supplier.

As on date, all payments have been made, though belatedly.

Sadly, the appellant argues that even today, the Corporation has not been indemnified by the Urban and Housing Department, Govt. of Bihar. In that event and also taking into account that the respondent / supplier does not press for any interest on the belated payment after one month and few days, such direction viz. the payment of interest in the order impugned be waived.

That the appellant has not been indemnified by the Urban and Housing Department, is an internal matter for which there is no appeal before us. The appellant has only prayed for waiving of the requirement of giving 10%



interest on belated payment in the personal capacity of the Commissioner of the Corporation in view of the fact that the entire payment has been made out of the kitty of Patna Municipal Corporation and the respondent no. 1/ supplier is absolutely satisfied with such payment.

Keeping the afore-noted submissions in mind, we modify the order dated 27.05.2020 to the extent that the appellant and the Commissioner of the Corporation would not be under any obligation to pay interest on the belated payments.

The appeal stands allowed accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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