IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2804 of 2019

Arising Out of PS. Case No.-64 Year-2011 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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1. Arun Kumar Agarwala S/o Ram Niwas Agarwala
2. Binod Kumar Agarwala S/o Bishwanath Agarwala
3. Shiv kumar Agarwala S/o Bhagwan Das Agarwala

All Directors of Company namely Satyam Ferro Tech Limited Liquidated now Merged in Shivam Iron And Steel Company Ltd. Having it's registered at 20 B, Abdul Hamid Street, 7th Floor, Kolkata, West Bengal.-700069.

... ... Petitioner/s

Versus

THE UNION OF INDIA Through the Registrar of Companies Bihar and Jharkhand having its office at Maurya Lok Complex, 4th floor, A Block, Dak Bunglow Road, Patna. - 800001

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.
Mr. Atal Bihari Pandey, Adv.
Mr. Alok Kumar Jha, Adv.
Mr. Mukund Kumar, Adv.

For the Opposite Party/s : Mr. A.B. Mathur, Adv.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 27-09-2023

Heard learned counsel for the petitioners and learned counsel appearing for the Union of India.

2. The present application has been filed seeking quashing of the order dated 27.04.2011 in Complaint Case No. 64(C) of 2011 passed by the learned Special Court, Economic Offences, Patna whereby cognizance has been taken of the offences under Sections 220 (3) and 162(1) of the Companies

Act, 1956 against the petitioners.

3. Learned counsel for the petitioners submits that from submissions made hereinafter, it would manifest that the said complaint case was instituted maliciously by the Registrar of the Companies. It is next submitted that the Registrar despite being aware of the entire fact that the Company in question had already merged with another Company which had sanction of the Hon'ble Jharkhand High Court, still proceeded to institute the present complaint. It is further submitted that opposite party filed a complaint against the petitioners before the learned Special Court, Economic Offences, Patna under Sections 220(3) and 162(1) of the Companies Act, 1956, alleging therein that the petitioners have not filed the balance sheet and profit and loss account of the Company for the year 2009-2010 before the office of the Registrar of the Companies, Bihar and Jharkhand, Patna. It is also submitted that in pursuance of the aforesaid complaint, cognizance came to be taken. It is next submitted that the Company in question in the present complaint is M/s Satyam Ferro Tech Limited bearing Registration No. 03-9902 having its registered office at Giridih, Jharkhand. It is further submitted that petitioners are also Directors of one another Company, namely, Shivam Iron and Steel Company Limited

having its registered office at Kolkata, West Bengal. It is further submitted that the accused Company was not operative for last several years and thus the petitioners felt the need of merging the accused Company with the Company, namely, Shivam Iron and Steel Company Limited. It is further submitted that after observing all the formalities a company petition under the Companies Act, 1956 being Company Petition No. 03 of 2008 was filed before the Hon'ble Jharkhand High Court at Ranchi under Sections 391(1) and 394 of the Companies Act, 1956. It is next submitted that the complainant was also furnished a copy of the said Company petition filed before the Hon'ble Jharkhand High Court in connection with amalgamation of the accused Company with Shivam Iron and Steel Company Limited vide letter dated 05.02.2009, as would be evident from Annexure-2 to this application. It is also submitted that the complainant also gave his no objection to the dissolution of the accused Company in course of its merger with Shivam Iron and Steel Company Limited, thereafter, the Hon'ble Jharkhand High Court vide order dated 28.08.2009 allowed the Company Petition No. 03 of 2008 and sanctioned the scheme of merger w.e.f. 01.04.2007.

4. Learned counsel for the petitioners submits that in view of the facts recorded hereinabove it becomes clear that

the complaint petition itself was baseless and misconceived for the reason that the accused Company had the sanction of the Hon'ble Jharkhand High Court to be merged with Shivam Iron and Steel Company Limited after no objection was given by the complainant, further, the order by the Hon'ble Jharkhand High Court dated 28.08.2009 was also passed in presence of the complainant.

5. Learned counsel for the petitioners submits that Section 581 ZN(11) of the Companies Act provides that once the assets and liabilities of a company are transferred in accordance with the provisions of sub-section (9) or where there is merger under sub-section (2) of the registration of the merging company would stand cancelled and that the company shall be deemed to have been dissolved and cease to exist forthwith, as such, what is not disputed rather stands admitted is that the accused Company cease to exist from the date of the order dated 28.08.2009 passed by the Hon'ble Jharkhand High Court in Company Petition No. 03 of 2008 and the merger was approved w.e.f. 01.04.2007, as such, the actual effect of such order would be the cessation of the existence of the accused Company w.e.f. 01.04.2007 itself as such there was absolutely no obligation on part of the Director of the accused Company to

file annual return, balance sheet and profit and loss account with the opposite party i.e. the complainant for the financial year ending on 31.03.2010.

6. Learned counsel for the petitioners further submits that the complainant had also issued notice dated 11.03.2010 upon the petitioners seeking explanation regarding non-compliance of the requirements of Sections 159, 160, 166, 210 and 220 (3) of the Companies Act, 1956. The said notice was responded by the petitioner by letter dated 13.03.2010 (Annexure-4 to this application) wherein it was made clear that in pursuance of the order dated 28.08.2009 the accused Company had already merged with the aforesaid Company w.e.f. 01.04.2007 and accordingly, a declaration to that effect was already filed vide Form No. 21 on 23.09.2009. It was also made clear that on account of merger the balance sheet and profit and loss account for the year ending 31.03.2009 also stood merged and was, accordingly, filed in the office of the complainant but the complainant took no steps against the petitioners for the financial year ending 31.03.2009 i.e. financial year 2008-09.

7. Learned counsel for the petitioners further submits that Shivam Iron and Steel Company Limited for the

financial year ending on 31.03.2010 has already filed the annual returns, balance sheet and profit and loss account after the accused Company merged with the aforesaid Company. Learned counsel for the petitioner thus submits that the complaint itself was misconceived and the cognizance came to be taken in a mechanical manner.

8. Learned counsel appearing for the Union of India is not in a position to rebut the factual submissions made by the learned counsel for the petitioners.

9. In view of the submissions recorded hereinabove and the fact that the accused Company had already merged with Shivam Iron and Steel Company Limited as aforesaid and thus ceased to exist w.e.f. 01.04.2007 or at least from the date of order of the Hon'ble Jharkhand High Court in Company Petition No. 03 of 2008, there was absolutely no liability of the accused Company to file its return in terms of Section 220 (3) of the Companies Act, 1956. Thus, the order dated 27.04.2011 in Complaint Case No. 64(C) of 2011 passed by the learned Special Court, Economic Offences, Patna whereby cognizance has been taken of the offences under Sections 220 and 162(1) of the Companies Act, 1956 against the petitioners is hereby quashed.

10. Accordingly, this application is allowed.

(Satyavrat Verma, J)

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AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	27.09.2023
Transmission Date	27.09.2023