

IN THE HIGH COURT OF JUDICATURE AT PATNA
Or. Criminal Miscellaneous No.5 of 2010

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OFFICIAL LIQUIDATOR OF M/S JAISWAL ENGINEERING WORKS
PVT.LTD Maurya Lok Comlex, A-Block, 4th Floor, Dak Bangalow Road,
Patna, (Bihar)

... .. Petitioner/s

Versus

1. Sri Ishwar Chand Choudhary S/o Sri Omkar Nath Choudhary R/o- 31-C, 1st Phase Industrial Area, Adityapur, East Singhbhum, Jamshedpur (Jharkhand)
2. Sri Bishnu Chand Choudhary S/o Sri Omkar Nath Choudhary R/o- 31-C, 1st Phase Industrial Area, Adityapur, East Singhbhum, Jamshedpur (Jharkhand)
3. Sri Trilok Nath Choudhary S/o Sri Omkar Nath Choudhary R/o- 31-C, 1st Phase Industrial Area, Adityapur, East Singhbhum, Jamshedpur (Jharkhand)

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Aggarwal, Adv.
For the Opposite Party/s : Mr. Vaibhav Veer Shankar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

75 23-02-2023

1. This is a complaint application filed for seeking prosecution against two accused persons in terms of Section 454 (5) of the Companies Act, 1956.

2. Notices were issued and charges were framed on 25.11.2010 and the accused persons were put on trial. Their application under Section 205 of Cr.P.C. had been allowed on 09.09.2010. Thus, they are exempted from their personal attendance in the Court. Evidences were recorded and cross-examination of P.W. 1 & D.W. 1 to D.W. 4 were also done.

3. Ishwar Chandra Choudhary, D.W. 1 has stated that he had not received any notice from the office of Official



liquidator nor he is called by the O.L. for giving any information or documents. In addition to that he does used to reside in the administrative block of the company office which the official liquidator sealed in February 2010. He stated that Sri Bishnu Chandra Choudhary, DW 4 is looking after the affairs of the company. He only knows about the winding of order when police was searching him for arrest in light of the warrant issued against him by the Hon'ble Court.

4. As regards D.W. 2 namely, Triloknath Choudhary has stated that his father Onkar Nath Choudhary is the M.D. of the company and the actual work of the company affair is dealt by his elder brother namely, Bishnu Chandra Choudhary. He further stated that he was separated from other family members in 2000 and was carrying his own business and merely a dummy Director of the said company under liquidation and he has not filed the statement of affairs till the date of recording of his statement.

5. D.W.3 namely, Onkar Nath Choudhary stated in his cross-examination that he did not receive any notice from the O.L. with regard to on going proceedings against the company in this Court. Although, he know that statement of affairs is used to be filed after the winding up of order. But, after the closure of



the company in 1994 they had become disturbed and therefore, could not take any steps in this regard.

6. D.W. 4 namely, Bishnu Chandra Choudhary stated in his cross-examination that he also did not receive any notice from the O.L. until the company was closed and subsequently received the information. At that very time, he was one of the director of the company and use to deal with the company's affairs. He further stated the registered office of the company was earlier at Patna and subsequently it was shifted to Jamshedpur. After the company was closed, the affairs of the company was in hotchpotch and thus, they could not inform the Registrar of Companies.

7. After perusal of the record, it is clear that all the Directors have enough knowledge about the winding up procedure running in this Court but they are taking merely fictitious excuses for not filing the statement of affairs within stipulated period of three months.

8. Learned counsel appearing for the O.L. submits that there was a delay of seven years in filing the statement of affairs. The **Section 454 (5) of the Companies Act, 1956** reads as under:

“(5) If any person, without reasonable excuse, makes default in complying with any of the



requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both.”

9. Be that as it may, considering above facts, it is in the provision of law and this Court deems it appropriate to close the case as against all the Directors since, the company has gone into liquidation long before and since the statement of affairs has already been produced before the O.L.

10. Accordingly, they are fined for submitting statement of affairs belatedly by a sum of Rs. 50,000/- (Fifty Thousand only) jointly and severely. The amount shall be deposited with the O.L. within period of one month from today. If the penalty is not deposited, all the respondent/accused shall undergo imprisonment for a term of three months.

11. Accordingly, the Original Criminal Miscellaneous No. 5/2010 is disposed of and is consigned to Records.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 87



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