IN THE HIGH COURT OF JUDICATURE AT PATNA
Or. Criminal Miscellaneous No.2 of 2014
In
COMPANY PETITION No.17 of 1999

Arising Out of PS. Case No.- Year-0 Thana- District-

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Official Liquidator Of Helios Finance And Investment Limited

... ... Petitioner/s

Versus

1. Sanjay Kumar Singh and Ors. Son Of Surendra Nath Singh @ Ram Naresh Singh, Ex-Chairman-Cum-Managing Director Of M/S Helios Finance And Investment Ltd. In Liquidation, Hathsarganj, Bangmal, Hajipur, District-Vaishali. Another Address-Helios Bhagwan, Station Road, Patna-800001, State Of Bihar.
2. Anjani Kumar,Siba Sadan, Indrapuri, Patna-800023, State Of Bihar.
3. Rakesh Kumar, Arti Press, Mainpura, Patna, State Of Bihar.
4. Satyendra Singh R/O Adalbai Near I.T.I, Budha Colony, Hazipur, District-Vaishali, State Of Bihar.
5. Sailendra Singh Helios Bhawan, Station Road, Patns State Of Bihar.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Official Liquidator High Court Patna
For the Opposite Party/s : Mr. Rudrank Shivam Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

60 19-01-2023 1. This is an application filed for initiating proceedings under 454 (5) & 5A of the Companies Act, 1956 read with Rule 124 and 127 with the Company (Courts) Rules, 1959 by the O.L. to take action against the then Directors of the Company. The O.L. submits that the company was directed to be wound up by this Court vide order dated 21.12.2006 in Company Petition No. 17/99. The O.L. was appointed as the liquidator of the company whereafter, within 21 days as the mandatory provision of Section 454 (3), the accused who were the Directors of the company in liquidation were obliged to submit their statement

of affairs and they have not submitted statement of affairs for a long time. The present application was filed for initiating the criminal proceedings. During the pendency of the proceedings accused no. 2 expired. While proceedings were dropped against accused no. 4 & 5. It is submitted that accused no. 3 is absconding and all possible steps have been taken to secure his presence but to no avail. It is also informed that the statement of affairs has been now filed in the correct format in 2015 after the filing of the present petition.

2. Per contra, learned senior counsel appearing for the accused no. 1 submitted that the Reserve Bank of India had passed an order against the company and the entire office of the company was taken possession of by the R.B.I. and put under lock and key in April 1998. Petition was also filed by the R.B.I. seeking up winding up of the company vide order dated 08.10.1999, the Court directed the official liquidator to act as provisional liquidator of the company and to take steps or possession of the assets of the company. And in accordance with thereto, possession of the head office of the company was taken under possession by the liquidator.

3. As the accused had no access to the official records of the company, it could not submit the statement of affairs

however, neither R.B.I. nor the liquidator cooperated or provided access to the office of the company and therefore, statement of affairs could not be filed. However, the payment proposal plan was also submitted before this Court. The documents were allowed to be inspected and copies were placed on record under supervision of O.L. on 12th February 2004, and the accused submitted a detailed affidavit giving details of the assets and liabilities of the company to the Court with a copy to the O.L.. The winding up of the company was directed on 21st December 2006 and again the official liquidator sent a notice on 2nd February 2007 for filing the statement of affairs, ignoring the earlier statement of affairs given by the accused in May 2004. It is further stated that on 08.10.2007, the accused presented himself before the O.L. and also gave all the information relating to the company in terms of the notice given to him under Rule 130 of the Company (Court) Rule, 1959. The O.L. was not accepting the earlier statements and wanted the same to be in the proper format which was supplied to him on 29th July 2015.

4. The learned O.L. does not deny the fact regarding having received the statement of affairs in 2015. Having noticed above, question arises whether there has been a delay in submitting of

statement of affairs by the accused and if so whether it is due to reasonable cause? This Court finds that the concept of filing of statement of affairs in terms of 454 (3) of the Act of 1956, is essentially to make available the entire details relating to the company so that the O.L. may be able to know about the entire assets and dealings of the company and also take all further steps with regard to the recovery of debts and disposal of liabilities of the company and also for the purpose of deciding and adjudicating the claims. The Ex-Directors are supposed to help and provide all the information which they have knowledge relating to the company which has been directed to be wound up. The provision for punishment in terms of Criminal Law as provided under 454 (5) and 5A of the Act of 1956, is to make them Directors sensitive to the essential requirement of filing of the Statement of affairs in a timely manner. The delay in filing of statement of affairs can be condoned if there is reasonable and plausible explanation coming from the concerned Director.

5. In the present case, this Court finds that in 2004, even before the company was directed to be wound up, the statement of affairs, of course not in the exact form, were made available to the provisional liquidator. A scheme was also proposed by the

Ex-Director for meeting out the debts of the company. Thus, it cannot be said that the liquidator was not having sufficient information relating to the company's affairs. This Court however, notices that the statement of affairs which was required to be filed in the correct format remained to be filed till July 2015 and there has been some material delay in filing the same. It has also taken note of that so far as the accused no. 1 is concerned, he was prevented from filing the same as he remained in judicial custody for a period from June 2005 to August 2007. Thus, up to August 2007, there was no occasion for him to file the statement of affairs. Whereafter, he has been cooperating and presented himself before the O.L. and submitted his statement in terms of Rule 130 of the Rules of 1959.

6. Having noticed all these aforesaid aspects, this court is satisfied that the delay is reasonably explained, so far as accused no. 1 is concerned and in view thereof, the *a quietus* may be now given to these proceedings and accordingly the proceedings are dropped and the matter is closed.

7. Since the statement of affairs has already been filed, the notices issued and bailable warrants are discharged.

8. Accordingly, Original Criminal Miscellaneous No. 2/2014

is disposed of and consigned to Records.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 94
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