

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55076 of 2016

Arising Out of PS. Case No.-3372 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Ishwari Prasad Tantia son of Late Gobardhan Prasad Tantia, Chairman and Managing Director, Tantia Construction Limited, resident of 96, Narkeldanga Main Road, Kolkata- 700054
 2. Rahul Tantia, son of Ishwari Prasad Tantia, Director, Tantia Constructions Limited, resident of 96, Narkeldanga Main Road, Kolkata- 700054.

... .. Petitioner/s

Versus

1. The State of Bihar
2. M/s Singh Nirman Pvt. Ltd. represented through B.K. Singh @ Babloo Kumar Singh, Managing Director, resident of House No. L- 220, 2nd Floor, Dumraon Palace, Fraser Road, P.S.- Kotwali, District- Patna, Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Praful Chandra Jha, Advocate Mr. Avinash Chandra, Advocate Mr. Sarvottam Anand, Advocate
For the O.P. No.2	:	Mr. Krishna Prasad Singh, Sr. Advocate Ms. Shakshi Deep, Advocate Mr. Mithilesh Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 12-12-2024 Heard Mr. Praful Chandra Jha, learned counsel appearing for the Petitioners, Mr. Krishna Prasad Singh, learned senior counsel for the informant and Mr. Jharkhandi Upadhyay, learned APP for the State.

2. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 28.01.2016 passed by the court of learned Judicial Magistrate 1st Class, Patna in Complaint



Case No. 3372 (C) of 2015 by which the cognizance of the offence under section 406 read with section 34 of the Indian Penal Code (in short 'IPC') has been taken against the petitioners.

3. Mr. Praful Chandra Jha, learned counsel appearing for the petitioners has mainly taken the grounds to quash the order impugned that from the facts and allegations made in the complaint filed by the O.P. No.2, no criminal offence even from the face of the allegation is made out against the petitioners as admittedly, there was business relation between the petitioners' company namely, M/s Tantia Constructions Limited and the company namely, M/s Singh Nirman Pvt. Ltd. (O.P. No.2), represented by its Managing Director, B.K. Singh @ Babloo Kumar Singh and as per allegation, a sum of Rs. 2,80,00,000/- was dues on the part of the petitioners' company with regard to raw materials such as stone chips, stone dust etc. which had been supplied by the company of O.P. No.2 in respect of the road construction work and further, on the application filed by the State Bank of India, one of the creditors to the petitioners' company, the Corporate Insolvency Resolution Process (in short 'CIRP') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'Insolvency Code') has been



initiated against the petitioners' company in which the company of O.P. No.2, M/s Singh Nirman Pvt. Ltd. has been made as one of the corporate debtors and the said resolution process is still subjudice before the National Company Law Tribunal, Kolkata Bench, Kolkata (in short 'NCLT Kolkata'). As per learned counsel appearing for the petitioners, vide order dated 13.03.2019 NCLT Kolkata has admitted the claim of the financial creditors including the petitioners and thereafter, on 18.03.2019, a Public Announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India Regulation, 2016 was published and the claims of the creditors of Tania Constructions Ltd. were invited and the O.P. No.2 raised its claim of Rs. 2,98,02,473/- on 25.04.2019 through Form-B (Annexure-P/12) against which the NCLT Kolkata approved the claim of the O.P. No.2 to the extent of Rs. 2,10,93,780/- (Annexure-P/13) and on 24.02.2020, NCLT Kolkata approved the resolution plan, Annexure-P/14 and thereafter, part payment of Rs. 6,49,346/- has been made vide Cheque No. 231739 dated 16.06.2023 in the bank account of O.P. No.2 and in this regard, Annexure-P/16 is relevant and it is important to mention that during CIRP period, O.P. No.2 filed its claim and the same was accepted to the tune of Rs. 2,10,93,780/- by the resolution



professional and thereafter, the O.P. No.2 has been classified as an operational creditor and the management of petitioners' company has been handed over to the new management on 17.06.2023 and as such in view of the provision of section 32-A of the Insolvency Code, 2016, the liability of the petitioners or its company M/s Tania Constructions Limited for an offence allegedly committed prior to the commencement of the Corporate Insolvency Resolution Process (CIRP) shall cease and the corporate debtors (petitioners) shall not be prosecuted for such offence from the date when the resolution plan has been approved by the adjudicating authority under section 31 of the Insolvency Code, 2016.

4. Though Mr. Krishna Prasad Singh, learned Senior Counsel appearing for the O.P. No.2 has opposed this petition but remained unable to rebut the ground of the petitioners taken by them in view of the provisions of section 32-A of the Insolvency Code, 2016 and has also not brought any material to show the dishonest intention being present on the part of the petitioners or their company from the beginning of the business transaction which was admittedly running in between the petitioners' company and the O.P. No.2.

5. Heard both the sides and perused the order



impugned, complaint filed by the O.P. No.2 against the petitioners and other relevant materials. This Court finds substance in the aforesaid grounds taken by the petitioners as admittedly there was business relation between the petitioners' company and O.P. No.2 with regard to the supply of raw materials for the construction of road etc. and there is no allegation by the O.P. No.2 that the petitioners had been deceiving the O.P. No.2 from the very beginning of the business transaction and as per the averments made in the complaint of O.P. No.2, the dispute arose in between them when the dues amount of Rs. 2,98,02,473/- was not paid by the petitioners' company and such dispute is purely of civil nature and does not attract the main ingredients of section 406 of IPC and from the face of allegation, the offence of the said Section is not made out and further, it is an admitted position that a Corporate Insolvency Resolution Process (CIRP) under section 7 of the Insolvency Code has been initiated against the petitioners' company by the NCLT Kolkata and the same is still subjudice and after the Public Announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India, Regulation 2016 (IBBI), the O.P. No. 2 raised its claim of Rs. 2,98,02,473/- through Form-B (Annexure-P/12 of the Supplementary



Affidavit) filed by the petitioners against which, the NCLT Kolkata approved the claim of the O.P. No.2 to the extent of Rs. 2,10,93,780/- and the same was informed to the O.P. No.2 through e-mail dated 02.07.2019 (Annexure-P/13) and it is an admitted position that the O.P. No.2 is one of the corporate creditors in the Corporate Insolvency Regulation Process which is running against the company of the petitioners and further, it is also an admitted position that some part payment of Rs. 6,49,346/- against the approved claim of the O.P. No.2 has been made in the bank account of the O.P. No.2 vide Annexure-P/16 and these facts are sufficient to bring the criminal proceeding initiated against the petitioners on the basis of complaint filed by the O.P. No.2 under the purview of sub-section (1) of section 32-A of the Insolvency Code, 2016 which has the clear provision as to the cessation of all the criminal proceeding in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process (CIRP) and the provision is as follows:

“ Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate



debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not -

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the



commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.”

6. Accordingly, in view of the aforesaid provision of Section 32-A of the Insolvency Code, 2016, the petitioners cannot be subjected to a criminal proceeding during the pendency of the Corporate Insolvency Resolution Process (CIRP) which is still pending against the petitioners' company and further, from the face of allegation, no criminal offence under section 406 of the IPC is made out and the learned Magistrate has taken cognizance of the said offence in mechanical manner and subjecting the petitioners to trial for the said offence will be the abuse of the process of Court, hence, the order impugned is hereby set aside and the instant Criminal Miscellaneous Petition stands allowed.

(Shailendra Singh, J)

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