IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14131 of 2021

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Patliputra Builders Ltd. a company incorporated under the Companies Act, 1956 having its office at Flat No. 301, Maharaja Kameshwar Complex, Fraser Road, Patna through its Director, Niranjan Kumar (Male) (aged about 45 years) Son of Late Yadu Nandan Singh, resident of Manas Path, Patel Nagar, Phulwari, P.S. Shastri Nagar, District - Patna.

... ... Petitioner/s

Versus

1. Income Tax Settlement Commission through its Secretary having its office at Additional Bench, 10-C Middleton Row, Second Floor, Kolkata - 700001.
2. Commissioner of Income Tax X
3. Asst. Commissioner of Income Tax, Central Circle 2, Patna.
4. Tax Recovery Officer, Central, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate Mr.Sadashiv Tiwary, Advocate
For the Income Tax	:	Mrs.Archana Sinha, Sr. Standing Counsel Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-01-2024

The petitioner is before this Court challenging the withdrawal of immunity as granted by the Settlement Commission by Annexure-1 order. Annexure-1 order runs into several pages, but there is no dispute on the quantum of the amounts determined by the Settlement Commission for the purpose of concluding the matter. The quantum was Rs. 2,72,40,648 and the dispute raised is on its satisfaction.

2. In considering the immunity granted by the

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Settlement Commission, we have to extract Paragraph 95 and 96 of the order.

> 95. ***IMMUNITY:*** *The applicant group has made a prayer for granting immunity from penalty and prosecution under the Income Tax Act. Considering the cooperation extended and the facts of the case, we allow the prayer of the applicant for immunity from penalty and prosecution under the Income Tax Act only, so far as the same relate to issues dealt with in this order of settlement.*
>
> *95.1* ***Prosecution:*** *However, in our view, any prosecution launched prior to the date of filing of application will subsist, and such proceedings would continue. Prosecution had been launched against the applicant(s) for not complying with the directions under Section 142(2A) before filing these applications would subsist in the case of the applicant(s).*
>
> *96.* ***PAYMENT OF TAXES*:** *The computation of income, tax and interest as per Annexures enclosed. The applicants PBL and Shri Anil Kumar would have substantial tax liabilities. The learned A.R. sought payment of taxes in eighteen installments in all cases. Considering the facts and the demand likely to arise, we grant installments in the case of M/s PBL, M/s patliputra Hytech Pvt. Ltd. and Shri Anil Kumar only. These three applicants shall pay 25% of their demand by 15th March, 2016. The balance 75% would be paid in equal monthly installments in F.Yr. 2016-17.*
>
> *96.1 Credit for adjustment of seized cash in the case of PBL shall be allowed from the date of seizure. As we have adjusted income year-wise, and also from one from one applicant to another while determining the*

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income, the surplus tax paid in any year may be adjusted with another year. Similarly, any refund due in the case of an applicant, shall be adjusted against the demand payable in the case of another applicant.

3. The immunity, hence was extended on the applicants paying up the amounts as directed therein i.e., 25% of the demand by 15.03.2016 and the balance 75% in equal monthly installments to be paid in Financial Year 2016-17. Admittedly, the petitioner did not pay up the amounts within the period provided in the order. The department approached the Principal Commissioner, Income Tax, Central for withdrawal of the immunity from penalty and prosecution. The Principal Commissioner, Income Tax, Central approached the Government of India which allowed the same as per communication dated 17/18.01.2018. There was an appeal filed from the said order which also stood dismissed.

4. The present writ petition was filed challenging the withdrawal of immunity on the ground that the petitioner was not heard. We find that the communication of the Government of India only permitted further proceedings and it cannot be considered to be an order of withdrawal of immunity. The immunity was granted by the Settlement Commission and was subject to the condition of payment being satisfied. The

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Central Government cannot withdraw the immunity granted by the Settlement Commission, if the conditions are satisfied. But, on the other hand if the conditions are not satisfied within the time period, the immunity would automatically cease to operate. The order of the Central government hence only directs proceedings on the cessation of immunity. The hearing of the petitioner is an empty formality because the petitioner does not have a case that he even paid one pie as per the settlement order.

5. The immunity granted was on condition of the petitioner satisfying the Settlement Commission's order which also prescribed specific time frame for payment. The Settlement Commission's order works itself out if the payment is not made in accordance with the directions therein and automatically, the immunity stands withdrawn. We find absolutely no reason to interfere with the order.

6. Now, the learned counsel specifically takes us to an order passed by this Court at the time of admission by a different Division Bench, on 25.08.2021. After referring to the submission made by the learned counsel for the Department that there was default in compliance of the Settlement Commission's order based on which the immunity ceased; the learned Judges opined that still the revenue is at fault for not having taken

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appropriate proceedings. The Division Bench issued directions, on the specific undertaking given by the learned counsel for the petitioner, which we extract from Paragraph 4, 5, 6 and 7 of the said order:

> *At this stage, Shri D.V. Pathy, learned counsel for the petitioner, states that to establish his bona fides, the petitioner is ready and willing to deposit the remaining amount of Rs.2,72,40,648/- within a period of two months from today.*
>
> *Statement accepted and taken on record.*
>
> *Let the petitioner deposit the aforesaid amount within the aforesaid period. At least Rupees One Crore, out of the said amount, he must deposit on or before 09.09.2021.*
>
> *At this stage, Ms. Archana Sinha states that the department would be at liberty to claim interest on delayed payment.*

7. Learned counsel takes us to the supplementary counter affidavit to point out that Rs. One crore was paid within the period provided in the interim order and the balance amounts also settled. Though Rs. One crore was paid within 09.09.2021, the petitioner failed to comply with the undertaking that the entire amounts would be paid within two months from the date of the order above extracted, which should have been on or before 25.08.2021. The payments as seen from Annexure-5 series produced by the petitioner in the supplementary counter

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affidavit are far later to that. Hence, just as the Settlement Commission's order worked itself out, the interim order of this Court also worked itself out.

8. The learned Standing Counsel for the respondent department also pointed out from the counter affidavit that the delay would create the liability of interest, interest on interest and penalty also, which has been tabulated in the counter affidavit dated 24.04.2023 filed by the department. We would only say that the statutory consequences follow.

9. It is submitted by the learned counsel appearing for the department that the quantum as submitted by the petitioner is also not the actual amounts made liable on delayed payment.

10. We agree with the learned counsel for the respondent that the interim order passed by another Division Bench, was only on the petitioner's submission that the amounts to be paid are Rs. 2,72,40,648/-. It is also pertinent that even the undertaking as seen from the interim order has not been complied with. We also have our own reservation as to whether by a judicial order, the necessary consequences of an order of the Settlement Commission, on non-compliance, can be set at naught by this Court. However, we need not look into that

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aspect since even according to the petitioner he has not complied with the interim order.

11. The order of the Settlement Commission and the interim order of this Court has worked itself out; both, on non-compliance of the conditions of payment, by the petitioner. The consequences with respect to immunity having been set at naught, would be visited on the petitioner. The Settlement Commission’s order would not be enforceable, but we made it clear that the delayed payments made would be set-off against the demands raised against the petitioner either interest or principle due, as the statute mandates.

12. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2024
Transmission Date	

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