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(2011) 03 JH CK 0038

Jharkhand High Court

Case No: Writ Petition (C) No. 3443 of 2003

Samir Kumar Ghosh	APPELLANT
Vs	
Nalanda Ceramic and Industries Limited and Others	RESPONDENT

Date of Decision: March 8, 2011

Acts Referred:

- Bihar and Orissa Public Demands Recovery Act, 1914 - Section 7
- Companies Act, 1956 - Section 446(1)

Citation: (2011) 03 JH CK 0038

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Judgement

R.R. Prasad, J.
Heard Mr. P. Modi, learned Counsel for the Petitioner and Mr. Mr. V.P. Singh, learned Senior Counsel appearing for the Electricity Board and also Mr. Lakhan Sharma, learned Counsel appearing for the Official Liquidator.

2. Before adverting to the submission advanced today, facts of the case noted under Order 28.2.2011 of this Court, be taken notice of, which reads as under:

Learned Counsel appearing for the Petitioner submits that the Petitioner was a Director of Nalanda Ceramic & Industries Ltd. Subsequently, he ceased to be the Director w.e.f. 21.09.1981. However, he was surprised to receive a notice, issued in terms of Section 7 of the Bihar and Orissa Pubic Demand Recovery Act, wherefrom an amount of Rs. 44,76,846.18 was sought to be realized from the Petitioner though the Petitioner at the relevant point of time i.e. from January, 1986 to December, 1989, when default was made in making payment of the electricity dues, was not the Director and that before notice was issued in terms of Section 7 of the Bihar and Orissa Pubic Demand Recovery Act, certificate had been drawn in the name of the company itself Still notice was given u/s 7

to this Petitioner and, therefore, the Petitioner has moved to this Court for quashing of the said notice as contained in Memo No. 153 dated 24.04.2003 (Annexure-6).

Learned Counsel appearing for the Petitioner further submits that in the year 1984-85, the Board had entered into an agreement with the Company for supply of the Electricity of 500 KVA and on account of that, whatever amount was due against the company, that was with respect to new agreement, which the Petitioner had nothing to do with and as such the Petitioner is never liable to pay certificate amount. It was also argued that the said Company is under liquidation and an order relating to winding up of the Company has already been passed in the year 1989 and hence, the Company cannot be proceeded with the matter relating to realization of any dues on account of the provision as contained in Section 446(1) of the Companies Act without the leave of the Company Court.

3. Mr. V.P. Singh, learned Senior Counsel appearing for the Electricity Board submits that actually the Petitioner was the person who had executed a deed of agreement on behalf of the company in the year 1974 and, therefore, notice was issued in terms of Section 7 of the Bihar and Orissa Public Demand Recovery Act when nobody responded on behalf of the Company to the notice sent on several occasions and in that situation, there is no illegality if the Board is proceeding to realize the dues from this Petitioner.

4. As against this, Mr. Modi, learned Counsel appearing for the Petitioner submits that it is true that this Petitioner had entered into the agreement with the Board in the year 1974 on behalf of Company but the Petitioner had demitted the office on 21.09.1981 and thereafter Board had entered into an agreement on 12.10.1985 for supply of electricity of 500 KVA in the year 1984-85 and consequent to that agreement electric energy was supplied to the company but on account of failure on the part of the company to deposit electricity bill a Certificate Proceeding was initiated for realization a sum Rs. 44,76,846.10 and on account of all these facts fact the Petitioner is not liable to be proceeded with for realization of the said amount and as such notice issued in terms of Section 7 of the Bihar and Orissa Public Demand Recovery Act is liable to be set aside.

5. No dispute has been raised with respect to fact that the Petitioner demitted the office as Director on 21.9.1981 and also with respect to the fact that thereafter the Board had entered an agreement with the Company for supply of electricity on 12.10.1985 and further that Certificate had been drawn in the name of company and not against the Petitioner and that order relating to winding up of the company has also been passed in the year 1989 and in these situations the Petitioner cannot be proceeded with the matter relating to realization of any dues on account of factual aspect as stated above particularly when no Certificate had been drawn in the name of this Petitioner. That apart an order relating to winding up of the company has been passed in the yer 1989 and therefore, in that view of the matter any due, cannot be realized without the leave of the company Court in view of the provision as contained in Section 446(1) of the Companies Act. That being so, notice as contained in Annexure 6 is hereby quashed.

6. Before parting with the order, it is recorded that the Electricity Board would be at liberty to take recourse of law available to it for realization of the dues in accordance with law.