

(2024) 04 OHC CK 0108
In the Orissa High Court
Case No : CRLMC No. 1921 Of 2023

Sree Metaliks Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Income Tax Act, 1961 — Section 201, 221, 276B, 278AA, 278B, 279(1)
Insolvency & Bankruptcy Code, 2016 — Section 7

Citation : (2024) 04 OHC CK 0108

Hon'ble Judges : S.S. Mishra, J

Bench : Single Bench

Advocate : Sidhartha Ray, Sidharth Sankar Mohapatra, A. Kedia

Final Decision : Allowed

Judgement

S.S. Mishra, J.

1. In the present petition, the petitioners are seeking quashing of the complaint case registered as 2(c) CC Case No.09 of 2023 pending in the Court of the learned Additional Chief Judicial Magistrate (Spl.)-cum-Asst. Sessions Judge, Cuttack. The petitioners are also aggrieved by the order dated 22.02.2023 passed by the learned Additional Chief Judicial Magistrate (Spl.)-cum-Asst. Sessions Judge, Cuttack in 2(c) CC Case No.09 of 2023 whereby the learned Court below has taken cognizance of the offences under Sections-276B/278B of the Income Tax Act, 1961 (In short "The Act"). The petitioners have also assailed the order dated 05.01.2023 passed by the Commissioner of Income Tax according sanction under Section 279(1) of the Income Tax Act for prosecuting the present petitioners for the offences as mentioned above.

2. The case against the opposite parties put forth in the statutory complaint filed by the opposite party no.1 is that the petitioners have violated the provisions of Sections-276B and 278B of the Act by not depositing the TDS amount for the Financial Year 2019-20 within the statutory period prescribed under law and

delay caused by them remained unexplained.

3. It is contended by the opposite parties that although the TDS amount was deposited belatedly by paying interest for the belated period by the petitioners, still the statutory offence under Section-276B r/w Section-278B of the Act has been admittedly committed by the petitioners. Admittedly, the petitioners have delayed in depositing the amount collected on behalf of the govt. ranging from 15 days to 394 days. Since the delays are beyond one year, the competent authority has rightly accorded sanction under Section-279(1) of the Act for prosecuting the petitioners for having committed the offences U/Ss 276B r/w Section-278B of the Act.

4. Mr. Sidhartha Ray, learned Senior Counsel appearing for the petitioners, inter alia, contended that due to general sluggishness in the market price of iron ore etc , the petitioners-company suffered huge loss. Apart from that at the instance of one of the financial creditor, a proceeding under Section-7 of the Insolvency & Bankruptcy Code, 2016 was initiated against the petitioner company. The I.B. proceeding was admitted on 30.01.2017 and resolution plan of the resolution applicant was approved on 07.11.2017. After approval of the resolution plan, the company gradually started paying the debts and statutory dues on the basis of the case flows of the company. Therefore, the delay has been caused in making payment of the TDS amount to the revenue. The petitioners have also contended that due to the outbreak of COVID-19 pandemic in the month of March, 2020, they could not deposit the TDS amount for the Financial Year 2019-20. Therefore, there is no mense rea involved in the unavoidable act of the petitioner in depositing the TDS amount with the Revenue belatedly. Despite general explanation afforded by the petitioners, the opposite parties have mechanically dealt with those explanations and proceeded to file the statutory complaint against the petitioners. Hence, the petitioners seek, indulgence of this Court.

5. My Ray, learned Senior Counsel to begin with has relied upon a Circular No F No 285/90/2008-IT(Inv-I)/05 dated 24.04.2008 and contended that the benefit of the said Circular ought to have been extended to the petitioners. The relevant part of the Circular reads as under:-

"Subject:- Streamlining of procedure for identification and processing of case for prosecution under Direct Tax Laws- matter reg.-

xxx xxx xxx xxx

2. xxx xxx xxx xxx

3. Identification and processing of potential prosecution cases:

3.1 The following categories of offences shall be processed for launching prosecution:-

(i) Offences u/s 276B: Failure to pay taxes deducted at source to the credit of Central Government

Cases, where amount of tax deducted is Rs.25,000 or more, and the same is not deposited even within 12 months from the date of deduction, shall be processed for prosecution in addition to the recovery steps as may be necessary in such cases.

The authority for processing the prosecution under this section shall be the officer having jurisdiction over TDS cases. The prosecution shall preferably be launched within 60 days of such detection. If any such default is detected during search/survey, the processing ADIT/DDIT or the authorized officer shall inform the A.O having jurisdiction over TDS forthwith."

6. Mr. Ray, learned Senior Counsel to buttress his aforementioned argument, relied upon the judgment of the Jharkhand High Court in the case of Dev Multicom Pvt. Ltd. and another vs. State of Jharkhand and another reported in [2023] 454 ITR 48 (Jharkhand). The relevant portion of the said judgment reads as under:

"The amount has already been deposited with interest and there is no reason why the criminal proceeding shall proceed and the criminal proceeding was launched after receiving the said amount with interest, had it been a case that the case was immediately instituted and thereafter the tax deducted at source amount has been deposited with interest, the matter would have been different. As such the continuation of the proceedings will amount to an abuse of the process of the Court.

Accordingly, the entire criminal proceedings and the cognizance orders in their respective cases, passed by the learned Special Economic Offices, Dhanbad, in the respective C. O. cases, whereby cognizance has been taken against the petitioners for the offences under sections 276B and 278B of the Income-tax Act, pending in the court of the learned Special Judge, Economic Offences, Dhanbad, are hereby, quashed."

7. Mr. Ray, learned Senior Counsel has also relied upon the judgment of our own High Court in the case of M/s. D.N. Homes Pvt. Ltd., Khurda and another vs. Union of India passed in CRLREV No.408 of 2023, the relevant paragraphs of which reads as under:

"20. The legislative intent would be well discernable when simultaneously, we glance at the provision of section 201 and 221 of the IT Act which says that penalty is not leviable when the Company proves that the default was for 'good and sufficient reasons', whereas, the expression used in section-278AA is 'reasonable cause'. The legislature has carefully and intentionally used these different expressions in the situations envisaged under those provisions.

22. Coming to the case before us, the prosecution has been launched against the petitioners for delay in deposit of the collected TDS for the Financial Year, 2020-21 (Accounting Year, 2021-22). The collected TDS was admittedly not deposited with the Central Government by the due date. The petitioners thus

have failed to deposit the collected TDS within the time stipulated as ordained under provision of the I.T. Act and Rules. They have deposited the said amount in phase manner with the delay in making the deposit which begins with the minimum of 31 days, ending at 214 days. It is not in dispute that the petitioners have by the time of consideration of the matter as to launching of the prosecution for such delayed deposit, had deposited the entire TDS with the interest as they were liable to pay as per this statutory provision for such delayed deposit of the TDS. The collected TDS with interest as above has been accepted and gone to the State Exchequer when by then no loss to the Revenue was standing to be viewed."

8. Mr. Ray submits that in the instant case also the opposite parties have accepted the delayed interest on the TDS amount as per the provision of law and after receiving the TDS amount along with interest initiated the Criminal Prosecution against the petitioners. Therefore, the criminal prosecution launched against the petitioners is not sustainable under law as has been authoritatively held by our own High Court and the High Court of Jharkhand. Apart from that the petitioners are entitled to be exempted for criminal prosecution under the Departmental circular dated 24.04.2008 Therefore, he seeks indulgence of this Court.

9. Mr. Mohapatra, learned Senior Standing Counsel appearing for the Income Tax opposed the prayer made by the petitioners and contended that the distress financial condition of the petitioners company and the COVID-19 pandemic situation cannot be taken as an alibi for late deposit of TDS into the Government account, as the amount was collected on behalf of the Government and due diligence was supposed have been taken for depositing the tax amount within the stipulated time frame. Mr. Mohapatra further contends that the COVID-19 pandemic restriction measures were only imposed during the month of March, 2020. However, the delay in remittance is not limited to that period. Mr. Mohapatra further contends that the Circular dated 24.04.2008 relied upon by the petitioners will not come to their aid because the delay is beyond one year. The petitioners could have escaped the prosecution, had the delay been within a period of 12 months. In that view of the matter, the sanction accorded by the competent authority under section 279(1) of the Act cannot be faulted with.

10. Taking into consideration the rival contentions of learned counsels for the parties and the judgments relied upon by the petitioners, I am of the considered view that the maximum delay of 394 days for depositing the TDS amount to the revenue account have been well explained by the petitioners, therefore, the authorities ought to have been taken into consideration same, particularly for the reasons that the petitioners-company has suffered the I.B. proceeding and the restriction imposed during the COVID-19 pandemic, I am of the view that the petitioners case is directly covered by the judgments cited in the case of Dev Multicom Pvt. Ltd. (supra) and M/s. D.N. Homes Pvt. Ltd. Khurda & another (supra), because the prosecution indeed has been initiated by the opposite

parties against the petitioners after having received the TDs amount along with the interest. Therefore, the entire proceeding arising out of 2(c) CC Case No.09 of 2023 pending in the Court of the learned Additional Chief Judicial Magistrate (Spl.)-cum-Asst. Sessions Judge, Cuttack and the consequential proceedings arising therefrom qua the petitioners stands quashed.

11. Accordingly CRLMC is allowed.

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