(2025) 10 OHC CK 1422

In the Orissa High Court

Case No : CRLMP No.837 Of 2025

Syed Najam Ahmed APPELLANT

Vs

State Of Odisha And Another RESPONDENT

Date of Decision : 13-10-2025

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141
Insolvency And Bankruptcy Code, 2016 — Section 7, 14, 31, 32a, 32a(1)
Limited Liability Partnership Act, 2008 — Section 2(j)

Citation : (2025) 10 OHC CK 1422

Hon'ble Judges : Chittaranjan Dash, J

Bench : Single Bench

Advocate : Sidhartha Mishra, A. K. Apat, S. S. Padhy

Final Decision : Dismissed

Judgement

Chittaranjan Dash, J

1. By means of this application, the Petitioner seeks the indulgence of this Court directing the learned JMFC (LR), Bhubaneswar to issue summon to the Resolution Professional (RP) to represent accused No.1 and to discharge the accused No.2 against whom cognizance has been taken in 1.C.C. Case No.3236 of 2021 vide order dated 18.03.2025 rejecting his prayer in the petition dated 23.12.2024 praying for discharge of the accused Nos.1, 2 & 3.

2. The background facts of the case are that M/s. Dewy Developers Pvt. Ltd. (hereinafter referred to as the complainant) filed a complaint before the learned JMFC (LR), Bhubaneswar under Section 138 of the Negotiable Instruments Act, 1881 (in short, "the N.I. Act"). In the said complaint, a prayer was made to summon the present Petitioner, namely Zenith Mining Private Ltd., its Managing Director, Mr. Syed Najam Ahmed, and its agent, Bhimsen Apat, and to direct recovery of Rs.1 crore from the said accused persons in terms of the provisions of the N.I. Act, and further to pay double the cheque amount as compensation.

3. The case of the complainant as emerges from the case record is that, the Petitioner through its Managing Director, Mr. Syed Najam Ahmed, keeping in view their cordial relationship, persuaded to extend a friendly loan of Rs.1 crore to the Petitioner-Company. The said amount was duly credited to the Petitioner's bank account with an assurance that it would be repaid within one year.

4. Since the Petitioner-Company failed to return the loan amount, the complainant approached accused No.2 (the Managing Director) who, for himself and on behalf of the accused-Company, issued Cheque No.978062 dated 25.06.2021 for Rs.1 crore, drawn on IndusInd Bank, in favour of the complainant. The complainant presented the said cheque with its banker, i.e., Bank of India, Chandrasekharpur Branch, Bhubaneswar, on the very same day (25.06.2021), but it got dishonoured with the endorsement "refer to drawer." The complainant was intimated as to the of the dishonour by its banker on 29.06.2021.

5. Being so informed, the complainant requested the Petitioner to make payment of the dishonoured cheque amount. On the request of the Petitioner, the complainant waited and represented the cheque through its banker, but once again it got dishonoured with the same remark "refer to drawer." This intimation sent by the Bank was received by the complainant on 09.07.2021. Thereafter, the complainant issued a statutory notice to the Petitioner demanding payment of the dishonoured cheque amount. As the Petitioner failed to comply with the said demand, the complainant instituted the complaint before the competent court U/s 138 of the Negotiable instrument Act.

6. In response, the Petitioner filed an application before the learned trial court seeking discharge from the prosecution on the ground that the Petitioner-Company had already been declared insolvent and a Resolution Professional had been appointed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). It was further stated that the learned NCLT, Cuttack had passed an order on 08.01.2024 to that effect. According to the Petitioner, in view of Section 32A of the IBC, 2016 and the law laid down by the Hon'ble Supreme Court in Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd., reported in (2023) 10 SCC 545, the complainant ought to have approached the Resolution Professional, who alone was competent to represent the accused-Company.

7. The learned trial court, however, rejected the Petitioner's prayer, holding that the prosecution under Section 138 of the N.I. Act cannot be terminated as against the signatories/Directors of the Company.

8. The learned counsel for the Petitioner, while reiterating the aforesaid position of law during the course of hearing of the application, relied upon the judgment of the Hon'ble Supreme Court in Ajay Kumar Radheshyam Goenka (supra). In reply, the learned counsel appearing on behalf of Opposite Party No.2 drew the attention of this Court to the relevant paragraph of the said judgment relied upon

by the Petitioner, wherein, at Paragraph 17 of the opinion of HMJ Sanjay Kishan Kaul (for himself and HMJ S. Oka), it has been held as follows:-

“16. … The only issue with which we are concerned with is whether during the pendency of the proceedings under the said Code which have been admitted, the present proceedings under the NI Act can continue simultaneously or not.

17. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. In fact, a bare reading of Section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act. We are unable to appreciate the plea of the learned c counsel for the appellant that because Section 138 of the NI Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the NI Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the NI Act. It is not a recovery of the amount d with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.”

9. Learned counsel for Opposite Party No.2 further invited the attention of this Court to the relevant provision under Section 32A of the Insolvency and Bankruptcy Code, 2016, as reiterated in the aforesaid judgment while referring to P. Mohanraj and Ors. vs. Shah Brothers Ispat Private Limited, reported in (2021) 6 SCC 258, read as follows in the concurring opinion of HMJ J. B. Pardiwala:-

“P. Mohanraj (supra) has harmoniously construed Section 32A with Section 14 of the IBC so as to apply to Section 138 NI Act, proceedings. Section 32A(1) is very crucial and hence, is quoted below:-

“32-A. Liability for prior offences, etc.(1) 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 in-charge 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."

10. Learned counsel for Opposite Party No.2 finally referred to Paragraph 108 of the aforesaid judgment, in the concurring opinion of HMJ J. B. Pardiwala, held as follows:-

"108. Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/Directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act."

11. In view of the above position of law, there remains no ambiguity with respect to the principle propounded by the Hon'ble Supreme Court, namely, that the matter lying before the Resolution Professional pursuant to the order dated 08.11.2024 of the NCLT would in no manner affect the proceedings arising out of the offence under Section 138 of the N.I. Act. Consequently, such proceedings cannot be stalled vis-à-vis the Petitioner. Accordingly, the impugned order passed by the learned court rejecting the prayer of the Petitioner is found to be just and proper and warrants no interference. Hence, the order.

12. In the result, the impugned order dated 18.03.2025 passed by the learned JMFC (LR), Bhubaneswar in 1CC Case No.3236 of 2021 is hereby confirmed. Consequently, the CRLMP stands dismissed being devoid of merit.