



IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application No. 872 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

with

Criminal Misc. Application No. 873 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

With

Criminal Misc. Application No. 874 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

With

Criminal Misc. Application No. 875 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

With

Criminal Misc. Application No. 876 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

With

Criminal Misc. Application No. 890 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

With

Criminal Misc. Application No. 891 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus

Future Fibres and another. Respondents.

Criminal Misc. Application No. 892 of 2025

Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents.
Criminal Misc. Application No. 893 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
With
Criminal Misc. Application No. 894 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents.
With
Criminal Misc. Application No. 895 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents.
With
Criminal Misc. Application No. 896 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
With
Criminal Misc. Application No. 897 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
With
Criminal Misc. Application No. 898 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents.
Criminal Misc. Application No. 899 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
With
Criminal Misc. Application No. 900 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents.
With
Criminal Misc. Application No. 901 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
With
Criminal Misc. Application No. 902 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
With
Criminal Misc. Application No.903 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents
With
Criminal Misc. Application No. 904 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.
Criminal Misc. Application No.905 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Future Fibres and another. Respondents.
With
Criminal Misc. Application No. 906 of 2025
Dr. Rakesh Chandra Rastogi. Applicant.

Versus
Sudha Ahluwalia and another. Respondents.

Present:
Mr. Aditya Singh, learned counsel for the applicant.
Mr. V.K. Kohli, learned senior counsel assisted by Mr. Parikshit Saini, Mr. Kanti Ram
Sharma, learned counsel for the respondent no.1.
Ms. Sukhwani Singh, learned counsel for the respondent no.2.

Hon’ble Mr. Justice Rakesh Thapliyal, J.

1. Since the common issues are involved in all these petitions,
therefore, with the consent of learned counsel for the parties

all these matters are being decided by the common judgment.

2. All these petitions have been preferred by the applicant –Dr. Rakesh Chandra Rastogi, under Section 528 of BNSS, challenging the proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act.
3. It is argued by the learned counsel for the applicant that the applicant was the CMD of the respondent no.2 Company, and in the year 2023, insolvency proceedings was initiated and the resolution plan was submitted in terms of Section 30 of the Insolvency and Bankruptcy Code, 2016, which was approved in terms of Section 31 on 06.08.2024.
4. Before the insolvency proceedings the respondent/complainant filed the different complaint under Section 138 of Negotiable Instruments Act, wherein, the process was initiated by taking cognizance and the summons were issued.
5. It is argued by the learned counsel for the applicant that once the resolution plan of insolvency was approved by the Adjudicating Authority then in terms of first proviso to Section 32-A of the Insolvency and Bankruptcy Code, 2016, even if the prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharge from the date of approval of the resolution plan.
6. At this juncture Section 32-A of the Insolvency and Bankruptcy Code, 2016 is now being reproduced herein as under:-

*“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 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.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

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

(ii) 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.

Explanation. – For the purposes of this sub-section, it is hereby clarified that, –

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

7. Learned counsel submits that the present applicant being CMD of the company, at the relevant point of time, should not be prosecuted in terms of first proviso to Section 32-A of the Code.

8. In response to this, learned senior counsel for the respondent no.1 Mr. V.K. Kohli, submits that in terms of second proviso to Section 32-A of the Code, the present applicant being CMD of the company, at the relevant point of time, when the complaint was filed is liable to be prosecuted and punished for the offence punishable under Section 138 of Negotiable Instruments Act since the present applicant was

not a corporate debtor, therefore, he cannot take the shelter of first proviso to Code of 2016.

9. In response to such submissions, Mr. Aditya Singh, learned counsel for the applicant submits that since the proceedings under Section 138 of Negotiable Instruments Act, is the summon case, and therefore, the applicant being CMD can only be prosecuted on a report of the Investigating Authority and not on the basis of the complaint under Section 138 of Negotiable Instruments Act, therefore, the second proviso to Section 32-A is not at all applicable rather the first proviso to Section 32-A of the Code, 2016 will come into way.

10. Now the question is whether the applicant is entitled to get protection of first proviso to Section 32-A of the Code or not? This aspect can be examined by the trial court for which he shall move the discharge application before the concerned court so that the concerned court may examine whether the present applicant is entitled to get protection of first proviso or to be prosecuted under the second proviso of Section 32-A of Code.

11. Mr. V.K. Kohli, learned senior counsel for the respondent no.1, submits that since the present applicant seeking discharge in terms of first proviso to Section 32-A of the Insolvency and Bankruptcy Code, 2016, and therefore, he should approach to the concerned court for seeking such discharge.

12. On such submissions of Mr. V.K. Kohli, Mr. Aditya Singh, learned counsel for the applicant seeks permission to withdraw all these petitions with the liberty to move a discharge application in terms of first proviso to Section 32-A of Insolvency and Bankruptcy Code, 2016.

13. On such submission, learned counsel for the respondent has not raised any objection.

14. Accordingly, all these petitions preferred under Section 528 of BNSS, 2023 is permitted to be withdrawn with the liberty to present applicant to move a discharge application before the concerned court in terms of first proviso to Section 32-A of the Insolvency and Bankruptcy, 2016, and if such an application is moved, the concerned court is directed to decide the same in accordance with law.

15. It is further made clear that if the present applicant applied for bail, the Trial Court should not insist upon to furnish separate bail bond.

(Rakesh Thapliyal, J.)

16.06.2026

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