

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 172 of 2022
IA No. CRAN 2 of 2022
CRAN 4 of 2022

Tantia Constructions Ltd.

-Versus-

Krishna Hi-Tech Infrastructure Pvt. Ltd.

For the Petitioner: Mr. Swatarup Banerjee, Ad.,
Mr. Avishek Guha, Adv.,
Sk. Sariful Haque, Adv.,
Ms. Akansha Chopra, Adv.

For the Opposite Party: Mr. A.K. Shrivastava, Adv.,
Mr. Abhishek Sikdar, Adv.,
Mr. Akash Sharma, Adv.

Heard on: 26 July, 2022.

Judgment on: 27 September, 2022

BIBEK CHAUDHURI, J. : –

1. Having heard the learned Counsels for the parties, this Court is of the view that the instant criminal revision can be disposed of on the basis of the submission made by the learned Counsels in course of hearing of the connected applications.

2. The Instant revisional application has been filed under Section 482 of Cr.P.C, 1973 for quashing of proceeding as against the

petitioner/accused No.1 in Complaint Case No.33889/2019 under Section 406, 420 and 120B of the IPC pending before the 8th Metropolitan Magistrate, Kolkata at the touchstone of Section 32A of Insolvency and Bankruptcy Code, 2016 (IBC, 2016 for short). The petitioner has further contended quashing of impugned criminal proceedings on the ground of Section 14 of IBC, 2016. The opposite party has filed an application bearing No. CRAN/2/2022 for vacating the impugned order for stay of this Court.

3. Moratorium under Section 14 of IBC, 2016 ceased on 24.02.2022 when the Resolution Plan for the Petitioner/Corporate Debtor was approved by NCLT, Kolkata in case bearing No. CP(IB) 148/KB/2018, whereby the aforementioned ground becomes infructuous.

4. For the application of Section 32A of IBC, 2016 and in light of the present matter, it is pertinent to determine the following two issues, i.e.,

- i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?
- ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

5. With respect to Issue No.1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by

NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No.2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors.

7. The contention of the opposite party that the petitioner herein does not hold valid constituted power of attorney for filing the instant petition merely because it has failed to mention that it has been authorized by the new management of the petition, holds no value by virtue of the separate juristic personality of the petitioner company.

8. In light of the above observation, it is directed that the Complaint Case No. 33889/2019 stands quashed as against petitioner/accused No. 1 only, for any actions taken on or before 24.02.2022. Opposite Party is at liberty to continue the said proceedings as against erstwhile Directors and/or person's responsible for the actions of petitioner.

9. With the above direction, instant petition along with its applications stands disposed off.

(Bibek Chaudhuri, J.)