

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.12248 Of 2022
(Through hybrid mode)**

Loramitra Rath

....

Petitioner

Mr. Gautam Mishra, Senior Advocate

-versus-

Bank of India, Mumbai and others

....

Opposite Parties

Mr. G.D. Kar, Advocate

Mr. P. Agarwal, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
19.05.2022**

**Order
No.**

2.

1. Mr. Mishra, learned senior advocate appears on behalf of petitioner. He had moved the writ petition on 17th May, 2022 to submit, his client is promoter of an existing small scale industry. The establishment is in financial distress and, therefore, provisions in the Insolvency and Bankruptcy Code, 2016 were invoked against it. Resolution Professional (RP) stood appointed.

2. He submitted, impugned is order dated 5th April, 2022 passed by the National Company Law Tribunal (NCLT), Cuttack Bench, whereby his client's resolution plan was not accepted purportedly on

ground that the establishment had not obtained registration under Micro, Small and Medium Enterprises Development Act, 2006.

3. He submitted, section 8 in the 2006 Act gives discretion to a person, who established a small scale industry prior to commencement, to obtain registration. Section 29A in the Code provides for persons, who are not eligible to put in the plan. His client's capacity cannot be said to be covered by said provision regarding ineligibility. He had sought interference.

4. Mr. Agarwal, learned advocate appears on behalf of R.P. and had submitted that his client would abide by direction of Court while Mr. Kar, learned advocate appearing on behalf of the bank had, on that day, prayed for adjournment to obtain instruction. Today Mr. Kar submits, Court passes appropriate order.

5. It appears from paragraph-21 onwards in impugned order that resolution plan submitted by petitioner was rejected. Consequently RP was discharged, liquidator appointed and directed to forthwith take the custody. Opposite parties have not been able to demonstrate that rejection of the plan is founded in law. It is clear, therefore, that the NCLT exercised its jurisdiction in rejecting the plan and making consequential directions, illegally. Impugned order is set aside and the resolution plan of petitioner restored to the NCLT, for reconsideration.

6. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks

