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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

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THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.3564 OF 2022

Jayashree Mohan

...Petitioner

Vs.

1. State Represented by,
Joint Director and Head of Zone,
Central Bureau of Investigation,
III Floor, E.V.K. Sampath Building,
College Road
Chennai - 600 006.
2. Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi, Delhi 110001.
3. Pathukasahasram Raghunathan Raman,
Ground Floor, Srihas Kamalam Apartment,
No.93, Sivan Koil South Street,
Vadapalani, Chennai - 600 026.

... Respondents

Prayer :- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to direct the first respondent to register the complaint filed by the petitioner dated 24.12.2021 against the third respondent for committing various offences under I.P.C.

For Petitioner : Mr.E.M.Sachin

For Respondents : Mr.K.Srinivasan (For R1)
Special Public Prosecutor
(C.B.I. cases),
High Court of Madras.
Mr.K.S.JeyaGaneshan (For R2)
(Sr. panel counsel)
Mr.S.Ramesh for R3.



ORDER

This petition is filed seeking direction to the first respondent to register the complaint filed by the petitioner dated 24.12.2021 against the third respondent for committing various offences under Indian Penal Code.

2.Learned counsel for the petitioner submitted that the main allegations against the third respondent are that,

i)a sum of Rs.4,00,000/- was settled to Deutch Bank and a sum of Rs.18,00,000/- settled to HDFC Bank. Both the banks have issued no due certificates. When no due certificates produced before the third respondent, he has not accepted the no due certificates.

ii)The third respondent received pecuniary advantage from the stakeholders for settling their amount.

iii)Stock Materials and container worth Rs.90,00,000/- were sold for a low price of Rs.17,00,000/-. It is further said that when the petitioner requested the documents relating to the sale of scrap materials, the third respondent has not produced the documents.

3.On these main allegations, a complaint was given to the first respondent on 24.12.2021, including other allegations as well. However, no first information report was registered so far. Therefore, this petition.

4.Heard the learned counsel for the petitioner and the respondents 1 to 3.

5.Learned Special Public Prosecutor appearing for first respondent submitted on instructions that, petitioner has given complaint in No.CA/0003/2022 and that was forwarded to the Chief Executive Officer, HDFC Bank House, Senapati Bapat Road, K7, Mumbai - 400013 for taking action at their end. It is also submitted that C.B.I has not caused any enquiry on the enclosed complaint nor retained any copy of the same.

6.Learned counsel for the second respondent submitted that no relief was asked against the second respondent and he also submitted that as per Section 217 and 218 of the Insolvency and Bankruptcy Code 2016, there is a mechanism provided for enquiring the complaint against the Insolvency Professional.

7.Learned counsel for the third respondent submitted that the third respondent was appointed as Liquidator after following



proper and appropriate procedure. The National Company Law Tribunal Division Bench - I Chennai, in its order dated 23.12.2020, observed that third respondent was appointed as Interim Resolution Professional on an application filed under Section 9 of the Insolvency and Bankruptcy Code and then, the third respondent was confirmed to act as a Resolution Professional of the Corporate Debtor namely RA-Ni Precast Pvt Ltd. A period of 330 days time was given for preparing resolution plan and submitting it before NCLT. Petitioner in this case is the suspended Director. Petitioner has not co-operated with the Resolution Professional, namely the third respondent in preparing the resolution plan. Therefore, this was intimated to the NCLT. Then petitioner was appointed as Liquidator of the corporate debtor to carryout the liquidation process. The third respondent appointed two registered valuers as stipulated under Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to ascertain the Fair value and Liquidation value of the properties of Corporate debtor. The immovable properties are valued at Rs. 4 ½ crores. It is further submitted by the learned counsel for the third respondent after the initiation of insolvency proceedings, petitioner had created an encumbrance by executing a lease agreement of the debtor's property. The execution of this lease agreement and creation of encumbrance on 10.06.2021 was intimated to National Company Law Tribunal through I.A.383/CHE/2021 and it is pending for enquiry.

8. With regard to the allegations of not accepting the no due certificate, the alleged receipt of illegal gratification, it is submitted by the learned counsel for the third respondent that the Deutsche Bank and HDFC bank have not participated in the meeting conducted by the third respondent to discuss about the proposal given by the petitioner to settle the claims of the claimants and take over the company. It is also submitted that two shareholders who claim to have paid illegal gratification to the third respondent namely M/s. Nithish & Co. represented by its proprietor Mr. S. Shankar and M/s. Thirupathi Stores, both of them have not raised any allegation of payment made to the third respondent as illegal gratification for the settlement of their amount. In fact, M/s. Thirupathi Stores has not participated in the meeting.

9. Thus, from the consideration of materials produced and the submission of the parties, the third respondent appears to have acted as per the terms and conditions imposed in the order dated 23.12.2020. If at all the petitioner has any grievance, is open to the petitioner to approach the appropriate forum as provided under Section 217 and 218 of the Insolvency and Bankruptcy Code, 2016. There is no prima-facie case made out to register a



criminal complaint against the third respondent. With this observation, this Criminal Original Petition in Crl.O.P.No.3564 of 2022 is dismissed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. State Represented by,
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Central Bureau of Investigation,
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 2. Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi, Delhi 110001.
 3. The Public Prosecutor,
High Court of Madras.
- +2ccs to Mr.E.M.Sachin, Advocate, S.R.No.27740
- +1cc to Mr.S.Ramesh, Advocate, S.R.No.27078

Crl.O.P.No.3564 of 2022

SKM(CO)
RLP(11/05/2022)