**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : **11.04.2023**
PRONOUNCED ON : **19.04.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Criminal Original Petition Nos. 5800, 4039 & 4086 of 2021
and
Crl.M.P. Nos. 3759, 2598 & 2488 of 2021

Deepak Upadhyaya ... Petitioner in Crl.O.P. No. 5800 of 2021

Raman Ramakrishnan ... Petitioner in Crl.O.P. No. 4086 of 2021

Subrata Monindranath Maity ... Petitioner in Crl.O.P. No. 4039 of 2021

Versus

1.State rep.by
The Inspector of Police,
District Crime Branch,
Thiruvallur District.
(Crime No.28/2020)

2.Mr.Deepak Jain … Respondents in all the petitions

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code seeking to call for the records of FIR in Crime No.28 of 2020, pending investigation on the file of the Inspector of Police, District Crime Branch, Thiruvallur District and to quash the same.

For Petitioners : Mr. V. Gopinath, Senior Counsel for
Mr. M. Habeeb Rahman.

For Respondents : Mr. S. Balaji,
Government Advocate (Crl.Side) for R1.

Mr. Varun Srinivasan for
M/s.NVS Associates for R2.

**COMMON ORDER**

The petitioners are accused in the FIR in Crime No.28 of 2020 on the file of the first respondent registered on the report given by the second respondent/defacto complainant.

2. The allegations in the FIR are that Subrata Monindranath Maity, petitioner in Crl.O.P. No. 4039 of 2021 (hereinafter referred as 'Resolution Professional' for the sake of convenience) was appointed as Resolution Professional for a Corporate debtor by the name M/s.Bhatia Coke Energy Limited (hereinafter referred as 'BCEL' for the sake of convenience); that Mr.Raman Ramakrishnan and Mr.Deepak Upadhyaya, Petitioners in Crl.O.P. Nos. 4086 & 5800 of 2021 (hereinafter referred as 'Associates') are the associates of Subrata Monindranath Maity ; that the defacto complainant is the CEO of a Company by name Tamil Nadu Coke and Power Pvt. Ltd.; that the

defacto complainant's company were suppliers of coal / coke to the Corporate debtor, BCEL; that after the Resolution Professional took charge, the petitioners with an intent to make wrongful gain demanded commission money in lieu of placing procurements / purchase orders from the defacto complainant; that the defacto complainant was asked to over value the invoices and pay the difference to the companies named by the petitioners as against fake and false invoices; that the petitioners had thus misappropriated the funds of BCEL; that the petitioners adopted similar modus with other companies also; that the defacto complainant had so far, paid commission through the companies named by the petitioners in the following manner viz., M/s.Ram Shyam Enterprises Pvt.Ltd., were paid Rs.9,80,000/-, M/s.Rashmila Pariyar were paid Rs.3,94,000/- and M/s.Shravan Logistics Pvt.Ltd., were paid Rs.11,60,000/-; that the BCEL's operation was stopped pursuant to the closure notice issued by Tamil Nadu Pollution Control Board on 01.04.2020; that thereafter the petitioners started demanding more money from the defacto complainant and also threatened him and his family members of dire consequences if the defacto complainant revealed this fact to third parties and thus, the petitioners committed the offences under Sections 406, 408, 417, 420, 468, 471 & 506(i) of the Indian Penal

Code.

3.Mr.V.Gopinath, learned Senior Counsel for the petitioners submitted that,

(a) the impugned FIR is an abuse of process of law. The defacto complainant was due to make payments to the Corporate debtor and since the Resolution Professional took strict action, the defacto complainant had filed this false complaint.

(b) the allegations, even if true, the proper remedy for the defacto complainant was to approach the National Company Law Tribunal (hereinafter referred to as 'NCLT') or the Insolvency and Bankruptcy Board of India (hereinafter referred to as 'IBBI'). A special procedure is provided under the Insolvency and Bankruptcy Code, 2016 which is a complete code to deal with such situations. If a debtor is allowed to file reports against the Resolution Professional before the Police, he would be unable to discharge his duties without fear or favour. The complaint is only to neutralize the action proposed to be taken against the defacto complainant for default.

(c)the alleged complaint, even otherwise, shows that it is malafide. Admittedly, the defacto complainant had paid commission in the months of February and March 2020. However the FIR was lodged in December 2020. If the defacto complainant was really interested in protecting the interest of the Corporate debtor, there was no reason for such an enormous delay in lodging the complaint. The impugned FIR was lodged after the defacto complainant received notice from the Resolution Professional.

(d)the fact that an FIR was registered was brought to the notice of NCLT, and the NCLT passed an order stating that the action of the defacto complainant in using the Police to register complaints was not appropriate. In fact the NCLT observed in its order that the defacto complainant ought to have approached the IBBI or the NCLT itself for necessary action.

4. The learned counsel for the defacto complainant would submit that the Insolvency and Bankruptcy Code, 2016, does not provide punishment for the offences alleged. In any case, demanding commission and misappropriating the funds of the Corporate debtor

cannot be said to be in discharge of his functions as Resolution Professional. That apart, the learned counsel would submit that the associates would not be covered under the provisions of the Insolvency and Bankruptcy Code, 2016. Hence, the offences committed by them has to be reported only to the Police. The learned counsel also submitted that the Resolution Professional was removed subsequently and that he has been prosecuted by CBI in a case of fraud and mismanagement in relation to some other Company. Thus, the Resolution Professional no longer enjoys immunity even assuming that no investigation by the Police is permissible against an Insolvency Resolution Professional.

5. This Court on perusal of the impugned FIR finds that the allegation is that the petitioners demanded commission money from the defacto complainant for placing orders with the defacto complainant. It is further alleged that the defacto complainant had paid commission money through various companies who had sent fake and false invoices. The allegations primarily are relating to the conduct of the Resolution Professional in discharge of his function in managing the affairs of the Corporate debtor. The Insolvency and Bankruptcy Code, 2016, provides a mechanism to deal with such situations. Chapter VI of the said Code

deals with the powers conferred on the IBBI to investigate the complaints against the Insolvency Resolution Professional. The provision not only confers power on the Board but also protects the Insolvency Resolution Professionals from being harassed by parties who are aggrieved by their actions. The nature of the duties of the Resolution Professional and as to whether he had failed or misused his power as Resolution Professional to gain unlawfully cannot be the subject matter of investigation by the Police. Therefore, this Chapter also has to be construed as providing a fair mechanism to deal with complaints against Resolution Professionals. The Board would be competent to understand the nature of the allegations and act accordingly. The nature of the allegations in the impugned FIR clearly shows that the alleged demand of commission by the Resolution Professional was in the discharge of his function as a Resolution Professional. The veracity of the allegation of the kind of misappropriation complained by the defacto complainant ought to have been first ascertained by the specialized agencies viz., IBBI or by an investigating authority appointed by IBBI.

6. That apart, it is seen that the fact that an FIR was registered was brought to the notice of the NCLT by the Resolution Professional. The

NCLT observed that the defacto complainant ought not to have approached the police in relation to the functioning of the Resolution Professional in the Corporate Insolvency Resolution process, and the relevant portion is extracted as follows;

> *"...Meanwhile, Counsel for the Applicant submits that if the RP in discharging his duties is put to harassment in the hands of the police or any other authorities, he will not be in a position to continue to conduct the proceedings under Insolvency & Bankruptcy Code ("IBC") without fear or favour. The entire professional conduct of the RP is covered by IBC Rules. IBBI is a regulatory authority. Any complaint against the RP/Liquidator or any violation by the RP/Liquidator under IBC, under the Rules and Regulations can be placed before Internal Monitoring Committee of IBBI for assessment and necessary action. However, criminal complaint has been filed against the RP and his team. The contents of this complaint relate to the CIRP which has been assigned to the RP.*
>
> *There is also a submission that RP, his team and their families have been threatened by the erstwhile directors. There is a great danger to the life of the RP. The contents of the F.I.R. relates to the sum and substance of CIRP work related under IBA/307/2019. It is pertinent to hear this application and protect the RP and his team from any further harassment. However, this Adjudicating Authority*

*at this stage of the case is not passing any orders on merits of the F.I.R. The RP and his family and the entire team involving for conduct of the CIRP in IBA/307/2019 shall be protected by the police. The RP and his family members shall also be given adequate protection. The entire F.I.R filed against the RP relates to CIRP in IBA/307/2019. Hence, it is imperative to protect them from any difficulties, violations, life threat etc. If there are any irregularities on the part of the RP or his team, the erstwhile director could have filed necessary applications before this Tribunal and also could have registered complaints with IBBI. No application has been filed before this Tribunal. For lawful discharge of duty as RP, accelerating criminal charges and using police to register complaint of criminal nature is not appropriate.*

*If every Resolution Professional is bombarded with criminal prosecution and police investigation, then no RP shall be able to conduct CIRP without fear and favour. Since the entire allegation in FIR relates to CIRP under IBC by RP, this Tribunal ought to protect the RP and his team. The RP is permitted to take out necessary actions to protect and safeguard including quash of F.I.R. before concerned courts."*

7. The above observations would make it clear that no complaint

was made by the defacto complainant either before the IBBI or before the NCLT against the Resolution Professional in respect of his conduct as a Resolution Professional for the Corporate debtor, BCEL. The fact that no complaint was made to the authorities concerned also confirms that the impugned FIR has been filed only to harass the petitioners and arm twist them. That apart, it is also seen that on 02.01.2021, a meeting was held by the Committee of creditors of the Corporate debtor in which it was brought to the notice of the Committee of debtors that the Corporate debtor had committed fraudulent transactions with the defacto complainant's company which was unearthed by the Resolution Professional. It is clear that the impugned FIR has been lodged to prevent any action against the defacto complainant for recovery of money due by them to the Corporate debtor. The submission of the learned counsel for the defacto complainant that now the Resolution Professional does not enjoy the immunity as he was removed cannot be countenanced, as the impugned FIR was lodged when he was a Resolution Professional.

8. Further more, it is seen that the complaint appears to be malafide for other reasons as well. The alleged payments of the commission are

said to have been made between the months of February and March 2020. Admittedly, the Corporate debtor Company stopped its operations after 01.04.2020 due to a closure notice issued by Tamil Nadu Pollution Control Board. The Resolution Professional had issued a notice for recovery of Rs.16,08,44,688/- on 04.12.2020 to the defacto complainant. The impugned FIR was registered on 30.12.2020 on the complaint said to have been given on 15.12.2020. The fact that no complaint was lodged immediately after the alleged payments and it was lodged after the defacto complainant received the notice from the Resolution Professional, would confirm that the FIR is not a genuine complaint.

9.It is seen that there was no reason why the complaint was not filed either before IBBI or NCLT for the alleged fraud. There was no reason why there was a delay of nine months in registering the FIR after the alleged payments. Approaching the police without resorting to the special procedure under the code IBC to arm twist the petitioners, is inappropriate, to say the least.

10.For all the above reasons, this Court is of the view that the impugned FIR against the petitioners is clearly an abuse of process of law and hence, quashed. Accordingly, these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

**19.04.2023**

*ay*
Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

**SUNDER MOHAN, J**

*ay*

To

1. The Inspector of Police,
   District Crime Branch,
   Thiruvallur District.

2. The Public Prosecutor,
   High Court of Madras,
   Chennai.

Crl.O.P. Nos. 5800, 4039 & 4086 of 2021
and

Crl.M.P. Nos. 3759, 2598 & 2488 of 2021

Dated: 19.04.2023