

D/L34  
26.06.2024  
Rakib  
(PA).

C.R.R.166 of 2022  
With  
CRAN 7 of 2024

Tantia Construction Ltd.  
Versus  
Trinetra Electronics Limited

Mr. Swatarup Banerjee  
Mr. Avishek Guha  
Mr. Sariful Haque  
Ms. Akansha Chopra.

...for the petitioner.

Mr. Karan Dudhwewala.

...for the opposite party.

The present revisional application has been preferred challenging the continuation of the proceedings being Complaint Case No.C.S.20145 of 2017 pending before the learned Metropolitan Magistrate, 7<sup>h</sup> Court, Calcutta.

Mr. Banerjee, learned advocate appearing for the petitioner submits that in view of the orders passed by the National Company Law Tribunal, Kolkata Bench on 13.03.2019 and 24.02.2020, the complaint case No.C.S.20145 of 2017 under Section 138/141 of the Negotiable Instrument Act, 1881 cannot continue. In order to substantiate his argument learned advocate relied upon judgments of the Hon'ble Apex Court in P. Mohanraj & Ors. Vs. Shah Brothers Ispat Private Limited reported in (2021) 6 SCC 258 and Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Limited reported in 2023 SCC OnLine SC 266.

The present case was instituted in the year 2017 and it has been submitted by the complainant/opposite party also that the

present stage of the proceedings before the learned trial Court is at the stage of Section 251 of the Code of Criminal Procedure and the evidence is yet to commence in the said proceedings.

Learned advocate for the complainant/opposite party stressed on the issue relating to Section 32-A of the Insolvency and Bankruptcy Code, 2016, emphasizing that the petitioner cannot as a matter of right pray for quashing before the High Court as the continuation of the proceedings before the trial Court would be subject to the restrictions under Section 32-A of the Insolvency and Bankruptcy Code, 2016. According to the learned advocate for the Opposite Party there are persons who were earlier associated with the accused company who are also in helm of affairs of the present management, pursuant to the directions passed by the National Company Law Tribunal.

I have taken into account the submissions of the learned advocate appearing for the petitioner/accused company as well as that of the complainant/opposite party and after relying on the later judgment i.e. Ajay Kumar Radheshyam Goenka (supra), I am of the view that the following paragraphs are relevant:

***“108.*** Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/Directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act.

.....

**109.1.** *After passing of the resolution plan under Section 31 IBC by the adjudicating authority & in the light of the provisions of Section 32-A IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management.”*

Having considered the proposition settled by the Hon’ble Apex Court, I am of the view that so far as the present petitioner or the Corporate debtor is concerned and as the same has been taken over by a new management, the proceedings against the petitioner/accused company in complaint case being Case No. C.S.20145 of 2017 should be terminated.

Thus, the revisional application being CRR 166 of 2022 is allowed.

Connected applications, if any, are consequently disposed of.

The interim order earlier so passed is made absolute.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Tirthankar Ghosh, J.)**