

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

**C.R.R. 169 of 2022
With
CRAN 4 of 2022
CRAN 10 of 2024
CRAN 11 of 2024
CRAN 12 of 2024
CRAN 13 of 2025**

***Tantia Construction Ltd.*
-versus-
Titec Finance Ltd.**

For the Petitioner : Mr. Swatarup Banerjee,
Mr. Avishek Guha,
Mr. Sk. Sariful Haque,
Mr. Ankush Majumder,
Mr. Adipta Kumar Pandit.

For the Opposite Party : Mr. Pawan Kumar Gupta,
Mr. Sakabda Roy,
Ms. Sofia Nesar,
Mr. Santanu Sett.

Hearing Concluded On : 08.08.2025

Judgement On : 25.08.2025

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the continuation of the proceedings being Complaint Case No. C.S. 40032 of

2015 pending before the learned Metropolitan Magistrate, 14th Court, Calcutta, as also the orders passed therein.

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. 40032 of 2015 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 2015 and it has been submitted by the complainant/opposite party also that the stage of the proceedings before the learned trial Court reflect that the evidence is yet to commence.

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/petitioner 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. 40032 of 2015 should be terminated.

Thus, the revisional application being CRR 169 of 2022 is allowed.

In course of the hearing of the revisional application it surfaced from the records of the learned Magistrate that the exhibit file was not available. Accordingly, from time to time this Court directed the learned Magistrate to trace out the records. To that effect an enquiry was conducted through the learned District Judge, 24 Parganas South and it was detected that the complainant initially filed the complaint before the learned A.C.J.M., Sealdah which was transferred to the learned Judicial Magistrate, 2nd Court Sealdah.

Subsequently, the said records were taken back and it was filed before the learned Chief Metropolitan Magistrate Court which was finally assigned to the learned Metropolitan Magistrate 14th Court Calcutta.

Records of the learned Metropolitan Magistrate 14th Court Calcutta reflects that the exhibits and or some of the documents are missing and as such the Court could not proceed with the case.

In view of the above observations of the learned Metropolitan Magistrate that the exhibits were never produced before the Court, I grant liberty to the complainant to reconstruct the records if required by filing the documents concerned which are in their custody by way of exhibits (which would be subject to admissibility under the Indian Evidence Act or BSA, 2023.)

Connected applications, if any, are consequently disposed of.

The interim order earlier passed is made absolute.

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

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)