

IN THE HIGH COURT OF ORISSA, CUTTACK  
(ORIGINAL JURISDICTION CASE)

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W.P. (C) NO. 12248 OF 2022


CODE NO. 269900

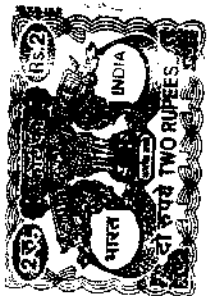
In the matter of:

An application under Articles 226 and 227 of the Constitution of India, 1950, challenging the patently illegal and arbitrary order dated 05.04.2022 passed by the learned National Company Law Tribunal, Cuttack Bench in I.A.(IB) No. 42/CB/2022 arising out of T.P. No. 30/CTB/2019 [C.P. (IB) No. 1323/KB/2018], whereby the COC approved resolution plan of the petitioner has been rejected and the Corporate Debtor has been ordered to be liquidated.

*Chitra Mohan Patra*

Presented in Court

  
B.O.  
*11/05/2022*



AND

In the matter of:

Loramitra Rath,  
Aged about 45 years,  
W/o. Prasanta Chandra Rath,  
At present serving as the Director, Maa  
Durga Rice Processing and Exports (P)  
Ltd., At Kairapari, P.O: Kothasahi,  
District: Cuttack, Odisha

.....Petitioner

-Versus-

*DK*  
DINESH KUMAR PATRA  
Advocate  
Enroll.No-O-1027/2010  
Mob.:9776264979

*PK*  
PRADIPTA KUMAR MOHANTY  
Notary, Cuttack Town  
Regd. No- ON-04/1995

*PK*

1. Bank of India, represented by its General Manager, Having its Registered Office at Star House, G Block, Plot No. C-5, BandraKurla Complex, Bandra, (East), Mumbai-400051, Maharashtra
  2. Bank of India, Bhubaneswar Zonal Office, represented by its Branch Manager, At 1/1D, Jayadev Vihar, Nayapalli, Bhubaneswar, Odisha-751015
  3. SREI Infrastructure Finance Limited, represented by its Vice President At.Plot.No.Y-10,Block.EP,Solt Lake,Sector-V,Kolkata.700091.
  4. Kamallesh Kumar Singhania, R.P., Aged about 65 years, S/o. Late Sanwar Mal singhania, At .Bajrang Kunj,Room No.412,413,2B Grand Lane,4<sup>th</sup> Floor,Kolkata.700012
- .....Opp. Parties

Done With Reluct



.....the present writ

*OK*

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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

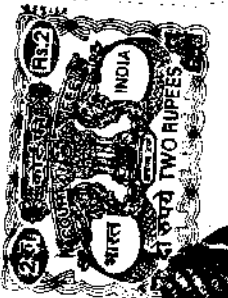
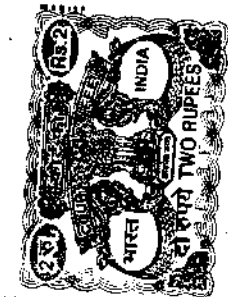
CORAM: JUSTICE ARINDAM SINHA

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 17<sup>th</sup> 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 5<sup>th</sup> April, 2022 passed by the National Company Law Tribunal (NCLT), Cuttack Bench, whereby his client's resolution plan was not accepted purportedly on



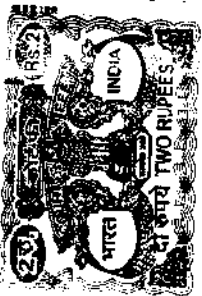
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ground that the establishment had not obtained registration under Micro, Small and Medium Enterprises Development Act, 2006.

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 instructions. Today Mr. Kar submits, Court passes appropriate order.

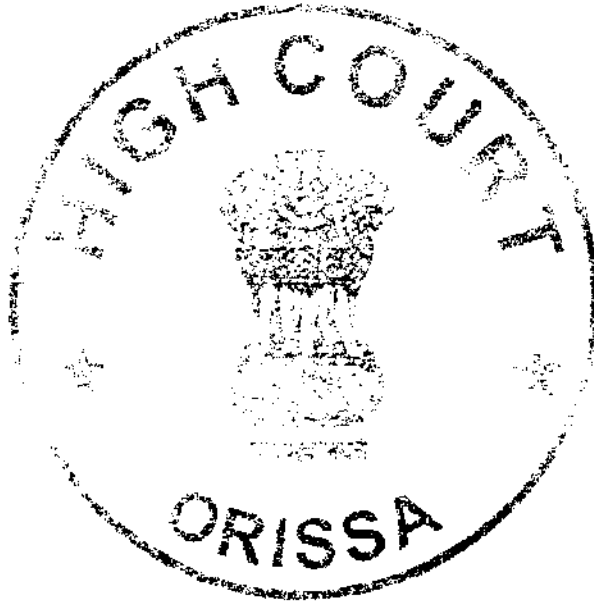
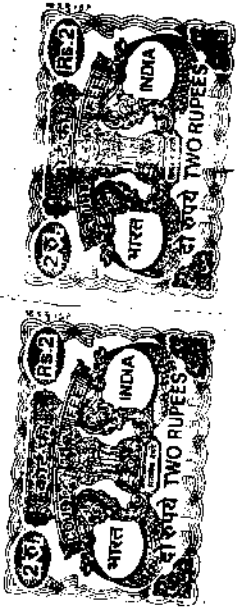
5. It appears from paragraph-21 onwards in impugned order that resolution plan submitted by petitioner was rejected. Consequently RP was discharged, liquidator appointed and directed to forthwith take the custody. Opposite parties have not been able to demonstrate that rejection of the plan is founded 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.

Sd/- A. Sinha, J.

Sks



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