



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : CRL.REVN/3/2024

RAJIV BHATNAGAR, RESOLUTION PROFESSIONAL OF M/S UM GREEN
LIGHTING PVT.LTD
HAVING ITS OFFICE AT C-51, FIRST FLOOR, CORPORATION BANK
BUILDING, AWAS VIKAS, NAINITAL ROAD, RUDRAPUR- UTTARAKHAND-
263153

VERSUS

M/S CSA CORPORATION PRIVATE LIMITED AND ANR
FORMERLY KNOWN AS ORSUS AGRO DEVELOPERS PVT. LTD
HAVING ITS CORPORATE OFFICE AT 250, FIRST FLOOR, OKHLA
INDUSTRIAL AREA, PHASE III, NEW DELHI- 110020 AND
REGISTERED OFFICE AT H/NO. 297, 1ST FLOOR, 17, AOYIMKUM
VILLAGE, DIMAPUR, NAGALAND AND REPRESENTED BY ITS
CONSULTANT SHRI. SANTOSH KUMAR

2:STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : NAGALI SHOHE

Advocate for the Respondent :

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

Date : 26.02.2024

Heard Mr. Nitin Bansal the learned counsel for the petitioner, Rajiv Bhatnagar Resolution Professional of M/S UM Green Lightning Pvt. Ltd.

The petitioner has filed this application under section 482 Cr.PC read with Article 226 and 227 of the Constitution of India for setting aside the summons issued to the Resolution Professional (R.P. for short) in the complaint Case in C.R Case No.12/2021 under section 420/406 IPC. The respondents are M/S CSA Corporation private Limited formerly known as (Orsus Agro Developers Pvt. Ltd) and the State of Nagaland.

It is submitted on behalf of the petitioner that he is Resolution Professional for M/S UM Green Lightning Pvt. Ltd appointed by order dated 10.1.2023 passed by the National Company Law Tribunal, Delhi within the meaning of section 5(27) of the Insolvency and Bankruptcy Code, 2016 (IBC, in short). The petitioner is duty bound to conduct Corporate insolvency under section 23 of the IBC 2016 and as such no suit prosecution or other legal proceedings shall lie against him under section 233 of the Code. It is also submitted that the petitioner was arrayed as accused No.1 in the complaint case C.R Case No.12/2021. At best if liable, the accused No.2 is liable for any criminal offence as alleged by the complainant-respondent No.1 herein. However, the C.R. case No.12.2021 against the respondent No.2 has been

set aside and quashed by order dated 20/7/2023 by co-ordinate bench of this Court in connection with CrI. Revn 4/2023.

The accused No.2 is the Director of M/S UM Green Lightning Pvt. Ltd but he has been exonerated from the charges leveled against him by the respondent No.1. It is submitted that under section 14 of the IBC, the petitioner is not liable to be prosecuted. The present petitioner has nothing to do with the alleged offence. Vide order dated 13/12/2021 in CP No.(IB)-2581(ND)/2019 (IRP), a moratorium was declared in terms of the provisions of section 14 of the Code. Vide order dated 10/1/2023 (Annexure-P-2), the present petitioner Mr. Rajiv Bhatnagar was appointed as Resolution Professional (RP in short) for M/S UM Green Lightning Pvt.Ltd. It was submitted that the petitioner is merely working on official duty as appointed and he is discharging his duty as representative of the Court for the time being. The immunities are granted under section 14, 223 r/w 238 of the IBC, 2016. Thus, the learned CJM is barred from taking cognizance of offence against the present petitioner under section 236 of the IBC, 2016.

It is further submitted that a co-ordinate Bench of this Court vide order dated 20/7/2023 in connection with CrI. Revn 4/2023 has already held that this commercial case is of civil nature and was given a criminal colour and the proceeding against the Director of the company in C.R. Case No.12/2021, was quashed and set aside.

The learned counsel for the petitioner has prayed for stay of the proceedings of C.R Case No.12/2021 under section 406/420 IPC till the disposal of the present petition. He has fur-

ther submitted that the learned CJM did not follow proper procedure. The petitioner does not function from Nagaland and the petitioner has its registered office at Uttarakhand but the procedure under section 202 of the Cr.PC was not followed before issuance of summons against the petitioner. It is further submitted that against the order in CrI. Revn 4/2023, the complainant-respondent No.1 herein has preferred SLP and it is submitted that no stay has been granted by the Hon'ble Supreme Court against the order of this Court quashing the proceedings of C.R. Case No.12/2021, against the Director of the Company.

I have taken into consideration the submission of the learned counsel Mr. Nitin Bansal for the petitioner. I have perused the order dated 20/7/2023 passed by a co-ordinate Bench of this Court and have perused the order of the learned CJM in C.R Case No.12/2021 dated 16/1/2024 issuing summon against the petitioner, Annexure-P-17. It is submitted that in the complaint petition the allegation is basically against the accused No.2. The present petitioner was appointed much later on 10/1/2023 whereas the C.R Case No.12/2021 was initiated and filed on 15/11/2021. The accused of C.R case No.12/2021 were awarded the contract work vide Letter of Award dated 10/2/2019 and 13/9/2017. No formal agreement was executed between the parties who had clear understanding of the roles to be carried out by both the parties in their meeting at Delhi. The company of the petitioner and the company of the respondent shared the responsibility of the Bank Guarantees at the ratio of 50:50. The petitioner and the respondent company participated in the open tender for design, manufacture supply, erection,

testing and commissioning of standalone off Grid Solar LED streets lights in 5 states namely Assam, Bihar, Jarkhand, Odisha and Uttar Pradesh including complete system warranty and its AMC for 5 years under Atal Jyoti Yojana (AJAY) of Ministry of New and Renewable Energy (MNRE), Government of India. In the 3rd year the respondents could not continue with the work due to non payment by the petitioners and also the petitioner company went under insolvency. Earlier another person Mr. Amar Gopal was the R.P who was replaced by the present petitioner Mr. Rajiv Bhatnagar as the R.P. vide order of the NCLT dated 10/1/2023 in connection with IB-2581(ND) 2019, and several I.A applications being I.A-743/2022, I.A/2022, I.A 1355/2022, I.A 2110/2022, I.A 2880/2022. It is submitted the present petitioner cannot at all be held responsible for the petitioner's company.

I have considered the submissions that the allegation survives only against the accused against whom C.R.12/2021 was initiated.

In the wake of the foregoing discussions, it is hereby held that the petitioner has drawn out sufficient grounds for interim stay. Further proceeding of the C.R Case No.12/2021 is stayed only upto the next date.

Issue notice to the respondent Nos. 1 and 2.

Scanned copies of the trial Court record of the case C.R/Case No.12/2021 is called for.

List the matter after 3(three) weeks.

**Sd/-
JUDGE**

Comparing Assistant