

20/88



-1-



**IN THE HON'BLE HIGH COURT OF ORISSA, CUTTACK**

**(CRIMINAL MISCELLANEOUS JURISDICTION)**

**CRLMC NO. 1972 OF 2019**

**CODE NO. 092100**

**IN THE MATTER OF:** An application under Section 482 of the Code of Criminal Procedure 1973;

**AND**

**IN THE MATTER OF:** An application seeking quashing of the Complaint Petition being 2 (CC) Case No. 14/2019 under Sections 74 (3), 236 and 235A of the Insolvency and Bankruptcy Code, 2016 read with Sections 190, 193 and 200 of the Code of Criminal Procedure, 1973 pending before the Court of Ld. District and Sessions Judge, as well as the order of cognizance taken in the said case dated 06.06.2019.

Presented in Court

B.O.  
23/07/19

**AND**

**THE MATTER OF:**

- LIBERTY HOUSE GROUP PTE. LTD.,** a Company incorporated under laws of Singapore having its registered Office at 8 Marina View, #40-06, Asia Square Tower 1, 018960, Singapore, represented



23/07/19  
**P. K. MOHANTY**  
NOTARY CUTTACK TOWN

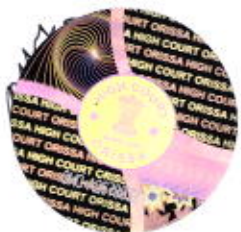
*[Handwritten signature]*

through authorized representative, Mr. Satish Chandra, S/o. Mr. Saryug Prasad Singh, aged about 37 years, R/o. F-2/12, Block B-7, Hi-Tech Plaza, Sundarpada, Bhubaneswar-751002.

2. Mr. Sanjeev Gupta, S/o. Mr. P.K. Gupta, aged about 48 years, residing at 47, Hertford Street, Mayfair, London W1J3SW, represented through Power of Attorney Holder, Mr. Satish Chandra, aged about 37 years, R/o. F-2/12, Block B-7, Hi-Tech Plaza, Sundarpada, Bhubaneswar-751002.

3. Mr. Rajiv Bajaj, S/o Late Shri R.C. Bajaj, aged about 48 years, R/o. H2-D-204, Westend Heights, DLF Phase 5, Gurgaon - 122009.

4. Mr. Rahul Yenurkar, S/o. Madhukar Yenurkar, aged about 54 years, residing at 420 S Hazard Street, Georgetown, South Carolina 29440, USA, represented through Power of Attorney Holder, Mr. Satish Chandra, aged about 37 years,



23/07/19  
P. K. MOHANTY  
NOTARY CUTTACK TOWN

*(Handwritten signature)*

R/o. F-2/12, Block B-7, Hi-Tech Plaza,  
Sundarpada, Bhubaneswar - 751002.

**...PETITIONERS**

**VERSUS**

**INSOLVENCY AND BANKRUPTCY BOARD  
OF INDIA**, through Mr. Umesh Kumar  
Sharma, 7<sup>th</sup> Floor, Mayur Bhawan, Shankar  
Market, Connaught Circus, New Delhi -  
110001.

**...OPPOSITE PARTY**



*Handwritten signature or mark in blue ink.*

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
07.	20.02.2020	<p>Heard Mr. Rajat Kumar Rath &amp; Mr.Dharanidhar Nayak, learned senior counsel for the petitioners and Mr.A.K.Bose, learned Asst. Solicitor General of India &amp; and Mr.Debasnan Das, learned counsel for the Opposite Party.</p> <p>2. This application has been filed by the petitioners under Section 482 of Cr.P.C. seeking quashment of the order of cognizance dated 06.06.2019 passed by the learned District &amp; Sessions Judge-Cum-Special Judge, Cuttack in 2(c)CC No.14 of 2019, which has been instituted at the instance of the Opposite Party against the petitioners alleging commission of offence punishable under Section 74(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') and also the proceeding thereunder against them.</p> <p>3. The facts relevant to this case are that, the petitioner No.1-Company incorporated under laws of Singapore is the successful Resolution Applicant with regard to the "Corporate Insolvency Resolution Process" of Corporate Debtors, Adhunik Metaliks Limited and its sister concern, Zion Steel Ltd. The Resolution Plan for Petitioner No.1-Company was approved on 17.07.2018 by the NCLT, pursuant to which, the Petitioner No.1-Company is stated to have deposited an amount of Rs.50 Crores but thereafter, since the Resolution Applicant did not</p>	



Sl. No. of Order	Date of Order	2 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>pay the upfront amount as agreed, alleging breach of the same, a complaint was filed against it alleging commission of offence under Section 74(3) of the Code wherein cognizance of the said offence has been taken against the petitioners. The petitioners have challenged the same on the ground that non-compliance on their part was not due to their fault but, for non-compliance of the condition precedent for payment of the upfront amount by the other stakeholders. Since in this case more time has been given for complying with the aforesaid for payment of upfront amount of thirty days more, the Opposite Party-Board could not have made compliant and as such, the complaint being premature, is liable to be quashed.</p> <p>4. The same has, however, been contested by the Opposite Party with the pleading that the purpose of the Code is to create an effective legal framework for timely resolution of insolvency and bankruptcy of corporate and to support development of bond market in India and encourage entrepreneurship. The Code was introduced to address the much-needed reforms in the insolvency and bankruptcy regime for improving the business environment and alleviating distressed credit market in the country. Further, the objective of the Code is to restore a debtor company to profitable venture,</p>	



Sl. No. of Order	Date of Order	3 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>to maximize the return to the creditors as a whole by maximizing the value of corporate debtor through resolution process, to establish a fair and equitable system for the ranking of claims and distribution of assets, identify the causes of company's failure and imposing sanctions for culpable management by its directors and officers, thereby, promptly responding to defaults in a way that promotes economic growth and competition. An effective insolvency regime is the only possible ways to foster public confidence which is required to fuel investment or commercial activity which will help respond to the financial risks. Accordingly, an expression of interest is published by the Resolution Professional inviting any prospective applicants, who are eligible under Code to submit a resolution plan. In such resolution plan of the Corporate Debtor, the petitioners-Resolution Applicant met the requirements provided under the Code which was approved as per scheme of the Code. But, thereafter, the Resolution Applicant, who are the petitioners committed breach of the payment of upfront amount within the time stipulated i.e. by 17.07.2018 as per resolution No.1, which exposed them to criminal prosecution and as such, they are indicted under Section 74(3) of the Code. Hence, the complainant-Opposite</p>	



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>Party having been made a complaint and prima facie, the petitioners having committed the contravention, the trial court took cognizance of the same. The ground that is taken on the application by other stakeholders was not performed and as such, the resolution of upfront amount could not pay in time for non-compliance of the condition precedent, as a defence plea, is without any substance. Furthermore, the petitioners having also not paid the upfront amount within thirty days shows lack of bonafides on their part in implementing the Resolution Plan which exposed them to the criminal prosecution. Therefore, when a prima facie case is made out against the Resolution Applicant exposing themselves to the prosecution under Section 74(3) of the Code, the court has taken cognizance against them and as such, this Court should not interfere with the same.</p> <p>5. During the course of hearing, Mr.Rath, learned Senior Counsel for the petitioners though advanced his argument that during the availability of the grace period of fifteen days, a complaint was filed but did not dispute with the fact of non-payment of the upfront amount. According to him, the upfront amount is subject to the performance of the obligations as mentioned in the petition and the same having not been</p>	



Sl. No. of Order	Date of Order	5 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>complied with, the upfront amount was not paid. He further submitted that suppressing the same the criminal prosecution having been launched and in the meanwhile, the upfront amount having already been paid, the NCLAT has held that it is open to the petitioner to approach the Opposite Party-Board for withdrawal of the complaint, and may request the learned Sessions Judge or High Court or Special Judge not to take cognizance of the offence. Citing the facts and circumstances as above, the learned senior counsel submits to quash the prosecution.</p> <p>6. Learned counsel for the Opposite Party-Board, however, vehemently opposed such prayer on the ground that cognizance having been taken by the Special Judge as prima facie, the offences are made out in view of the breach, the Court in exercise of the power under Section 482 of Cr.P.C. should not quash the prosecution, inasmuch as, it is well settled in law that when prima facie offence is made out, the Court in exercise of the power under Section 482 of Cr.P.C. should not interfere with the order of cognizance and the proceeding at the threshold.</p> <p>7. To appreciate the contentions of the learned counsel for the parties, it would be apposite to look into the subsequent</p>	



Sl. No. of Order	Date of Order	6 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>development in the matter as it is stated that in the meanwhile, the upfront amount has already been paid and the National Company Law Appellate Tribunal (NCLAT) has also given its observation which reads as thus:</p> <p style="text-align: center;"><i>*xxx xxx xxx In view of the above development, we allow the 'Resolution Professional'/ 'Liquidator' to hand over the records, control etc. to the Appellant ('Successful Resolution Applicant' - Liberty House Group Pvt. Ltd.). Parties will also ensure to implement the plan in its letter and spirit. The detailed affidavit(s) by filed by the Appellant and the 'Committee of Creditors' within a week. Rest of the issues will be decided on the next date.</i></p> <p style="text-align: center;"><i>Post the case 'for orders' on 3<sup>rd</sup> March, 2020 before the 1<sup>st</sup> Bench on the top of the list. The appeal may be disposed of on the next date.</i></p> <p style="text-align: center;"><i>In view of the aforesaid development, having complied with the 'Resolution Plan', it will be open to the Appellant - 'Liberty House Group Pvt. Ltd.' to move before the 'Insolvency and Bankruptcy Board of India' with the request to withdraw the complaint before the Learned Special Judge, Cuttack. The Appellant may request the learned Sessions Judge, High Court of Orissa and the learned Special Judge, Cuttack not to take cognizance of the offence".</i></p> <p><b>8.</b> In this case, as it appears, when cognizance has been taken, the complaint at the behest of the complainant can either be withdrawn, or in exercise of the power under Section 482 of Cr.P.C., this Court can quash the same if it feel the same is warranted in the facts and situation. It is submitted on behalf of the petitioners that since in this case, the upfront amount has already been paid and the Resolution Applicant</p>	



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>has already complied with the terms, the continuance of the prosecution hereinafter shall be an abuse of the process of the Court and for that, the Court should quash the same, which, however, has been vehemently opposed by the opposite parties on the ground that when prima-facie the offence has already been committed, this Court should not interfere with the order of cognizance on the said ground.</p> <p>9. Considering the observation of the NCLAT, but without expressing any opinion with regard to the exercise of power under Section 482 of Cr.P.C. on merit and as it is stated that the Opposite Party-Board has already been approached for withdrawal of the prosecution, it is observed that the Opposite Party-Board may take a decision on the application of the petitioners for withdrawal of the prosecution in the changed circumstances within three weeks' hence but, the same should not be construed as an expression of any opinion by this Court or mandate to the Board for withdrawal of the prosecution. It is left open to the wisdom of the complainant to take a decision as they deem fit and proper on the prayer made by the petitioners. However, till the period of three weeks' hence, the Special Court shall not proceed with the matter. Liberty is also given to the petitioners to approach this Court under Section 482 of</p>	

*[Handwritten signature]*



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
RKS/MRS		<p>Cr.P.C., if they are so advised, seeking quashment of the proceeding on merit as this Court has not decided the petition under Section 482 of Cr.P.C. for quashment after the decision of the Board.</p> <p>10. With the aforesaid order, the CRLMC stands disposed of.</p> <p>Urgent certified copy of this order be granted on proper application.</p> <p style="text-align: right;"><i>Sd. S. Pujahari, J.</i></p>	



*Comp by  
Anish  
28-2-20*

Date of Application : 28.2.  
 Date of Notification : 00.  
 Date of Supply :- 28.2/20  
 Date of Ready :- 28.3.  
 Date of Delivery : 3.3.20

C.A.No- 20783/20

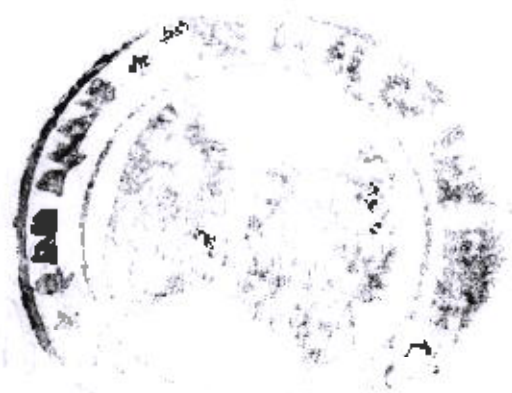
### MEMO OF COSTS

	Rs.	P.
Application Fee.....	5	50
Searching Fee.....	—	—
Extra Fee for Urgency..	9	00
Folios // Pages.....	27	50
Hologram Fees (11.)	11	00
Other Items (if any).....	7	15
	60	15

Rupees Sixty  
 & Paise Fifteen only

*[Signature]*  
 28.2.20

EXAMINER OF COPIES  
 CUM  
 SUPERINTENDENT  
 COPYING DEPARTMENT



CERTIFIED TO BE A TRUE COPY  
*[Signature]*  
 Assistant Registrar (Estt.)  
 ORISSA HIGH COURT  
 Authorised Under Section-76, Act-I of 1872