



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 4645 of 2024

(In the matter of an application under Section 482 of Criminal Procedure Code, 1973).

Anil Kumar Gilra *Petitioner(s)*
-versus-

State of Odisha & Anr. *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Soumya Jyoti Biswal, Adv.*

For Opposite Party (s) : *Ms. Gayatri Patra, ASC*
Mr. Bibekananda Nayak, Adv.
(for O.P.2)

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-05.03.2026

DATE OF JUDGMENT:-13.03.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner has instituted the present Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure , 1973/ Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, invoking inherent jurisdiction of this Court, seeking entire criminal prosecution initiated by the Opposite Party No.2 for the alleged commission of the offences punishable under Section 406/409 of the IPC.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:



- (i) On 03.07.2014 the inspector appointed under Section 13 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter E.P.F. & M.P. Act) filed an F.I.R bearing P.S. Case No. 155/14 against the Petitioner wherein the Complainant alleged that during the course of investigation regarding deposit of statutory E.P.F dues in respect of employees of M/s. Cosboard Industries Ltd.
- (ii) The Complainant noticed that the Petitioner who is the then promoter/director of the said company has deducted the employee's share of the provident fund from the salary/ wages of the employees, amounting to Rs. 15,14,533.00/- (Rupees Fifteen Lakhs Fourteen Thousand Five Hundred Thirty-Three Only) from a period of March, 2012 to March, 2013 and from May, 2013 to July, 2013.
- (iii) Furthermore, the Complainant alleged that the present Petitioner has committed criminal breach of trust by deducting the employee's contribution from the wages/salary payable to the said employees and for that reason lodged an F.I.R against the Petitioner under Section 406 and 409 of IPC.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioners earnestly made the following submissions in support of his contentions:
 - (i) The Petitioner in the instant case is the erstwhile Director of M/s. Cosboard Industries Pvt. Ltd., however the company underwent insolvency as under the provisions of Insolvency and



Bankruptcy Act, 2016 on 16.12.2019/Annexure-7, by an order of the National Company Law Tribunal, Cuttack Bench and on 03.02.2022 the learned National Company Law Tribunal vide its order under Annexure-8, passed a resolution plan whereby the going concern was acquired by a Successful Resolution Applicant, who is now in charge of the operations of the company.

- (ii) The entire litigation stems from a FIR Dt. 03.07.2014 lodged by the Jagatpur Police Station bearing P.S. Case No. 155 of 2014 corresponding to G.R. Case No. 487 of 2014/Annexure-1. On account of a complaint submitted by the O.P. No. 2 against the Petitioner under Sections 406 and 409 of the Indian Penal Code, 1860 for the failure on his part to deposit the contribution of the employer to the employees provident fund accounts for the period of March 2012 to March 2013 and then again May 2013 to July 2013.
- (iii) The Petitioner through various transactions ranging from July 2014 to February 2015 cleared the outstanding contribution sum of Rs. 15,14,533/- (Rupees Fifteen Lakhs Fourteen Thousand Five Hundred Thirty Three Only) and the same was also communicated and brought to the knowledge of the O.P. No. 2.
- (iv) The Deputy Commissioner of the O.P. No. 2 also wrote a letter Dt. 27.08.2024 reference No.OR/DO/CTC/3263/1230/Annexure-4, addressing the learned J.M.F.C. that the dues of the Petitioner were cleared and attached thereto copies of the transaction slips



contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

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- (viii) The E.P.F. & M.P. Act, 1952 has been amended post the introduction of IBC, 2016, however the legislature whilst enacting the amendments at no instance have introduced any provisions which would alter/exclude the E.P.F. & M.P. Act, 1952 from the purview of IBC, 2016.
- (ix) The Hon'ble Apex Court in the case of *PR. Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd.*¹ held that the provision of Section 238 of the IBC, 2016 are to be followed and that in case of any inconsistency the provisions of Section 238 of the IBC, 2016 shall also supersede the provisions of Income Tax Act as well.
- (x) In the case of *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr.*² has also held that the provisions under Section 238 of the IBC would be squarely applicable to all the organizations under CIRP and that the provisions of Section 238 give an unambiguous reading that the same shall be applicable to all the laws unless the same is inconsistent.
- (xi) Whether the Resolution Plan is absolute and the recitals made therein are binding on all the stakeholders?

¹ SLP (C) No. 6843 of 2018 decided on 10.08.2018

² Civil Appeal No. 8337-8338 of 2017 decided on 31.08.2017



Section 31 of the IBC, 2016 explicitly states that the Resolution Plan once it is approved by the Adjudicating Authority shall be binding on all the stakeholders and that the same shall be followed in letter and spirit once it is approved. Section 31(1) of the IBC, 2016 has been reproduced hereunder:

“31. Approval of resolution plan. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 1(including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]”

- (xii) The Supreme Court of India in the case of *Ghanshyam Mishra & Sons. Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Ltd. & Ors.*³ has explicitly relied on the statement of objects & reasons as encapsulated in the IBC, 2016 and has opined that the provisions of IBC, 2016 shall be binding on all the stakeholders including the government. That the Hon'ble Apex Court has further opined, under Para nos. 95-105, that the law has to be

³ 2021 (9) SCC 657



interpreted in furtherance of the Resolution Plan in a manner so as to allow the successful Resolution Applicant to start with a clean slate and provide him the best possible start to successfully run the sick unit.

(xiii) In the case of *M/s. JSW Energy (Utkal) Limited, Bhubaneswar vs. State of Odisha, Revenue and Disaster Management Department & Ors*⁴. and in the case of *Sandeep Jajodia vs. IDBI Bank Ltd. & Ors*⁵. has held that the recitals made by the Adjudicating Authority in the Resolution Plan shall be held supreme and would fairly apply to all the entities and stakeholders interested in the going concern.

(xiv) Whether the Resolution Plan so approved by the Adjudicating Authority contains the concessions which are prayed for by the instant Petitioner?

The Resolution Plan as approved by the NCLT, Cuttack does contain the necessary concessions and the recitals on the basis of which the Petitioner has preferred this instant petition.

(xv) The Clause No. 30, at Page No. 118 of the Petition, of the approved Resolution Plan explicitly states that any litigation or proceedings which are initiated against the incumbent promoter group of the going concern shall stand extinguished including but not limited to taxation matters, environmental law matters, criminal matters, etc.

⁴ 2025 (II) OLR 553

⁵ 2024 (Supp. I) OLR 761



- (xvi) Clause No. 12 at Page No. 105, Clause No. 20 at Page No. 110 and Clause No. 29 at Page No. 116 of the main Petition, further indemnifies the Petitioner from any and all wrongdoing, in his capacity as a director, which have existed prior to the taking over of the company by a Successful Resolution Applicant.
- (xvii) The Resolution Plan under its various concessions and recitals has also allowed that any and all litigations which exist against the Petitioner in respect to this position in the company shall stand extinguished, thus the existence and the ongoing progress in the G.R. Case is in direct contravention of the judicial order of the Hon'ble NCLT, Cuttack.
- (xviii) Whether a second application under Section 528 of the BNSS 2023 is maintainable?
- It has been held by the Hon'ble Supreme Court in countless decisions that the existence of a prior application under Section 482 of CrPC, corresponding to Section 528 of the BNSS, 2023 is not a bar.
- (xix) Further, the documents which have been bought before this Hon'ble Court in the instant case, i.e., the Resolution Plan, order of CIRP by the NCLT, Cuttack Bench as well as the receipts showcasing the deposit of the employer aspect of contribution towards the provident fund was also never before this Hon'ble Court in the previous CRLMC application.



- (xx) The Hon'ble Supreme Court in the case of *Superintendent and Remembrancer of Legal affairs, West Bengal vs. Mohan Singh*⁶ held that a subsequent application under section 482 of Cr.P.C., would be maintainable in changed circumstances. It was affirmed that a subsequent application, which is not a repeat application squarely on the same facts and circumstances, would be maintainable. A similar stance was also taken by the Apex Court in *Anil Khadkiwala vs. State (Government of NCT of Delhi)*⁷. Furthermore, it was held in *Vinod Kumar, IAS vs. Union of India*⁸, a 3-judge Bench of the Hon'ble Apex Court observed that dismissal of an earlier petition under Section 482 Cr.P.C would not bar filing of a subsequent petition thereunder in case the facts so justified.
- (xxi) The initiation of criminal proceedings against the Petitioner in case when the due amount has already been paid by the Petitioner in full and the same has been acknowledged by the complaining authority is abuse of process of law and requires the immediate and urgent intervention of this Court.
- (xxii) The initiation and the continuance of criminal proceedings is a serious matter as it affects the liberty of a person and no greater damage can be done to the reputation of a person than dragging him in a criminal case.

⁶ (1975) 3 SCC 706

⁷ (2019) 17 SCC 70

⁸ 2021 SCC OnLine SC 559



(xxiii) The Petitioner in the instant case has brought in record various documents including but not limited to the payment receipts, delayed chargesheet, acknowledgement of dues letter issued by the O.P. No. 2 as well as the Resolution Plan whereby the Petitioner has been granted various concessions and reliefs.

(xxiv) There exists any discrepancy between the provisions of IBC, 2016 and the E.P.F. & M.P. Act, 1952 then the provisions of IBC shall apply on account of the non-obstante clause and catena of decisions of the Hon'ble Supreme Court of India.

(xxv) Subsequently, the Hon'ble Supreme Court in the case of Ghanashyam Mishra supra has already opined that the recitals of the approved Resolution Plan under Section 31(1) of the IBC, 2016 shall be absolute and all the recitals contained therein shall be applicable to the state and central governmental authorities as well.

(xxvi) The Petitioner in light of the above-made submissions most humbly prays that the FIR dated 03.07.2014 lodged by the Jagatpur Police Station bearing P.S. Case No. 155 of 2014 corresponding to G.R. Case No. 487 of 2014/Annexure-1 may be quashed in totality.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of her contentions:

(i) The FIR was lodged against the petitioner u/s. 406 and 409 read with Explanation 1 u/s.405 of Indian Penal Code 1860, according



to para 32 of the EPF Scheme 1952. The petitioner having been deducted from the wages / salary of the employees is deemed to have been entrusted to him for the purpose of making payment to the statutory fund in terms of sub-para (3) of para 32 of the EPF Scheme 1952.

- (ii) That it is humbly submitted that since the petitioner has violating the statutory provisions of the EPF Scheme, 1952. The criminal proceeding has been initiated against the petitioner/s.406 & 409 of IPC r/w Explanation -1 u/s.405 of IPC,
- (iii) For better appreciation of the provision the relevant portion of the section 405 is quoted below:

Section 405: Criminal Breach of trust:

Explanation [1]:- A person, being an employer "[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]



- (iv) The complainant is a public functionary given powers of inspector u/s.13 of the EPF & MP Act, 1952 with proper evidence.
- (v) The CBT EPF dues must be deposited mandatorily within 15 days of subsequent month and any deposit made after 15th of the subsequent month and any deposit made after 15th of the subsequent month is a penal offence. Therefore, even if the deposits has been made after the due date, the offence is already committed.
- (vi) The employer M/s. Cosbaord Industries Ltd., Established by Sri Anil kumar Girla has deducted the employees share of the provident fund from the salary wages of the employees amounting to Rs.15,14,533 /- (Fifteen Lakhs Fourteen Thousand Five hundred Thirty Three rupees) from the period 03/2012 to 03/2013 and from 05/2013 to 07/2013 according to para 32 of the EPF scheme 1952.
- (vii) It is further submitted that, as on date of filling of FIR dtd.03.07.2014, the CBT EPF dues was not paid by employer and therefore, offence was already committed by not depositing the dues on time.
- (viii) As the offence has already been committed by deducting the employees share but not depositing both the employee and employer share on due date, a criminal breach of trust is already established beyond doubt. A careful examination of wage



month, due date of deposit for the default period mentioned in the FIR is clear evidence of offence.

- (ix) There is no mention of specific submission by the employer before the Hon'ble Tribunal regarding the pending dues. Therefore, the petitioner is failed to discharge the duty of the employer of clearing all the outstanding dues, submitting report and returns to the commissioner and any other tribunals and courts in tribunal manner. It is therefore clear that the petitioner was actively involved in preventing the CBT EPF dues to be registered, discussed and discharged which is offence U/s. 14 of the EPF & MP Act, 1952.
- (x) It is submitted that any offence relating to not adhering to payment of statutory dues on scheduled time is committed very next date after the due period. Once, such an offence is committed and registered which is criminal in nature cannot be absolved by any Tribunal including NCLT that dealt with civil matters. Any criminal offence committed and registered before the appropriate court only be decided by the jurisdictional court as original court and appeal can be filed after pronouncement of judgment. The Hon'ble NCLT is not a criminal court in original jurisdiction nor an Appellate Tribunal vested with jurisdiction and therefore simply lacks the authority to pardon or punish for this criminal offence by virtue of lack of jurisdiction. Besides, as per Insolvency and Bankruptcy Code, 2016 the EPF & MP Act is not amended in accordance with the provision of Insolvency



and Bankruptcy Code, 2016 and CBT EPF has legal right to recover EPF dues U/s. 17 B of the EPF & MP Act, 1952 from both previous and current employer if dues are not discharged.

(xi) SECTION 17 (B): Liability in case of transfer of establishment:

Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or 1 [the 2[pension] Scheme or the Insurance Scheme], as the case may be, in respect of the period up to the date of such transfer: provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

(xii) The dues of CBT EPF cannot be waived off by the NCLT for lacking jurisdiction decide EPF matter, post enactment of Insolvency and Bankruptcy Code, 2016, section 17 B remains unaltered because of EPF & MP Act is not among the Acts amended to align with Insolvency and Bankruptcy code.

(xiii) The Hon'ble NCLT lacks jurisdiction for an offence already committed. The matter relates not only about payment of dues has been cleared but offence of criminal Breach of Trust remains by Employer.



- (xiv) It is humbly submitted that, the submission of petitioner is related to the insolvency proceedings because before the insolvency employer has already defaulted in the payment of statutory dues on scheduled time and accordingly offence already committed and subsequently registered. Therefore, ratio of *Ashok Kumar Vs. New India Assurance Co. Ltd.*⁹ is not related to this case.
- (xv) It is humbly submitted that, as per the ratio of *Ghanashyam Mishra & sons Private Limited Vrs. Edelweiss Asset Reconstruction Limited and Others*¹⁰ the ration of said judgment is not applicable in this case. The doctrine of clean state cannot be used to hide a statutory dues before the tribunal so that the resolution plan makes no mention of the outstanding statutory dues and summary provision of reducing all miscellaneous dues to zero. By not putting CBT EPF dues, the current employer and the Resolution Professional both have committed perjury and fraud and criminal Breach of trust.
- (xvi) The ratio in the decision relied by the petitioner in case of *Superintendent and Remembrancer of Legal Affairs, West Bengal Vrs. Mohan Singh*¹¹ is not applicable to the present case.
- (xvii) It is to be mentioned that this Court in paragraph 3 of the judgment in *Cuttack Wholesale Co-Operative stores Limited,*

⁹ 2023 SCC (SC) 893

¹⁰ 2021 (9) SCC 657

¹¹ (1975) 3 SCC 706



*Cuttack Vrs. Regional Provident Fund Commissioner, Bhubaneswar*¹² has held that:

“But a criminal prosecution can be quashed only when the High court is satisfied that the facts alleged on the face value do not constitute the offence in question. In the facts and circumstances of the present case, it is difficult for us to come to a conclusion that the allegations in the complaint petition do not make out the offence in question.”

(xviii) It is submitted that, in view of the aforesaid facts and circumstances, The offence committed by the petitioner is grave endangering the Right to pension and Right to life of the workers engaged in the establishment, there is no ground to quash the criminal proceedings against the petitioner in GR case No.487/2014, which is pending now before the learned court of J.M.F.C (R), Cuttack. And therefore praying before this Hon'ble Court not to quash the FIR and encourage a grave offender of the law to go scot-free, harming public interest, weakening public trust on rule of law and protection of law.

(xix) In view of the above facts and circumstances, the present CRLMC petition is not sustainable in the law and the CRLMC petition should be rejected with cost.

IV. COURT'S REASONING AND ANALYSIS:

5. The complainant is a public functionary given powers of inspector under Section 13 of the EPF & MP Act, 1952 with proper evidence.

¹² 1995 1 OLR 367



6. The CBT EPF dues must be deposited mandatorily within 15 days of subsequent month and any deposit made after 15th of the subsequent month and any deposit made after 15th of the subsequent month is a penal offence. Therefore, even if the deposit has been made after the due date, the offence is already committed.
7. The employer M/s. Cosbaord Industries Ltd., Established by Sri Anil kumar Girla has deducted the employees share of the provident fund from the salary wages of the employees amounting to Rs.15,14,533 /- (Fifteen Lakhs Fourteen Thousand Five hundred Thirty Three rupees) from the period 03/2012 to 03/2013 and from 05/2013 to 07/2013.
8. The dues of CBT EPF cannot be waived off by the NCLT for lacking jurisdiction decide EPF matter, post enactment of Insolvency and Bankruptcy Code, 2016, section 17 B remains unaltered because of EPF & MP Act is not among the Acts amended to align with Insolvency and Bankruptcy code.
9. In view of the aforesaid facts and circumstances, The offence committed by the petitioner is grave endangering the Right to pension and Right to life of the workers engaged in the establishment, there is no ground to quash the criminal proceedings against the petitioner in GR case No.487/2014, which is pending now before the learned court of J.M.F.C (R), Cuttack. And therefore, praying before this Hon'ble Court not to quash the FIR and encourage a grave offender of the law to go scot-free, harming public interest, weakening public trust on rule of law and protection of law. In view of the above facts and



circumstances the present CRLMC petition is not sustainable in the eye of law.

V. CONCLUSION:

10. In view of the foregoing analysis, and after an anxious and careful consideration of the material facts and circumstances of the case, this Court is of the considered opinion that the G.R. Case No. 487/2014 as well as consequential proceedings emanating therefrom, are not liable to be quashed. Consequently, this Court is not inclined to accede to the relief prayed for by the Petitioner.
11. Accordingly, the CRLMC stands **dismissed**.
12. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated 13th March, 2026/