IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.360 OF 2018

BETWEEN:

1. BIODIVERSITY CONSERVATION INDIA PVT. LTD.,
37, 1/1, R.K.CHAMBERS,
GROUND FLOOR, AGA ABBAS ALI ROAD,
BENGALURU-560042.
REPRESENTED BY ITS OFFICIAL LIQUIDATOR
MR. AMIT CHANDRAKANT SHAH.

2. BCIL ZED RIA PROPERTIES LTD.,
37, 1/1, R.K.CHAMBERS,
GROUND FLOOR, AGA ABBAS ALI ROAD,
BENGALURU-560042.
REPRESENTED BY ITS MANAGING DIRECTOR
CHANDRASEKHAR HARIHARAN.

3. BCIL RED EARTH DEVELOPERS INDIA PVT. LTD.,
37, 1/1, R.K.CHAMBERS,
GROUND FLOOR, AGA ABBAS ALI ROAD,
BENGALURU-560042.
REPRESENTED BY ITS MANAGING DIRECTOR
CHANDRASEKHAR HARIHARAN.

...PETITIONERS

(BY SRI. AJESH KUMAR S., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY SHO, HALASUR POLICE STATION,
REPRESENTED BY SPP,
HIGH COURT BUILDING,
CUBBON PARK,
BENGALURU-560001.

2. MR. AKASH GUPTA,
S/O MR. BLAMUKUND GUPTA,
PRESENTLY RESIDING AT FLAT NO.22,
TOWER-6, PEBBLE BAY APARTMENT,
SANJAYNAGAR, RMV 2ND STAGE,
BENGALURU-560094.

…RESPONDENTS

(BY SRI. SUHAS GOWDA M., HCGP FOR R1;
SRI. N.VENKATESH KAMATH, ADVOCATE FOR
SRI. CHINTAN CHINNAPPA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE FIR, PENDING BEFORE IV ACMM, BENGALURU, IN CR.NO.408/2017 OF HALASOORU POLICE STATION.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard the learned counsel for the petitioners, the learned High Court Government Pleader appearing for respondent No.1/State and the learned counsel for respondent No.2/complainant.

2. This petition is filed by accused Nos.1 to 3 praying this Court to quash the FIR in Crime No.408/2017, for the offence punishable under Sections 406, 420 read with 34 of IPC.

3. The factual matrix of the case of the complainant/respondent No.2, is that the complainant invested a sum of Rs.4,20,00,000/- with the petitioners, who allegedly agreed to repay a sum of Rs.6,19,00,000/-. Towards repayment of the said amount, the petitioners issued cheques in favour of the complainant. However, upon presentation, all the cheques were dishonoured. Hence, an allegation is made that the petitioners with an intention to deceive the complainant, made him to invest the money and failed to repay the same as agreed, and the cheques issued towards repayment were dishonoured upon presentation.

4. The main contention of the learned counsel for the petitioners before this Court relying upon the documents Annexures-A to F is that these documents clearly discloses that a false complaint is filed and case is registered. The copy of the statement of account of respondent No.2 (Annexure-C) is clear with regard to the payments made to the complainant by the petitioners. The learned counsel would contend that suppressing the material facts, respondent No.2 has initiated the criminal proceedings under Section 138 of the Negotiable Instruments Act as well as the

arbitration proceedings in A.A.No.373/2017 as per Annexures-E and F. The main contention of the learned counsel is that it is purely civil in nature and there is a provision for arbitration as well as with regard to the bouncing of cheque, already a criminal case is filed giving criminal colour to the civil dispute. The learned counsel would vehemently contend that respondent No.2 has suppressed all the facts and he had promised investment in the ZED RIA project resulting in the petitioners facing huge burden of raising loan to pay the land owners, who had threatened to withdraw from the project.

5. The learned counsel in support of his argument relies upon the document of copy of the order of the NCLT dated 09.08.2018 admitting petitioner Nos.1 to 3 to CIRP and so also the copy of the order of the NCLT, Bangalore dated 16.07.2019 rejecting the application of respondent No.2 herein and document Nos.3 and 4 copy of the NCLT order dated 16.07.2019 and 09.08.2019 approving the resolution plan of petitioner Nos.2 and 3, respectively. The learned counsel also vehemently contend that petitioner Nos.2 and 3 have been admitted to the resolution plan and

new management also taken over in view of the NCLT order. The learned counsel also brought to the notice of this Court the provisions of Section 32A of the Insolvency and Bankruptcy Code, 2016 ('IBC' for short) and contend that there is a bar to proceed against these petitioners. The learned counsel also brought to the notice of this Court that when the proceedings is already initiated under Section 138 of the Negotiable Instruments Act, there is a protection under Section 32A of IBC and ought not to have initiated the criminal prosecution.

6. Per contra, the learned counsel for respondent No.2/complainant would submit that insofar as petitioner No.1 is concerned, there cannot be any prosecution since liquidator is appointed. Insofar as petitioner Nos.2 and 3 is concerned, the learned counsel brought to the notice of this Court the further proviso of Section 32A of IBC and contend that former Director cannot escape from the liability and sub-section (3) of Section 32A is very clear that who are associated with the company and dealt with the company affairs, they are liable. The learned counsel would contend that specific allegations are made against petitioner Nos.2

and 3 in the complaint and they are liable in their individual capacity and the Directors cannot escape from the criminal prosecution.

7. In reply to this argument, the learned counsel for the petitioners would contend that there is no FIR against petitioner Nos.2 and 3. The learned counsel in support of his argument relies upon the judgment of the Apex Court in the case of **MANISH KUMAR v. UNION OF INDIA AND ANOTHER** reported in **(2021) 5 SCC 1** and brought to the notice of this Court the discussion made in paragraph Nos.317 and 319. Section 32A has been divided into three parts consisting of sub-sections (1) to (3) i.e., the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease, and the corporate debtor shall not be prosecuted for such an offence. Both these immunities are subject to the conditions as mentioned in paragraph Nos.317.1, 317.2, 317.3 and 317.4.

8. In reply to this argument, the learned counsel for respondent No.2 would contend that former director cannot be given a clean chit for the act which they have done.

9. Having heard the learned counsel for the respective parties, it is not in dispute that a complaint is given by respondent No.2 in terms of Annexure-B. It is also not in dispute that in pursuance of the complaint (Annexure-B), FIR is registered for the offences punishable under Sections 406, 420 read with Section 34 of IPC. It is not in dispute that the Company is liquidated and liquidator is appointed. Section 32A of IBC is very clear that there cannot be any prosecution when the company is liquidated and liquidator is appointed. The learned counsel for respondent No.2 also not disputes that corporate debtor cannot be prosecuted.

10. Now the question before this Court is in respect of petitioner Nos.2 and 3. It is not in dispute that they are the Directors and investment was made by the complainant. The complainant invested crores of rupees with the petitioners, who allegedly agreed to repay the amount along with the agreed returns. Towards discharge of the said liability, the petitioners issued cheques in favour of the complainant; however, the cheques were dishonoured upon presentation. A specific allegation of cheating was alleged against the

petitioners that at the inception with an intention to cheat the complainant, made him to invest money. It has to be noted that only FIR is registered. This Court would like to refer to the provisions of Section 32A of IBC i.e., liability for prior offences is concerned. No doubt, Section 32A is very clear that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted.

11. The learned counsel for respondent No.2 brought to the notice of this Court the second proviso to Section 32A, which is clear that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue

to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section. Hence, there is a force in the contention of the learned counsel for respondent No.2/complainant.

12. This Court would like to rely upon the judgment of the Delhi High Court passed in W.P.(Crl) 3037/2019 and Crl.M.A.39126/2019 in the case of **TATA STEEL BSL LIMITED AND ANOTHER v. UNION OF INDIA AND ANOTHER,** wherein the Delhi High Court taken note of and extracted Section 32A(1) of the IBC, particularly the second proviso fixing the liability. The Delhi High Court in paragraph No.6 observed that it is clear from the express language of the aforementioned provision that a corporate debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the adjudicating authority. It is also observed that there is no dispute that a resolution plan has been approved by the adjudicating authority (NCLT) and in the circumstances, there is much merit in the contention that the petitioner

cannot be prosecuted and is liable to be discharged. In paragraph No.9 it is clarified that this order will not affect the prosecution of the erstwhile promoters or any of the officers who may be directly responsible for committing the offences in relation to the affairs of the petitioner company. Hence this judgment goes against petitioner Nos.2 and 3.

13. This Court also would like to rely upon the judgment of the Apex Court in the case of **AJAY KUMAR RADHEYSHYAM GOENKA v. TOURISM FINANCE CORPORATION OF INDIA LIMITED** reported in **(2023) 10 SCC 545,** wherein it is held that the criminal proceedings under the Negotiable Instruments Act against Director/signatory for dishonour of cheque, during the pendency of proceedings under IBC, is permissible. It is also discussed with regard to scope of Section 32A of IBC in paragraph Nos.69 and 70. It is held that Section 32A broadly leads to extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management. The prosecution in relation to every person who was a "designated partner" as defined in

clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of Section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor is any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take its own course. Only the corporate debtor (with new management) as held in paragraph No.42 of the judgment in the case of **P. Mohan Raj v. Shah Bros. Ispat (P) Ltd.** reported in **(2021) 6 SCC 258**, will be safeguarded. In paragraph No.69.3 it is held that if the old management takes over the corporate debtor, the corporate debtor itself is also not safeguarded from prosecution under Section 138 or any other offences. In paragraph No.70 it is held that by operation of the provisions of IBC, the criminal prosecution initiated against the natural persons under Section 138 read with Section 141 of the Negotiable Instruments Act read with Section 200 of Cr.P.C. would not stand terminated. Further discussion was made in paragraph Nos.80, 81 and 82. Hence, the contention

of the learned counsel for the petitioners cannot be accepted in respect of petitioner Nos.2 and 3 and they being the Directors, in view of further proviso to Section 32A of IBC, they are not entitled for the relief. The judgment of the Apex Court in the case of **Manish Kumar** (supra) will not come to the aid of petitioner Nos.2 and 3 in view of the discussion made in paragraph No.319 of the judgment.

14. In view of the discussions made above, I pass the following:

ORDER

(i) The petition in respect of petitioner No.1 is allowed. The proceedings initiated against petitioner No.1 in FIR registered in Crime No.408/2017 is quashed.

(ii) The petition in respect of petitioner Nos.2 and 3 is rejected.

Sd/-
(H.P.SANDESH)
JUDGE

MD