



IN THE HIGH COURT OF KERALA AT ERNAKULAM
(Original Jurisdiction)

In the matter of the Companies Act, 1956
and
In the matter of M/s.Kalpetta Janakshema Maruthi Chits Pvt. Ltd. (In
Liquidation)

Report No.32/2025 in Co.Pet. No.43/2016

Before:

The Honourable Mr.Justice VIJU ABRAHAM
Monday, the 25th day of August, 2025/3rd Bhadra, 1947

Report filed by the Official Liquidator praying for an order that, this
Hon'ble Court may be pleased to:-

i) Permit the Official Liquidator to proceed with the
criminal complaints pending under Section 138 of the Negotiable
Instruments Act, 1881 before the Chief Judicial Magistrate Court, Kalpetta in
ST Nos.370/2016, 380/2016, 46/2022, 165/2022, 175/2022 and 68/2023,
without the necessity of obtaining leave from the NCLT;

and

ii) To pass such further or other orders as this Hon'ble
Court may deem fit and proper in the facts and circumstances of the case.

This Report coming on for orders on this day upon hearing
Sri.K.Moni, Standing Counsel for the Official Liquidator, the Court passed the
following:-

**“C.R.”****VIJU ABRAHAM, J.****Report No.32 of 2025 in C.P. No. 43 of 2016**Dated this the 25th day of August, 2025**ORDER**

The present report has been filed by the official liquidator in respect of the company which has been ordered to be wound up as per order of this Court dated 04.02.2019 in CP No. 43 of 2015. It is submitted that multiple criminal cases under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “NI Act”), are presently pending before the Chief Judicial Magistrate Court, Kalpetta, against the company. By official memorandum dated 25.03.2025 of the Chief Judicial Magistrate Court, Kalpetta, the company under liquidation was directed to obtain leave of the Tribunal under Section 279 of the Companies Act, 2013 (hereinafter referred to as “Act 2013”), to proceed with the case. In the report, permission is sought to permit the Official Liquidator to proceed with criminal complaint pending under Section 138 of the NI Act, before the Chief Judicial Magistrate Court, Kalpetta as S.T.Nos.370 of 2016, 380 of 2016, 46 of 2022, 165 of 2022, 175 of 2022 and 68 of 2023 without the necessity of obtaining



leave from NCLT.

2. The company was wound up and orders were passed as per the provisions of the Companies Act, 1956 and is still under the jurisdiction of this Court and in view of Section 434 of the Companies Act, 2013 and the Companies (Transfer of Pending Proceedings) Rules, 2016, the matter has not been transferred to NCLT and hence the proceedings still remain before this Court. The Chief Judicial Magistrate Court, Kalpetta, has directed the company under liquidation to obtain leave of the Tribunal under Section 279 of the Companies Act, 2013, so as to proceed with the case. Since the company has been wound up as per the provisions of the Companies Act, 1956 and the matter is pending before this Court and not before the Tribunal, the provisions of the Companies Act, 1956 will apply in the present case and Section 446 of the Companies Act, 1956 which is the corresponding Section to Section 279 of the Companies Act, 2013 for obtaining leave will have no application in the present case.

3. The further issue to be resolved is as to whether leave of the Court is to be obtained for proceeding with a complaint filed under Section 138 of the NI Act, 1881. This Court in **Jose Antony v. Official Liquidator, 1998 (2) KLT 176**, has held that only those criminal proceedings which relate to the assets of the company will come within



the ambit of legal proceedings contemplated under Section 446 of the Companies Act, 1956. Paragraphs 8, 9, 10 and 11 of the said judgment read as follows:

*“8. S.446 of the Companies Act reads as follows
S.446 - Suits stayed on winding up order - (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of winding up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose.*

x x x x

x x x x

x x x x

9. Even though the provisions of S.446 of the Companies Act are wide enough to include criminal prosecution within the ambit of legal proceedings mentioned therein, the criminal proceedings which relate to the assets of the company alone will come within the ambit of the legal proceedings contemplated under S.446 of the Companies Act. In this case, it is clear from the complaint filed by the 2nd respondent before the Addl. Chief Judicial Magistrates Court, a copy of which is produced as Annexure - A1 to this petition, that only the offence punishable under S.138 of the Negotiable Instruments Act is alleged against the applicant and the company and absolutely no allegation to fasten any civil liability against the applicant and the company is alleged in that complaint. It is also stated by the applicant in the affidavit filed in support of this application that O.S. No. 447/96 filed by the 2nd respondent against the applicant and the company before the 2nd Addl. Sub Court, Ernakulam for realisation of the amount covered by the cheque, is already transferred to this Court and re - numbered as C.S. 24/97. It is also submitted at the Bar that the suit has been withdrawn by the plaintiff therein.

10. The counsel for the Official Liquidator submitted that this Court has considered identical issue in the decision in K. P. Devassy v. The



Official Liquidator (1997 (2) KLJ 243) and held that the complaint filed under S.138 of the Negotiable Instruments Act cannot be stayed and transferred to the Company Court under S.446 of the Companies Act. In that reported case the petitioner who was the Managing Director of Chandhini Chits (P) Ltd. which is ordered to be wound up as per order dated 17.11.1989, filed application for transfer of the criminal cases instituted against him before the Magistrates Court under S.138 of the Negotiable Instruments Act for dishonour of the cheques issued by him as the Managing Director of the Company for insufficiency of funds. In that case, the learned single Judge of this Court after considering the various decisions of this Court as well as other High Courts held that since the proceedings under S.138 of the Negotiable Instruments Act is purely for the punishment of the person who issued the cheque, no recovery of any amount can be claimed in respect of the dishonoured cheque in that criminal case and as such that proceeding does not relate to the assets of the company and therefore, S.446 of the Companies Act is not attracted in those cases.

11. It has to be remembered that the provisions of S.446 of the Companies Act are intended to safeguard the assets of the Company under liquidation against wasteful and expensive litigation with regard to the matters which can be decided expeditiously and cheaply in the winding up proceedings itself. It is the object of S.446 to preserve the assets of the Company in liquidation which are in the hands of the Official Liquidator appointed by the court, so that the assets of the company can be distributed in an equitable manner to the creditors and members of the company. S.138 of the Negotiable Instruments Act is enacted in order to safeguard the credibility of commercial transactions and to prevent bouncing of cheques by providing a personal criminal liability against the drawer of the cheque in public interest. No civil liability or any liability against the assets of the drawer of the cheque is contemplated under S.138 of the Negotiable Instruments Act Therefore, I am in respectful agreement with the observations made by the learned single Judge in the above decision



to the effect that the provisions under S.446 of the Companies Act have no application to proceedings under S.138 of the Negotiable Instruments Act.” (underline supplied)

The Bombay High Court in ***M/s Indorama Synthetics (I) Ltd v. State of Maharashtra and another, AIR OnLine 2016 Bom 1*** has considered the question as to whether the expression “suit or other proceedings” in Section 446(1) includes criminal complaint filed under Section 138 of the NI Act and held that expression “suit or other proceedings” in Section 446(1) will not include criminal complaint filed under Section 138 of the NI Act.

In view of the declaration of law as stated above, I am of the opinion that the relief sought for in the report can be allowed by permitting the Official Liquidator to proceed with the criminal complaints pending under Section 138 of the NI Act before the Chief Judicial Magistrate Court, Kalpetta as S.T.Nos.370 of 2016, 380 of 2016, 46 of 2022, 165 of 2022, 175 of 2022 and 68 of 2023, without the necessity of obtaining leave from NCLT.

With the above said direction, the matter is disposed of.

Sd/-
VIJU ABRAHAM
JUDGE