IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 25th OF OCTOBER, 2024

MISCELLANEOUS PETITION NO.6125 OF 2023

SURENDRA KUMAR PATWA

VS.

DHARMENDRA VOHRA

Shri Abhinav Malhotra – Advocate for the petitioner.

Shri Rohit Mangal – Advocate with Shri Anuj Agrawal – Advocate for the respondent.

Reserved on : 21.08.2024

Pronounced on : 25.10.2024

ORDER

Pleadings are complete, therefore, with the consent of learned counsel for the parties, the matter is heard finally.

2. This petition under Article 227 of the Constitution of India, has been filed questioning the validity of order dated 23.09.2023 passed by the XXII Additional Sessions Judge, Indore, in Criminal Revision No.377/2023 filed under Section 397 r/w Section 399 and 401 of the Code of Criminal Procedure, preferred against the order dated 15.06.2023 passed by the Judicial Magistrate First Class, Indore, rejecting the application moved by the petitioner in a pending criminal case seeking stay on the proceedings pending before the trial Court on the basis of interim-moratorium declared

by the National Company Law Tribunal, Indore [hereinafter referred to as the 'NCLT'] upon the application filed by the creditor-Bank of Baroda.

3. To decide the controversy involved in this case, it is apt to mention the facts of the case, which in nutshell, are:-

(**3.1**) That, the petitioner and the respondent are the parties to the proceedings pending before the Judicial Magistrate Court initiated by the respondent by filing an application under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as the 'N.I. Act']. The petitioner is one of the Directors of a company registered under the Companies Act. One of the creditors of the petitioner, namely, Bank of Baroda, filed an application for initiating insolvency resolution process under Section 95 of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as the 'IBC'] before the NCLT, Indore. The said case was registered as case No.CP(IB)/16(MP)2021 titled as 'Bank of Baroda Vs. Surendra Kumar Patwa'.

(**3.2**) The NCLT in accordance with Section 95 r/w 96 of the IBC, by order dated 18.06.2021, declared interim-moratorium from the date of application with respect to all the debts of the petitioner and all the proceedings pending against him in terms of Section 96 of the IBC. A copy of order dated 18.06.2021 is available on record as Annexure-P/1.

(**3.3**) As per the petitioner, the moratorium as has been declared by the NCLT is applicable in respect of all the debts of the petitioner and 'any legal action or proceedings'. Undisputably, the order dated 18.06.2021 passed by the NCLT declaring interim-moratorium has been continuing and is still in operation.

(**3.4**) That, the respondent has preferred a complaint under Section 138 of the N.I. Act before the Magistrate seeking issuance of process against the

petitioner in respect of a cheque said to have been issued by the petitioner in lieu of legally enforceable liability, in favour of the complainant, which got dishonored. The said complaint was registered as SC-PPM/146/2021. In the said case, the petitioner preferred an application seeking stay on the proceedings initiated under Section 138 of the N.I. Act, on the ground that in pursuance of the order passed by the NCLT on 18.06.2021, the said proceedings cannot be initiated against him.

(**3.5**) The application was replied to by the respondent and the Court vide order dated 03.08.2023 rejected the application saying that the interim-moratorium issued under Section 96 of the IBC will not be applicable to the proceedings initiated under Section 138 of the N.I. Act as the said proceedings are 'criminal' in nature.

(**3.6**) Against the order dated 03.08.2023, a revision was preferred by the petitioner before the Court of Sessions, which was registered as Criminal Revision No.377/2023 and the revisional Court finally dismissed the revision holding that the IBC does not contain any provision regarding stay on the proceedings of Section 138 of the N.I. Act. Hence, the petitioner preferred this petition challenging the order passed by the revisional Court on the ground that the revisional Court has wrongly interpreted the provisions of IBC and exceeded its jurisdiction while rejecting the revision holding that the order passed by the NCLT is not applicable so far as the proceedings initiated under Section 138 of the N.I. Act, are concerned.

4. Learned counsel for the petitioner has attacked the impugned order mainly on the ground that the provisions of Section 96 of the IBC are very specific and cover any legal action or proceedings pending in respect of debts which include the proceedings of Section 138 of the N.I. Act. To give strength to his submissions, learned counsel for the petitioner has placed

reliance upon various judgments of the Supreme Court, viz. **Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited** reported in **2023 SCC OnLine SC 266; Charanbir Singh Sethi Vs. Pooja Sharma & Others** reported in **Manu/2291/2023; Ashok B. Jeswani & Anothers Vs. Redington India Limited** reported in **2023 SCC OnLine Madras 8029**. It is also submitted by learned counsel for the petitioner that the revisional Court misinterpreted the order passed by the Supreme Court in the case of **Ajay Kumar Radheyshyam Goenka** (supra). He has also submitted that the case of **Ajay Kumar Radheyshyam Goenka** (supra) and the other cases of Supreme Court, upon which he has placed reliance, clearly demonstrate that the proceedings initiated against the petitioner even under the provisions of the N.I. Act, cannot be allowed to be continued and the Court could stay the same in pursuance of the order passed by the NCLT.

5. *Per contra*, learned counsel for the respondent has opposed the submissions advanced by learned counsel for the petitioner and submitted that the order of revisional Court is based upon the latest decision of the Supreme Court passed in the case of **Ajay Kumar Radheyshyam Goenka** (supra). He has also placed reliance upon the judgment of Delhi High Court in the case of **Sandeep Gupta Vs. Shri Ram Steel Traders & Another** reported in **2023 SCC OnLine Del 2786**, in which the Delhi High Court has observed as under :-

> "22. In P. Mohanraj v. Shah Bros. Ispat (P) Ltd., 2021 : INSC : 133, the Hon'ble Supreme Court has observed
>
> > "77…..Since the corporate debtor would be covered by the moratorium provision contained in Section 14 IBC, by which continuation of Sections 138/141 proceedings against the corporate debtor and initiation of Sections 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paras 51 and 59 in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] would then become applicable. The legal impediment contained in Section 14 IBC would make it

impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) of the Negotiable Instruments Act. **This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act**.

Conclusion

78. In conclusion, disagreeing with the Bombay High Court and the Calcutta High Court judgments in Tayal Cotton (P) Ltd. v. State of Maharashtra [Tayal Cotton (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312] and MBL Infrastructions Ltd. v. Manik Chand Somani [MBL Infrastructions Ltd. v. Manik Chand Somani, 2019 SCC OnLine Cal 9097], respectively, we hold that a Sections 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) IBC."

Emphasis supplied

23. Thus, I am of the view that the judgment of P. Mohanraj (supra) is clear in this regard. Admittedly, in the present case, the petitioner had signed the cheque as the Managing Director of Respondent No. 2. The judgment of P. Mohanraj (supra) categorically states that the moratorium provisions u/s 14 IBC would apply only to the corporate debtor and the natural persons would continue to be liable. The petitioner is the natural person and merely because he has filed personal insolvency proceedings, the same would not bring him under the ambit of Section 96 IBC vis-a-vis the pending complaint under section 138 NI Act.

24. The Hon'ble Supreme Court in "AJAY KUMAR RADHEYSHYAM GOENKA v. TOURISM FINANCE CORPORATION OF INDIA LTD."2023 : INSC : 232 observed the scope of the IBC as well as NI act.

"16. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. In fact, a bare reading of Section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act. We are unable to appreciate the plea of the learned counsel for the Appellant that because Section 138 of the N.I. Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the N.I. Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the N.I. Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.

17. **It cannot be said that the process under the IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. No doubt in terms of the Scheme under the IBC there are sacrifices to be made by**

parties to settle the debts, the company being liquidated or revitalized. The Appellant before us has been roped in as a signatory of the cheque as well as the Promoter and Managing Director of the Accused company, which availed of the loan. The loan agreement was also signed by him on behalf of the company. What the Appellant seeks is escape out of criminal liability having defaulted in payment of the amount at a very early stage of the loan. In fact, the loan account itself was closed. So much for the bona fides of the Appellant.

18. We are unable to accept the plea that if proceedings against the company come to an end then the Appellant as the Managing Director cannot be proceeded against. We are unable to accept the plea that Section 138 of the N.I. Act proceedings are primarily compensatory in nature and that the punitive element is incorporated only at enforcing the compensatory proceedings. The criminal liability and the fines are built on the principle of not honouring a negotiable instrument, which affects trade. This is apart from the principle of financial liability per se. To say that under a scheme which may be approved, a part amount will be recovered or if there is no scheme a person may stand in a queue to recover debt would absolve the consequences under Section 138 of the N.I. Act, is unacceptable."

Emphasis supplied

25. In the present case as well, the petitioner is seemingly trying to escape his liability by trying to urge that his application u/s 94 of the IBC in his individual capacity would stay the complaint under section 138 NI Act against him. It is clear that the petitioner is facing criminal proceedings for being signatory to the cheque which has been dishonoured. He is covered under natural person under section 141 NI Act.

26. The debt in the present case is not of the petitioner but that of Respondent No. 2. Section 141 of the NI Act fastens liability on every officer of the company who was in management and control of the affairs of the company.

27. Hence, in my considered view, the provisions of Section 96 of the IBC would not be applicable in the facts of the present case as the petitioner is arrayed as an accused in the complaint u/s 138 NI Act in his capacity of the Managing Director of Respondent No."

Further, he has placed reliance upon the order passed by the High Court of Madhya Pradesh in the case of **Anurodh Mittal Vs. Rehat Trading Company & Another [M.Cr.C. No.17782 of 2024]** and also the judgment passed by the High Court of Punjab & Haryana at Chandigarh in the case of **Jitender Singh Sodhi & Another Vs. Deputy Commissioner of Income Tax & Another**, wherein the Court has observed as under :-

"10. It is noteworthy that Chapter XVII covering Sections 138 to 142 of the NI Act was inserted by way of an amendment (Act No.66 of 1988) w.e.f.01.04.1989 with an object "to enhance the acceptability of cheques in

> settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or fot the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."
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> x x x
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> 16. Since **Goenka's case (supra)** is the latest three-judge Bench judgment by Hon'ble the Supreme Court rendered on 15.03.2023 and as such, in view of the mandate of Article 141 of the Constitution, this Court is bound to follow the same. Therefore, the judicial precedent cited by learned counsel for the petitioners are distinguishable; hence not helpful, in any manner.".

6. Considering the rival contentions of learned counsel for the parties and on perusal of record, the question which emerges to be answered is whether the interim-moratorium declared by the NCLT would be applicable upon the proceedings initiated against the petitioner under Section 138 of the N.I. Act or not ?

7. To answer the said question, it is required to see the nature of proceedings initiated against the petitioner by the respondent which are under Section 138 of the N.I. Act and in fact, *quasi* criminal in nature and indirectly relating to recovery of debt. The said proceedings are initiated by the respondent-complainant against the petitioner for not being able to honour the payment of an amount under the negotiable instruments, which was promised to be paid by the petitioner to the complainant and are indirectly for recovering debt. The proceedings are not considered to be criminal in nature. The case of **P. Mohanraj & Others Vs. Shah Brothers Ispat Private Limited** reported in **(2021) 6 SCC 258**, is relevant in the present case, wherein the Supreme Court has observed as under:-

> "67. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, through couched in language making the act complained of an offence, is really in order to get back through a summary proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given

> our analysis of Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited hereinabove, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding.
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> 84. Clearly, therefore, given the hybrid nature of a civil contempt proceeding, described as "quasi-criminal" by several judgments of this Court, there is nothing wrong with the same appellation "quasi-criminal" being applied to a Section 138 proceeding for the reasons given by us on an analysis of Chapter XVII of the Negotiable Instruments Act. We, therefore, reject the learned Additional Solicitor General's strenuous argument that the appellation "quasi-criminal" is a misnomer when it comes to Section 138 proceedings and that therefore some of the cases cited in this judgment should be given a fresh look."

In the said case, the Supreme Court considering the aspect as to whether the interim-moratorium under Section 96 applies to the proceedings under Section 138 of the N.I. Act or not, has observed as under:-

> "6. The important question that arises in this appeal is whether the institution or continuation of a proceeding under Sections 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision, namely, Section 14 IBC.
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> 18. This definition being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability. This is made clear by Section 96(3) and Section 101(3) which contain the same language as Section 14(3)(a), these sections speaking of "debts" of the individual or firm. Equally important is Section 14(3)(b), by which a surety in a contract of guarantee of a debt owed by a corporate debtor cannot avail of the benefit of a moratorium as a result of which a creditor can enforce a guarantee, though not being able to enforce the principal debt during the period of moratorium.
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> 28. A reading of these judgments would show that ejusdem generis and noscitur a sociis, being rules as to the construction of statutes, cannot be exalted to nullify the plain meaning of words used in a statute if they are designedly used in a wide sense. Importantly, where a residuary phrase is used as a catch-all expression to take within its scope what may reasonably be comprehended by a provision, regard being had to its object and setting, noscitur a sociis cannot be used to colour an otherwise wide expression so as to whittle it down and stultify the object of a statutory provision.
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> 31. It can thus be seen that regard being had to the object sought to be

achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process, Given this fact, it is difficult to accept that noscitur a sociis or ejusdem generis should be used to cut down the width of the expression "proceedings" so as to make such proceedings analogous to civil suits.

32. Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein being also interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor's assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur.

x x x

35. When the language of Section 14 and Section 85 are contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision contained in Section 14(3)(a) which is that "transactions" are the subject-matter of Section 14(1). "Transaction" is, as we have seen, a much wider expression than "debt", and subsumes it. Also, the expression "proceedings" used by the legislature in Section 14(1)(a) is not trammelled by the word "legal" as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, "debts" is used as is used in Section 85.

35.1. Sections 96 and 101 read as follows:

> "96. ***Interim-moratorium***.—(1) When an application is filed under Section 94 or Section 95—
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> (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
>
> (b) during the interim-moratorium period—
>
> (i) any legal action or proceeding pending in respect of any debt

shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

* * *

101. ***Moratorium***.—(1) When the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the adjudicating authority passes an order on the repayment plan under Section 114, whichever is earlier.

(2) During the moratorium period—

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

35.2. A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding. This is for the reason that a Section 138 proceeding would be a legal proceeding "in respect of" a debt. "In respect of" is a phrase which is wide and includes anything done directly or indirectly — see *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* [Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd., (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288] (at p. 709) and *Giriraj Garg v. Coal India Ltd.* [Giriraj Garg v. Coal India Ltd., (2019) 5 SCC 192 : (2019) 2 SCC (Civ) 744] (at pp. 202-203). This, coupled with the fact that the section is not limited to "recovery" of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.

35.3. When the language of these sections is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor,

inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96 and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor.

x x x

45. Section 138 contains within it the ingredients of the offence made out. The deeming provision is important in that the legislature is cognizant of the fact that what is otherwise a civil liability is now also deemed to be an offence, since this liability is made punishable by law. It is important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The Explanation to Section 138 makes it clear that such debt or other liability means a legally enforceable debt or other liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138. This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, would show that it is really a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law. Further, though the ingredients of the offence are contained in the first part of Section 138 when the cheque is returned by the bank unpaid for the reasons given in the section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

46. Likewise, under Section 139, a presumption is raised that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. To rebut this presumption, facts must be adduced which, on a preponderance of probability (not beyond reasonable doubt as in the case of criminal offences), must then be proved. Section 140 is also important, in that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section, thus making it clear that strict liability will attach, mens rea being no ingredient of the offence. Section 141 then makes Directors and other persons statutorily liable, provided the ingredients of the section are met. Interestingly, for the purposes of this section, Explanation (a) defines “company” as meaning any body corporate and includes a firm or other association of individuals.

47. We have already seen how the language of Sections 96 and 101 would include a Sections 138/141 proceeding against a firm so that the moratorium stated therein would apply to such proceedings. If Shri Mehta's arguments were to be accepted, under the same section, namely, Section 141, two different results would ensue — so far as bodies corporate, which include limited liability partnerships, are concerned, the moratorium provision contained in Section 14 IBC would not apply, but so far as a partnership firm is concerned, being covered by Sections 96 and 101 IBC, a Sections 138/141 proceeding would be stopped in its tracks by virtue of the moratorium imposed by these sections. Thus, under Section 141(1), whereas a Section 138 proceeding against a corporate body would continue after initiation of

the corporate insolvency resolution process, yet, the same proceeding against a firm, being interdicted by Sections 96 and 101, would not so continue. This startling result is one of the consequences of accepting the argument of Shri Mehta, which again leads to the position that inelegant drafting alone cannot lead to such startling results, the object of Sections 14 and 96 and 101 being the same, namely, to see that during the insolvency resolution process for corporate persons/individuals and firms, the corporate body/firm/individual should be given breathing space to recuperate for a successful resolution of its debts — in the case of a corporate debtor, through a new management coming in; and in the case of individuals and firms, through resolution plans which are accepted by a committee of creditors, by which the debtor is given breathing space in which to pay back his/its debts, which would result in creditors getting more than they would in a bankruptcy proceeding against an individual or a firm.

48. Section 142 is important and is set out hereunder:

> "**142.** ***Cognizance of offences***.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
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> (*a*) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
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> (*b*) such complaint is made within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138:
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> Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.
>
> (*c*) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138.
>
> (2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction—
>
> (*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
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> (*b*) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.
>
> *Explanation*.—For the purposes of clause (*a*), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

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103. In conclusion, disagreeing with the Bombay High Court and the Calcutta High Court judgments in *Tayal Cotton (P) Ltd. v. State of Maharashtra* [Tayal Cotton (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312] and *MBL Infrastructions Ltd. v. Manik Chand*

Somani [MBL Infrastructions Ltd. v. Manik Chand Somani, 2019 SCC OnLine Cal 9097] , respectively, we hold that a Sections 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) IBC.

104. Resultantly, the civil appeal is allowed and the judgment under appeal is set aside. However, the Sections 138/141 proceedings in this case will continue both against the Company as well as the appellants for the reason given by us in paras 101 and 102 above as well as the fact that the insolvency resolution process does not involve a new management taking over. We may also note that the moratorium period has come to an end in this case."

8. In view of the facts and circumstances of the case and also the arguments advanced by learned counsel for the parties, it is also apt to see the respective provisions of IBC under which the proceedings before the NCLT, can be initiated, which are as under:-

"**94**. Application by debtor to initiate insolvency resolution process.- (1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.

(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.

(4) A debtor shall not be entitled to make an application under sub-section (1) if he is-

(a) an undischarged bankrupt;

(b) undergoing a fresh start process;

(c) undergoing an insolvency resolution process; or

(d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.

95. Application by creditor to initiate insolvency resolution process.- (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks fit.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to-

(a) the debts owned by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

96. Interim-moratorium.- (1) When an application is filed under section 94 or section 95-

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period-

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

9. Here in this case, the application was moved by one of the creditors under Section 95 of the IBC against the petitioner and in the said proceedings, the NCLT passed an order under Section 96 constituting the

interim-moratorium and directing the respondent therein (present petitioner) to file a report with regard to corporate debtors within ten days. As submitted by learned counsel for the petitioner, when an application is filed under Section 94 of the IBC, then interim-moratorium applies to the debts of a company, but when the application is filed by the creditor under Section 95, the debts confine to the person who is before the NCLT. According to learned counsel for the petitioner, an application under Section 95 was moved by one of the creditors i.e. Bank of Baroda before the NCLT against one of the Directors of the company i.e. the petitioner and as such, interim-moratorium declared by the NCLT would be applicable in respect of any proceedings initiated against the petitioner including the proceedings under the N.I. Act.

10. As per the observation made by the revisional Court in its order holding that in view of the law laid-down by the Supreme Court in the case of **Ajay Kumar Radheyshyam Goenka** (supra), the other cases relied upon by learned counsel for the petitioner have no application and cannot be treated as precedent. According to the revisional Court, the transaction is a personal transaction of the present petitioner and, therefore, he cannot take advantage of his own defaults on the basis of moratorium order. The revisional Court has also observed that in the case of **Ajay Kumar Radheyshyam Goenka** (supra), the Supreme Court has held that the proceedings of Section 138 of the N.I. Act are criminal proceedings but not recovery proceedings; it has also been observed that the Supreme Court has very clearly held that the provisions of IBC cannot stay the proceedings of the N.I. Act and those proceedings would not stand terminated. According to learned counsel for the petitioner, the revisional Court failed to appreciate the legal question dealt with by the Supreme Court in the case of **P. Mohanraj** (supra) as well as in the case of **Ajay Kumar Radheyshyam**

Goenka (supra) in an appropriate manner. On perusal of the judgment passed in the case of **P. Mohanraj** (supra), the question which was decided by the Supreme Court, has been mentioned in paragraph-6 of the judgment, which reads as follows:-

> "6. The important question that arises in this appeal is whether the institution or continuation of a proceeding under Sections 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision, namely, Section 14 IBC."

and further in the case of **Ajay Kumar Radheyshyam Goenka** (supra), the Supreme Court has dealt with the situation whereby an application was moved for terminating the proceedings under Section 138 of the N.I. Act initiated against the Managing Director in view of the resolution of the corporate debtors, whereas in the case at hand, the petitioner is only seeking stay on the proceedings initiated against him under Section 138 of the N.I. Act in the light of Section 96 of the IBC.

11. The basic object of the IBC is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. Moreover, the objects of Section 14 of IBC is to ensure that the Corporate Insolvency Resolution Process (CIRP) could proceed unhindered and without any action being taken against the corporate debtor or its assets; it is essentially designed to ensure that the assets and properties of the corporate debtor are duly preserved and no coercive steps are taken against them during the pendency of the CIRP. So far as the case of **Ajay Kumar Radheyshyam Goenka** (supra) is

concerned, in the said case, the Court was dealing with the scope of Section 14 of the IBC and it's applicability over the corporate debtors under part-2 of the IBC, while in the case of **P. Mohanraj** (supra), the Court was dealing with the applicability and scope of Section 96 of the IBC, which is in respect of an individual/personal guarantor under part-3 of the IBC.

12. Learned counsel for the petitioner has also pointed-out that in the case of **Ajay Kumar Radheyshyam Goenka** (supra), the Supreme Court has followed the earlier decision passed in the case of **P. Mohanraj** (supra), but so far as the proceedings under Section 138 of the N.I. Act, are concerned, it is *per incurium* because the Supreme Court in the case of **P. Mohanraj** (supra) has observed otherwise in respect of the said proceedings. The revisional Court has also observed that the case of **P. Mohanraj** (supra) does not deal with Section 138 of the N.I. Act whereas this observation of the revisional Court is contrary to the law laid-down by the Supreme Court in the case of **P. Mohanraj** (supra) because on number of occasions, the Supreme Court has observed that interim-moratorium under Section 96 of the IBC has applicability over the proceedings of N.I. Act.

13. The Supreme Court in the case of **Kaushalya Devi Massand Vs. Roopkishore Khore** reported in **(2011) 4 SCC 593**, has observed that the proceedings of the N.I. Act are almost in the nature of civil wrong which have been given criminal overtones. Likewise, the High Court of Madhya Pradesh in the case of **Atul Singh Vs. Indian Oil Corporation** in **Writ Petition No.5339 of 2021**, has observed as under:-

> "9. In view of aforesaid judgment passed by the Apex Court, it is clear that proceedings under Section 138 of Negotiable Instruments Act are civil in nature with criminal overtones."

14. Learned counsel for the petitioner has also relied upon the judgment

passed in the case of **Vijay Kr. Ghai Vs. Pritpal Singh Babbar** reported in **2022 SCC OnLine P&H 1672**, in which the Court has dealt with the question as to whether Section 96 has any application upon the proceedings initiated under Section 138 of the N.I. Act against a personal guarantor of the corporate debtor and has answered the same in the following manner:-

> " 72. Consequently, the two questions now before this court are:—(1) Whether in such circumstances the complaint under Section 138 of the Act of 1881 would also fall within the ambit of the phrases "all the debts" and "any legal actions or proceedings pending in respect of any debt" as occur in clauses (a) and (b)(i) of sub-section (1) respectively of Section 96, or would the aforesaid expressions be limited to any debt as is concerned or linked in any manner to the corporate debtor for whom the petitioner stands as a personal guarantor, with the respondent herein not being in any manner concerned with the debt of either the corporate debtor or the personal guarantee furnished by the petitioner in respect of the corporate debtor;
>
> (2) If the answer to the aforesaid question is in the affirmative, whether proceedings under Section 138 of the Act would be deemed to have been stayed in terms of Section 96 of the Code in view of the fact that the complaint against the petitioner was filed 8 to 9 years prior to the petitioners' application under Section 94 and even about 6 years before the initiation of proceedings against the corporate debtor by the State Bank of India under Section 7 of the Code.
>
> 73. As regards the first question, there are two ways of interpreting the phrases "all the debts" and "any legal actions or proceedings pending in respect of any debt" as are referred to in Section 96 of the Code.
>
> 74. First, that as per a plain reading of the aforesaid phrases in the provision, once a personal guarantor to a corporate debtor has filed an application under Section 94(1) before the Adjudicating Authority, all legal proceedings in respect of any debt that the personal guarantor is facing, would be covered by the interim moratorium and consequently the proceedings in the complaint filed by the respondent herein under Section 138 of the Act also would remain stayed, such proceedings being in respect of a debt alleged to have been incurred by the petitioner qua the respondent, (with such interim moratorium to continue till the application under Section 94 is either rejected or accepted by the Adjudicating Authority. If the application is admitted, proceedings under Section 138 would remain stayed till the proceedings before the Tribunal are taken to their logical conclusion, in terms of Sections 100 and 101 of the Code).
>
> 75. The other interpretation that can be given is that the phrases "all legal proceedings" and "any debt", only pertain to debts as are relatable to the corporate debtor in any manner; and any other personal debt incurred by the guarantor to a corporate debtor, as has nothing to do with such corporate debtor or corporate debt, would not be affected in any manner by the application filed under Section 94 by the personal guarantor to a corporate debtor and consequently the complaint filed by the respondent herein under Section 138 of the Act can continue wholly independently of the proceedings before the Adjudicating Authority/NCLT.

76. To further try and understand as to which of the aforesaid two interpretations would apply, the following part of the judgment of the Supreme Court (in paragraph 26.1) of *V. Ramakrishnans' case* (supra) would need to be looked at again:—

> "…….and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."

77. Further, the judgment in *Lalit Kumar Jains' case* (supra) may also be again referred to wherein, while upholding the distinction created between other individuals and personal guarantors to corporate debtors vide sub-section (2) of Section 60 of the Code (as regards the forum before which a personal guarantor would be required to apply under Section 94), it was thereafter held in paragraph 100 (Law Finder edition = para 113 SCC edition) as follows:—

> "100. It is clear from the above analysis that Parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the Adjudicating Authority was common with the corporate debtor to whom they had stood guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes - the provisions of which are disparate-is to be common, i.e. through the NCLT. As was emphasized during the hearing, the NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realizing some part of the creditors' dues from personal guarantors."
>
> (Emphasis applied in this judgment only).

78. Hence, it is obviously clear from a reading of the aforesaid part of the said judgment as also from the relevant provisions of the Code as have been reproduced hereinabove, that personal guarantors to corporate debtors are to be treated differently from other categories of individuals who would be covered by

Part III of the Code, with it to be again observed that personal guarantors have however only been defined in Section 5(22) falling in **Part II** thereof and not in **Part III**.

79. Yet, the rule making authority under Section 239 of the Code (the Central Government) promulgated the Rules of 2019 by invoking jurisdiction under the said provision as also under the other provisions referred to in the preamble to the rules, and stipulated in Rule 6 therein that an application to be made by such a guarantor under the provisions of Section 94(1) would be submitted in terms of the procedure laid down under that Rule.

80. Thus, the application to be made by a personal guarantor to a corporate debtor, even though such a person/individual is referred to in Section 5(22) and Section 60, both falling in **Part II** of the Code and not in **Part III** thereof, is to be made under Section 94(1) falling within **Part III** and with the said application to be made before the NCLT, in terms of Section 60(1) which falls under **Part II** of the Code.

81. Now in the aforesaid background, if one is to consider Mr. Jaggas' argument that the petitioner having sought his own insolvency under Section 94, all his debts would necessarily have to be considered by the Tribunal, that would seem to be in consonance with what has been observed in paragraph 100 of *Lalit Kumar Jains' case* (reproduced earlier also, supra), to the effect that:—

> "As was emphasized during the hearing, the NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realizing some part of the creditors' dues from personal guarantors."
>
> (Emphasis applied in this judgment only).

82. Hence, though in the opinion of this court otherwise a proceeding under Section 138 of the Act, qua a debt as is wholly incurred qua an individual who is not in any manner connected to the corporate debtor that the petitioner stood a personal guarantor for, nor to the corporate debt itself, would need to proceed independently so as not to make the complainant in such proceedings under Section 138 suffer further delays, especially when in the present case he has already suffered a delay of about 10 years since his complaint was initially filed, however, in the light of the aforesaid observations as also the fact that Section 96 of the Code does not specifically carve out any exception qua such a debt as is subject matter of an instrument in the context of which a complaint under Section 138 of the Act has been filed, this court would have to interpret the terms "all the debts" and "any legal action or proceedings pending in respect of any debt" as occur in Section 96 of the Code, to mean that it would cover all such debts including any debt not pertaining to a corporate debtor for whom the accused in such a complaint under Section 138 stood as a personal guarantor to, even in his capacity as a Director of such corporate debtor.

83. This would be further so in the opinion of this court, because a "debt" has been defined in the absolutely generic meaning of the word, in Section 3(11) of the Code (falling in the preliminary Part-I thereof); and further, as admitted by learned counsel for the respondent, a debt as is subject matter of proceedings under Section

138 of the Act, has not been prescribed to be an "excluded debt" in terms of Section 79(e) of the Code.

84. In this regard, it also needs to be observed here that unless the wordings of a statute are "unworkable" or wholly impractical nothing extra can be read into a statute or taken away therefrom.

85. As regards the second question posed to itself by this court in paragraph 34 (supra), it would have to be held that by virtue of the term "any legal action or proceedings pending in respect of any debt (as per Section 96), proceedings under Section 138 of the Act, would be deemed to be stayed irrespective of the fact that such proceedings were initiated far before the application under Section 94 of the Code was filed by the personal guarantor to a corporate debtor.

86. In that very context, as regards the dismissal by the Supreme Court of other appeals and writ petitions as were heard with P. Mohanrajs' case (as have been pointed to by Mr. Mehta, learned counsel for the respondent), the dismissal would seem to be on account of the fact that the proceedings under Section 138 against the Directors of the companies as were corporate debtors in those cases, were firstly held to be independent of the proceedings under the Code against the corporate debtor itself and further, there is no interim moratorium referred to in Section 14, with the moratorium mentioned in that provision, being one as has to be declared by the Adjudicating Authority; and consequently the Supreme Court held that such declaration having come at a stage far after the proceedings were initiated under Section 138 of the Act, the moratorium would not apply (obviously also because the Directors were treated different to the corporate debtor itself); which is a wholly different situation to that as is postulated in Section 96, wherein it is an interim moratorium that comes into effect, by which all proceedings qua any debt of the individual/partnership firm etc. would be deemed to have been stayed.

87. Consequently, even though the respondent herein may suffer longer delays due to the stay that would be deemed to be operating on the proceedings in the complaint filed by him under Section 138 of the Act, by virtue of the interim moratorium stipulated in Section 96 of the Code, there would seem to be no option with this court but to allow the petition and set aside the impugned order passed by the learned JMIC, Jalandhar, dated 25.05.2021. It is therefore ordered accordingly.

88. Hence, till a decision is taken by the Adjudicating Authority in terms of Sections 100 and 101 of the Code, on the application filed by the petitioner under Section 94(1) thereof, the proceedings before the learned trial court under Section 138 of the Act, would remain stayed."

15. Further, the Bombay High Court in the case of **Sheetal Gupta Vs. National Spot Exchange Limited & Others** reported in **Manu/MH/0706/2023** dealing with the same question as to whether Section 96 of the IBC has any application over the proceedings initiated under Section 138 of the N.I. Act or not, has observed as under:-

"15. In the case of **P. Mohanraj and Others vs. Shah Brothers Ispat Private**

Limited (supra), the Hon'ble Apex Court has observed thus-

> "35. When the language of Section 14 and Section 85 is contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision contained in Section 14(3) (a) which is that "transactions" are the subject-matter of Section 14(1). "Transaction" is, as we have seen, a much wider expression than "debt", and subsumes it. Also, the expression "proceedings" used by the legislature in Section 14(1)(a) is not trammelled by the word "legal" as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, "debts" is used as is used in Section 85.
>
> **35.2** - A “legal action or proceeding in respect of any debt" as mentioned in Sections 81, 85, 96 and 101 IBC, would, on its plain language, include a Section 138 NI Act proceeding. This is for the reason that a proceeding would be a legal proceeding "in respect of" a debt. "In respect of" is a phrase which is wide and includes anything done directly or indirectly This, coupled with the fact that the section is not limited to "recovery" of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.
>
> 36. For all these reasons, therefore, given the object and context of Section 14, the expression construction and must be given a fair meaning consonant with the obiect and conceded directly related to transactions evidencing himinal proceedings whte corporate debtor would be outside the scope of this expression.
>
> 37- V. Ramakrishnan Looked at and contrasted Section 14 with Sections 96 and 101 from the point of view of a guarantor to a debt, and in this context, held: We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be Initiated under Part 111. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason."

16. As such, the proceedings under Section 138 read with 141 of NI Act get covered the term "any legal action or proceeding pending in respect of any debt" appearing Section 96(1) of IBC.

17. The contention of learned Advocate for the respondent-NSEL that NSEL 15 no party to the proceedings, will be of no consequence. Admittedly the SBI has filed to the cwill bey of and Board against the applicant hate the petition befores National Company Law Boessary to have a glancen Process releva Insolvency outonapter II of IBC speaks of Insolvency Resolusolvency 94 thereof pertains to the application by debtor to initiate the Insolvency Process. Under Section 95 of IBC, a creditor

may initie an application to is Insolvency Resolution Process. For ready reference, Section 95(1) of IBC is reproduced which reads thus :-

> "95 - Application by creditor to initiate insolvency resolution process. - (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under this section by submitting an application."

18. Section 96 of IBC speaks of "Interim-moratorium", which reads thus:-

> "96 - Interim-moratorium. (1) When an application is filed under Section 94 or Section 95-
>
> (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
>
> (b) during the interim-moratorium period-
>
> (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
>
> (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
>
> (2) .....
>
> (3) .....

19. The adjudicating authority is expected to pass an order either allowing or rejecting the application under Section 94 or under Section 95, as the case may be. If the application is admitted under section 100 of IBC, moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of 180 days beginning with the date of admission of the application or on the date, the Adjudication Authority passes an order on the repayment plan under Section 114 of IBC, whichever is earlier.

20. In view of Sub-section (2) of Section 101 of IBC, during the moratorium period any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed. Then Section 102 of IBC speaks of issuance of public notice and claims from creditors. For better appreciation, Section 102(1) is reproduced, which reads thus:-

> "102 - Public notice and claims from creditors - (1) - The Adjudicating Authority shall issue a public notice within seven days of passing the order under Section 100 inviting claims from all creditors within twenty-one days of such issue."

21. It is true that respondent-NSEL is not a party to the application moved under Section 95 of IBC. The terminology of clause (b) of Section 101(2) of IBC unequivocally suggests that any pending legal action or proceeding pending in respect of any debt shall be deemed to have been stayed. The debt incurred or likely to be incurred by the applicant herein by virtue of a final order, that may be passed in a proceedings under Section 138 of NI Act initiated by respondent-NSEL, is covered by the term "any debt" appearing under Section 96 of Sub-section (1) of IBC. As per provisions under Section 103 of IBC, all the creditors are expected to

register their claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

22. Section 41 of the Indian Evidence Act speaks of a final judgment, order or decree of a Competent Court, in the exercise of insolvency jurisdiction, operates as a judgment "in rem".

23. On going through the scheme of Insolvency Resolution Process contained in Chapter III of IBC, the contention of learned Advocate for respondent-NSEL thal proceeding under Section 95 of IBC and outcome thereof is a party specific (parties to the said proceeding only), can not be accepted.

24. Learned Magistrate ought to have allowed the application/s for stay of the proceedings pending before it. Since the same has not been done, interference with the order/s impugned herein is warranted. In the result, the applications succeed. Hence the following order is passed:-

ORDER

1. Criminal Application Nos. 1151 to 1153 of 2022 and 1170 of 2022 are allowed.

2. The proceedings (C.C. Nos. 4185/SS/2017, 2218/SS/2017, 4186/SS/2017 & 2217/SS/2017) under Section 138 of NI Act pending before learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai to stand stayed, qua the applicant, during the interim moratorium period.

3. Criminal Application Nos. 1151 to 1153 of 2022 and 1170 of 2022 stand disposed of."

This order of Bambay High Court was also affirmed by the Supreme Court in SLP No.4727 of 2023 decided by order dated 28.04.2023.

16. Moreover, in the case of **Mukund Ajay Kumar Choudhary & Others Vs. K.B. Board Mills LLP** reported in **Manu/MH/2140/2023**, Nagpur Bench has observed that :-

"10. In this application, primarily two issues arise. First is whether all the Directors are immune from the prosecution under Section 138 of the N.I.Act, in view of the imposition of the moratorium by the N.C.L.T., New Delhi under Section 14 of the I.B. Code, viz-viz Corporate Debtor accused No.1/Company?

11. The next connected question is whether the accused No.2 is entitled to seek stay to the prosecution in view of the imposition of moratorium under Section 96 of the I.B. Code in his individual capacity vide order dated 08.04.2021 by N.C.L.T., New Delhi under Section 96 of the I.B. Code?

12. Learned Advocate for the applicants submitted that in view of the imposition of the moratorium under Section 14 of the I.B. Code viz-a-viz Corporate Debtor, the accused No.1/Company, prosecution against company and Directors cannot be continued. Learned Advocate further submitted that in case of the accused No.2, since in his individual insolvency proceeding moratorium has been

imposed under Section 96 of the I.B. Code being a personal guarantor to the Company this 138 N.I. Act proceeding cannot be continued against him during the pendency of the insolvency proceeding.

13. Learned Advocate for the complainant submitted that the Directors of the Company are not immune from prosecution in view of the imposition of the moratorium by the N.C.L.T., New Delhi viz- a-viz the Corporate Debtor, the accused No.1/Company. As far as, the accused No.2 is concerned, learned Advocate submitted that to the extent of his individual interest, he can avail the benefit of the imposition of the moratorium by the N.C.L.T., New Delhi in his individual insolvency proceeding under Section 96 of the I.B. Code.

14. Learned Advocates for both the parties, in order to buttress their submissions placed heavy reliance on decision in the case of P. Mohanraj and Others Vs. Shah Brothers Ispat Private Limited reported in (2021) 6 SCC 258. The learned Advocates for the parties took me through the judgment and more particularly through paragraph Nos.101 and 102 of the decision. It would be profitable to re-produce paragraph Nos.101 and 102 of the judgment in the case of P. Mohanraj and Others (supra). It reads thus:-

> WHETHER NATURAL PERSONS ARE COVERED BY SECTION 14 IBC
> "101. As far as the Directors/persons in management or control of the corporate debtor are concerned, a Sections 138/141 proceeding against them cannot be initiated or continued without the corporate debtor - see Aneeta Hada V. Godfather Travels & Tours (P) Ltd. reported in (2012) 5 SCC 661. This is because Section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the company for the conduct of the business of the company, as well as the company. The Court, therefore, in Aneeta Hada (supra) held as under: (SCC pp.686-88, paras 51, 56 and 58-59)
> "51. We have already opined that the decision in Sheoratan Agarwal Vs. State of M.P. [(1984) 4 SCC 352 : runs counter to the ratio laid down in State of Madras Vs. C.V. Parekh (1970) 3 SCC 491 which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada Vs. Indian Acrylic Ltd., (2000) 1 SCC 1 has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of lex non cogit ad impossibilia gets attracted."
>
> "56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in the Company as well as the Director and/or other officers who are responsible for the acts of the Company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be

understood in the context."

"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the Company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the Company" appearing in the Section make it absolutely unmistakably clear that when the Company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the Company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in para 51.

The decision in U.P. Pollution Control Board Vs. Modi Distillery (1987) 3 SCC 684 has to be treated to be restricted to its own facts as has been explained by us hereinabove."

102. Since the corporate debtor would be covered by the moratorium provision contained in Section 14 IBC, by which continuation of Sections 138/141 proceedings against the corporate debtor and initiation of Sections 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."

15. Perusal of the above quoted paragraphs would indicate that the proceeding can be initiated and continued against the persons mentioned in Section 141(1) and (2) of the N.I.Act. In this case, the Hon'ble Apex Court has held that the moratorium provision contained in Section 14 of the I.B. Code would apply only to the corporate debtor and the natural persons mentioned in Section 141 would continue to be statutorily liable under Chapter XVII of the N.I. Act. In my view, as far as the accused Nos. 3 and 9 are concerned, they are not entitled for the benefit

of imposition of interim moratorium viz-a-viz Corporate Debtor/the accused No.1/Company. As far as, the accused No.2 is concerned, in the ordinary circumstances, he would not have been entitled to get benefit of the moratorium imposed under Section 14 viz-a-viz Corporate Debtor. In the fact situation the case of the accused No.2 is required to be examined separately in view of the imposition of the moratorium in his individual insolvency case under Section 96 of the I.B. Code. I, therefore, conclude that as far as the accused Nos.3 and 9 are concerned, they are not entitled to get the benefit of the moratorium imposed under Section 14 of the I.B. Code vide order dated 03.01.2020 by the N.C.L.T., New Delhi. On this count, their contention deserves to be rejected.

16. As far as the accused No.2 is concerned, he is relying upon order passed by N.C.L.T., New Delhi dated 08.04.2021 under Section 94 of the I.B. Code. The accused No.2 initiated the said insolvency proceeding. He prayed for interim moratorium under Section 96 of the I.B. Code. The N.C.L.T., New Delhi imposed the interim moratorium under Section 96. In the insolvency application of the accused No.2, the N.C.L.T., New Delhi directed the resolution professional to file report as required under Section 97(1) of the I.B. Code. It is to be noted that in view of this order Section 96 of the I.B. Code will come into operation. As per Section 96 (1)(b)(i) in case of imposition of interim moratorium, by deeming fiction, during the interim moratorium period, any legal action or proceeding pending in respect of any debt shall remain stayed. Therefore, the accused No.2 would also be entitled to exercise right and benefits conferred under Section 96 of the I.B. Code. In my view, therefore, during the pendency of the insolvency proceeding the complaint cannot be prosecuted against the accused No.1 and 2."

17. The Supreme Court also in the case of **State Bank of India Vs. V. Ramakrishnan & Another** reported in **(2018) 17 SCC 394**, dealing with the issue as to whether provisions of Sections 14 and 96 would be applicable upon the personal guarantor of corporate debtor or not has observed as under:-

"26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.

26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt,

which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.

26.2. We may hasten to add that it is open to us to mark the difference in language between Sections 14 and 96 and 101, even though Sections 96 and 101 have not yet been brought into force. This is for the reason, as has been held in *State of Kerala* v. *Mar Appraem Kuri Co. Ltd.* [*State of Kerala* v.*Mar Appraem Kuri Co. Ltd.*, (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69] , that a law "made" by the legislature is a law on the statute book even though it may not have been brought into force. The said judgment states : (SCC pp. 141-42, paras 79-81)

> "*79*. The proviso to Article 254(2) provides that a law *made* by the State Legislature with the President's assent shall not prevent Parliament from *making* at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so *made* by a State Legislature. Thus, Parliament need not wait for the law made by the State Legislature with the President's assent to be brought into force as it can repeal, amend, vary or add to the assented State law no sooner it is made or enacted. We see no justification for inhibiting Parliament from repealing, amending or varying any State legislation, which has received the President's assent, overriding within the State's territory, an earlier parliamentary enactment in the concurrent sphere, *before it is brought into force*. Parliament can repeal, amend, or vary such State law no sooner it is assented to by the President and that it need not wait till such assented-to State law is brought into force. This view finds support in the judgment of this Court in *Tulloch* [*State of Orissa* v. *M.A. Tulloch & Co.*, AIR 1964 SC 1284 : (1964) 4 SCR 461] .
>
> *80*. Lastly, the definitions of the expressions "*laws in force*" in Article 13(3)(*b*) and Article 372(3) Explanation I and "existing law" in Article 366(10) show that the laws in force include laws passed or *made* by a legislature before the commencement of the Constitution and not repealed, notwithstanding that any such law may not be in operation at all. Thus, the definition of the expression "laws in force" in Article 13(3)(*b*) and Article 372(3) Explanation I and the definition of the expression "existing law" in Article 366(10) demolish the argument of the State of Kerala that a law has not been *made* for the purposes of Article 254, unless it is enforced. The expression "existing law" finds place in Article 254. In *Edward Mills Co. Ltd.* v. *State of Ajmer* [*Edward Mills Co. Ltd.* v. *State of Ajmer*, AIR 1955 SC 25] , this Court has held that there is no difference between an "existing law" and a "law in force".
>
> *81*. Applying the tests enumerated hereinabove, we hold that the Kerala Chitties Act, 1975 became void on the making of the Chit Funds Act, 1982 on 19-8-1982, (when it received the assent of the President and got published in the Official Gazette) as the Central 1982 Act intended to cover the entire field with regard to the conduct of the chits and *further* that the State Finance Act 7 of 2002, introducing Section 4(1)(*a*) into the State 1975 Act, was void as the State Legislature was denuded of its authority to enact

> the said Finance Act 7 of 2002, except under Article 254(2), after the (Central) Chit Funds Act, 1982 occupied the entire field as envisaged in Article 254(1) of the Constitution."
>
> (emphasis in original)

18. I have perused the judgments relied upon by learned counsel for the respondent. So far as the decision in the case of **Ajay Kumar Radheyshyam Goenka** (supra), is concerned, the said case has already been discussed hereinabove. The case decided by the High Court of Madhya Pradesh has no application in the facts and circumstances of the case at all for the reason that in the said case, the Court was dealing with the issue relating to a proceeding initiated under Section 482 of Cr.P.C. asking termination of conviction passed in a case initiated under Section 138 of the N.I. Act and the Judicial Magistrate First Class awarded the sentence of six months and compensation to the tune of Rs.68,69,457.24/-. The High Court has finally observed that merely because the appellant is signatory of a cheque of a corporate debtor against whom the proceedings were initiated under IBC, cannot be given any weightage over the conviction recorded by the trial Court. So far as the decision passed in the case of **Sandeep Gupta** (supra) is concerned, it was a case in which the petitioner himself has approached the NCLT by moving an application for initiating personal insolvency proceedings and as such, same does not bring him under the ambit of Section 96 of the IBC, therefore, it was held that the benefit of proceedings of Section 138 cannot be given to him whereas in the present case, one of the creditors has approached the NCLT by moving an application under Section 95 of the IBC. Considering the whole scenario of the case, this Court is of the opinion that the revisional Court has not properly considered the factual matrix of the case nor interpreted the provisions of IBC. As per Section 14 of the IBC, the moratorium is constituted with an object that once the proceedings have been initiated by

the NCLT under the special enactment to assess the value of assets of the debtors so as to promote entrepreneurship, availability of credit and balance to protect the interest of all the stakeholders including the alteration in the order on priority of payment of Government dues so as to avoid any type of discrimination and therefore, to avoid misuse of assets of any debtor, the moratorium is declared so as to avoid any other proceedings of recovery of debts against the debtor and if the application is moved under Section 94 of the IBC by the debtor or under Section 95 by the creditor, then the authority under the provisions of Section 96 of IBC, constitutes an interim-moratorium.

19. Here in this case, since one of the creditors i.e. Bank of Baroda has moved an application under Section 95 of the IBC against the present petitioner, who is one of the Board of Directors of the company, as such, when the adjudicating authority has declared interim-moratorium under Section 96, then it is clear that as per sub-section 2 of Section 96, if an application is made in relation to a firm, the interim-moratorium covers the proceedings against not only the firm but also against the partners of the firm. Here in the present case, since the proceedings have been initiated only against the present petitioner that too by one of the creditors, therefore, the interim-moratorium would apply to the proceedings initiated against the petitioner in respect of any of the transactions in which he was involved and proceedings are initiated for recovery of debts from such debtor. The provisions have overriding effect as has already been observed by the Supreme Court because of a special enactment and it is also observed in the case of **P. Mohanraj** (supra) that the moratorium declared under Section 96 of the IBC has also application over the proceedings of Section 138 of the N.I. Act and that ratio of **P. Mohanraj** (supra) has not been disturbed even in the case of **Ajay Kumar Radheyshyam Goenka**

(supra), but on the contrary, the Supreme Court has followed the ratio of **P. Mohanraj** (supra) and therefore, no question regarding ignoring the legal position as has been settled by the Supreme Court in the case of **P. Mohanraj** (supra) arises. It has already been considered by this Court that the case of **P. Mohanraj** (supra) and the facts and issues dealt with therein by the Supreme Court were altogether different than that of the case of **Ajay Kumar Radheyshyam Goenka** (supra).

20. The Supreme Court in the case of **Ajay Kumar Radheyshyam Goenka** (supra) has dealt with a very peculiar situation that the company by resolution got dissolved and as per the said resolution, they have decided to get themselves protected by any other proceedings initiated including the proceedings of Section 138 of the N.I. Act. The Court has observed that they cannot; and their decision to dissolve is confined to the company only, but in such circumstances, they cannot escape from their personal and penal liability. Therefore, interpreting the law which has been laid-down by the Supreme Court in the case of **Ajay Kumar Radheyshyam Goenka** (supra) that it has virtually declared that the law laid-down by the Supreme Court in the case of **P. Mohanraj** (supra), is not a good law, in my opinion, is completely incorrect appreciation of law. Both the legal positions as have been dealt with by the Supreme Court in the case of **P. Mohanraj** (supra) and also in the case of **Ajay Kumar Radheyshyam Goenka** (supra), are distinct and have their own application considering the facts involved in the case.

21. As per the facts and circumstances of the present case, the law laid-down by the Supreme Court in the case of **P. Mohanraj** (supra) would be applicable, therefore, in my opinion, the order passed by the revisional Court is based upon incorrect interpretation of legal position and as such, not sustainable in the eyes of law. Accordingly, it is set aside. The petition

is allowed directing that the proceedings initiated against the petitioner under Section 138 of the N.I. Act, shall remain stayed till the moratorium declared by the NCLT in a pending proceeding of Section 96 of IBC, is in operation.

22. With the aforesaid observations, the petition stands **allowed** and **disposed of**.

(SANJAY DWIVEDI)
JUDGE

Prachi

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