

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CRM-M-39693-2018 (O&M)

Date of decision : 16.10.2019

M/s Gian Chand and Sons Pvt. Ltd. and another

...Petitioners

Versus

M/s Mahavir Traders

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. N.S. Sidhu, Advocate for the petitioners.

Mr. H.S. Oberoi, Advocate for the respondent.

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**ANIL KSHETARPAL, J. (ORAL)**

Present petition has been filed under Section 482 Cr.P.C. for quashing criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881, alongwith all the consequential proceedings including the order summoning the petitioners-accused.

Learned counsel for the petitioner has raised two arguments:-

- 1) Proceedings under the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as “the Code of 2016”), have been initiated and, therefore, as per Section 14 of the Code of 2016, proceedings under Section 138 of the Negotiable Instruments Act, cannot continue.
- 2) Cheques in question were security cheques and, therefore, proceedings under Section 138 of the Negotiable Instruments Act are

not maintainable.

This Court has considered the submissions.

Section 14 of the Code of 2016, is extracted as under:-

***“14. Moratorium,- (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—***

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
  - (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
  - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
  - (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- (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.*
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency*

*resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

On careful perusal of the aforesaid provision, it is apparent that the proceedings as specified in the aforesaid provision are to be kept on hold. In the aforesaid provision, there is no provision for keeping on hold criminal prosecutions which are penal in nature. National Company Law Appellate Tribunal, New Delhi in the case of **Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & ors., Civil Appeal (AT) (Insolvency) No.306 of 2018,** has also taken the same view.

Learned counsel for the petitioners further submitted that against the judgment passed by the National Company Law Appellate Tribunal, civil appeal has been entertained and stay of further proceedings in the criminal complaint has been granted vide Civil Appeal No(s).10355 of 2018. At this stage Hon'ble the Supreme Court has entertained the appeal against the judgment passed by the National Company Law Appellate Tribunal, however, as on date, attention of the Court has not been drawn to the judgment of Hon'ble the Supreme Court laying down that Moratorium as provided in Section 14 of the Code of 2016 would also cover penal statute/prosecutions.

Second argument of the learned counsel involves adjudication of disputed questions of fact which can only be decided after appreciation of

evidence. In exercise of powers under Section 482 Cr.P.C., High Court cannot go into the issue at initial stage as to whether the cheques in question were in fact security cheques or issued for existing debt or liability.

In view thereof, the present petition is disposed of by relegating the petitioners to the remedy before the Court of Magistrate.

**16.10.2019**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                  Yes/No**