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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 885 OF 2020
WITH
WRIT PETITION NO. 886 OF 2020
WITH
WRIT PETITION NO. 887 OF 2020
WITH
WRIT PETITION NO. 888 OF 2020
WITH
WRIT PETITION NO. 889 OF 2020**

Yogesh Jogindernath Mehra and ors. .. Petitioners
vs.

M/s. Oasis Infrastructure Pvt. Ltd. and anr. .. Respondents

Mr. Girish B. Badiger for petitioners.

Mr. A.A. Palkar, APP for State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 28, 2022.

P.C. :

1. This bunch of writ petitions raise common questions and therefore disposed of by this common order.
2. Heard learned Counsel for the petitioners. The petitioners No. 1 to 3 are alleged to be the Managing Directors of the Wind World India Ltd. (hereinafter referred to as "the Company" for short) by the original complainant

and arrayed as accused in the various complaints filed by the respondent no. 1 under section 138 of the Negotiable Instruments Act, 1881 ("NI Act", for short) pending before the Metropolitan Magistrate, 30th Court Kurla, Mumbai. The respondent No.1 is the original complainant.

3. The petitioners belong to the suspended board of management of the Company as the Company was admitted under the Insolvency and Bankruptcy Code, 2016 (hereinafter "the IB Code", for short) on 20/02/2018 by National Company Law Tribunal (hereinafter "NCLT", for short), Ahmedabad Bench. It is one of the contention of the petitioners that section 138 proceedings of the NI Act are covered by the moratorium under section 14 of the IB Code. Learned Counsel contends that on the proceedings being initiated under IB Code, now that the moratorium is declared in respect of the Company, section 138 proceedings are covered. It is the contention of the learned Counsel for the petitioners that under the IB Code, till the decision is taken on the resolution plan, the moratorium continues and hence, the impugned proceedings under section 138 of NI Act cannot go on.

4. My attention is invited to an order dated 31/07/2018 passed by NCLAT, New Delhi in some other proceedings where similar issue had arisen, whereby it has been held that the proceedings under section 138 of the NI Act would not fall within the purview of section 14 of the IB Code. The order dated 31/07/2018 was challenged by the

concerned Company before the Hon'ble Supreme Court and vide its order dated 26/10/2018, the Hon'ble Supreme Court granted stay to the execution of the order passed by NCLAT and also granted stay to the on-going 138 NI Act proceedings.

5. Though learned Counsel for the petitioners made every possible effort to contend that the moratorium under section 14 of IB Code made applicable in the case of the Company would also apply in respect of persons in charge of, and responsible to the company for the conduct of the business of the company, as well as the company; this issue however, now is no longer *res integra* in view of the decision of the Hon'ble Supreme Court in the case of **P. Mohanraj and others Vs. Shah Brothers Ispat Private Limited (2021) 6 Supreme Court Cases 258**. For ease of reference, it would be profitable to quote paragraph 102 of such decision which reads thus.

"Since the corporate debtor would be covered by the moratorium provision contained in Section 14 of the 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 Vs. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 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 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."

6. In this view of the matter, as the answer to the challenge raised in these petitions is squarely covered by the decision of the Apex Court in **P. Mohanraj and others** (supra), these petitions are now devoid of merit and hence dismissed.

(M.S.KARNIK, J.)