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Crl.O.P.No.15456 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.15456 of 2022
and Crl.M.P.Nos.8699 & 8702 of 2022

1.M/s.Saalim Shoes (P) Ltd
Represented by its Managing Director
Mr.Arcot Mohammed Saalim
No.1-A, Regency Apartment, No.5, 1st Lane
Nungambakkam High Road, Chennai – 600 034
Factory at No.63/1, 63/2
Ammor Road, Manthangal,
Ranipet, Ranipet District- 632 403,
Tamil Nadu.

2.Arcot Mohammed Saalim

3.Arcot Mohammed Aslam

4.Arcot Mohammed Ashfaque

... Petitioners

Versus

M/s.United Enterprises,
Represented by its,
Managing Partner Mr.N.Srinivasan,
No.15/3, Bharathi Nagar, Ranipet
Ranipet District – 632 403

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C.,
pleaded to call for the entire records in pursuant to the S.T.C.No.383 of 2020
pending on the file of Judicial Magistrate Court, Ranipet District and quash the
same.



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For Petitioner : Mr.T.R.Prabakaran

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ORDER

This Criminal Original Petition has been filed seeking to quash the Charge Sheet in S.T.C.No.383 of 2020 pending on the file of the learned Judicial Magistrate Court, Ranipet District, for the offence under Section 138 read with Section 142 of Negotiable Instrument Act, 1881.

2. The present petition has been filed to quash the cheque complaint in S.T.C.No.383 of 2020 mainly on the ground that the management of the first petitioner company was taken over by the Corporate Debtor appointed by National Company Law Tribunal, Division Bench – I, Chennai and there was a moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016. Therefore, it is submitted that no complaint is maintainable as against the petitioner company and its Directors.

3. At the outset, I am unable to persuade myself to the submission of the learned counsel. The Hon'ble Apex Court in the case of ***P. Mohanraj and Others vs. Shah Brothers Ispat Pvt. Ltd.***, reported in ***[2021 SCC Online SC 152]***, after dealing with various judgements of the Apex Court in paragraph 103 held as follows:



"103. Since the Corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 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 of the 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 Section 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 Instrument 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."

As the moratorium applies to the Corporate Debtor, under sections 138



and 141 of the Negotiable Instruments Act, no proceedings can be continued or be initiated 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 Instrument 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 continue to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.

4. In such a view of the matter, the petitioners 2 to 4 being the directors of the first petitioner company, have to be prosecuted as per the above judgment.

5. Such view of the matter, the complaint as against the first petitioner company alone is quashed. In respect of others, the application to quash is dismissed. At this stage, the learned counsel for the petitioners citing the age of the second petitioner seeks dispensing of personal appearance before the Trial Court. Considering the same, personal appearance of the second petitioner before the Trial Court is dispensed with, except when called for in required circumstances, the second petitioner shall be present on the date as fixed by the Trial Court. However, the Trial Court shall proceed as against other accused and dispose of the same in accordance with law.



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WEB COPY 6. With the above directions, this Criminal Original Petition stands partly allowed. Consequently, connected miscellaneous petitions are closed.

06.07.2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order
ham

To

The Judicial Magistrate,
Ranipet District



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N.SATHISH KUMAR, J.

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