

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.15193 OF 2022

AND

CRL.M.P.NOS.8486 & 8487 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 / Accused 1-4

Versus

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

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the S.T.C.No.384 of 2020 pending on the file of Judicial Magistrate Court, Ranipet District.

For Petitioner : Mr.T.R.Prabakaran

ORDER

This Criminal Original Petition has been filed seeking to quash the Chargesheet in S.T.C.No.384 of 2020 pending on the file of Judicial Magistrate Court, Ranipet District, for the offence under Section 138 read with Section 142 of Negotiable Instrument Act, 1881.

2. The present petitioner has been filed to quash the cheque complaint in S.T.C.No.384 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 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, no 138/141 proceedings can continue 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 continuing 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 the first petitioner company alone is quashed. In respect of others, the application to quash is dismissed and at this stage, the learned counsel for the petitioners citing the age of the second petitioner seeks exemption 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 the Trial Court. However, the Trial Court shall proceed as against other accused and dispose of the same in accordance with law.

6. With the above directions, this Criminal Original Petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

dhk

To

1.Judicial Magistrate Court,
Ranipet District

2.The Public Prosecutor
High Court, Madras.

+1cc to Mr.T.P.Prabakaran, Advocate Sr.No.43381

CRL.O.P.No.15193 of 2022

SVI(CO)
RVM(20/07/2022)