203 (6)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.7174 of 2023
Date of Decision: 16.08.2023

Ram Kishor Arora @ R.K. Arora ... Petitioner

Versus

Anubhav Kapoor ... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Kushagra Beniwal, Advocate
for the petitioner.

Mr. Ravinder Chaudhary, Advocate
for the respondent.

.....

SANJIV BERRY, J. (ORAL)

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of the impugned order dated 09.07.2021 (Annexure P-4) passed in complaint bearing No. NACT-17330 of 2020 dated 11.09.2020 titled as “Anubhav Kapoor Vs. M/s Supertech Ltd. & Others” under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') (Annexure P-3) whereby summons have been issued to the present petitioner by the learned trial Court and further staying of the impugned complaint (Annexure P-3) along with summoning order dated 21.11.2022 (Annexure P-5) passed by the learned Judicial Magistrate First Class, Gurugram.

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2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was the Director of M/s Supertech Ltd., which is now undergoing a Corporate Insolvency Resolution Process (CIRP) before the National Company Law Tribunal (for short, 'NCLT'), New Delhi Bench and an interim resolution professional has already been appointed. Learned counsel has also referred to the order dated 25.03.2022 passed by NCLT (Annexure P-1). He submits that by virtue of interim moratorium applied by the said order, the independent recovery as well as criminal proceedings cannot continue against the Directors by virtue of provisions of Sections 14 and 96 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC').

3. Learned counsel further submits that the petitioner has been summoned as an accused under Section 138 of the NI Act. He contends that since the petitioner is no longer at the helm of affairs of the company, the amount due, if any cannot be honoured in the light of the interim moratorium order of the NCLT, and thus the petitioner cannot be summoned under Section 138 of the NI Act. Learned counsel vehemently submits that respondent No.1 cannot be allowed to avail two separate remedies for the same cause of action. Hence, the proceedings under Section 138 of the NI Act are liable to be quashed.

4. On the contrary learned counsel representing the respondent has assailed these arguments by submitting that the petition is not maintainable and is liable to be dismissed. He submitted that the pendency of proceedings before the NCLT under IBC does not bar the proceedings under Section 138

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of NI Act which being penal in nature. In support of his argument he referred to a Three Judge Bench of the Hon'ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation Of India Ltd : 2023 LiveLaw (SC) 195; and also in Sachin Goyal and another vs. M/s Rajasthan Trading Co. and another in CRM-M 16158 of 2023 decided on 29.03.2023*** .

5. I have heard the submissions made by the learned counsel for the parties and perused the relevant record.

6. In the present case the main point of dispute is as to whether during the pendency of the proceedings under the IBC, the proceedings under the Negotiable Instrument Act can continue simultaneously or not.

7. After considering the rival contentions and perusing the record, admittedly, in the present case the proceedings under IBC are pending before NCLT (Anneure P-1) and vide order (Annexure P-4) dated 09.07.2021 the petitioner has been summoned to face trial under Section 138 of Negotiable Instrument Act in a complaint titled as "Anubhav Kapoor Vs. M/s Supertech Ltd. & Others" (Annexure P-3).

8. The law in this regard is settled in a recent Three Judge Bench of the Hon'ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka's*** case (supra) wherein it has been held as under :

> *"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*

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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.

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18. 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."

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9. Thus, it transpires from the judgment (supra) that it has been laid down by the Hon'ble Supreme Court that recovery proceedings barred under Section 14 of the IBC are primarily civil in nature, whereas the proceedings under Section 138 of the NI Act are criminal in nature, and both have a different set of purpose. Furthermore, the complainant approaches the Criminal Court not only for recovery of the legally enforceable debt but also for taking penal action under Section 138 of the NI Act for the offence already committed by the accused by not making the payment of the cheque amount despite the receipt of the statutory notice. Therefore, by operation of the provisions of the IBC, the criminal prosecution initiated against the natural persons under Section 138 read with 141 of the NI Act would not stand terminated. This proposition of law laid down in the latest judgment of Hon'ble Supreme Court could not be controverted or distinguished by the learned counsel for the petitioner.

10. Consequently, in the light of the above discussion, finding no merits in the petition, the same is hereby dismissed.

11. Pending applications, if any, shall stand disposed of along with this judgment.

(SANJIV BERRY)
JUDGE

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i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No

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