

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-16158-2023

Date of decision: 29.03.2023

Sachin Goyal and another

.....Petitioners

Versus

M/s Rajasthan Trading Co. and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Viren Jain, Advocate for the petitioners.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioners have invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of complaint bearing No.NACT-1290 of 2022 dated 22.08.2022 titled as “Rajasthan Trading Co. Vs. Shree Om Prime Food Private Limited and others” under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') (Annexure P-4) along with summoning order 31.08.2022 (Annexure P-5) passed by the learned Judicial Magistrate First Class, Sirsa, revisional order dated 12.12.2022 (Annexure P-9) passed by learned Sessions Judge, Sirsa whereby the Revision bearing No.CRR-233 of 2022 titled as “Shreeom Prime Foods Pvt. Ltd. and others Vs. Rajasthan Trading Co.” was dismissed. The petitioners have also prayed for staying of proceedings before the Trial Court.

Learned Counsel appearing on behalf of the petitioners contends that the petitioners were the directors of Shreeom Prime Foods Pvt. Ltd. (respondent No.2), which is now undergoing a resolution process before the National Company Law Tribunal (for

short, 'NCLT'), Jaipur Bench and an interim resolution professional has already been appointed. Learned counsel while drawing the attention of this Court to the order dated 28.07.2022 passed by NCLT (Annexure P-3) contends that upon passing of the admission order by NCLT, the Board of Directors of the company i.e. Respondent No.2, was suspended, and thus the petitioners have since then ceased to be the Directors of the respondent company. 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').

Learned counsel further submits that the petitioners and respondent No.2 company have now been summoned as an accused under Section 138 of the NI Act. He contends that since the petitioners are 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 petitioners 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. In support, he places reliance upon a decision of this Court in ***Vijay Kumar Ghai vs. Pritpal Singh Babbar : (2020) 2 RCR (Criminal) 539.***

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

The only issue with which this Court is concerned is

whether during the pendency of the proceedings under the IBC, which have been admitted, the present proceedings under the NI Act can continue simultaneously or not.

While dealing with a similar question, 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***, has 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 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.”

Thus, what flows from the above law laid down by the Hon'ble Supreme Court is that whereas recovery proceedings barred

under Section 14 of the IBC are primarily civil in nature, 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.

As a sequel to the above discussion, this Court does not find any merit in the instant petition, which is accordingly dismissed.

29.03.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No