Neutral Citation No.2023:PHHC:043616

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101-6

CRM-M-39885-2022
Date of decision : 23.03.2023

Rakesh Bhanot ... Petitioner

V/S

M/s Gurdas Agro Pvt. Ltd. ... Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. N.K. Setia, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondent.

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ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing/setting aside order dated 23.05.2022 (Annexure P-3) passed by learned Judicial Magistrate First Class, Bathinda in Criminal Complaint No.COMA 1061/2019 titled as 'M/s Gurdas Agro Pvt. Ltd. Vs. M/s Arjun Mega Mall Retail Holdings Pvt. Ltd.' filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') whereby the application filed by the petitioner for adjourning the matter sine die was dismissed.

Brief facts relevant for disposal of present petition are that in discharge of their legal liability towards the respondent/complainant, the petitioner along with his co-accused issued cheque bearing

No.807653 dated 12.10.2014 for Rs.50,00,000/- drawn on UCO Bank, Mid Corporate Industrial Area, Ludhiana with an assurance that the same shall be honoured on its presentation. When the said cheque was presented by the respondent/complainant to his banker for encashment, the said cheque was dishonoured and returned back with remarks 'Funds Insufficient'. Thereafter, a legal notice was issued to the petitioner but he failed to make the payment of the said cheque within the stipulated period. Thereafter, the respondent/complainant has filed a complaint under Section 138 of the N.I. Act against the petitioner, his wife and their business concern M/s Arjun Mega Mall Retail Holdings Pvt. Ltd. During the pendency of the complaint, the petitioner filed petition under Section 94 of the Insolvency and Bankruptcy Code, 2016 (for short 'the IBC') of National Company Law Tribunal, Chandigarh for personal insolvency for personal guarantors of the Corporate Debtor which is still pending. Thereafter, the petitioner filed application under Sections 94 and 60 of the IBC, seeking stay of the proceedings before the learned trial Court which was dismissed by the trial Court vide impugned order dated 23.05.2022.

Learned counsel for the petitioner submits that the trial Court dismissed the application filed by the petitioner seeking stay of proceedings in complaint case filed under Section 138 of the N.I. Act without appreciating the fact that interim moratorium had commenced against all the debts of the petitioner on the date of filing of application under Section 94 of the IBC and as per Section 96 of the IBC all the proceedings relating to the debt, shall remain stayed during the period of the interim moratorium. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgment passed by the Coordinate Bench of this Court in ***CRM-M-22685-2021 (O&M) titled as 'Vijay Kumar Ghai Vs. Pritpal Singh Babbar' decided on 04.07.2022***.

On the other hand, learned counsel for the respondent submits that the petitioner is the habitual offender. He approached the NCLT Chandigarh just to delay the proceedings and to avoid legal liabilities. The complaint under Section 138 of the N.I. Act does not come under the definition of Section 96 of the IBC. The accused were not appearing before the trial Court and prior to filing of the application for stay before the trial Court, non-bailable warrants of arrest has also been issued against co-accused Arjun Bhanot, who is son of the petitioner. The application filed by the petitioner before the trial Court is not maintainable as the respondent has filed the complaint under Section 138 of the N.I. Act against M/s Arjun Mall Retail Holding Pvt. Ltd. through its Directors i.e. Kiran Bhanot, Rakesh Bhanot (the petitioner) and Arjun Bhanot. These persons have not been impleaded in their personal capacity rather they have been impleaded being the Directors of the firm and they do not come under the definition of personal guarantors to the corporate debtors. Therefore, learned trial Court has rightly dismissed the application filed by the petitioner for staying the proceedings under Section 138 of the N.I. Act.

I have heard learned counsel for the parties and gone through the paper-book.

In ***Narinder Garg and Others Vs. Kotak Mahindra Bank Ltd. and Others : (2022) SCC OnLine SC 517***, Hon'ble Supreme Court held that:-

> *"3. In **P. Mohanraj v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258**, a Bench of three-Judges of this Court considered the matter whether a corporate entity in respect of which moratorium had become effective could be proceeded against in terms of Sections 138 and 141 of the Negotiable Instruments Act, 1881 ("the Act" for short).*
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> *4. A subsidiary issue was also about the liability of natural persons like a Director of the Company. In paragraph 77 of its judgment, this Court observed that the moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act.*
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> *5. It is submitted by Mr. Gopal Sankaranarayanan, learned Senior Advocate that the resolution plan having been accepted in which the dues of the original complainant also figure, the effect of such acceptance would be to obliterate any pending trial under Sections 138 and 141 of the Act.*
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> *6. **The decision rendered in P. Mohanraj is quite clear on the point and, as such, no interference in this petition is called for**."*

In view of above, it is clear that no provision of the IBC bars the continuation of the civil/criminal proceedings initiated against the Directors and officials of the company. By the moratorium only the corporate debtor (i.e. the company) is protected and no protection against civil and criminal liability is available to the guarantors or any other person who has committed a criminal act. The signatories/directors cannot escape from their penal liability under Section 138 of the NI Act by citing dissolution of the company. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act.

Moreover, the petitioner and his co-accused are not appearing before the trial Court to prolong the trial and the trial Court has also issued the non-bailable warrants of arrest of co-accused Arjun Bhanot, who is son of the petitioner.

In view of above, I find no illegality in the impugned order dated 23.05.2022 passed by the trial Court, therefore, the present petition being devoid of any merit is hereby dismissed and the trial Court is directed to further proceed the trial.

23.03.2023 **(ASHOK KUMAR VERMA)**
kothiyal **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No