HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-39859-2022
Date of Decision: 07.02.2023
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Rakesh Bhanot ... Petitioner

VS.

M/s Gurdas Agro P.Ltd. ... Respondent
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
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Present: Mr. Sumer Singh, Advocate for the petitioner

Mr. Parminder Singh, Advocate for the respondent
****

Sandeep Moudgil, J.

The petitioner seeks quashing of the order dated 23.05.2022 (Annexure P3) passed in criminal complaint No.COMA/1060/2019 instituted on 11.04.2019 under Section 138 of the Negotiable Instruments Act vide which an application for adjourning the matter *sine die* was dismissed.

A complaint under Section 138 of NI Act was filed against the petitioner, his wife and their business concern M/s Arjun Mega Mall Retail Holdings P.Ltd. bearing No.COM/1060/2019, initially before Ludhiana Court and subsequently, its trial was transferred to Bathinda Court. It was alleged in the complaint that the Branch Manager of UCO Bank Bathinda, in connivance with the accused persons – petitioner, transferred Rs.1,99,28,490/- belonging to the complainant into the account of M/s Arjun Mall Retail Holding P.Ltd. When a complaint was made, the accused persons – the petitioner issued four cheques each of Rs.50,00,000/- drawn on UCO Bank in order to discharge their liability. However, the cheques were dishonoured eventually resulting into filing of the present complaint under Section 138 of NI Act.

Learned counsel for the petitioner averred that prior to filing of complaint, the petitioner faced losses in his business and as such he approached the National Company Law Tribunal, Chandigarh (NCLT) under Section 94 of the Insolvency and Bankruptcy Code, 2016 (IBC) for personal insolvency for personal guarantors of the corporate debtor. The wife of the petitioner also moved before the NCLT under Section 94 IBC.

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 contended that once a petition under Section 94 IBC is filed, an interim moratorium, in terms of Section 96 IBC becomes operational which further provides for and encompasses a calm period for the applicant under Section 94 IBC, to enable him to come up with a repayment plan in conjunction with the Resolution Professional (RP).

It is further contended that legal proceedings in respect of any debt of the petitioner is required to be stayed in terms of the mandate of the above provisions of IBC. The subject proceedings under Section 138 NIC which concern the dishonor of the cheque would undoubtedly fall within the prohibition contained under Section 96 IBC. Reliance is placed on ***P.Mohanraj & Ors. Shah Brothers Ispat P.Ltd. (2021) SCC Online 152*** to contend that the protection granted under Section 96 IBC would extend to matters pertaining to those filed under Section 138 of NI Act.

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 'Vijay Kumar Ghai Vs. Pritpal Singh Babbar'*** decided on 04.07.2022.

It is urged on behalf of the petitioner that immediately upon filing of an application under Section 94 IBC, an interim moratorium comes into existence in respect of all the debts of the concerned applicant and any legal action or proceedings pending in respect of any debt shall be deemed to have been stayed and as such, the proceedings initiated by the respondent under Section 138 of NI Act is vitiated by the provisions of IBC.

Reply dated 15.11.2022 has been filed by the learned counsel for the respondent, which is taken on record. He submits that the petitioner is the habitual offender and has approached the NCLT Chandigarh just to delay the proceedings and to avoid legal liabilities. He urged that the instant complaint does not come under the definition of Section 96 IBC as 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.

Learned counsel for the respondent further averred that the application filed by the petitioner is not maintainable as the respondent has filed the complaint under Section 138 of the NI 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 by virtue of being the Directors of the firm and as such do not come under the definition of 'personal guarantors' to the corporate debtors and thus the court below is right in dismissing the petitioner's application for staying the proceedings under the NI Act.

Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that there is no merit in the contention raised by the petitioner and the petition deserves to be rejected.

Firstly, there is no provision under the IBC which bars continuation of the civil/criminal proceedings initiated against the Directors and officials of the company. The moratorium only protects the corporate debtor i.e. the company and there is no protection of interim moratorium provided for civil and criminal proceedings against 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 since it is the company which has dissolved but the personal penal liability of the accused covered under Section 141 of the NI Act remains intact.

The Supreme Court in ***Narinder Garg and Others Vs. Kotak Mahindra Bank Ltd. and Others (2022) SCC OnLine SC 517*** relied upon ***P. Mohanraj v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258*** which considered 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 NI Act and held that:-

> *"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.*
> *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.*
> *6. The decision rendered in P. Mohanraj is quite clear on the point and, as such, no interference in this petition is called for."*

Secondly, the petitioner and his co-accused are not appearing before the trial Court with a view to prolong the trial. So much so, the trial Court has also issued the non-bailable warrants of arrest of co-accused Arjun Bhanot, who is son of the petitioner to secure his presence which shows that the petitioner and other co-accused persons are evading the process of law.

Thirdly, on a bare perusal of the application (Annexure P2) filed the petitioner shows that the petitioner has not approached the adjudicating authority under Section 94 IBC but has approached the adjudicating authority under Section 13 IBC as the petitioner has moved the application in his individual capacity and not on behalf of the firm/company.

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.

Misc. Application(s) pending, if any, shall stand disposed of accordingly.

07.02.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*