

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.49201 of 2023

Date of decision: 3rd October, 2023

Madhukar Tulsi & another

... Petitioners

Versus

State of UT Chandigarh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Jigyasa Tanwar, Advocate for the petitioners.

Mr. Vivek Singla, APP UT Chandigarh
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking quashing of the complaint NACT No.21605 of 2018 dated 17.12.2018 titled as 'Tripat Pal Singh vs. M/s IREO Fiveriver Pvt. Ltd. and Others' filed by the respondent under Sections 138, 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the NI Act'), as well as the summoning order dated 17.12.2018 passed by the Court of learned Judicial Magistrate 1st Class, Chandigarh.

2. Learned counsel for the petitioners submits that though petitioner No.1 was the Director of M/s IREO Fiveriver Pvt. Ltd. (hereinafter referred to as, 'the Company') and petitioner No.2 was the Chief Financial Officer of the Company, however, the Company had gone through a Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter

referred to as, 'IBC') before the National Company Law Tribunal, Delhi (hereinafter referred to as, 'NCLT'); an order of moratorium under Section 14 of the IBC was passed on 13.12.2018. Vide the same order, an Interim Resolution Professional (IRP) was also appointed by the NCLT. In support, learned counsel has drawn the attention of this Court to Annexure P-2. Upon the appointment of the IRP vide order dated 13.12.2018, the petitioners thus had no role thereafter to play in the day-to-day affairs of the Company as they had ceased to be at the helm of its affairs. Thus, they could not be held liable under Section 141 of the NI Act. Furthermore, the Company had since been taken over by consortium of M/s Trident Infrastructure Pvt. Ltd. and Romano Infrastructure Pvt. Ltd. and is presently known as M/s Trident Hills Pvt. Ltd. i.e. respondent No.4. Learned counsel has asserted that in the aforementioned facts and circumstances, the petitioners would not be in a position to honour the claim made by the complainant. He has further submitted that by virtue of interim moratorium applied by the said order, the petitioners were entitled to the protection offered under the provisions of Section 14 IBC and furthermore, an independent recovery as well as criminal proceedings could therefore, not continue against them.

3. Learned counsel has still further, submitted that the complainant had already approached the IRP and gotten his claim admitted vide Annexure P-3 dated 06.08.2021. Moreover, in lieu of the property booked by the complainant in IREO Fiveriver project, he had already been allotted another property in one of the sister concerns of the

Company. Learned counsel has vehemently argued that the complainant could not be allowed to avail of two separate remedies for the same cause of action, and hence, the proceedings under Section 138 of the NI Act deserved to be quashed.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. Though the learned counsel for the petitioners has argued with vehemence that proceedings under Section 138 of the NI Act cannot continue in view of the protection granted under Section 14 of the IBC, however, this Court does not find any merit in the said submissions.

6. The proceedings under Section 138 of the NI Act are criminal in nature, and thus, different from recovery proceedings barred under Section 14 of the IBC, which proceedings are primarily of a civil nature. It would be apposite to refer to the ratio of law laid down by the Hon'ble Supreme Court in '**Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.**' 2023(2) RCR (Criminal) 161, wherein while dealing with an identical question, a three-Judge Bench of the Hon'ble Supreme Court 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 if proceedings against the company come to an end then the Appellant as the Managing Director cannot be proceeded against. 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.”

7. It is, thus, clear that the resort under Section 138 of the NI Act would be available to the complainant not only for the recovery of a legally enforceable debt but also for availing penal action. Therefore, the operation of the provisions of the IBC would not terminate the criminal

prosecution, which stands initiated against a natural person under Section 138 read with 141 of the NI Act.

8. As a sequel to the above, in the light of the ratio of law laid down by the Hon’ble Apex Court in **Ajay Kumar Radheyshyam Goenka’s case (supra)**, no ground is made out to entertain the present petition, which accordingly stands dismissed.

9. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

October 3, 2023
rps

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