IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101-7

CRM-M-59371-2022
Date of decision : 23.03.2023

M/s Gurdas Agro Pvt. Ltd. Petitioner

V/S

M/s Arjun Mall Retail Holding Pvt. Ltd. And others Respondents

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. N.K. Setia, 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 12.09.2022 (Annexure P-4) passed by learned Judicial Magistrate First Class, Bathinda in Criminal Complaint No.COMA 89/2016 titled as 'M/s Gurdas Agro Pvt. Ltd. Vs. M/s Arjun Mega Mall Retail Holdings Pvt. Ltd. and others' filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') read with Section 420 of the Indian Penal Code, 1860 whereby the application filed by respondent No.3-Rakesh Bhanot for staying the proceedings in the complaint case in view of provisions of Section 96 of the Insolvency and Bankruptcy Code, 2016 (for shot 'the IBC') was allowed.

Brief facts relevant for disposal of present petition are that in discharge of their legal liability towards the petitioner, the respondents/accused have issued 04 cheques amounting to Rs.50,00,000/- each drawn on UCO Bank, Mid Corporate Industrial Area, Ludhiana with an assurance that the same shall be honoured on their presentation. When the said cheques were presented by the petitioner to his banker for encashment, the same were got dishonoured and returned back with remarks '*Funds Insufficient*'. Thereafter, a legal notice was issued to the respondents but they failed to make the payment of the said cheques within the stipulated period. Thereafter, the petitioner has filed a complaint under Section 138 of the N.I. Act read with Section 420 of the IPC against the respondents. During the pendency of the said complaint, respondent No.3-Rakesh Bhanot filed petition under Section 94 of the IBC before National Company Law Tribunal, Chandigarh for personal insolvency for personal guarantors of the Corporate Debtor which is still pending. Thereafter, respondent No.3-Rakesh Bhanot filed application under Sections 94 and 60 of the IBC, before the trial Court seeking stay of the proceedings under Section 138 of the N.I. Act which was allowed by the trial Court vide impugned order dated 12.09.2022.

Learned counsel for the petitioner submits that the respondents are the habitual offenders. Respondent No.3-Rakesh Bhanot 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 respondents were intentionally not appearing before the trial Court just to delay the proceedings. Respondent No.2-Kiran Bhanot has already been declared proclaimed offender and non-bailable warrants of arrest has been issued against respondent No.4-Arjun Bhanot. The trial Court has passed the impugned order without appreciating the fact that the application filed by respondent No.3 before the trial Court is not maintainable as the petitioner 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 and Arjun Bhanot. These respondents 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 wrongly allowed the application filed by respondent No.3 for staying the proceedings under Section 138 of the N.I. Act. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***P. Mohanraj and others Vs. M/s Shah Brothers ISPAT Pvt. Ltd. : (2021) 6 SCC 258*** and ***Narinder Garg and Others Vs. Kotak Mahindra Bank Ltd. and Others : (2022) SCC OnLine SC 517***.

On the other hand, learned counsel for the respondents submits that interim moratorium had commenced against all the debts of respondent No.3 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. There is no illegality in the impugned order passed by the trial Court. Therefore, the present petition may be dismissed.

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 present complaint is more than 07 years old and the respondents are not appearing before the trial Court to prolong the trial. Respondent No.2-Kiran Bhanot has already been declared proclaimed offender and non-bailable warrants of arrest has already been issued against respondent No.4-Arjun Bhanot. Respondent No.3-Rakesh Bhanot has also not complied with order dated 06.09.2022 passed by the NCLT, Chandigarh whereby he was directed to file affidavit to that effect that notice has been served upon creditor(s) with proof of service before the next date of hearing, which shows that he has approached the NCLT just to delay his legal liabilities.

In view of above, the present petition is allowed and impugned order dated 12.09.2022 passed by learned Judicial Magistrate First Class, Bathinda is hereby set aside.

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

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