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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.05.2023

+ **CRL.M.C. 474/2021 & CRL.M.A. 2459/2021**

GOVIND PRASAD TODI & ANR.

..... Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. with
Ms. Aditi Sharma, Mr. Karan, Mr. Amer Vaid,
Ms. Neelakshi Bhadauria, Ms. Divita Vyas, Adv.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Aashneet Singh, APP
Mr. Naveen Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking quashing of the summoning order dated 24.11.2020 passed by the learned MM, Patiala House Courts, New Delhi in CC No. 7554/2020 titled '*M/s KTC Trading (P) Ltd. vs. M/s Ajanta Offset & Packaging Ltd.*'.
2. The brief facts of the case are that in the present case, the respondent No.2 filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter called NI Act) against the M/s Ajanta Offset & Packaging Ltd. (hereinafter referred to M/s Ajanta) and others for bouncing of cheque bearing No. 065894 and 065893 for a sum of Rs. 30 lakhs each.



3. The petitioner Nos. 1 and 2 were the promoters / directors of M/s Ajanta. The respondent No.2 had supplied paper to M/s Ajanta and the cheques were issued towards the discharge of the liability of M/s Ajanta.
4. In the present case, the Corporate Insolvency Resolution Process (hereinafter called "CIRP") was initiated under Section 7 of the Insolvency and Bankruptcy Code (hereinafter called IBC) and was admitted on 04.02.2020. In this view of the matter, the moratorium envisaged under Section 14(1) of the Code started operating from the said date.
5. The IRP Mr. Satyanarayana Guddeti on 07.02.2020 addressed emails to all the banks of M/s Ajanta directing not to allow any debit transaction from the accounts without the written approval or instructions of the Interim Resolution Professional (hereinafter called IRP).
6. The cheques in question were presented for encashment on 12.02.2020 and on 13.02.2020, the same were dishonoured with the remarks 'payment stopped by drawer'.
7. It is stated by Mr. Wadhwa, learned senior counsel for the petitioners that in the present case, in view of the moratorium, the cheques were incapable of encashment and hence, the petitioners cannot be liable for prosecution under Section 138 of the NI Act. He relies upon a judgment of the Bombay High Court in '*Asmita Sarang vs. Yogesh Badoni and Another* 2023 SCC OnLine Bom 528'.
8. Mr. Sharma, learned counsel for the respondent disputes the proposition and states that the Hon'ble Supreme Court in '*P. Mohanraj & Others vs. Shah Brothers Ispat Private Limited*' [(2021) 6 SCC



258] mandates that in view of Section 141 of the NI Act, prosecution under Section 138 of the NI Act can continue against natural persons i.e., Directors and persons In-Charge of affairs of the company. He also relies upon '*M/s Nag Leathers Pvt. Ltd. vs. M/s Dynamic Marketing Partnership*' in CRL. APPL. No. 1424/2021 arising out of SLP (CRL.) No. 9077/2019 and more particularly, the relevant portion which reads as under:-

"It must therefore be held that the corporate debtor, namely, the appellant herein cannot now be proceeded against under Section 138 of the Act. Consequently, the proceedings initiated against the appellant deserve to be quashed.

Since no natural person was arrayed as accused, the exception carved out in the decision of this Court in P. Mohanraj (supra) does not arise in the instant case."

9. Mr. Sharma, learned counsel also states that the return memo shows 'payment stopped by drawer' and there is no evidence as of today that it was stopped pursuant to the mandate issued by the IRP.
10. I have heard learned counsel for the parties.
11. In the present case, admittedly, CIRP proceedings were admitted against M/s Ajanta on 04.02.2020. In my opinion in view of the CIRP proceeding, the moratorium under Section 14 kicks in on the same day. The IRP vide email dated 07.02.2020 had, in accordance with the provisions of the IBC, directed all the financial institutions not to permit any debit transactions from the account of M/s Ajanta without



written approval. The relevant portion of the email reads as under:

“...To not to allow any debit transactions from the account without written approval or instructions of the IRP...”

12. Section 14 of the IBC, 2016 reads as under:-

“14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor



where such property is occupied by or in the possession of the corporate debtor.

[Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

.....
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

.....”

13. As is clear from the above, once the CIRP proceedings have been admitted, the proceedings against the corporate debtor cannot continue.



The only question that remains to be answered is whether the petitioners can continue to be prosecuted under Section 138 of the NI Act in view of them being natural persons.

14. I am in agreement with the observation of the Bombay High Court in *Asmita Narang (supra)*, wherein the High Court has held as under:-

“31. Admittedly, NCLT, Bench at Mumbai vide its order dated 08/01/2019, passed the prohibitory order (referred hereinabove). As a consequence thereof, the company was prohibited from transferring or alienating or disposing of any of its assets. Meaning thereby, the amount in the bank account of the Corporate Debtor/company came to be freezed. Insolvency Resolution Professional was appointed. He took over the charge of management of the Corporate Debtor/company. There is communication on record indicating the Corporate Debtor to have expressed its inability to pay the amount of dishonoured cheques on account of moratorium imposed vide order dated 08/01/2019. The concern bank of Corporate Debtor/company was also informed the operation of bank account was taken over by Insolvency Resolution Professional. As a consequence, the Insolvency Resolution Professional became the authority to operate the bank account. As a further consequence, signature of earlier person, who was authorized to operate the bank account, came to be replaced with that of the Insolvency Resolution Professional. The cheques came to be presented on 11/04/2019 and 02/05/2019 i.e. long after moratorium was imposed. When



the cheques were presented for encashment, the respondents were no longer in control and management of day to day affairs of the Corporate Debtor. It is not known as to whether there were sufficient funds in the bank account of Corporate Debtor to honour the cheques.”

(Emphasis supplied)

15. Since from the date of the admission of the CIRP proceedings, it was the IRP who was In-Charge of and responsible for the conducting the business of the company at the time when the cheques were presented for encashment, it is thus clear that the role of the natural persons had ceased.
16. The instrument, namely, the cheque on the basis of which the complaint was filed could not have been encashed by the financial institutions in view of the mandate of Section 14 IBC read with Section 17 and 18 IBC.
17. Section 17 and 18 IBC read as under:-

“17. Management of affairs of corporate debtor by interim resolution professional.

(1) From the date of appointment of the interim resolution professional,—

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;



(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as [may be specified; and].

[(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.]. ”

18. Duties of interim resolution professional.

The interim resolution professional shall perform the following duties, namely:—



(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;



(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this [section], the term "assets" shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

18. On the basis of the combined reading, it is the IRP who had the authority to operate the bank accounts and on the date of presentation, the petitioners cannot be stated to be in control and management of the affairs of M/s Ajanta.
19. In the judgment of *P. Mohanraj & Others v. Shah Brothers Ispat Private Ltd.*, (2021) 6 SCC 258 the facts are distinguishable from that of the present case. In *P. Mohanraj*, 51 cheques were issued by the company in favour of the respondent towards amounts payable from 21.09.2015 to 11.11.2016. On 31.03.2017, the respondent issued a statutory demand notice under Section 138 read with Section 141 of the



Negotiable Instruments Act, 1881. The order admitting the application was passed on 06.06.2017 by the Adjudicating Authority directing commencement of the corporate insolvency resolution process with respect to the company and putting a moratorium in terms of Section 14 of the IBC. Hence in judgment of *P.Mohanraj*, the moratorium commenced from 06.06.2017. Prior to that not only the cheques had bounced but demand notices were also issued. In the present case, prior to presentation of cheques, not only the moratorium kicked in but the IRP had also sent the effective letter. As a result, the cheques became incapable of encashment.

20. The reliance of Mr. Sharma, learned counsel in '*M/s Nag Leathers Pvt. Ltd.*' (supra) is misconceived as the observations are not the ratio of the judgment but a passing observation in view of the judgment of the Hon'ble Supreme Court in '*P. Mohanraj*' (supra).
21. For the said reasons, the petition needs to be allowed and the summoning order dated 24.11.2020 passed by the learned MM, Patiala House Courts, New Delhi in CC No. 7754/2020 titled '*M/s KTC Trading (P) Ltd. vs. M/s Ajanta Offset & Packaging Ltd. & Ors.*' is hereby quashed.
22. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MAY 18, 2023 / (MS)

[Click here to check corrigendum, if any](#)