



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

% ***Date of decision: 19.04.2023***

+ **CRL.M.C. 2679/2023**

AMIT SURESHMAL LODHA & ORS. Petitioners

Through: Mr. Harsh N. Gokhle,
Advocate.

versus

ALLOYSMIN INDUSTRIES & ANR. Respondents

Through: Ms. Srishti Agarwal, Advocate
for R-1.

+ **CRL.M.C. 2711/2023**

AMIT SURESHMAL LODHA & ORS. Petitioners

Through: Mr. Harsh N. Gokhle,
Advocate.

versus

ALLOYSMIN INDUSTRIES & ANR. Respondents

Through: Ms. Srishti Agarwal, Advocate
for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

CRL.M.A. 10106/2023 (Exemption) In CRL.M.C. 2679/2023

CRL.M.A. 10212/2023 (Exemption) In CRL.M.C. 2711/2023

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.



CRL.M.C. 2679/2023 & CRL.M.A. 10105/2023 (stay)
CRL.M.C. 2711/2023 & CRL.M.A. 10211/2023 (stay)

1. The present petitions have been filed by the petitioners under Section 482 Cr.P.C. for quashing of Complaint Case No. 23326/2019 and setting aside of the summoning order dated 25.02.2021 passed by Ld. MM (N.I. Act), N/W, Rohini Court, Delhi, in Complaint Case No. 23326/2019 registered under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881; and for quashing of Complaint Case No. 2992/2020 and setting aside of the summoning order dated 06.09.2022 passed by Ld. MM (N.I. Act), N/W, Rohini Courts, Delhi, in Complaint Case No. 2992/2020 registered under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881; and the proceedings emanating therefrom.

2. In brief the facts of the case are that on 01.09.1994, Castings Dynamics Limited (Respondent No. 2) was incorporated and registered with Registrar of Companies, Delhi under the Companies Act, 1956. Castings Dynamics Limited was engaged in the business of manufacturing of Insulator caps, Power Transmission Flanges, Automobile Castings, Oil, Gas Castings and Customer Specific Casting. During the usual course of business, Respondent No.2 Company had entered into transactions with Alloysmin Industries (Respondent No.1) for supply of raw materials such as Calcined Anthracite Coal, Graphitized Anthracite Coal, Ferro Silicon etc. and the accused persons had issued various cheques towards payment obligations. On 24.09.2019, NCLT, Mumbai directed to initiate



Corporate Insolvency Resolution Process against Castings Dynamics Limited in the CP 4697 (IB)/MB/2018 under the Insolvency and Bankruptcy Code, 2016 and moratorium was imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016. Subsequently, all the directors stood suspended and the management was deemed to have been given to the Resolution Professional. Mr. Manish Sukhani was appointed as the Interim Resolution Professional by NCLT, Mumbai on 24.09.2019 and was confirmed as the Resolution Professional for Castings Dynamics Limited /Respondent No.2. On 15.10.2019, public announcement was made by the Interim Resolution Professional of Respondent No.2 and the creditors of Respondent No.2 were called upon to submit their claims with proof on or before 30.10.2019. On 13.12.2019, Alloysmin Industries (Respondent No.1) filed its claim of Rs.36,46,157/- as an operational creditor in the insolvency of Respondent No.2. On 30.12.2019, first invitation of expression of interest for resolution plan was published by Resolution Professional of Castings Dynamics Limited and on 10.06.2020, second invitation of expression of interest for resolution plan in the insolvency of Castings Dynamics Limited was published by Resolution Professional of Respondent No.2.

3. The complainant/ Respondent No. 1 herein, had instituted a Complaint Case No. 23326/2019 under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 against the petitioners in respect of non-payment against two dishonored cheques for the sum of Rs. 4,09,723/- and Rs. 5,87,640/- and Complaint Case No. 2992/2020



under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 against the petitioners in respect of non-payment against three dishonored cheques for the sum of Rs. 10,28,200/-, Rs. 10,32,944/- and Rs. 5,87,640/-, issued by the petitioners in favour of the complainant/ Respondent No. 1.

4. The Metropolitan Magistrate vide order dated 25.02.2021 in Complaint Case No. 23326/2019 and vide order dated 06.09.2022 in Complaint Case No. 2992/2020 issued summons requiring the petitioners to attend the Court.

5. The petitioners being aggrieved filed the present petitions invoking jurisdiction of this Court U/s 482 Cr.P.C.

6. It has been mainly argued by the Ld. Counsel for the petitioners that on 24.09.2019, NCLT had admitted Respondent No.2 company to Corporate Insolvency Resolution Process and moratorium was imposed and the cheques in question were deposited by Respondent No. 1 on 03.10.2019, 14.10.2019 and 11.12.2019. As a consequence of the moratorium and provisions of the Insolvency and Bankruptcy Code, 2016, the petitioners were suspended as directors prior to the deposit of the cheques and in any case, no amount could be paid by the Respondent No. 2 Company due to the imposition of moratorium. He further submits that Respondent No. 1 has filed its claim before the RP/Liquidator as well and the same has been verified, thus, the proceedings under the N.I. Act cannot be pursued further by Respondent No. 1 since they have already availed remedy available under the Insolvency and Bankruptcy Code. He further submits that



when the insolvency process was initiated by NCLT, Respondent No. 1 chose to recover its dues through the provisions of the Code and accordingly, the Complaint case registered against the petitioners ought to have been dismissed as it would never reach any conclusion since the cheques were dishonoured due to operation of law. He further submits that the petitioners cannot be held liable for acts or omissions under the N.I. Act where he has no control or was stopped by operation of law. The Corporate Insolvency Resolution Process had already taken notional control over the management and day-to-day affairs of Respondent No.2 company w.e.f. 24.09.2019 and since then petitioners had no control in any of the matters including financial-related matters of Respondent No.2, petitioners in their reply dated 13.11.2019 to the Legal Notice dated 26.10.2019 of Respondent No.1 had duly informed Respondent No.1 that Respondent No.2 was admitted into Corporate Insolvency Resolution Process under the Code and all the powers of management had been transferred to the Interim Resolution Professional and thus, the petitioners have no role in the day-to-day affairs of Respondent No.2 company and even after being informed of the proceedings under the Code, Respondent No.1 proceeded to file two complaints under Section 138 of the N.I. Act against the petitioners and Respondent No.2 Company, which is clearly an abuse of the process of law to harass the petitioners, who are residing in Mumbai. Furthermore, Ld. counsel for the petitioners submits that the petitioner Nos.2 and 3 are senior citizens with poor health and they have not even signed the cheques in question and thus,



contends that it cannot be assumed that there exists a legally enforceable debt or liability against the petitioners.

7. Ld. Counsel for the petitioners has placed reliance on the following judgments:-

- ***P. Mohanraj and Ors. vs. Shah Brothers Ispat Pvt. Ltd. [(2021) 6 SCC 258]***
- ***Kusum Ingots vs. Pennar Peterson [2000 (2) SCC 745]***
- ***Shekhar Resorts vs. UOI [2023 SCC Online SC 11]***
- ***Sunita Palita vs. Panchami Stone Quarry [2022 (10) SCC 152]***
- ***Alibaba Nabibasha vs. Small Farmers Agri Business [2020 SCC Online Del 1250]***

8. On the contrary, learned counsel for the Respondent No. 1 has pointed out that the cheques in question were presented within its validity period and after the cheques being dishonored on 04.10.2019, 15.10.2019 and 12.12.2019, the complainant issued the legal notice dated 26.10.2019 in Complaint Case No. 23326/2019 and legal notice dated 08.01.2020 in Complaint Case No. 2992/2020. She submits that more than 15 days elapsed from the date of receipt of notice, however, the petitioners still failed to make any payment. She further submits that the petitioners knowing well that the cheques in question will not be honoured by the drawee bank and that there is not sufficient balance in the Bank account, issued the cheques in question and simultaneously, initiated the Corporate Insolvency Resolution Process to escape liability. She further submits that the presumption under



Section 139 N.I Act includes a presumption that there exists a legally enforceable debt and liability, therefore, no case for quashing of the complaints or the summoning orders is made out.

9. In the instant case, two cheques were dishonored in Complaint Case No. 23326/2019 for the sum of Rs. 4,09,723/- and Rs. 5,87,640/- and three cheques were dishonored in Complaint Case No. 2992/2020 for the sum of Rs. 10,28,200/-, Rs. 10,32,944/- and Rs. 5,87,640/-, issued by the accused persons in favour of the complainant, namely, Alloysmin Industries (Respondent No.1). Legal notices dated 26.10.2019 and 08.01.2020 were issued against the accused persons/petitioners, however, on 24.09.2019, the Corporate Insolvency Resolution Process stood initiated in respect of accused no.1 company, namely, Castings Dynamics Limited (Respondent No.2). On 15.10.2019, public announcement was made by the Interim Resolution Professional of Respondent No.2 and the creditors of Respondent No.2 were called upon to submit their claims with proof on or before 30.10.2019. On 13.12.2019, Alloysmin Industries (Respondent No.1) filed its claim of Rs.36,46,157/- as an operational creditor in the insolvency of Respondent No.2. On 30.12.2019, first invitation of expression of interest for resolution plan was published by Resolution Professional of Castings Dynamics Limited and on 10.06.2020, second invitation of expression of interest for resolution plan in the insolvency of Castings Dynamics Limited /Respondent No. 2 was published by Resolution Professional of Respondent No.2. Thus, during the pendency of the Corporate Insolvency Resolution Process,



Summons dated 25.02.2021 in Complaint Case No. 23326/2019 and 06.09.2022 in Complaint Case No. 2992/2020 were issued against the petitioners.

10. It is trite law that the corporate debtor is covered by the moratorium provision contained in Section 14 of the Insolvency and Bankruptcy Code, 2016, by which continuation of Section 138/141 of Negotiable Instruments Act, 1881 proceedings against the corporate debtor or initiation of Section 138/141 of Negotiable Instruments Act, 1881 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, however, it has been time and again observed that since the legal impediment contained in Section 14 of the Insolvency and Bankruptcy Code would make it impossible for such proceedings to continue or be instituted against the corporate debtor, therefore, for the period of moratorium, such proceedings can be initiated or continued against the natural persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act.

11. Reliance can be placed upon *P. Mohanraj & Ors. vs. M/s. Shah Brothers Ispat Pvt. Ltd [(2021) 6 SCC 258]*, decided by the Hon'ble Supreme Court on 01.03.2021, wherein, it is observed and held as under:

"WHETHER NATURAL PERSONS ARE COVERED BY SECTION 14 OF THE IBC

77. As far as the Directors/persons in management or control of the corporate debtor are concerned, a Section 138/141



*proceeding against them cannot be initiated or continued without the corporate debtor – see **Aneeta Hada** (supra). This is because Section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the company for the conduct of the business of the company, as well as the company. The Court, therefore, in **Aneeta Hada** (supra) held as under:*

*“51. We have already opined that the decision in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.”*

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“56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as



an accused. The words “as well as” have to be understood in the context.”

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“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraignment of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”



*Since the corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in **Aneeta Hada** (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."*

12. In **Narinder Garg and Others v. Kotak Mahindra Bank Ltd. and Others** reported in [(2022) SCC OnLine SC 517], decided by the Hon'ble Supreme Court on 28.03.2022, it is observed and held as under:

" 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).

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.”

13. In ***Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd., Criminal Appeal No. 170 of 2023 (Arising out of SLP (CRL) No. 417 of 2020)***, decided by the Hon'ble Supreme Court on 15.03.2023, it is observed and held as under:

“51. What follows from the aforesaid is that for difficulty in prosecuting the corporate debtor under Section 138 of the NI Act after the approval of the resolution plan under the IBC, we need not let the natural persons i.e., the signatories to the cheques/directors of the corporate debtor escape prosecution. How can one allow the natural persons to escape liability on such specious plea? In such a situation the Latin maxim Lex Non Cogit Ad Impossibilia is attracted which means law does not compel a man to do which he cannot possibly perform. Broom's "Legal Maxims" contains several illustrative cases in support of the maxim. This maxim has been referred to with approval by this Court in State of Rajasthan v. Shamsheer Singh reported in 1985 supp SCC 416.

52. Thus, where the proceedings under Section 138 of the NI Act had already commenced and during the pendency the plan is approved or the company gets dissolved, the directors and the other accused cannot escape from their liability by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act. They will have to continue to face the prosecution in view of the law laid down in Aneeta Hada (supra)...”

14. The sum and substance of the propositions of law, which can be culled out from the aforesaid judgments is that although a corporate



debtor is covered by the moratorium provision contained in Section 14 of the Insolvency and Bankruptcy Code, 2016, and the corporate debtor's interest are given protection by preserving the assets of the corporate debtor during the resolution process by preventing initiation or continuation of any Section 138/141 of Negotiable Instruments Act, 1881 proceedings but in so far as the position of the directors of an accused company, it is explicit that the moratorium provision under Section 14 of the IBC does not apply to the natural persons mentioned under Section 141 of the Negotiable Instruments Act and therefore, such proceedings can be initiated or continued against the said *natural persons* including directors.

15. Perusal of the material on record shows that the petitioner no.1 was a director and petitioner nos. 2 and 3 were additional directors in Castings Dynamics Limited (Respondent No.2 Company). The two cheques in Complaint Case No. 23326/2019 and three cheques in Complaint Case No. 2992/2020 got dishonored way back in 2019 and even the legal notices were issued upon the petitioners. It is only after their failure to make any payment within the stipulated period, the said Complaint Case Nos. 23326/2019 and 2992/2020 were registered against the petitioners.

16. As far as the contention of the Ld. Counsel for the petitioners that the petitioners are residing in Mumbai and they have no role in the day-to-day affairs of Respondent No.2 company, moreover, petitioner nos. 2 and 3 are senior citizens and had not even signed the



cheques in question, does not cut much ice as the same is a matter of trial.

17. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.PC which have been discussed in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. It is seen in many cases that the petitioners with malafide intention and to prolong the litigation raise false and frivolous pleas and in some cases, the petitioners do have genuine defence, but instead of following due procedure of law, as provided under the N.I. Act and the Cr.PC, and further, by misreading of the provisions, such parties consider that the only option available to them is to approach the High Court and on this, the High Court is made to step into the shoes of the Metropolitan Magistrate and examine their defence first and exonerate them. The High Court cannot usurp the powers of the Metropolitan Magistrate and entertain a plea of accused, as to why he should not be tried under Section 138 of the N.I. Act. This plea, as to why he should not be tried under Section 138 of the N.I. Act is to be raised by the accused before the Court of the Metropolitan Magistrate under Section 251 and 263(g) of the Cr.PC.



18. Therefore, I find no force in the contentions of the Ld. Counsel for the petitioners and accordingly, the present petitions along with pending applications, if any, stands dismissed being devoid of any merits.

RAJNISH BHATNAGAR, J

APRIL 19, 2023

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