2024:PHHC:139134

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

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(1) **CRM M-19068 of 2022 (O&M)**
Date of Decision: 24.07.2024

Heavent Sudhir Malhotra ...Petitioner
Versus
Shree Naina Plastics Inc Khata Baddi ... Respondent

(2) **CRM M-19171 of 2022 (O&M)**

Heavent Sudhir Malhotra ...Petitioner
Versus
Shree Naina Plastics Inc Khata Baddi ... Respondent

(3) **CRM M-19149 of 2022 (O&M)**

Heavent Sudhir Malhotra ...Petitioner
Versus
Shree Naina Plastics Inc Khata Baddi ... Respondent

(4) **CRM M-19076 of 2022 (O&M)**

Heavent Sudhir Malhotra ...Petitioner
Versus
Shree Naina Plastics Inc Khata Baddi ... Respondent

(5) **CRM M-19070 of 2022 (O&M)**

Heavent Sudhir Malhotra ...Petitioner
Versus
Shree Naina Plastics Inc Khata Baddi ... Respondent

(6) **CRM M-19145 of 2022 (O&M)**

Heavent Sudhir Malhotra ...Petitioner

Versus

Shree Naina Plastics Inc Khata Baddi ... Respondent

(7) **CRM M-11614 of 2022 (O&M)**

Heavent Sudhir Malhotra ...Petitioner

Versus

Shree Naina Plastics Inc Khata Baddi ... Respondent

(8) **CRM M-1666 of 2022 (O&M)**

Vinod Shewag ...Petitioner

Versus

Shree Naina Plastics Inc Khata Baddi ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Randeep Singh Rai, Sr. Advocate with
Mr. Viren Sharma, Advocate and
Ms. Rubina Virmani, Advocate
for the petitioner(s).

Mr. Rishabh Jain, Advocate with
Ms. Suman Jain, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose off 08 petitions, i.e., CRM M-19068-2022 titled as **"Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc Khata Baddi",** CRM M-19171 of 2022 titled as **"Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc Khata Baddi",** CRM M-19149 titled as **"Heavent Sudhir Malhotra Vs.**

Shree Naina Plastics Inc Khata Baddi”, CRM M-19076 of 2022 titled as **“Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc Khata Baddi”,** CRM M-19070 of 2022 titled as **“Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc Khata Baddi”,** CRM M-19145 of 2022 **“Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc Khata Baddi”,** CRM M-11614 of 2022 **“Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc Khata Baddi”** and CRM M-1666 of 2022 titled as **“Vinod Shewag Vs. Shree Naina Plastics Inc Khata Baddi”** as same questions of facts and law are involved in these petitions. For the purpose of disposal of the petitions, the facts have been borrowed from CRM M-19068-2022 titled as **“Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc”.**

2. The petitioner has filed the petition under Section 482 Cr.P.C. with a prayer to quash a criminal complaint No. 18386 dated 29.09.2018 titled as “**Shree Naina Plastics Inc. Vs. Xalta Food and Beverages Private Limited and others” (**Annexure P-1) and the summoning order dated 01.10.2018 (Annexure P-2) passed by the Court of Judicial Magistrate 1st Class, Chandigarh, whereby, the petitioner has been summoned to face trial under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**'). A further prayer has been made with a prayer to quash the order dated 04.01.2022 (Annexure P-6) passed in Criminal Revision No. 372 dated 18.10.2019 titled as **“Heavent Sudhir Malhotra Vs. Shree**

Naina Plastics Inc. (Annexure P-5), whereby, the revision petition filed by the petitioner was ordered to be dismissed.

3. Learned senior counsel appearing on behalf of the petitioner vehemently argued that the accused/company, namely, M/s XALTA Food and Beverages Private Limited and others was duly incorporated under the provisions of Companies Act, 1956, whereas, the respondent/complainant was a partnership firm, which used to supply PET PREFORMS to the accused/company and had raised the invoices. As per the case set up by the respondent/complainant, after reconciliation of accounts, a sum of Rs.7,100,99,34.34/- was payable by the accused towards the respondent. In discharge of liability certain cheques were issued by the accused-company in favour of the complainant in part discharge of its liability. However, the said cheques were dishonoured on presentation and after serving legal notice, the respondent filed the complaint (Annexure P-1) against the accused-company and the petitioner was also arrayed as one of the accused in the complaint (Annexure P-1). The petitioner was arrayed as an accused, being the director/authorized signatory of the accused-company. Vide order dated 01.10.2018 (Annexure P-2), the trial Court proceeded to issue summon against the accused including the petitioner. The petitioner appeared before the trial Court on 11.07.2019 and was admitted to bail. However, he was directed to furnish surety for a sum of Rs.10 lacs in all seven complaint cases and

the petitions were allowed and the surety amount was reduced to Rs. 2 lacs each, instead of Rs. 10 lacs as imposed by the trial Court. Learned senior counsel submitted that the petitioner had approached the Court of Sessions Judge, Chandigarh, by instituting a revision petition, i.e., CRR 372/2019 on 18.10.2019 and challenged the summoning order (Annexure P-2). No stay of proceeding was granted by the Sessions Court and the trial Court proceeded further with the prosecution of the complaint (Annexure P-1). Even, the revision petition was filed on 18.10.2019 before the Sessions Court alongwith an application for condonation of delay of more than 300 days. Even, when no learned counsel appeared before the Revisional Court on 03rd consecutive dates of hearing, the revision petition as well as application for condonation of delay filed by the present petitioner were ordered to be dismissed in default by the Court of Additional Sessions Judge, Chandigarh on 04.01.2022 vide order (Annexure P-6). Learned senior counsel further submitted that be that as it may, this Court has vast powers under Section 482 Cr.P.C. to quash the criminal complaint (Annexure P-1) and the case may be examined on merits.

4. Learned senior counsel further submitted that even otherwise, the Corporate Insolvency Resolution Process (CIRP) had been initiated against the accused and due to this, the powers of the petitioner as Director were suspended under Section 17 of the

Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as **'the Code'**) and an Interim Resolution Professional (IRP) was appointed by the National Company Law Tribunal (hereinafter to be referred as **'the NCLT'**) vide its order dated 25.07.2018. Learned counsel also placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Sandeep Khaitan, Resolution Professional for National Plywood Industries Ltd. Vs. JSVM Plywood Industries Ltd. and another [2021 SCC online SC 408]** to contend that the management of the affairs of the Corporate Debtor would vest in the Interim Resolution Professional (IRP) and the power of the Board of Directors of the Corporate Debtor shall stand suspended as per Section 17 of the Code.

5. Learned senior counsel further submitted that NCLT had initiated Insolvency Resolution Process against the petitioner vide order dated 04.08.2022 and the interim moratorium under Section 96(1)(a) of the Code was initiated. Thus, in view of the interim moratorium imposed under Section 96 of the Code, the continuation of the proceedings against the debtor, i.e., the petitioner, during the interim moratorium period was prohibited. He further contended that in view of Section 96 of the Code, the proceedings under Section 138 of the Act could not be instituted or continued against the petitioner, being a debtor and, accordingly, the complaint (Annexure P-1) could

not have been initiated/continued during the moratorium being enforced.

6. Learned senior counsel further vehemently argued that it was incumbent upon the complainant to prove that the petitioner was the incharge of and responsible to the accused/company for the conduct of its business. Only a vague averment had been made in the complaint (Annexure P-1) that the petitioner was incharge of and responsible of the conduct for its day to day business and the summoning order was legally unsustainable.

7. On the other hand, learned counsel for the respondent submitted that the petition filed by the petitioner is full of concealment of facts. This Court had directed the petitioner to appear before the trial Court and to furnish the bail bonds, as directed. However, he did not comply with the orders passed by this Court. Later on, the proceedings under Section 82 Cr.P.C. were initiated. The petitioner appeared before the Magistrate on 11.07.2019 and was granted bail and was directed to furnish bail bonds. The petitioner alongwith other accused filed petitions before this Court against the directions of the Court to furnish surety of Rs. 10 lacs and the amount of surety was reduced from 10 lacs to Rs. 2 lacs by this Court. This Court also directed the trial Court to dispose off the matter, preferably within a period of 01 year. In the meantime, the petitioner filed

criminal revision before the Sessions Court, Chandigarh, to challenge the summoning order (Annexure P-2). However, again the counsel for the petitioner did not appear before the Revisional Court on three dates and ultimately vide order dated 04.01.2022 (Annexure P-6), the application for condonation of delay of 300 days in filing the revision petition as well as revision petition were dismissed in default. Learned counsel further submitted that vide order dated 28.07.2022, all the accused were declared proclaimed persons and the Court had directed to initiate proceedings against them. The petitioner moved various miscellaneous petitions before this Court with a prayer to quash the order dated 28.07.2022 passed by the Judicial Magistrate 1st class, Chandigarh, whereby, the petitioner was declared as proclaimed person. While dismissing the petition CRM M-40387 of 2022 titled as **"Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc and other connected petitions",** this Court had noticed the conduct of the petitioner and his co-accused by observing as follows:-

> *"(8) Over 4 ½ years ago the respondent filed a complaint under Section 138 of the Act in which the petitioner was one of the accused. In such complaint, through order of the Magistrate dated 01.10.2018, the petitioner was summoned to face trial. However, even after issuance of bailable warrants the petitioner's presence could not be secured. Therefore, the Magistrate initiated proceedings to declare the petitioner to be a proclaimed person. It is only thereafter that the*

petitioner put in appearance on 11.07.2019 on which date he was granted bail which was subject to the petitioner furnishing bail bonds in the sum of Rs.10 lakhs with one surety in the like amount. The petitioner requested the Magistrate to permit him for that day only to submit his personal bonds and undertook to furnish the required bail bonds and surety bonds on the next date of hearing. The Magistrate allowed the petitioner's request. However, on the next date of hearing also the petitioner stated before the Magistrate that for that date as well he be permitted to be released on furnishing of personal bonds and that he shall furnish the required bail bonds and surety bonds on the next date of hearing which request of his was also allowed with a direction to the petitioner to arrange the required bail bonds and surety bonds by the next date of hearing which was 23.08.2019.

(9) It has been nearly four years thereafter and the petitioner has not furnished the required bail/surety bonds.

(10) In the meanwhile, the petitioner alongwith his co-accused, had knocked the doors of this Court through CRM-M-47600-2019 seeking therein reduction in the amount of bail/surety bonds. Through order dated 22.09.2021, this Court had reduced the amount from Rs.10 lakhs to Rs.2 lakhs. As per the order of this Court the petitioner was to furnish the bail/surety bonds within 07 days of the order but even after over one year and eight months the petitioner has not bothered to do the needful. Thus, for not months but years has the petitioner

played truant with the Court and has also made false statements to procure favourable orders.

(11) The afore conduct of the petitioner continued even before he was declared a proclaimed person through the impugned order dated 28.07.2022 as he was served in such proceedings on 13.06.2022 but continued to remain absent from the proceedings on 14.07.2022 as also on 28.07.2022 i.e. the date on which he was declared a proclaimed person and this is in spite of the fact that on 14.07.2022 his counsel had been specifically directed by the Magistrate to ensure the petitioner's presence on the adjourned date.

(12) XXXX XXXX XXXX

(13)XXXX XXXX XXXX

(14) In the case in hand through order dated 23.05.2022 the Magistrate had initiated proclamation proceedings to declare the petitioner a proclaimed person. The next date in such proceedings was 01.07.2022. At the time of passing of the order dated 23.05.2022 the Magistrate had ordered the next listing of the matter beyond 30 days. On 23.05.2022 the Magistrate was not aware as to on which date would the petitioner be actually served. Therefore, in terms of the requirement in Section 82 Cr.P.C., at the time of issuance of proclamation on 23.05.2022 the only precaution that the Magistrate could have taken was to keep the next date of hearing beyond 30 days which he did. Since the proclamation was actually executed upon the petitioner on 13.06.2022, to await the petitioner's presence and as an abundant

> *precaution, the Magistrate further adjourned the matter from 01.07.2022 to 14.07.2022. However, in spite of having been served on 13.06.2022 neither on 01.07.2022 nor on 14.07.2022 did the petitioner put in appearance before the Magistrate. However, his counsel appeared on 14.07.2022. Exemption from the petitioner's personal appearance was sought which request of his was rightly rejected. The petitioner's counsel was directed to produce the petitioner on 25.07.2022 on which date, showing scant regard for the Court neither the petitioner nor his counsel appeared before the Magistrate leaving no option with the Magistrate but to declare the petitioner to be a proclaimed person".*

8. Learned counsel for the respondent submitted that the petitioner had concealed the fact that he has been declared as proclaimed person and the petition filed by him challenging the said order has already been dismissed by this Court by passing a speaking order.

9. Apart from that, on 09.02.2023, the petitioner/accused again moved an application before the Judicial Magistrate 1st Class, Chandigarh by raising similar arguments and sought the stay of proceedings before the trial Court. It was pleaded that on 25.04.2022, an application for initiating insolvency under Section 95(1) read with Rule 7(2) of Insolvency and Bankruptcy Code against the accused, had been moved and vide order dated 04.08.2022, the NCLT, New Delhi, had appointed an IRP for Personal Guarantors to Corporate

Debtor for initiating the Insolvency Resolution Process for the accused. Still further, the present petitioner also raised a plea that till the decision is taken by the adjudicating authority in terms of Sections 100 and 101 of the Code on the application filed by the petitioner, the proceedings before the trial Court under Section 138 of the Act may be stayed. Learned counsel further submitted that vide order dated 09.02.2023, the Court of Judicial Magistrate 1st Class, Chandigarh had dismissed the said application filed by the present petitioner and said stay order has attained finality. Even the above mentioned facts have also been concealed by the petitioner in the present proceedings and the petition is liable to be dismissed only on this ground alone.

10. Learned counsel for the respondent further submitted that the benefit of Section 96 of the Code can never be extended to the present petitioner. In fact, the scope of nature of proceedings under the provisions of the Insolvency and Bankruptcy Code 2016 and Negotiable Instruments Act, 1982 is apparently different and both the Acts would operate in different spheres. The initiation of the proceedings under Section 19 of Code could never serve as a ground for staying/quashing the criminal proceedings initiated under Section 138 of the Act. Even otherwise, the proceedings under the Act were initiated much before the proceedings under the Code came to be initiated.

11. I have heard the rival contentions raised by learned counsel for the parties and have gone through the record carefully.

12. In the present case, the primary contention raised by learned senior counsel on behalf of the petitioner is that the NCLT had initiated Insolvency Resolution Process against the petitioner vide order dated 04.08.2022 and the interim moratorium under Section 96(1)(a) of the Code was initiated. In view of the interim moratorium imposed under Section 96 of the Code, the continuation of the proceedings against the debtor, i.e., the petitioner during the *interim* moratorium period is prohibited. Consequently, the proceedings under Section 138 of the Act as well as the summoning order (Annexure P-2) are liable to be quashed by this Court. In fact, this Court does not find any merit in the contention raised by learned counsel for the petitioner.

13. The Hon'ble Supreme Court, while discussing the extent of Sections 14, 96 and 101 of the Code in the matter of **"P. Mohanraj and others Vs. Shah Brothers Ispat Private Limited"** (2021) 6 Supreme Court Cases, 258 held as follows:-

> *"35. When the language of Section 14 and Section 85 are contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the*

exception provision contained in Section 14(3)(a) which is that "transactions" are the subject matter of Section 14(1). "Transaction" is, as we have seen, a much wider expression than "debt", and subsumes it. Also, the expression "proceedings" used by the legislature in Section 14(1)(a) is not trammelled by the word "legal" as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, "debts" is used as is used in Section 85.

35.1. XXXX XXXX XXXX

35.2. A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding. This is for the reason that a Section 138 proceeding would be a legal proceeding "in respect of" a debt. "In respect of" is a phrase which is wide and includes anything done directly or indirectly – see Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd., (2018) 2 SCC 674 (at page 709) and Giriraj Garg v. Coal India Ltd., (2019) 5 SCC 192 (at pages 202-203). This, coupled with the fact that the Section is not limited to 'recovery' of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.

35.3. When the language of these Sections is juxtaposed against the language of Section 14, it is clear that the *width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96, and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these Sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor."*

14. Furthermore, the Hon'ble Supreme Court in P. Mohanraj's case (supra), while referring to the observations made in Ramakrishnan's case (supra), observed as under:-

"37. V. Ramakrishnan (supra) looked at and contrasted Section 14 with Sections 96 and 101 from the point of view of a guarantor to a debt, and in this context, held:

"26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III.

Secondly, the protection of the moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.

26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."

These observations, when viewed in context, are correct. However, this case is distinguishable in that the difference between these provisions and Section 14 was not examined qua moratorium provisions as a whole in relation to corporate debtors vis-à-vis individuals/firms."

15. Still further, the Hon'ble Supreme Court, while discussing the same controversy held in the matter of **Ajay Kumar**

Radheyshyam Goenka Vs. Tourism Finance Corporation of India Ltd., 2024(1) SCC Criminal 128; 2023(2) R.C.R. (Criminal) 161 as follows:-

> *"15. The issue whether the respondent is a Secured Financial Creditor or an Unsecured Financial Creditor within the meaning of the said Code is not something we can deal with as that is the matter of the proceedings under the said Code or any appeal preferred therefrom. The only issue with which we are concerned with is whether during the pendency of the proceedings under the said Code which have been admitted, the present proceedings under the N.I. Act can continue simultaneously or not.*
>
> *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.

17. It cannot be said that the process under the IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. No doubt in terms of the Scheme under the IBC there are sacrifices to be made by parties to settle the debts, the company being liquidated or revitalized. The Appellant before us has been roped in as a signatory of the cheque as well as the Promoter and Managing Director of the Accused company, which availed of the loan. The loan agreement was also signed by him on behalf of the company. What the Appellant seeks is escape out of criminal liability having defaulted in payment of the amount at a very early stage of the loan. In fact, the loan account itself was closed. So much for the bona fides of the Appellant.

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”*.

16. Apart from that, it is also apparent that the cheque in question was issued on 07.06.2018 and on the date of issuance of cheque, the present petitioner was acting as a Director. Even otherwise, the powers of the petitioner as a Director were suspended under Section 17 of the Code and an Interim Resolution Professional was appointed by the NCLT vide order dated 25.07.2018. Still further, the petitioner is a Director and specific averments have been made in Para 9 of the complaint that the present petitioner and other accused were active Directors of the accused/company and were looking after day to day business affairs of the company. All the transactions in question from the date of supply until issuance of cheque and dishonouring of the same were in knowledge of the accused and they were individually and jointly liable for the offence committed under Section 138 of the Act. Thus, the arguments raised by the learned counsel for the petitioners are meritless.

17. Apart from that, the Hon’ble Supreme Court has held in number of judgments that no litigant can be permitted to play “hide and seek” with the Court or adopt “pick and choose”. Every litigant approaching a Court of law should come with candid facts and suppression or concealment of material facts is forbidden to a litigant

or even as a technique of advocacy. In such cases, the Court is under a legal duty to discharge the rule nisi and such tendency is required to be curbed by the Court.

18. The Hon'ble Supreme Court in the matter of **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114** came down heavily on unscrupulous litigants by holding that it is now well settled that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief interim or final.

19. In **Arunima Baruah v. Union of India (2007) 6 SCC 120,** the Hon'ble Supreme Court held that it is trite law that to enable the Court to refuse to exercise its discretionary jurisdiction in case of suppression of material fact. Material fact would mean material for the purpose of determination of the lis. It was further held that a person invoking the discretionary jurisdiction of the Court cannot be allowed to approach it with a pair of dirty hands.

20. In **Prestige Lights Limited v. State Bank of India (2007) 8 SCC 449,** Apex Court held as under:

> *"It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses*

relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

21. Adverting to the facts of the present case, in the present case, the petitioner has been declared to be a proclaimed person vide order dated 28.07.2022 passed by the Judicial Magistrate 1st Class, Chandigarh and the petitioner has concealed the said fact. Even, while dismissing the petition, i.e., CRM M-40387 of 2022 titled as **"Heavent Sudhir Malhotra Vs. Shree Naina Plastics Inc and other connected petitions",** this Court had clearly observed that for the last several years, the petitioner had not even bothered to furnish the required bail/surety bonds. Apart from that, even the petitioner for the last several years has played truant with the Court and has made false submissions with the Court and has made false submissions to procure further orders. In view of the said conduct as well as concealment of facts by the petitioner, the present petition deserves to be dismissed by this Court.

22. Still further, it can be safely held that a person, who is fleeing from the process of justice, has scant regard for the rule of law and is not entitled for any equitable relief from this Court.

23. Apart from that, it is also apparent that the summoning order in the present case was passed on 01st October, 2018 and for the last more than 05 years, the petitioner is filing different applications/petitions by raising different pleas, instead of appearing before the trial Court. Even, he is proclaimed person for the last several years and instead of appearing before the Court, he moved an application before the trial Court by raising same arguments. The petitioner moved an application before the trial Court by raising an argument that on 25.04.2022, an application was moved for initiating insolvency proceedings under Section 95(1) read with Rule 7(2) of the Code against the accused-company (including the petitioner) and vide order dated 04.08.2022, the NCLT New Delhi Bench had appointed IRP for Personal Guarantors to Corporate Debtor for initiating the insolvency resolution process for the accused and the proceedings under Section 138 of the Act were liable to be stayed by the trial Court.

24. The Judicial Magistrate 1st Class, Chandigarh/trial Court dismissed the said application on 09.02.2023. The petitioner not only concealed the said fact from this Court but also preferred not to

challenge the said order before this Court. Thus, it is apparent that not only the arguments raised by the petitioner are meritless, but the case of the petitioner is liable to be thrown out on the ground of concealment of material facts as well.

25. In view of the above discussion, finding no merit, the present petition as well as connected petitions are liable to be dismissed by this Court.

26. Dismissed.

24.07.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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