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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM-M-52874-2023 (O&M)
Date of decision : 13.03.2024

Jitender Singh Sodhi and another ...Petitioner(s)

Versus

Deputy Commissioner of Income Tax and another ...Respondent(s)

(2) CRM-M-12525-2023 (O&M)

Jitender Singh ...Petitioner(s)

Versus

G.L. Thakkar and another ...Respondent(s)

(3) CRM-M-12538-2023 (O&M)

Jitender Singh ...Petitioner(s)

Versus

G.L. Thakkar and another ...Respondent(s)

(4) CRM-M-45748-2023 (O&M)

Jitender Singh and others ...Petitioner(s)

Versus

Madan Lal and others ...Respondent(s)

(5) CRM-M-16133-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

M/s Tayal Traders and others ...Respondent(s)

(6) CRM-M-16271-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

M/s Tayal Traders and others ...Respondent(s)

(7) CRM-M-16323-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

M/s Tayal Traders and others ...Respondent(s)

(8) CRM-M-16324-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

M/s Tayal Traders and others ...Respondent(s)

(9) CRM-M-16478-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

M/s Tayal Traders and others ...Respondent(s)

(10) CRM-M-16564-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

M/s Tayal Traders and others ...Respondent(s)

(11) CRM-M-63838-2023 (O&M)

Kabir Sodhi ...Petitioner(s)

Versus

M/s Walsons Services Pvt. Ltd. and another ...Respondent(s)

(12) CRM-M-63990-2023 (O&M)

Kabir Sodhi ...Petitioner(s)

Versus

M/s Walsons Services Pvt. Ltd. and another ...Respondent(s)

(13) CRM-M-39635-2023 (O&M)

Jitender Singh and another ...Petitioner(s)

Versus

Devinder Singh and another ...Respondent(s)

(14) CRM-M-39674-2023 (O&M)

Jitendra Singh and others ...Petitioner(s)

Versus

Ravindera Electric Works and another ...Respondent(s)

(15) CRM-M-39677-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

Harish Kumar and another ...Respondent(s)

(16) CRM-M-39678-2023 (O&M)

Jitendera Singh and another ...Petitioner(s)

Versus

Sandeep Kalia and another ...Respondent(s)

(17) CRM-M-39681-2023 (O&M)

Gurmeet Sodhi ...Petitioner(s)

Versus

Ramphal Singh and another ...Respondent(s)

(18) CRM-M-39705-2023 (O&M)

Jitendera Singh and others ...Petitioner(s)

Versus

Ram Shabd Saroj and another ...Respondent(s)

(19) CRM-M-39707-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

Vijay Kumar and another ...Respondent(s)

(20) CRM-M-39737-2023 (O&M)

Jitendera Singh and another ...Petitioner(s)

Versus

Arvind Kumar and another ...Respondent(s)

(21) CRM-M-39742-2023 (O&M)

Jitendra Singh and others ...Petitioner(s)

Versus

Sunil Kumar Srivastav and another ...Respondent(s)

(22) CRM-M-39747-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

Sandeep Kumar and another ...Respondent(s)

(23) CRM-M-52445-2023 (O&M)

Jitendera Singh Sodhi and another ...Petitioner(s)

Versus

Davinder Singh and another ...Respondent(s)

(24) CRM-M-52563-2023 (O&M)

Jitendra Singh Sodhi and others ...Petitioner(s)

Versus

R.K. Trading and another ...Respondent(s)

(25) CRM-M-52640-2023 (O&M)

Jitendra Singh Sodhi and others ...Petitioner(s)

Versus

Rajeev Kaushal and another ...Respondent(s)

(26) CRM-M-52704-2023 (O&M)

Jitendra Singh ...Petitioner(s)

Versus

Anil Saxena and another ...Respondent(s)

(27) CRM-M-52764-2023 (O&M)

Kabir Sodhi ...Petitioner(s)

Versus

Surinder Kumar Dwivedi and another ...Respondent(s)

(28) CRM-M-52771-2023 (O&M)

Jitender Singh Sodhi and another ...Petitioner(s)

Versus

Deputy Commissioner of Income Tax
and another ...Respondent(s)

(29) CRM-M-52842-2023 (O&M)

Jitendra Singh Sodhi and another ...Petitioner(s)

Versus

Rudal Prasad Yadav and another ...Respondent(s)

(30) CRM-M-52844-2023 (O&M)

Jitendra Singh Sodhi and others ...Petitioner(s)

Versus

Rajiv Kumar and another ...Respondent(s)

(31) CRM-M-52855-2023 (O&M)

Jitendra Singh Sodhi and another ...Petitioner(s)

Versus

M.L. Sharma and another ...Respondent(s)

(32) CRM-M-52856-2023 (O&M)

Jitender Singh Sodhi and another ...Petitioner(s)

Versus

Deputy Commissioner of Income Tax
and another ...Respondent(s)

(33) CRM-M-42319-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

M/s Brij Lal Jain & Sons and another ...Respondent(s)

(34) CRM-M-42391-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

M/s Brij Lal Jain & Sons and another ...Respondent(s)

(35) CRM-M-42667-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

M/s Brij Lal Jain & Sons and another ...Respondent(s)

(36) CRM-M-42669-2023 (O&M)

Jitendra Singh and another ...Petitioner(s)

Versus

M/s Brij Lal Jain & Sons and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Viren Sibal, Advocate,
for the petitioner(s) in all the petitions.

Mr. Pankaj Bali, Advocate for respondent Nos.1 & 2
in CRM-M-45748-2023.

Mr. Anuj Dewan, Advocate for respondent No.1
in CRM-M Nos.63838 &63990 of 2023

Mr. Kartik Bansal, Advocate for respondent No.1
in CRM-M-39674-2023.

Mr. Chetan Kapoor, Advocate for respondent No.1
in CRM-M-39707 & 52844-2023

Mr. Rahul Bansal, Advocate,
and Mr. Rishabh Jain, Advocate for respondent No.1
in CRM-M-52445-2023.

Mr. Yogesh Putney, Senior Standing Counsel,
and Mr. Vaibhav Gupta, Advocate for respondent No.1
in CRM-M-52771, 52856 & 52874-2023.

Mr. Sandeep Simpy, Advocate for respondent No.1
in CRM-M Nos.52842 & 52855 of 2023.

Mr. Deepak Jain, Advocate for respondent No.1
in CRM-M Nos.42319, 42391, 42667 & 42669 of 2023.

MAHABIR SINGH SINDHU, J.

Controversy involved in the above cases is of similar nature; therefore, all 36 petitions are being disposed off by this common order.

2. For brevity and with consent of both sides, the facts are being noticed from CRM-M-52874-2023 (Jitender Singh Sodhi & another Vs. Deputy Commissioner of Income Tax & another).

3. Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for quashing of the impugned order dated 21.08.2023 (P-1), passed by learned Judicial Magistrate First Class, Chandigarh (for short, 'JMIC'), whereby, an application of petitioner for stay of proceedings in Complaint No.NACT/3656/2015, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'), was declined.

3.1. Precisely, the application was moved for stay of proceedings in terms of Section 96 of the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC'). In order to oppose the aforesaid application, a written response was filed by the respondents. Learned JMIC, after hearing both sides and examining the matter, dismissed the application while passing the impugned order.

4. Hence, present petition.

5. It is contended by learned counsel for the petitioners that in view of the provisions of Section 96 of the IBC, there is a complete and unequivocal bar on continuation of proceedings before learned JMIC under the NI Act. Further contended that provisions of Section 14 of the IBC are not applicable to the personal guarantor and the *non-obstante* clause under Section 238 of the IBC is having an overriding effect over the provisions of the NI Act. Hence, the proceedings pending before learned JMIC be stayed. In support of the above contentions, learned counsel for the petitioners has placed reliance on:

(i) *Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd., (2023) 10 SCC 545;*

(ii) *P. Mohanraj & Ors Vs. M/s Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258;*

(iii) *Lalit Kumar Jain Vs. Union of India & ors, 2021 (2) Law Herald (SC) 1462;*

(iv) *State Bank of India Vs. Ramakrishnan & Anr. (2018) 17 SCC 394;*

(v) *PR. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd., SLP (Civil) 6483-2018* decided on 10.08.2018*;*

(vi) *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Company & ors., (2000) 5 SCC 694;*

(vii) *Rakesh Bhanot Vs. M/s Gurdas Agro Pvt. Ltd. (SLP (Criminal) No.6087 of 2023, order dated 16.05.2023);*

(viii) *Vijay Kumar Ghai Vs. Pritpal Singh Babbar (P&H) (CRM-M-22685-2021* decided on 04.07.2022).

6. *Per contra,* learned counsel for the respondent No.1 while opposing the prayer, submitted that law is well settled by Hon'ble the Supreme Court in the judgment of ***Goenka's case (supra)*** to the effect that proceedings pending under Section 138 of the NI Act are not for recovery. Rather, these are penal in character and a person may face imprisonment and/or fine or both, but there is no such provision under the IBC. Hence, the nature & scope of proceedings under both the Acts is quite different and as such, the impugned order does not require any interference by this Court. Further contended that petitioners along with other co-accused are facing prosecution for cheating, forgery of records and causing loss to the tune of Rs.1301.67 crores to the Punjab National Bank.

7. Heard learned counsel for the parties and perused the paper-book as well as records.

8. Records reveal that initially, complaint under Section 138 of the NI Act was filed before Sub Divisional Judicial Magistrate, Dera Bassi (for short, 'SDJM') by the respondent No.1-Income Tax Department on account of dishonor of cheque No.398304 dated 25.02.2015 for an amount of Rs.1,00,00,000/-. It is alleged that above cheque was issued for discharging the liability towards payment of income tax due for the year 2012-13 and following persons were arrayed as accused:-

1. M/s Kudos Chemie Pvt. Ltd.
2. Jitender Singh (petitioner No.1 herein)
3. Gurmeet Sodhi (petitioner No.2 herein)

8.1. Learned SDJM after recording its satisfaction, passed the summoning order dated 11.05.2015 in the following manner:-

> *"Complaint U/S 138 of NI Act has been presented today it be registered in the relevant register CW-1 present and examined. Complainant closed his preliminary evidence.*
>
> *2. Heard. The present complaint has been filed by the complainant with the averments that accused in discharge of his liability, issued cheque No.398304 dated 25.2.2015 amounting to Rs. 1 Crore drawn on UCO Bank, Dera Bassi, in favour of the complainant. Said cheque when presented in the bank for encashment were received back dishonoured due to the reasons Exceeds arrangement. The complainant also got issued legal notice dated 27.3.15, but the accused did not make the payment within the stipulated period of notice. Hence, the present complaint.*
>
> *3. The complainant in preliminary evidence himself stepped into the witness box as CW-1 and tendered his affidavit Ex.CA. The complainant also proved on file authority letter dated 01.5.15 Ex.C1; copy of income tax return for the assessment year 2012-12*

Ex.C2; revised return dated 5.10.12 Ex.C3; photocopy of refund details of accused dated 23.3.14 Ex.C4; copy of letter dated 11.11.14 written by the complainant to the accused Ex.C5; and Ex.C6; copy of show cause notice dated 19.11.14 issued to the accused Ex.C7 and Ex.C8; letter dated 27.11.14 written by the accused to the complainant Ex.C9 and Ex.C10; reply to the show cause notice dated 28.11.14 sent by the accused to the complainant Ex.C11 and Ex.C12; separate show cause notice dated 18.12.14 issued by the complainant to the accused Ex.C13 and Ex.C14; copy of letter dated 23.12.14 issued by the accused to the complainant Ex.C15, copy of letter dated 5.1.15 issued by the accused to the complainant Ex.C16; challan no. ITNS280 dated 17.3.15 Ex.C17; original cheque no 398304 dated 25.2.2015 amounting to Rs 1 Crore Ex.C18; memo of bank dated 18.3.15 Ex.C19; copy of legal notice dated 27.3.15 Ex.C20; original postal receipts dated 27.3.15 Ex.C21 to Ex.C25; copy of Indian Post R Net Tracking Record collected form the Internet on 20.4.15 Ex.C26 to Ex.C30.

4. From the perusal of preliminary evidence produced by the complainant and documents, a prima facie case under Section 138 of the Negotiable Instruments Act, is made out against the accused. Accordingly, accused is ordered to be summoned to face trial for the said offence for 21.7.2015 on filing of PF and copy of complaint within 7 days. Dasti summon be issued, if so requested. Long date is given due to summer vacations.

Pronounced;

11.5.2015 *Sd/-*

Sub Divisional Judicial Magistrate,

Dera Bassi"

8.2. Subsequently, in view of the Negotiable Instruments (Amendment) Ordinance 2015 (No.6 of 2015) promulgated on 15.06.2015, the complaint was transferred by the SDJM to the Court of learned Chief Judicial Magistrate, Chandigarh, vide order dated 21.07.2015 and ultimately it was entrusted to learned Judicial Magistrate First Class, Chandigarh (for short, 'JMIC'), on 10.08.2015.

8.3. It transpires that despite various attempts, including summons/bailable warrants, petitioners did not come forward and ultimately in pursuance of the non-bailable warrants, both the petitioners joined proceedings and they were released on bail by learned JMIC vide order dated 14.03.2016.

8.4. Also noteworthy that on 25.05.2016, learned JMIC taking into consideration the nature of controversy, observed that complaint be tried as a summons case (under Chapter XX of Cr.P.C.) and finding a *prima facie* case, issued notice of accusation against the accused, to which they pleaded not guilty and claimed trial. For reference, the order dated 25.05.2016 reads as under:-

> *"Both the parties have been examined orally. After hearing their submissions with regard to instant complaint, this Court is of the considered view that it would not be appropriate to try the instant case as a summary case as the matter requires thorough consideration. For proper adjudication of the matter, the accused needs fair opportunity to cross-examine the complainant and would also need opportunity to lead evidence in defence. Considering all these facts, this court find it proper to try the instant complaint as summons case under Chapter XX of Cr.P.C.*
>
> *Finding a prima facie case, notice of accusation has been served upon the accused, the contents of which have been read over and explained to accused in vernacular, whereto they pleaded not guilty and claimed trial. For evidence of complainant, file be put up on 16.07.2016.*
>
> *Sd/-*
> *JMIC/25.05.2016"*

8.5. On 10.11.2017, CW-1 Ms. Princy Singla tendered her affidavit Ex.CW-1/A along with documents Ex.C-1 to Ex.C-30 and her cross-examination was deferred on the request of defence counsel for 29.11.2017. On 04.06.2018, after concluding the cross-examination of

CW-1, the case was adjourned to 06.07.2018 for recording statements of accused under Section 313 Cr.P.C.

At this stage, accused No.3-Gurmeet Sodhi, moved an application under Section 245(2) of the Cr.P.C. for discharge, but the same was dismissed by learned JMIC, vide order dated 15.01.2019.

8.6 Again the matter was adjourned to 28.01.2019 for recording the statement under Section 313 Cr.P.C. subject to last opportunity. Ultimately, the statement of accused under Section 313 Cr.P.C. was recorded on 15.03.2019 and they opted to lead evidence in defence; however, despite repeated opportunities, no DW was produced by the petitioners. Since the case was falling under the category of Action Plan 2019; therefore, last opportunity was granted on 15.10.2019 for concluding the defence evidence and the matter was fixed for final arguments on 24.10.2019.

8.7 Despite availing various opportunities, neither arguments were addressed, nor any defence witness was produced; rather on 30.07.2021, petitioners filed an application to interdict the proceedings pending before learned JMIC, and which is recapitulated as under:-

"DCIT versus M/s Kudos Chemie Ltd.

Application to interdict the proceedings u/s 138 & 141 of NI Act till the end of moratorium period.

Respectfully Showeth,

1. That the above mentioned matter is pending before this Hon'ble Court and is fixed for today i.e. 30th July'2021.

2. That the accused of the company M/s Kudos chemie Ltd. moved an application u/s of Insolvency and Bankruptcy code, 2016.

3. That the company has been declared insolvent vide order dated 05.07.2019 by the competent authority, order is attached as Annexure – A1.

4. That continuation of proceedings u/s 138 & 141 of NI ACT may be interdict as moratorium period is in progress.

Prayer:-

It is respectfully prayed before this Hon'ble court that proceedings u/s 138 & 141 of NI Act may kindly be interdict till the continuation of moratorium period, in the interest of justice.

Place : Chandigarh Applicant/Accused

Dated : 30.07.2021"

It seems that above application was filed just to delay the proceedings and that is the precise reason that later on, petitioners themselves decided not to pursue the same. On 20.05.2022, their counsel made the following statement:-

" I do not want to pursue with transfer application and I have no objection in proceedings with the present case."

8.8. Again, instead of leading any defence evidence and/or arguing the matter, petitioners filed present application on 20.05.2022, which was dismissed by learned JMIC vide impugned order dated 21.08.2023.

9. It is quite evident that petitioners are facing proceedings under Section 138 of the NI Act being Managing Director & Director, respectively of the Company and both were stated to be 'incharge of' and 'responsible' to the Company i.e. Ms. Kudos Chemie Pvt. Ltd. for the conduct of its business.

10. It is noteworthy that Chapter XVII covering Sections 138 to 142 of the NI Act was inserted by way of an amendment (Act No.66

of 1988) w.e.f. 01.04.1989 with an object *"to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."*

11. Keeping in view the object of above amendment, the nature of proceedings under NI Act were made penal in nature and for reference, relevant part of the Section 138 is recapitulated as under:-

> *"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, <u>such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:"</u>*

Also noteworthy that under Section 141 of the NI Act, a Company as well as every person incharge thereof and responsible for conduct of its business have also been made liable for punishment.

12. Hon'ble the Supreme Court in ***P. Mohanraj's case (supra)***, while dealing with the moratorium provisions in terms of Section 14 of the IBC vis-à-vis continuation of proceedings under Section 138/141 of the NI Act, in para 77, held as under:-

> *".....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 <u>corporate debtor</u>, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."*

13. As per Section 3(8) of the IBC, *"Corporate Debtor means a corporate person who owes a debt to any person."*

14. Again, Section 3(7) of the IBC says that *"corporate person means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider."*

15. Recently, Hon'ble the Supreme Court in ***Goenka's case (supra)*** while dealing with the scope of Section 14 of the IBC culled out the issue in para 15 and which reads as under:-

"15. ..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."

Hon'ble the Supreme Court while answering the above point, in para Nos. 16, 17 & 18 of the above judgment, 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.

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."

Also worthwhile to mention here that Hon'ble Mr. Justice J.B. Pardiwala in his concurrent opinion in ***Goenka's case (supra),*** while elaborately discussing ***P. Mohanraj's case***, observed as under:-

"85. Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/directors cannot escape from their penal liability under Section 138 of the NI Act 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.
86. I may draw my final conclusions as under: (a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management. (b) Section 138 proceedings in relation to the signatories/directors who are liable/covered by the two provisos to Section 32A(1) will continue in accordance with law."

In view of the legal position discussed hereinabove, there remains no doubt that Signatories/Directors cannot escape their penal liability under Section 138/141 of the NI Act.

A *fortiori,* Section 96 of the IBC, *inter alia,* envisages that during the interim moratorium period, any legal action or proceeding pending in respect of 'any debt' shall be deemed to have been stayed. Since, proceedings in the present case under the NI Act are not in respect of any debt; rather penal in nature and can invite imprisonment for a term which may extend to two years or fine which may extend to twice the cheque amount or with both.

Hence, in such a scenario, it cannot be countenanced that continuation of the proceedings under NI Act, against both the petitioners being Managing Director/Director of the company, deserve to be stayed or that Section 96 of the IBC would be treated as a bar to that effect, in any manner.

16. Since ***Goenka's case (supra)*** is the latest three-judge Bench judgment by Hon'ble the Supreme Court rendered on 15.03.2023 and as such, in view of the mandate of Article 141 of the Constitution, this Court is bound to follow the same. Therefore, the judicial precedents cited by learned counsel for the petitioners are distinguishable; hence not helpful, in any manner.

17. It would not be out of place to mention here that both the petitioners, along with Bank officials are facing prosecution for cheating, forgery and causing loss of **Rs.1301.67 crores** to the Punjab National Bank, in FIR No.RC BD1/2017/E/0002 dated 07.04.2021, under Sections 120-B, 420, 467, 468 & 471 of the Indian Penal Code, 1860 (for short, 'IPC') & Section 13(2) read with 13(d) of Prevention of Corruption Act, 1988 (for short, 'PC Act'). It is not in dispute that charges have been framed by learned Special Judge, CBI in this case on

29.01.2024 under Sections 420, 467, 468, 471 & 120-B of the IPC & Section 13(2) read with 13(d) of the PC Act and the trial is stated to be pending for prosecution evidence.

18. Needless to say that present petition filed under Section 482 Cr.P.C. is neither an appeal, nor a revision; hence, such a recourse can be entertained only *to give effect to any order under the Cr.P.C.;* OR *to prevent abuse of the process of any Court; OR otherwise to secure the ends of justice;* but not in a routine manner.

19. As discussed above, complaint under Section 138 of the NI Act is pending for the last 09 years; Hon'ble the Supreme Court has repeatedly issued directions to expedite the proceedings under the NI Act. In the case in hand, notice of accusation was issued way back on 25.05.2016; cross-examination of the complainant was conducted on 04.06.2018, but the petitioners are delaying the proceedings on one pretext or the other. In such a scenario, this Court is of the considered opinion that present petition is complete misuse of the process of Court; hence, entertaining such a petition would not be in the interest of justice; rather it shall frustrate the same.

20. In view of the above, there is no option, except to dismiss present petition.

21. Ordered accordingly.

22. Needless to say that observations made above be confined only for decision of the present petition(s) and be not construed as expression of an opinion on merits of the controversy pending before learned JMIC.

23. Interim order(s) in respective case(s) extended from time to time shall stand vacated.

24. Pending application(s), if any, shall also stand disposed off.

13.03.2024 **(MAHABIR SINGH SINDHU)**
atulsethi **JUDGE**

Whether speaking/ reasoned : Yes / No

Whether reportable : Yes / No