

313.
05.05.2025
bd
Ct.29

CRR 4159 of 2023

**Narendra Kumar Agarwal
Vs.
M/s. Monotrone Leasing Pvt. Ltd.**

Mr. Shibaji Kumar Das
Ms. Deblina De ...for the petitioner

Mr. Sujit Banerjee
Mr. Nilay Sengupta ...for the Opposite party

Being aggrieved by and dissatisfied with the order dated 11th April, 2023 passed by learned Magistrate, 9th Court at Alipore in Complaint Case No. 4829 of 2018, the petitioner herein has preferred the instant application. By the order impugned learned court below rejected the petition dated 16.05.23 filed by the petitioner/accused person seeking stay of the proceeding under section 138 of the N.I. Act, and thereby issued process against the accused/petitioner under 204 of the Cr.P.C.

Opposite party herein had filed a petition of complaint against M/s. B.D. Motors Pvt. Ltd. and its directors including the petitioner herein being aforesaid Complaint Case No. 4829 of 2018 for commission of offence punishable under 138/141 of the Negotiable Instruments Act, 1881 (in short NI Act).

Opposite party herein in the capacity of being the financial creditor had filed a petition under section 7 read with section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (IBC) as against said M/s. B.D. Motors Ltd. being C.P. (IB) No. 188/KB/2019 before the National Company Law Tribunal (NCLT), Kolkata Bench.

The State Bank of India in the capacity of being the financial creditor had filed a proceeding under section 95(1) of the Insolvency and Bankruptcy Code, 2016 individually as against the petitioner herein being C.P. (IB) No. 239/KB/2022 before the NCLT, Kolkata Bench and the same is pending.

On 3rd April, 2023, the petitioner herein had filed a petition before the Court below praying for stay of the instant criminal proceeding initiated by the opposite party under section 138 of the N.I. Act, as against him, in view of section 96(1) (b) of the Insolvency and Bankruptcy Code, 2016.

Learned court below by the impugned order rejected such prayer made by the petitioner and while dealt with the issue had relied upon the judgment in the case of **Ajay Kumar Radheshyam Goenka -vs- Tourism Finance Corporation of India Limited**, reported in **(2023) 10 SCC 545** which stated that any proceeding under IBC 2016 shall not bar separate proceeding under section 138/141 of N.I.Act, in respect of private debtors.

Being aggrieved by the said proceeding learned counsel appearing on behalf of petitioner Mr. Shibaji Kumar Das, submits that the learned court below while passing the order impugned erred both in law and in fact and thereby failed to appreciate that State Bank of India has filed insolvency case as against the petitioner herein before the NCLT, Kolkata Bench and thus in view of section 96(1)(b) of the Insolvency and Bankruptcy Code, 2016, during the interim moratorium period any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and the creditor and the debtors shall not initiate any legal action or proceeding in respect of the debt and thus the

petitioner's prayer for stay of the instant criminal proceeding filed against him under section 138 of the N.I. Act, ought to have been granted by the Court below instead of rejecting the same.

I have considered the submissions made by both the parties.

The law on this point is no more res-integra and very recently in the judgment of the Apex Court in the case of ***Rakesh Bhanot –vs- M/s. Gurdas Agro Pvt. Ltd.*** reported in **2025 SCC online SC 728** it held that a proceeding under section 138 of the N.I. Act cannot be stayed because a interim moratorium period under section 96 IBC is there and therefore the Apex Court affirmed the judgment and orders of the trial court which had rightly refused to stay the proceeding initiated under section 138 of the N.I. Act.

Needless to mention that a proceeding under section 138 of the N.I. Act is not a money recovery proceeding but it prescribes punishment for committing offence upon bouncing a cheque and for which Court cannot direct payment of the cheque amount, if the offence against the accused is proved but can only award imprisonment and/or compensation and/or fine. Thus the personal penal liability of the petitioner/accused covered under section 141 of the N.I. Act is not dissolved by the above-mentioned proceedings. More specifically a director/signatories who were in management and control of the affairs of the company cannot escape from their personal liability under section 138 of N.I. Act for filing personal insolvency proceeding since such person is covered under natural person under section 141 of the N.I. Act. Therefore the provisions of section 96 of the IBC would not be applicable in the facts of the present case as the petitioner has been arrayed as an accused in the instant complaint under

section 138 of the N.I. Act, in his capacity as a director of M/s. B.D. Motors Pvt. Ltd. The judgment relied by petitioner in ***Vijay Kumar Ghai –vs- Pritpal Singh Babbar***, reported in ***2022 SCC online P & H 1672***, did not have the scope to consider the ratio laid down in ***Ajay Kumar Radheshyam Goenka –vs- Tourism Finance Corporation of India Limited***, case (*supra*) and ***Rakesh Bhanot –vs- M/s. Gurdas Agro Pvt. Ltd.*** case (*supra*) where Supreme Court has clearly laid down the law.

In such view of the matter, I find that the instant application does not have any merit and as such it is liable to be rejected.

Accordingly, CRR 4159 of 2023 stands dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)