IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 68 OF 2024.

Shri Ramdev Cotspin Partnership Firm,
through its Partner,
Pramod Lunkaran Chandak,
Aged about 56 years, Occupation
Business, resident of Near Satwai Mata
Mandir, Hiarkhed Road, Akot,
Taluq Akot, District Akola. ... **PETITIONER.**

VERSUS

1.Pacific Cotspin Ltd.
(Now known as Silverton Spineers Ltd)
through its Authorized Signatory
Shri Ashok Mehra, Aged Adult,
resident of P-22, C.I.T. Road, Scheme 55,
7th Floor, Kolkata – 700014.

2.Shri Ashok Mehra,
Chairman-cum-Whole Time
Director of Pacific Cotspin Ltd.,
resident of P-22, C.I.T. Road, Scheme 55,
7th Floor, Kolkata – 700014.

3.Chandra Prakash Mehra,
Managing Director of Pacific Cotspin Ltd.,
resident of P-22, C.I.T. Road, Scheme 55,
7th Floor, Kolkata – 700014. ... **RESPONDENTS.**

Mr. C.S. Kaptan, Senior Advocate with Mr.P.K. Mohta, Advocate for the Petitioner.
Mr. A.A. Naik, Senior Advocate with Mr.H.M. Mohta, Advocate for Respondents.

CORAM : M.M. NERLIKAR, J.
DATE : SEPTEMBER 26, 2025.

ORAL JUDGMENT.

Heard. Issue Rule, returnable forthwith. Learned Senior Counsel appearing for Respondents, waives notice. By their consent, the matter is taken up for final disposal.

2. By present Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges the common order passed by the Judicial Magistrate, First Class, Court No.2, Akot below Exhs.43 and 54 in Summary Criminal Case No.405/2017 on 17.08.2023, by which the applications filed by the original accused at Exhs. 43 and 54 came to be allowed, and the proceedings are stayed till

insolvency resolution in process till final moratorium is reached.

3. The petitioner is the original complainant, who filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act" for short), against the respondents. The respondent no.1 is a Company and is arrayed as original accused no.1. Respondent no. 2 is the Chairman-cum-Whole Time Director of the respondent no.1 Company, whereas the respondent no.3 is the Managing Director of respondent no.1 Company. Both are arrayed as original accused nos.2 and 3 respectively and they are responsible and in-charge of the day to day business/affairs of the respondent no.1 Company. It further appears that the respondent nos.2 and 3 had issued cheques dated 03.10.2016 bearing Nos.118857 to 118867 drawn on United Bank of India, CIT Road, Kolkata in favour of the present petitioner. All the accused purchased cotton bales from time to time, totaling to Rs.4,34,46,276/- from 05.05.2016 to 29.06.2016 from the petitioner/complainant. Out of the said amount, the accused paid an amount of Rs.1,78,68,088/- through RTGS to the complainant. The remaining balance amount was due from the accused persons,

however, the complainant took back some cotton bales from the accused, as the accused persons did not certify quality of the same, and that amount is credited in the account of the accused persons. The same is corroborated by the entries in the account of the accused, which shows remaining amount due from them. The complainant therefore, demanded the said amount from the accused and in lieu of that the accused issued 10 cheques signed by the accused no.2 as an authorized signatory and Director of accused no.1 Company towards part payment and for discharge of the legal liability. Thereafter, the petitioner deposited the said cheques with his Banker i.e. Akola Janta Commercial Cooperative Bank Limited, Akot in their current account on 17.12.2016 for clearance. However, all the cheques returned back with memo and endorsement “funds insufficient”. The complainant therefore, issued a legal notice to the accused demanding the amount of Rs.1,05,00,000/-, and as the amount was not paid the petitioner filed a complaint under Section 138 of the N.I.Act.

4. The learned Trial Court issued process against the accused on 05.07.2017. Accused Nos.1 to 3 were served and they appeared

before the Court and pleaded not guilty. Initially the complaint was against 7 accused persons, however, it appears that the accused nos.4 to 7 were deleted with the permission of the Court.

5. During the pendency of this Summary Criminal Case, a Company Petition under Section 95[1] of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the IB Code" for short) bearing No.C.P.(IB)/55(KB)/2022 came to be filed against the respondent no.2 before the National Company Law Tribunal, Kolkata (NCLT) by the State Bank of India. Similarly, against respondent no.3, proceeding bearing Company Petition No.C.P.(IB) /57(KB)/2022 came to be filed by the State Bank of India before the NCLT Kolkata Bench, and the said Tribunal by its order dated 07.04.2022 was pleased to pass two separate orders in respect of 'interim moratorium' in terms of Section 96[1][a] of the IB Code. It was observed by the said Tribunal that "*the interim moratorium in terms of Sec. 96[1][a] of IBC, 2016 shall commence from the date of application.*"

6. After passing of this order by the learned NCLT, Kolkata,

the respondents herein/original accused filed applications vide Exhs.43 and 54 before the learned Magistrate praying therein to stay the proceedings of Summary Criminal Case to which the petitioner filed its reply. The learned Judicial Magistrate, First Class was pleased to pass the impugned order as stated above.

7. I have heard the learned Counsel for the parties. The learned Senior Counsel Shri Kaptan, appearing on behalf of the petitioner submits that the learned Judicial Magistrate has failed to take into consideration the latest law laid down by the Hon'ble Supreme Court. He further submits that the respondent nos.2 and 3 are natural persons, and respondent no.1 is a Company, therefore, as laid down by the Hon'ble Supreme Court the proceedings under Section 138 of the Negotiable Instruments Act cannot be stayed and further it may go on. The Supreme Court has already interpreted the provisions of 'Insolvency and Bankruptcy Code' and in the light of penal provisions contained in the Negotiable Instruments Act, the Supreme Court has clarified that the object of the Negotiable Instruments Act would be frustrated, if proceedings under the said Act are stayed or quashed, only on the ground

of moratorium being imposed. He further submits that the proceedings under Section 138 /141 of the NI Act will continue against both i.e. the Company and its office bearers, respondents herein. In support of said submissions he has relied on the judgments of Supreme Court in case of (1) **Ajay Kumar Radheshyam Goenka .vrs. Tourism Finance Corporation of India Ltd. - (2023) 10 SCC 545; and** (2)**Rakesh Bhanot .vrs. Gurdas Agro Private Ltd. - (2025) 6 SCC 781.**

8. On the other hand, the learned Senior Counsel Shri Naik, appearing for the respondents submits that Section 138 proceedings are in the nature of recovery, and taking into consideration the provisions of Section 96 of the IB Code, any legal action or proceedings pending in respect of debt shall deemed to have been stayed and therefore, the learned Court below has rightly passed the order. Mr, Naik, also placed reliance on the judgment of Supreme Court in case of **P. Mohanraj and others .vrs. Shah Brothers ISPAT Pvt. Ltd. - (2921) 6 SCC 258**, to submit that since the interim moratorium is imposed under Section 96 of the IB Code, it leads to imposing certain liabilities and restrictions on the corporate debtor and its properties, and therefore, in order to safeguard

those properties, the proceedings are necessarily required to be stayed, otherwise the very object of the IB Code would be frustrated. He further submits that in terms of Section 14 of the IB Code, which is similar to Section 96 of the IB Code, institution of suits or continuation of pending suits or proceedings against corporate debtor, including judgment, decree or order in any Court of law, Tribunal, Arbitration Panel or other Authorities is prohibited, and therefore, prayed for dismissal of the petition.

9. I have considered the rival submissions of the parties. It appears from the record that, the proceedings under Section 138 of the Negotiable Instruments Act was initiated in the year 2016. Whereas the proceedings under the IB Code initiated by the State Bank of India, who is a creditor, was initiated in the year 2022. Order under Section 95/96 of the IB Code was passed on 07.04.2022 imposing interim moratorium. In such circumstances, the question before me is -" *Whether the accused are entitled to seek stay to the prosecution in view of the imposition of moratorium under Section 96 of the IB Code and whether the Judicial Magistrate First Class was justified in staying the proceedings ?".*

10. At the outset, it would be useful to refer to the judgments relied on by the parties. The Supreme Court in case of P. Mohanraj (supra) has observed as under :

> *"32. Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein being also interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor's assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur.*
>
> *....*
>
> *102. 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.

…

104. Resultantly, the civil appeal is allowed and the judgment under appeal is set aside. However, the Section 138/141 proceedings in this case will continue both against the company as well as the appellants for the reason given by us in paragraph 77 above as well as the fact that the insolvency resolution process does not involve a new management taking over. We may also note that the moratorium period has come to an end in this case."

11. Again another judgment which is necessary to be referred

herein is the case of Ajay Goenka (supra), wherein the Supreme Court while dealing with the provisions of IB Code has held as under :

> *"70. Thus, I am of the view that by operation of the provisions of the IBC, the criminal prosecution initiated against the natural persons under Section 138 read with 141 of the NI Act read with Section 200 of the CrPC would not stand terminated.*
>
> *…*
>
> *75. 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). Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile directors can no longer represent it.*
>
> *….*
>
> *98. As per Section 138 of the NI Act, when the cheque was dishonoured and a statutory notice demanding the cheque amount was issued, the accused shall pay the cheque amount within 15 days from the date of receipt of the said notice. The moment the said 15 days expired, the cause of action arises. In other words, the offence under Section 138 of the NI Act is complete. Once the cause of action arose for the*

offence committed, the complainant has to approach the criminal court within one month to take penal action under Section 138 of the NI Act. To put it clearly, the complainant approaches the criminal court not for recovery of the legally enforceable debt, but for taking penal action under Section 138 of the NI Act for the offence already committed by the accused by not making the payment of the cheque amount despite the receipt of the statutory notice. The only question before the criminal court is whether the cheque issued by the accused towards the discharge of his liability was dishonoured and despite the service of demand notice, whether he had not paid the amount. There is no bar contained in any of the provisions of the IBC, and the NI Act from approaching the criminal court to seek penal action under Section 138 of the NI Act.

....

108. 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.

......

109.2. 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.”*

12. It will be also useful to refer to the latest ruling of the Supreme Court in case of Rakesh Bhanot (supra), wherein in paragraph nos.22 and 24, the Supreme Court has held as under:

> *“22. The legislative intent behind the Insolvency and Bankruptcy Code (IBC) is to provide a structured framework for the resolution of corporate debtors' financial distress, facilitating their rehabilitation and ensuring the maximization of asset value. The application under Section 94 or 95 would fall under Chapter III of the IBC. An application under Section 94, when taken out by a debtor in the capacity of a personal guarantor of a company, to declare him/her as insolvent, is to be disposed by following the procedures in Sections 97 to 119. The application filed under Section 94 is scrutinized by the Resolution Professional and a report is submitted as contemplated under Section 99 recommending either the approval or rejection of the application. The interim moratorium which commences on the presentation of the application will expire on the admission of the application by an order of the adjudicating authority under Section 100. Upon admission, the moratorium under Section 101 comes into operation. The interim moratorium 28 under Section 96 and the moratorium under Section 101 IBC are designed to offer a breathing space to the corporate debtor, allowing them*

to reorganize their financial affairs without the immediate threat of creditor actions. However, this moratorium is not intended to shield individuals from personal criminal liabilities arising from their actions outside the scope of corporate debt restructuring. The respective appellants / petitioners, having filed insolvency applications as personal guarantors under Section 94 IBC, cannot extend this protection to avoid prosecution under Section 138 of the N.I. Act, 1881.

…

24. On the other hand, the proceedings under Section 138 of the N.I. Act, 1881, pertain to the dishonor of cheques issued by the respective appellants / petitioners in their personal capacity. These proceedings are distinct from the corporate insolvency proceedings and are aimed at upholding the integrity of commercial transactions by holding individuals accountable for their personal actions. The scope and nature of the proceedings under the IBC may result in extinguishment of the actual debt by restructuring or through the process of liquidation. But such extinguishment will not absolve its directors from the criminal liability. Section 141 of the N.I. Act, 1881 enables the prosecution of the persons in charge of the affairs and responsible for the conduct of the business of the company along with the company. The statutory liability against the directors under Section 138 of the N.I. Act, 1881, is personal and hence, continues to bind natural persons, irrespective of any moratorium applicable to the corporate debtor."

13. From the above judgments, some key features can be culled out as under :

(i) Section 138 NI Act proceedings are not recovery proceedings.

(ii) The Directors of the Company remains liable under Section 138 of the NI Act, even if Company's debt is resolved under the IB Code.

(iii) A resolution plan approved under the IB Code does not automatically extinguish the criminal liability of Directors under Section 138 of the NI Act.

(iv) The Supreme Court further emphasized that Section 138 of the NI Act proceedings are penal in nature, aimed at maintaining the integrity of commercial transactions and not just compensating.

(v) The approval of a resolution plan under Section 31 of the IB Code does not automatically discharge the signatory/ Directors from the liability under Section 138 of the NI Act.

(vi) The Supreme Court further clarified that Section 32A protects the corporate debtor, but, not individuals responsible for Company's conduct.

(vii) The IB Code and the NI Act serve different purposes and do not conflict with each other.

14 Ultimately, the individuals responsible for financial misconduct cannot evade liability by hiding himself behind corporate

debtor or insolvency proceedings, and therefore criminal proceedings under NI Act are not affected by moratorium under Section 14 or 96 of the IB Code. Therefore, both these cases i.e. P. Mohanraj and Ajay Goenka (supra), deals with the intersection of IB Code and NI Act. P. Mohanraj focuses on the moratorium's effect and Ajay Goenka addresses the impact of a resolution plan on Director's liability under Section 138 of the NI Act.

15. Thus, it is clear that despite moratorium proceedings, proceedings under Sections 138 and 148 of the NI Act, can be instituted or continued against the erstwhile Directors or persons in-charge or responsible for conducting the business of the corporate debtor. However, after passing of the resolution plan under Section 31 of the IB Code by the adjudicating Authority and considering Section 32 A of the IB Code, Criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to corporate debtor, provided that the old management is taken over by the new management. However, the said protection shall not be available to the corporate debtor in the resolution plan, if the management or control of the corporate debtor is

given to a person or debtor who abated or conspired in commission of offence.

So far as the present case is concerned, the respondent nos.2 and 3 are natural persons and managing the day to day affairs of the respondent no.1 Company. The respondent no.2 is the signatory to the cheques. The complaint under Section 138 of the NI Act would also demonstrate that the respondent nos. 2 and 3 are Chairman and Managing Director of the Company respectively.

16. Considering the purport of Section 32 of the IB Code, the protection of cessation of liability for prior offence is applicable only to a corporate debtor in the contingency if the management of the company is changed by the adjudicating Authority in the approval resolution. However, this protection is not available to natural persons in view of the law laid down by the Supreme Court in cases of P. Mohan Raj, Ajay Kumar Goenka and Rakesh Bhanot (supra).

17. In the instant case, it appears that the interim moratorium in terms of Section 96[1][a] of the IB Code commenced, however, there is

nothing on record to show what happened thereafter. Considering the above facts and circumstances, coupled with the law laid down by the Supreme Court in above referred cases, the position is crystal clear that the respondents cannot be protected even if the order of interim moratorium is passed by the NCLT Kolkata, and therefore, considering the above discussion, the common order passed by the learned Judicial Magistrate First Class, Court No.2, Akot, District Akola below Exhs.43 and 54 in Summary Criminal Case No.405/2017, would not sustain and is liable to be quashed and set aside, and therefore, the proceedings for the offence punishable under Section 138 of the NI Act, shall continue against the respondents, i.e. the Company as well as its Chairman and Managing Director. Hence, the following order.

ORDER

(i) Criminal Writ Petition is allowed and disposed of.

(ii) The order passed by the learned Judicial Magistrate First Class, Court No.2, Akot, District Akola below Exhs.43 and 54 in Summary Criminal Case No.405/2017, is hereby quashed and set aside.

(iii) Rule is made absolute in aforesaid terms.

JUDGE