2025:PHHC:062161

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.6157 of 2025 (O&M)

Date of decision : 12.05.2025

Ashutosh Mahindru

... Petitioner

Versus

Capri Global Capital Limited
through its authorised representative

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Pallav Saxena, Advocate (through V.C.) and
Mr. Chakitan V.S.Papta, Advocate for the petitioner.

Mr. Harsh Chopra & Mr. Satnam Singh, Advocates
for the respondent.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) read with Section 582 of the Bharatiya Nagarik Suraksha Sanhita, 2024 (*sic- 2023*) [*for short 'BNSS'*] for quashing of the impugned order dated 25.09.2024 (P-1), passed by learned Judicial Magistrate 1st Class, Gurugram *(for short 'JMIC'),* whereby an application dated 29.08.2024 (P-6), moved by petitioner, under Section 101 read with Section 238 of the Insolvency and Bankruptcy Code, 2016 (*for short 'IBC'*), for stay of proceedings in Complaint No.NACT/10692/2018 (having registration dated 22.05.2018), titled as "**M/s Capri Global Capital Limited** *Versus* **M/s Shri Krishna Tankers Pvt. Ltd. and others**", under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*) read with Section 200 Cr.P.C. (as amended), was declined.

(2) BRIEF FACTS

(2.1) Respondent-M/s Capri Global Capital Limited filed a complaint dated 22.05.2018 (P-2) through Yogesh Sharma, Authorized Representative/ Person against **(i)** petitioner-Ashutosh Mahindru; **(ii)** Vishal Sharma, both Directors/Authorized Signatories of M/s Shri Krishna Tankers Private Limited as well as **(iii)** M/s Shri Krishna Tankers Private Limited (*for short 'accused'*), under Sections 138, 141 & 142 of the N.I. Act read with Section 200 Cr.P.C., with the allegations that aforesaid accused had availed loan from respondent to the tune of ₹ 27,50,000/- and in partial discharge of their legal liability, they had issued cheque bearing No.309253 dated 12.04.2018 for a sum of ₹ 26,00,000/-, which got dishonoured vide memo dated 17.04.2018 with the endorsement "*Funds Insufficient*".

(2.2) During the pendency of aforesaid complaint, petitioner (accused No.2 therein), moved an application dated 29.08.2024 (P-6) under Section 101 read with Section 238 of the IBC, seeking stay of proceedings in present case on the ground that moratorium was declared under Section 101 of IBC by the National Company Law Tribunal (*for short* '*NCLT*'). The said application was dismissed vide impugned order dated 25.09.2024 (P-1), passed by learned JMIC. Hence, the present petition.

(3) CONTENTIONS ON BEHALF OF THE PETITIONER

(3.1) It is contended by learned Counsel for the petitioner that in view of the provisions of Sections 96 & 101 of IBC, there is a complete and unequivocal bar on continuation of proceedings before learned JMIC under the N.I. Act.

(3.2) Further contended that an application (P-6) under Section 101 read with Section 238 of IBC has wrongly been rejected by learned JMIC while passing the impugned order dated 25.09.2024 (P-1) in view of the fact that proceedings are not criminal in nature; rather the same are '*quasi* criminal'. Reference in this regard has been made to **"*M. Abbas Haji*** *Versus* ***T.N. Channakeshava", (2019) 9 SCC 606.***

(3.3) Also contended that during the pendency of complaint under Section 138 of N.I. Act, State Bank of India filed a petition (P-4) bearing No.C.P.(IB) 714/PB/2021, titled as "**State Bank of India** *Versus* **Mr. Ashutosh Mahindru**" before the NCLT for initiation of Insolvency Resolution Process under Section 95 of the IBC on the premise that petitioner was the personal guarantor for credit facilities availed by the principal borrower, namely, M/s Advance Surfactants India Limited under the provisions of IBC.

(3.4) Again contended that provisions of Section 14 of IBC are not applicable to the personal guarantor and *non obstante* clause under Section 238 of IBC is having an overriding effect over provisions of N.I. Act; hence, the proceedings pending before learned JMIC be stayed.

(3.5) Learned Counsel for the petitioner has also placed reliance on the following judicial precedents:-

(i) ***Rakesh Bhanot*** *Versus* ***M/s Gurdas Agro Pvt. Ltd., Criminal Appeal No.1607 of 2025 (arising out of SLP (Criminal) No.6087 of 2023, order dated 01.04.2025);***

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

(iii) ***Vijay Kumar Ghai*** *Versus* ***Pritpal Singh Babbar, 2022 SCC OnLine P&H 1672;***

(iv) ***Meters and Instruments Private Limited and Another*** *Versus* ***Kanchan Mehta, (2018) 1 SCC 560;***

(v) ***R. Vijayan*** *Versus* ***Baby and another, (2012) 1 SCC 260;***

(vi) ***Kaushalya Devi Massand*** *Versus* ***Roopkishore Khore, (2011) 4 SCC 593.***

(4) SUBMISSIONS ON BEHALF OF THE RESPONDENT

(4.1) *Per contra*, learned Counsel for the respondent, 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 N.I. Act are not merely for recovery; rather, these are penal in nature as well; thus, a personal guarantor upon conviction may face imprisonment and/or fine or both; but there is no such provision under the IBC. Hence, the nature as well as scope of proceedings, under both the Acts, are quite different and as such, the impugned order does not warrant any interference by this Court.

(4.2) Further submitted that from perusal of petition (P-4), under Section 95 of the IBC itself, it is evident that petitioner, being the personal guarantor for M/s Advance Surfactants India Limited, is facing prosecution along with other co-accused for cheating, forgery of records and causing loss to the tune of ₹ 258,97,35,449/- to the State Bank of India. Again submitted that apart from above, petitioner is also a guarantor for M/s Advance Home and Personal Care Limited against the credit facilities of ₹ 18,08,00,000/- and the outstanding amount as on 30.06.2021 is stated to be ₹ 27,61,77,221/-.

(4.3) In support of above submissions, learned Counsel has placed reliance on **Rakesh Bhanot's case** (*supra*).

(5) Heard learned Counsel for the parties and perused the paper-book as well as records.

(6) Hon'ble the Supreme Court in **Rakesh Bhanot's case** (*supra*), in identical matter(s), formulated the question of law in para 4 thereof and which reads as under:-

> "*Whether the proceedings initiated against the appellants/petitioners under Section 138 read with Section 141 of the N.I. Act, 1881 should be stayed in view of the interim moratorium under Section 96 IBC having come into effect upon the appellants/petitioners' filing applications under Section 94 IBC?"*

(6.1) The above legal issue was answered while observing that object of moratorium or for that purpose, the provision enabling debtor to approach the Tribunal under Section 94 of IBC is not to stall the criminal prosecution, but only to postpone any civil actions for recovery of any debt. It was further held that deterrent effect of Section 138 of N.I. Act is critical to maintain the trust in the use of negotiable instruments, like cheques in business dealings; thus, criminal liability for dishonoring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, subject to satisfaction of other conditions under the N.I. Act.

(6.2) For reference, para Nos.17, 18 & 19 of the aforesaid judgment, being relevant, are also extracted as under:-

> ***"17.*** *For the foregoing discussion, we are of the opinion that the object of moratorium or for that purpose, the provision enabling the debtor to approach the Tribunal under Section 94 is not to stall the criminal prosecution, but to only postpone any*

civil actions to recover any debt. The deterrent effect of Section 138 is critical to maintain the trust in the use of negotiable instruments like cheques in business dealings. Criminal liability for dishonoring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however subject to satisfaction of other conditions in the N.I. Act, 1881. Therefore, allowing the respective appellants / petitioners to evade prosecution under Section 138 by invoking the moratorium would undermine the very purpose of the N.I. Act, 1881, which is to preserve the integrity and credibility of commercial transactions and the personal responsibility persists, regardless of the insolvency proceedings and its outcome.

18. *In view thereof, the contention of the appellants that the decisions relied on by the High Court dealt with the proceedings under section 14 IBC and not the proceedings under section 96 IBC, cannot be countenanced by us. Furthermore, the decision in Dilip B. Jiwrajka (supra) is not relevant to the facts of the present case, as the issue therein was relating to the constitutional validity of certain provisions of the IBC and the applicability of moratorium to a proceedings under Section 138 of the N.I. Act, 1881 was not the subject matter.*

19. *For the foregoing discussion, the prayer of the appellants / petitioners to stay the prosecution under Section 138 of the N.I. Act, 1881, relying on the interim moratorium under Section 96 IBC, cannot be entertained. Therefore, the judgments / orders passed by the different High Courts affirming the orders of the trial court, which had rightly refused to stay the section 138 proceedings, need not be interfered with by us."*

(7) Although, learned Counsel for petitioner tried to raise a plea that in view of the judgments of Hon'ble the Supreme Court, rendered in ***M. Abbas Haji;*** **Kaushalya Devi Massand & Meters and Instruments Private Limited** (*supra*), proceedings under N.I. Act are '*quasi* criminal' in nature; but at the same time, by no stretch of imagination, it can be said that these proceedings are civil in nature. Thus, the plea on that count will not cut much ice for the petitioner.

(8) *A fortiori,* Chapter XVII of N.I. Act was substituted vide an amendment in the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (Act 66 of 1988) and Hon'ble the Supreme Court in "**Vinay Devanna Nayak** *Versus* **Ryot Seva Sahakari Bank Ltd", (2008) 2 SCC 305** while discussing about the above Amendment, in para 16 thereof, observed as under:-

> "*Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (Act 66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters. The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors."*

(9) Consequently, the contention raised on behalf of petitioner to the effect that proceedings under N.I. Act are '*quasi* criminal' in nature would be of no help to interfere with the impugned order; hence, the plea in this regard is also hereby rejected.

(10) Concededly, petitioner is the personal guarantor; the legal issue regarding stay of proceedings against personal guarantor has already been decided by Hon'ble the Supreme Court in **Rakesh Bhanot's case** *(supra).* Even the contention(s) with regard to applicability of Section 14 of IBC as well as *non obstante* clause of Section 238 IBC were also considered by Hon'ble the Supreme Court in para No.10.1 & relevant part of para No.16 of the judgment and which read as under:-

> ***"10.1.*** *From the above provisions, it is clear that the term "Corporate Person" includes a company as defined under Section 2(20) of the Companies Act, 2013, and a Limited Liability Partnership. However, there is a subtle difference in the protection available to the Directors and the Partners. In case of a partnership firm, the interim moratorium protects not only the firm, but also the partners. But in case of a company, such protection is available only to the company and not to its directors. That apart, the object of interim moratorium can be no different from that of the moratorium specified under Section 14. It is also clear from Section 14 that the protection from legal action during the period of moratorium is not available to the surety or in other words, to a personal guarantor. The use of the words "all the debts" and "in respect of any debt" in Sub-section (1) of Section 96 is not without a*

> *purpose, as the moratorium is intended to offer protection only against civil claim to recover the debt. Hence, such period of moratorium prescribed under Section 14 or 96 is restricted in its applicability only to protection against civil claims which are directed towards recovery and not from criminal action.*
>
> ***16.*** *Even recently, a larger bench of this Court in Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corpn. of India Ltd., of which one of us (J.B. Pardiwala, J) is a member, after considering the scope and object of the IBC and the interplay with the N.I. Act, 1881 in detail, has held as follows:*
>
> > ***"72.*** *It is true that by virtue of Section 238 IBC, the provisions of Cr. P.C. (to be read as Code) shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But, no provision of IBC bars the continuation of the criminal prosecution initiated against the Directors and officials."*

(11) Also noteworthy that judgment of **Vijay Kumar Ghai's case** (*supra*) would be also not helpful to petitioner for the reason that this decision was rendered by the then Single Bench of this Court on the point in issue; but in view of the latest judgment by Hon'ble the Supreme Court in **Rakesh Bhanot's case** *(supra)*, the same will pale into insignificance.

(12) Even **R. Vijayan's case** *(supra)* is also not helpful for the simple reason that in that case, subject matter was not regarding IBC; but relating to the proceedings under Section 138 of N.I. Act *vis-à-vis* civil suit for recovery of cheque amount.

(13) In view of the above, there is no option except to dismiss the present petition with costs of ₹ 25,000/-.

(14) So ordered.

(15) The above observations be not construed as an expression of opinion on the merits of Complaint No.NACT/10692/2018, pending before learned JMIC, in any manner.

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

12th May, 2025 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*