



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

CRM-M-24360-2025(O&M)

Reserved on: 06.05.2025

Pronounced on: 14.05.2025

Gagandeep Singh Swani

....Petitioner

Versus

Daljit Singh Grewal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manish Jain, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of complaint bearing No. COMA/4885/2023 dated 15.03.2023 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act' read with Section 420 of the Indian Penal Code, 1860 titled- '*Daljit Singh Grewal vs. Swani Motors Services Pvt. Ltd.*' as well as summoning order dated 16.03.2023 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Ludhiana.

2. Briefly, the facts, as alleged, are that on 01.11.2015, the respondent-complainant and his brother leased a property in Ludhiana to the company of the petitioner. However, the company of the petitioner failed to pay the agreed rent, causing the parties to enter into another Extended Leave and License deed dated 10.11.2021. According to this agreement, the multiple cheques were issued by the accused, however on presentation for encashment, the same was dishonoured. Thereafter, a second agreement dated 14.10.2022



was entered into by the parties by virtue of which the old cheques were replaced with fresh ones. Consequently, one of the cheques bearing No.707443 dated 01.02.2023 for Rs.5,00,000/- was presented for encashment. However, the same was dishonoured vide memo dated 03.02.2023 with the remarks- '*funds insufficient.*' Hence, the present complaint.

3. Learned counsel for the petitioner *inter alia* contends that the company of the petitioner, that is the drawer of the cheque, was admitted to Corporate Insolvency Resolution (CIR) process under the Insolvency and Bankruptcy Code, 2016 (for short 'IBC') vide order dated 28.10.2022 (Annexure P-3) by the learned National Company Law Tribunal, Chandigarh. In furtherance of the same, Interim Resolution Professional (IRP) was appointed and a moratorium was declared under Section 14 of the IBC. Per Section 17 of IBC, the board of directors of the accused company stands suspended with immediate effect on commencement of the CIR process and the management of affairs of the accused company i.e. the corporate debtor falls under the purview of the Interim Resolution Professional. However, the legal notice dated 14.02.2023, much after the dishonor of the disputed cheque, was issued to the company and not the IRP. As such, the learned trial Court ought not to have entertained the complaint(supra) as it was instituted after the commencement of CIR proceedings. As such, the petitioner and the accused company cannot be implicated in the present proceedings under the NI Act. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***Vishnoo Mittal vs. M/s Shakti Trading Company*** **2025(2)R.C.R.(Criminal) 371.**

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it appears that the complaint(supra) was



instituted on 15.03.2023 while the CIR process had commenced against the accused company on 28.10.2022. Admittedly, the petitioner was the Director in the said company and responsible for maintaining its day-to-day affairs.

5. Pertinently, the IBC defines ‘corporate debtor’ under Section 3(8), which reads as follows:

Section 3. Definitions

(8) “corporate debtor” means a corporate person who owes a debt to any person

Moreover, Section 32-A was added to the IBC vide Act 1 of 2020 and came into effect from 28.12.2019. The same is reproduced below:

Section 32A. Liability for prior offences, etc.—

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

*Provided further that every person who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, **shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.***



(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not--

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.--For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

A perusal of Section 32 A of the IBC would indicate that it only forbids prosecution of the corporate debtor for offences committed prior to commencement of CIR process, and not the individuals involved. As such, the directors and the signatory cannot be allowed to escape the consequences of their wrongdoings. The same has also been upheld by a three Judge bench of the Hon'ble Supreme Court in ***Manish Kumar vs. Union of India and another (2021) 5 SCC 1***, where speaking through Justice K.M. Josph, the following was held:



“326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.” (emphasis added)

6. Further, a study of Section 138 of the NI Act is warranted and the relevant part of the same is reproduced below:

Section 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, 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. (emphasis added)

While the recent amendments to the NI Act encourage compromise and swift settlement thereby assisting recovery, it must not be overlooked that the legislative intention behind Section 138 NI Act is to impose criminal liability. It



aims at punishing the erring party for the failure to honour the commitment made by them on issuance of a cheque to discharge a legally enforceable debt.

7. Further still, the doctrine of vicarious liability is a civil concept and its applicability in criminal cases is an exception rather than the rule. The doctrine of vicarious liability originates from the maxim *Qui Facit per Alium Facit per*, which means any act done by the servant in the course of his employment is considered to be done by the master and in principle, the master is also liable for the said act. As far as the NI Act is concerned, the persons responsible for the conduct of business in the accused company are sought to be made liable by virtue of Section 141. In that vein, it would be profitable to mention that a two Judge Bench of the Hon'ble Supreme Court in ***K.K. Ahuja vs. V.K. Vora and another (2009) 10 SCC 48*** has categorically held that signature of a Director of the company would automatically attract liability under Section 141(2), NI Act. Speaking through Justice R.V. Raveendran, the following was observed:

- “20. *The position under section 141 of the Act can be summarised thus :*
- (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.*
 - (ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. **The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.***

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xxx” (emphasis added)



8. The discussion above makes it clear that the imposition of a moratorium and appointment of an IRP only protects the corporate entity that has filed for insolvency and not the private persons involved with it. Such private persons have been specifically made vicariously liable by virtue of Section 141 of the NI Act for the acts perpetrated by them in the name of the corporate entity. Further still, it is settled law that the proceedings under the NI Act can not only be continued but also initiated against the accused arraigned by virtue of Section 141 of the NI Act, even after the accused company is admitted to the insolvency process. Reliance in this regard can be placed on the judgment rendered by a three Judge bench of the Hon'ble Supreme Court in ***P. Mohanraj vs. M/s Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258*** where, speaking through Justice Rohinton Fali Nariman, the following was opined:

“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.” (emphasis added)

9. Recently, a three Judge bench of the Hon'ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Limited (2023) 10 SCC 545***, speaking through Justice Sanjay Kishan Kaul, the following was observed:



“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.**” (emphasis added)

Rendering a concurring opinion in **Ajay Kumar Radehyshyam**

Goenka(Supra), Justice Jamshed Burjor Pardiwala, opined as follows:

“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. I may draw my final conclusions as under:

109.1 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.

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.**" (emphasis added)

10. The reliance placed by the learned counsel for the petitioner on the judgment rendered by a two Judge bench in ***Vishnoo Mittal (supra)*** is misfounded as this particular legal question already stands settled not only by a three Judge bench in ***Ajay Kumar Radheyshyam Goenka (supra)*** but also a two Judge bench in ***P. Mohanraj(supra)*** which held the field from an earlier vantage. The same has been conclusively held by a Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680***, wherein, speaking through Justice Dipak Misra, the following was observed:

21. In the context, we may fruitfully note what has been stated in ***Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others***, 2002(1) RCR (Civil) 551 : (2002) 1 SCC 1. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:-

"6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ..."

22. In ***Chandra Prakash and others v. State of U.P. and another***, 2002(2) S.C.T. 776 : (2002) 4 SCC 234, another Constitution Bench dealing with the concept of precedents stated thus:-



"22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghubir Singh, 1989(1) R.R.R. 552 : (1989) 2 SCC 754 held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ..."

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*24. In **Sandhya Educational Society and another v. Union of India and others**, (2014) 7 SCC 701, it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In **Rattiram and others v. State of Madhya Pradesh**, 2012(2) RCR (Criminal) 471 : 2012(2) Recent Apex Judgments (R.A.J.) 99 : (2012) 4 SCC 516, the Court dwelt upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions. The Court noted the observations in *Raghubir Singh (supra)* and reproduced a passage from *Indian Oil Corporation Ltd. v. Municipal Corporation*, (1995) 4 SCC 96 which is to the following effect:-*

*"8. ... The Division Bench of the High Court in *Municipal Corpn., Indore v. Ratnaprabha Dhanda* was clearly in error in taking the view that the decision of this Court in *Ratnaprabha* was not binding on it. In doing so, the Division Bench of the High Court did something which even a later coequal Bench of this Court did not and could not do. ..."*

Moreover, a two Judge bench of the Hon'ble Supreme Court in *Union Territory of Ladakh and others vs. Jammu And Kashmir National Conference & Anr.* 2023 SCC OnLine SC 1140, speaking through Justice Ahsanuddin Amanullah, held as follows:

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open,



*unless specifically directed by this Court , to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. **In any case, when faced with conflicting judgments by Benches of equal strength of this Court , it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680.** The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”* (emphasis added)

11. In view of the discussion above, this Court does not find any merit in the arguments put forth by the learned counsel for the petitioner. Accordingly, the present petition is dismissed.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.05.2025

Neha

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