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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 9278/2023& CRL.M.A. 34659/2023

VIJAY KUMAR GHAI & ANR.Petitioners

Through: Mr. Mrinal Harshvardhan, Mr.
Aaditya Mishra and Mr. Rituparna
Patra, Advocates.

versus

M/S FASHION DEZIRERespondent

Through: Mr. Ravi Kapoor, Mr. Manish Dewan
and Mr. Rishabh Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

11.07.2025

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1. This hearing has been done through hybrid mode.
2. The present petition filed under Section 482 of the Cr.P.C. seeks the following prayers:

- i. Quash the impugned Order dated 21.08.2023 passed by Sh. Sanjay Sharma -II, ASJ-03, Central District, Tis Hazari Courts, New Delhi, in Crl. Revision No. 323/2023 titled "Fashion Dezire v. Vijay Kumar Ghai & Mohit Kumar Ghai", arising out of Orders dated 03.03.2022 and 25.04.2022 in CC nos. 514741/2016, 514744/2016, 516789/2016 and 519350/2016 titled "Fashion Dezire v. Priknit Retails Ltd. & Ors." pending before; and
- ii. Pass any other order(s) as this Hon'ble Court may deem fit and necessary in the interest of justice.

3. The present petition has been filed seeking quashing of the impugned order dated 21.08.2023 passed by the learned ASJ-03, Central District, Tis Hazari Courts, Delhi in Criminal Revision No. 323/2023 titled '*Fashion Dezire vs. Vijay Kumar Ghai & Mohit Kumar Ghai*' whereby, the learned ASJ had set aside the orders dated 03.03.2022 and 25.04.2022 passed by



the learned Metropolitan Magistrate, NI Act-06, Central District, Tis Hazari Courts in CC Nos. 514741, 514744, 516789 and 519350/16 titled '*Fashion Dezire v. M/s. Priknit Retails*'. *Vide* the impugned order, the learned ASJ allowed the revision petition filed by the respondent and vacated the stay of proceedings *qua* the four complaints. Learned ASJ further directed the learned Trial Court to proceed with the aforesaid complaints filed against the present petitioners.

4. The learned Metropolitan Magistrate *vide* order dated 03.03.2022 allowed the application filed by the petitioners and stayed the proceedings against the petitioners in CC Nos. 514741, 514744, 516789 and 519350/16 due to the application of interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC'). *Vide* order dated 25.04.2022, the learned Metropolitan Magistrate held that no grounds to review his previous order dated 03.03.2022 were made out and dismissed the application filed by the respondent.

5. Learned counsel appearing on behalf of respondent submits that the issue in the present petition has been decided by the judgement of the Hon'ble Supreme Court in '**Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2025 SCC OnLine SC 728**'.

6. In **Rakesh Bhanot (supra)**, the issue before the Hon'ble Supreme Court is enumerated in paragraph 4 of the judgment, which reads as under:

"4. The common legal question that arises for consideration herein is, 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. In view of the commonality of issues involved in all the cases, we need not necessarily review the facts of each case individually."



7. The final decision on the said issue reads 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.

8. A perusal of the record would reflect that the aforesaid judgment covers the issue raised in the present petition.

9. The captioned petition challenging the impugned order 21.08.2023 passed by the learned ASJ-03, Central District, Tis Hazari Courts, Delhi in Criminal Revision No. 323/2023 is hereby dismissed and disposed of.

10. Pending application(s) are also dismissed and disposed of.



11. The learned Trial Court is directed to proceed with the Trial in accordance with law.
12. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.
13. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

JULY 11, 2025/kr/sc