



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

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**CRM-M-49366-2022
Date of decision: 08.04.2026**

SANDEEP GUPTA AND ANOTHERPetitioners

VERSUS

HSIIDCRespondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Jasvinder Singh Nagla, Advocate
for the petitioner.

Mr. Vivek Saini, Advocate with
Mr. Arnav Goel, advocate
for respondent-HSIIDC.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C (now Section 528 BNSS) for quashing/setting aside order dated 15.09.2022 (Annexure P-3) passed in Criminal Complaint No. NACT 164/2018 filed on 05.02.2018, pending under Section 138 of the Negotiable Instruments Act before the Court of JMIC, Panchkula titled as "M/s HSIIDC Vs. M/s Richa Infrastructure Ltd and others" vide which summons have been issued against the petitioners.

2. The matter came up for hearing on 22.11.2022 when the following order was passed:-

“Learned counsel for the petitioners has challenged the summoning order dated 15.09.2022, Annexure P-3 whereby petitioners have been summoned in the proceedings initiated by respondent under Section 138 of the Negotiable Instruments Act. Learned counsel has contended that application under Sections 94 and 60 of the Insolvency and Bankruptcy Act, 2016 has been filed by petitioner No.1 on 03.09.2022 and petitioner No.2 on 24.08.2022 wherein as of now no order appointing RP has been passed. He relies on the provision of Section 96 of the Code to submit that when an application is filed under Sections 94 or 95, an interim moratorium shall commence on the date of application in relation to all debts and shall cease to have effect on the date of admission of such application and that any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed. It is in light of the aforesaid that the learned counsel makes a reference to judgment passed by this Court in CRM-M-22685 of 2021 in Vijay Kumar Ghai Vs. Pritpal Singh Babbar wherein the proceedings under Section 138 of the Act were stayed as petitioner was the Director. Learned counsel also relies on an order passed by this Court in CRM-M-37169-2022 titled Rakesh Bhanot Vs. M/s Gurdas Agro Pvt. Ltd passed 08.09.2022.

Notice of motion.

Mr. Vivek Saini, Advocate accepts notice on behalf of respondent.

Adjourned to 24.01.2023.

Proceedings before the trial Court are stayed till the next date of hearing.

3. Learned Counsel appearing on behalf of the petitioners had placed reliance on Sections 94 and 60 of the Insolvency and Bankruptcy Code, 2016, application having been filed by petitioner No.1. on 03.09.2022 and by petitioner No.2 on 24.08.2022. It was submitted that when an application is filed under Sections 94 or 95, an interim moratorium commences on the date of said application, in relation to all debts and cases pending on the date of such application and instituted thereafter with effect from the date of admission of such application. It is further vehemently argued by the Counsel for the petitioners that the trial Court erred in not considering the aforesaid statutory provision, hence, the order of summoning of the petitioners is rendered liable to be set aside.

4. Learned Counsel appearing on behalf of the respondent contends that the issue in hand is covered against the petitioners as per the judgment of the Supreme Court of India arising out of ***Criminal Appeal No. 1607 of 2025*** titled as ***“Rakesh Bhanot versus M/s Gurdas Agro Pvt. Ltd.”***, decided on 01.04.2025. The Supreme Court considered the intent behind the Insolvency and Bankruptcy Code and the framework prescribed for resolution of Corporate debtors’ financial distress to facilitate their rehabilitation and to ensure maximization of the asset value. The Supreme Court also discussed the scope of the Negotiable Instruments Act and Section 138 of the NI Act being specifically aimed towards upholding the integrity of the commercial transactions by holding individuals accountable for their personal actions. It was noticed that while the scope and nature of proceedings under IBC may result in extinguishment of an actual debt by

restructuring of the same or through the process of liquidation, however, such extinguishment does not absolve directors from their criminal liability. The Supreme Court finally concluded that the object of moratorium or for that purpose, the provision enabling the debtor to approach the Tribunal under Section 94 of the IBC is not to stall the criminal prosecution, but to postpone only 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. The Criminal liability for dishonoring of cheques ensures that individuals who engage in commercial transactions are held accountable for their actions. Therefore, allowing such accused (petitioners herein) to evade prosecution under Section 138 of the NI Act, by invoking moratorium, would undermine the very purpose of Negotiable Instruments Act, 1881. It was accordingly held that no prayer for staying the prosecution under Section 138 of the Negotiable Instruments Act, 1881, relying on the interim moratorium under Section 96 IBC, can be entertained. The operative part of the judgment reads thus:-

“12. 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 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. Upon filing of the application under section 94 IPC, a moratorium comes into effect, designed to protect the debtors from any legal actions concerning their debts. Specifically, Section 96 IBC provides that any legal proceedings pending against the debtor concerning any debt shall be deemed to have been stayed. The term "any legal action or proceedings" does not mean "every legal action or proceedings". In sub-clauses 96 (b) (i) and (ii), the term "legal action or proceedings" are followed by the term

"in respect of any debt". The term "legal action or proceedings" would have to be understood to include such legal action or proceedings relating to recovery of debt by invoking the principles of noscitur a sociis. The purpose of interim moratorium contemplated under Section 96 is to be derived from the object of the act, which is not to stall the proceedings unrelated to the recovery of the debt. The protection is not available against penal actions, the object of which is to not recover any debt. This moratorium serves as a critical mechanism, allowing the debtor to reorganize their financial affairs without the immediate threat of creditor actions. The clear and unequivocal language of this provision reflects the legislative intent to provide a protective shield for debtors during the insolvency process."

5. Counsel for the petitioners is not in a position to dispute that the aforesaid judgment would be applicable against the petitioners in the present case. Consequently, the ratio of the aforesaid judgment would be applicable against the petitioners in the present case and that the petitioners cannot claim benefit of moratorium against initiation or continuance of proceedings under Section 138 of the Negotiable Instruments Act, 1881 by invoking Section 96 of the Insolvency and Bankruptcy Code, 2016.

6. The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

08.04.2026
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No