IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO. 1749 OF 2024

Jagmohan Garg	... Applicant
Versus	
National Spot Exchange Ltd and Anr	...Respondents

WITH

WRIT PETITION NO. 2228 OF 2025

Prashant Boorugu	... Petitioner
Versus	
National Spot Exchange Ltd and Anr	...Respondents

WITH

WRIT PETITION NO. 2229 OF 2025

Prashant Boorugu	... Petitioner
Versus	
National Spot Exchange Ltd and Anr	...Respondents

WITH

APPLICATION NO. 501 OF 2024

Kamal Kant Dewan	... Applicant
Versus	
National Spot Exchange Ltd	...Respondent

WITH

WRIT PETITION NO. 6264 OF 2024

Lotus Refineries Pvt Ltd Through Managing Director Arun Kumar Sharma and Anr	... Petitioners
Versus	
State of Maharashtra and Anr	...Respondents

WITH

APPLICATION NO. 1690 OF 2024

Jagmohan Garg	... Applicant
Versus	
National Spot Exchange Ltd & Anr	...Respondents

WITH

APPLICATION NO. 1694 OF 2024

Jagmohan Garg … Applicant
Versus
National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1743 OF 2024

Jai Shankar Shirvastava … Applicant
Versus
National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1742 OF 2024

Jagmohan Garg … Applicant
Versus
National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1745 OF 2024

Jag Mohan Garg … Applicant
Versus
National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1750 OF 2024

Jai Shankar Shirvastava … Applicant
Versus
National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1744 OF 2024

Jag Mohan Garg … Applicant
Versus
National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1748 OF 2024

Jag Mohan Garg ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1746 OF 2024

Jai Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd ...Respondent

WITH

APPLICATION NO. 1756 OF 2024

Jai Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1757 OF 2024

Jai Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1758 OF 2024

Jai Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1754 OF 2024

Jai Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1838 OF 2024

Jag Mohan Garg ... Applicant

Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1839 OF 2024

Jag Mohan Garg ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1841 OF 2024

Jag Mohan Garg ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1840 OF 2024

Jag Mohan Garg ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1885 OF 2024

Jay Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1883 OF 2024

Jay Shankar Shrivastava ... Applicant
Versus
National Spot Exchange Ltd & Anr ...Respondents

WITH

APPLICATION NO. 1886 OF 2024

Jay Shankar Shrivastava ... Applicant
Versus

National Spot Exchange Ltd & Anr …Respondents

WITH

APPLICATION NO. 1882 OF 2024

Jay Shankar Shrivastava … Applicant

Versus

National Spot Exchange Ltd & Anr …Respondents

Mr Sudeep Pasbola, Senior Advocate i/by Mr. Abhiraj Rao, for the Applicant in APL 1749 of 2024.

Mr. Vinay J Bhanushali with Mr. Abhiraj Rao, Mr. Sanmit Vaze, Ms. Diksha Sharma, for the Applicant in APL Nos.1690/2024, 1694/2024, 1743/2024, 1742/2024, 1745/2024, 1750/2024, 1744/2024, 1748/2024, 1746/2024, 1756/2024, 1757/2024, 1758/2024, 1754/2024, 1838/2024, 1841/2024, 1839/2024, 1840/2024, 1885/2024, 1883/2024, 1886/2024, 1882/2024 and 501/2024.

Ms. Aakanksha Nehra (through VC), with Mr. Anuj Jhaveri, Mr. Mihir Modi, for the Petitioner in WP/2228/2025 and WP/2229/2025.

Mr. Rishi Bhuta, a/w Ms. Vaishnavi Javheri, Mr. Pratham Jain, Mr. Parth Govilkar, Mr. Prateek Dutta, Ms. Maitrayee Ganediwala, Ms. Ankita Bamboli, Ms. Saakshi Jha, Ms. Karishma Rajesh, Ms. Kashish Singhi, Ms. Khushboo shah, Mr. Faizan shaikh, Ms. Neha Patil, Mr. Ashish Dubey, Ms. Sujata, Ms. Steve Fernandes /by Mr. Dilip Shukla, for the Petitioners in WP/6264/2024.

Mr. Arvind Lakhawat a/w Mr. Nimeet Sharma, Mr. Vinit Vaidya, Ms. Jalpa Shah, Ms. Himani Narula, i/b. MZM Legal LLP, for Respondent No.1 - NSEL in all the matters.

Mr. D J Haldankar, APP for the Respondent-State

CORAM : N. J. JAMADAR, J.

RESERVED ON : 23rd JULY 2026

PRONOUNCED ON : 18 AUGUST 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. In these Petitions and Applications the core question that arises for consideration is the applicability of the moratorium under the provisions of Section 96 of the Insolvency and Bankruptcy Code, 2016 ("IBC 2016") to the initiation or continuation of a complaint filed for the commission of an offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 ("the NI Act, 1881") qua the directors/the persons liable for commission of such offence under Section 141 of the NI Act, 1881?

3. Since a common question of law arises for determination in a, by and large, similar fact-situation, all the Applications and Petitions were heard together and are being decided by this common judgment.

4. The facts in Application No. 1749 of 2024 are noted as a representative case. Reference would be made to the facts in the Writ Petitions in brief, a little latter.

5. The broad background facts leading to the Application No. 1749 of 2024 can be summarized as under:

5.1 National Spot Exchange Limited ("NSEL"), the complainant, is a company incorporated under the Companies Act, 1956. The complainant carries on business as a spot exchange providing for an electronic trading platform for spot contracts in commodities on a compulsory delivery basis. M/s Mohan India Private Limited (A1) is a private limited company. A1 is a trading and clearing member of the complainant.

5.2 The Applicant (A2) is the director and authorized signatory of A1. A3 is also a director and authorized signatory of A1. The day to day affairs of A1 were managed by A2 and A3 and they were allegedly in-charge and control of the day to day affairs of A1 and liable for all the acts and deeds done by A1.

5.3 As a member of the complainant spot exchange, A1 was bound to comply with the Rules and By-laws of the complainant. The Accused had given an undertaking to that effect.

5.4 Vide Circular dated 31st July 2013, the complainant directed that the positions outstanding in the contracts would be settled by way of delivery and payment after expiry of 15 (fifteen) days.

5.5 In the wake of outstanding with respect to A1 and its sister concerns, Tavashi Enterprises Private Limited and Vrunda Commodity Private Limited, A1 alongwith its sister concern and six others (including A2 and A3) had entered into a Settlement Agreement. On 30th October 2013, a Settlement Award as contemplated under Section 73 of the Arbitration and Conciliation Act, 1996 (“the Act, 1996”) came to be passed.

5.6 Under the said Award, an amount of Rs. 771 Crores became due and payable by A1 in 13 installments. The first installment was paid by A1. However, the accused committed default in payment of the succeeding installments. As of 10th March 2014 a sum of Rs.124.50 Crores was due and payable in terms of the Settlement Award.

5.7 Towards discharge of the liability as per the Settlement Award, A1 issued a cheque for a sum of Rs.30 Crores drawn on Axis Bank Limited, New Delhi Branch, payable on 28th February 2014. The said cheque was signed by A2 and A3 on behalf of A1.

5.8 Upon presentment, the said cheque was returned unencashed with the remarks, “funds insufficient” and “account freezed”, vide Bank Memo dated 28th February 2014. Despite service of the demand notice dated 10 March 2014, the accused committed default in payment of the amount covered by the cheque, within the stipulated period. Thus, Respondent No.1-complainant lodged the complaint for an offence punishable under Section 138 read with Section 141 of the N.I. Act, 1881.

5.9 During the pendency of the said complaint, the Applicant (A2) filed an Application seeking stay of the proceeding in the said complaint under Section 96 of the IBC, 2016, on the premise that A2 had filed an Application under Section 94 of the IBC, 2016, before the National

Company Law Tribunal, Delhi (NCLT) for initiation of Insolvency Resolution Process ("IRP"), on 13th May 2024.

5.10 A2 contended that with the initiation of the IR Petition, the interim moratorium contained in Section 96 of IBC, came into effect. Resultantly, all the legal proceedings, including the subject prosecution for an offence punishable under Section 138 of the N.I. Act, 1881, were deemed to have been stayed. Since the complainant has asserted in the complaint that the subject cheque was drawn towards the discharge of part of the debt, the conditions for applicability of moratorium under Section 96 stood satisfied. Moreover, in view of the provisions contained in Section 238 of the IBC, 2016, which gives an overriding effect to the provisions of IBC, 2016, the prosecution under Section 138 of the NI Act, 1881, was required to be stayed.

5.11 A2 further asserted that he had given his personal guarantee to various companies and one of the financial creditors had already invoked the personal guarantee given by A2. Therefore, the proceeding in the complaint were required to be stayed in view of the moratorium under Section 96 of the IBC, 2016.

5.12 Respondent No.1-complainant resisted the Application. It was refuted that Section 96 of the IBC, 2016 governed facts of the case. The subject cheque was drawn by A1 company for discharge of it part liability, as such. A2 was prosecuted for being a director and the person responsible for A1-company by invoking the provisions contained in Section 141 of the NI Act, 1881. In substance, A2 was being prosecuted as a natural person by invoking his vicarious liability contained in Section 141 of NI Act, 1881. The prosecution was not in relation to the debt owed by A2 personally.

5.13 Respondent No.1 further asserted that, the proceeding under Section 94 of the IBC, 2016 for initiation of the IR were in relation to the personal liability of A2 in his capacity as a surety in the contract of guarantee executed by him in favour of the complainant. In contrast, the prosecution in the instant case, was in relation to the debt of A1-company towards discharge of which the subject cheque was drawn. The debt of A1 was not the personal debt of A2. There is no embargo for the continuation of the prosecution for an offence punishable under Section 138 of the NI Act, 1881, against the natural person. The moratorium under Section 96, would be attracted only in case of the corporate entity and not the natural person.

5.14 The learned Magistrate, after appraisal of the material on record and the rival submissions, was persuaded to reject the Application opining *inter alia* that the subject cheque was drawn by A1-company purportedly towards the discharge of its liability. A2 has, in fact, raised a defence that he was not liable to pay the debt towards discharge of which the subject cheque was allegedly drawn. Thus, the expression 'debt' used in Section 96 of the IBC, 2016 would not govern the liabilities of A2 under Section 141 of NI Act, 1881. Consequently, the proceeding in the complaint were not requested to be stayed.

5.15 Being aggrieved A2 has preferred this Application.

6. In WP No.2228 of 2025 and 2229 of 2025, the change is that the Application under Section 95 of IBC, 2016 was instituted before NCLT, Chennai. Thereupon, the Petitioners filed an application under Section 96 of IBC 2016. Learned Magistrate rejected the Application opining, inter alia, that the cheques were drawn on an account maintained by the corporate entity to discharge its corporate liability; the Petitioners were being prosecuted in their capacity as directors / responsible persons by invoking the provisions of Section 141 of the Act, 1881 and that the Petitioners were not the primary debtors.

7. In WP No.6264 of 2024, the Petitioner / accused filed an application seeking stay of the proceedings on the strength of the Petition filed under Section 95(1) of IBC, 2016 before the NCLT Mumbai. As the learned Magistrate rejected the application, the Petitioner preferred a revision before the learned Sessions Judge. The Revision Application was dismissed as non-maintainable, construing the order of rejection as an interlocutory order.

8. I have heard Mr. Vinay J Bhanushali, the learned Counsel for the Applicant in APL Nos.1690/2024, 1694/2024, 1743/2024, 1742/2024, 1745/2024, 1750/2024, 1744/2024, 1748/2024, 1746/2024, 1756/2024, 1757/2024, 1758/2024, 1754/2024, 1838/2024, 1841/2024, 1839/2024, 1840/2024, 1885/2024, 1883/2024, 1886/2024, 1882/2024 and 501/2024, Mr. Rishi Bhuta, the learned Counsel for the Petitioner in WP/6264/2024, Ms. Aakanksha Nehra (through VC), the learned Counsel for the Petitioner in WP/2228/2025 and WP/2229/2025, Mr. Sudeep Pasbola, the learned Senior Advocate, for the Applicant in APL No.1749 of 2024, Mr. Arvind Lakhawat, the learned Counsel for Respondent No.1-NSEL, in all the matters, at length.

9. With the assistance of the learned Counsel for the parties, I have perused the material on record.

SUBMISSIONS :

FOR APPLICANTS/PETITIONERS :

10. Mr. Bhanushali, the learned Counsel for the Applicants submitted that, if the entire scheme of IBC, 2016 and the underlying object of the mechanism of moratorium are appreciated, then the continuation of the prosecution for an offence punishable under Section 138 of the NI Act, 1881, qua the directors would prove detrimental and counter productive to the avowed object of revival of the corporate entity. The distinction between the corporate debtor and the natural person who are sought to be prosecuted for an offence punishable under Section

138 read with Section 141 of the NI Act, 1881, does not hold the ground if the legislative intendment is properly understood.

11. Mr. Bhanushali submitted that the decision in the case of **P. Mohanraj Vs M/s Shah Brothers Ispat Pvt Ltd,**[1] which forms the sheet anchor of the distinction between the fate of the proceeding qua the corporate debtor and natural person, does not advance the cause of the submissions on behalf of the complainant, if the principles laid down therein are appreciated correctly. On the contrary, the said decision though rendered in the context of the provisions contained in Section 14 of the IBC, 2016 would apply with greater force and rigor to the moratorium envisaged under Sections 96 and 101 of the IBC, 2016.

12. Taking the Court through the provisions of Sections 94 and 95, which are subsumed in Part III of IBC, 2016, Mr. Bhanushali would urge that ultimate effect of initiation of IR Process either under Section 94 or Section 95 of IBC, 2016 is that, it triggers the operation of the interim moratorium under Section 96 of the IBC, 2016 no sooner the Petition is admitted. Consequently, during the pendency of such Insolvency Resolution Petition before the NCLT, by operation of law, the proceedings, including the prosecution under Section 138 of NI Act, 1881, are deemed to be instantaneously stayed.

13. Mr. Bhanushali would urge that, if the object and operation of the moratorium is to ensure that there is no depletion of corporate debtors

1 (2021) 6 SCC 258.

assets during IR Process for maximizing value for all stake holders and revival of the corporate entity, if possible, the fine distinction sought to be made in the matter of the proceeding qua the corporate entity and the natural person would fall through. It was submitted that the scope of operation of the moratorium under Sections 96 and 101 of IBC, 2016 is more expansive than Section 14 of IBC, 2016 which applies to corporate debtors.

14. Mr. Bhanushali further submitted that the decisions in the cases of **Ajay Kumar Radheyshyam Goenka Vs Tourisin Finance Corporation of India**[2] and **Rakesh Bhanot Vs M/s Gurdas Agro Pvt Ltd**[3]**,** on which reliance was placed on behalf of Respondent No.1, are of no assistance to the complainant as those decisions were rendered in a different fact-situation. In any event, the decision in the case of **P Mohanraj (Supra)** which is rendered by a Bench of three Hon'ble Judges, if properly construed governs the case of personal insolvency as well. Resultantly, the complaints under Section 138 and Section 141 of NI Act, 1881 qua the natural persons, who are impleaded in the capacity of the directors and the persons in-charge of and responsible to the affairs of the company, are also required to be stayed.

15. Mr. Rishi Bhuta, the learned counsel for the Petitioners in Writ Petition No. 6264 of 2024 submitted that, the text of Section 96 of the

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2 (2023) 10 SCC 545.

3 (2025) 6 SCC 781.

IBC, 2016 is absolutely clear and unambiguous. Once an Insolvency Resolution Petition is admitted, the interim moratorium operates automatically and instantaneously. The broad expression, "any legal action or proceeding in respect of any debt" used in Section 96, covers in its fold a prosecution for an offence under Section 138 of the NI Act, 1881, as well.

16. Amplifying the aforesaid submission Mr. Bhuta would urge a complaint under Section 138 of the NI Act, 1881, has its genesis in the issuance of a cheque towards discharge of a legally enforceable debt or liability. Thus, the Supreme Court in the case of **P. Mohanraj (Supra)**, enunciated that, though proceedings under Section 138 of the NI Act, 1881, are criminal in form, yet they are primarily intended to enforce the payment of a debt or discharge of the liability. Consequently, the continuation of the prosecution even against the director of a company during the pendency of the moratorium is legally impermissible.

17. Mr. Bhuta also laid emphasis on the non-obstante clause contained in Section 238 of IBC, 2016, which gives an overriding effect to the provisions of IBC, 2016, over any other law or instrument. Thus, since Section 6 defines a cheque as an instrument, the provisions of the moratorium would also extend to any instrument having effect by virtue of any law.

18. Mr. Bhuta further submitted that, the IBC, 2016 itself carves out the specific exceptions in the form, “excluded debts” under Section 79(15). The Parliament has not included the debt arising out of dishonour of cheque within the category of excluded debts and, therefore, the moratorium under Section 96 of the IBC, 2016 must apply to the proceedings under Section 138 of the NI Act, 1881.

19. A contrary view, Mr. Bhuta would urge, would defeat the object and purpose of IBC, 2016. If the creditors are allowed to pursue the prosecution under Section 138 of the NI Act, 1881, against the directors, whilst the proceeding stand stayed against the corporate entity, it would lead to a chaotic situation and undermine the collective insolvency resolution mechanism. In any event, no prejudice is likely to be caused to the complainant as the moratorium under Section 96 can only be for a limited period.

20. Ms. Aakanksha Nehra, the learned Counsel for the Petitioner in Writ Petition Nos. 2228 of 2025 and 2229 of 2025 submitted that, there is a distinction between the Insolvency Resolution process at the instance of the debtor himself and on the Application of a Creditor. In the underlying proceeding in Writ Petition No. 1749 of 2024, the IRP was initiated by the creditors. Therefore, the decision in the case of **Rakesh Bhanot (Supra)** which arises out of the IR Process initiated by debtor himself would not govern the facts of the case. This crucial distinction was lost sight of the by the Trial Court. If the IR Process is initiated at the instance of the creditor, the interim moratorium under Section 96 must operate, submitted Ms. Nehra.

21. Mr. Sudeep Pasbola, the learned Senior Advocate for the Applicants would urge that the claim of complainant falls within the ambit of 'debt' for the purpose of Section 96 of IBC, 2016. The trial Court committed a grave error in law in carving out a distinction between the personal debt of the Applicants and that of the corporate entity. If the effect test is applied, there is no justification for such artificial distinction. Secondly, the proceeding under Section 138 of the NI Act,1881, is a quasi-criminal proceeding for recovery of the debt as the predominant object is to restitute the complainant. Thirdly, if the benefit of the interim moratorium under Section 96 of IBC, 2016, is not made applicable to the proceeding under Section 138 of the NI Act, 1881, the very object of IBC would be jeopardized.

22. In order to lend support to the aforesaid submissions, the learned Counsel for the Applicants/Petitioners have placed reliance on the judgments of the Supreme Court in the cases of (I) **Dilip B. Jiwrajka V/s. Union of India and Ors.**[4]; (ii) **P. Mohanraj and Ors. V/s. Shah Brothers Ispat Pvt. Ltd. (supra)**; (iii) **Ajay Kumar Radheyshyam Goenka V/s. Tourism Finance Corporation of India Ltd. (supra)**; (iv) **Indian**

4 (2024) 5 SCC 435

Overseas Bank V/s. M/s. RCM Infrastructure Ltd.[5] and the judgment of the learned Single Judge of this court in the case of **Sheetal Gupta V/s. National Spot Exchange Ltd. and Anr.**[6].

For Respondent No.1 – complainant :

23. Mr. Arvind Lakhawat, the learned Counsel for Respondent No.1-complainant, stoutly countered the submissions on behalf of the Applicants-Petitioners and supported the impugned order.

24. Mr. Lakhawat would urge that the issue sought to be raised on behalf of the accused is settled by binding judgments of the Supreme Court in the cases of **Rakesh Bhanot (Supra)** and **Ajaykumar Goenka (supra)**.

25. The support sought to be drawn by the Accused from the decisions in the cases of **Dilip B Jiwrajka Vs Union of India**[7] and **Sheetal Gupta Vs National Spot Exchange Ltd**[8] is of no avail. Right from the judgment of the Supreme Court in the case of **P Mohanraj (Supra)** it is well-recognized that the moratorium, be it under Section 14 or Section 96 of the IBC, 2016, does not operate qua the proceeding against natural persons.

26. The decision in the case of **P Mohanraj (Supra),** according to Mr. Lakhawat, supports the stand of the complainant. In the case of **Sheetal**

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5 2022 LiveLaw (SC) 496

6 Cri. Appl. No.1151 of 2022 dt. 10 Jan. 2023

7 (2024) 5 SCC 435.

8 2023 SCC OnLine Bom 3095.

Gupta (Supra) the attention of this Court was not drawn to the relevant observations in the judgment in the case of **P. Mohanraj (Supra)** pertaining to the natural persons in the matter of the application of moratorium. Nor the distinction between the provisions contained in Sections 14 and 96 of IBC, 2016 was considered by this Court. Comparing and contrasting the provisions contained in Section 14(1) (a), which uses the expression, "against the corporate debtor" and Section 96 (1) (b) (i), which uses the expression, "in respect of any debt", Mr. Lakhawat submitted that Section 96 governs the case of personal debt and not the debt of the corporate entity.

27. Mr. Lakhawat submitted that the reliance on the judgment in the case of **P Mohanraj (Supra)** is wholly misplaced as the said judgment does not strictly govern a case covered by Section 96 of IBC, 2016. On the contrary, the decision in the case of **Ajay Kumar Radhyeshyam Goenka (Supra),** Mr. Lakhawat would urge, makes it explicitly clear that there is no bar for continuation of prosecution for an offence punishable under Section 138 of the NI Act, 1881, qua the natural persons. Mr. Lakhawat submitted that after the decision in the case of **Rakesh Bhanot (Supra)** in a series of judgments, the challenge of an identical nature has been repelled by various Courts.

28. At this juncture, it is necessary to note that the parties were heard on the implications of the judgment of the Supreme Court in the case of

Dineshchand Surana Vs Uco Bank[9], whereby a two Judge Bench of the Supreme Court, after an elaborate analysis, enunciated that the moratorium under Sections 96 and 101 of IBC, 2016, respectively, is applicable qua the directors' who are saddled with the liability to discharge the compensatory obligation of the company by virtue of the use of the words, "any debt" therein. And the following questions were referred to a three Judge Bench :

> 1. Whether the provisions of Section 138 of the NI Act, 1881 and the objective underlying the enactment thereof indicate that it is a quasi-criminal in nature with a tilt towards the criminal side?
> 2. Whether the moratorium provisions under Part III of the IBC, 2016, should be made applicable on the entire proceedings under Section 138 of NI Act, 1881 or only to the compensatory aspect thereof?

29. The Counsels for the Applicants/Petitioners were in unison on the point that the decision on these Applications/Petitions be deferred till the larger Bench decides the aforesaid questions. It was submitted that the aforesaid judgment bolsters up the case of the Accused.

30. Per contra, the learned Counsel for the Respondents-complainant submitted that the aforesaid judgment reinforces the principle that, so far as the prosecution of the natural persons for an offence punishable under Section 138 of the NI Act, 1881, the moratorium is not attracted. What has been referred to the three Judge Bench is the aspect of the

9 2026 INSC 579

applicability of the moratorium to the compensatory aspect of the proceeding under Section 138 of the NI Act, 1881. Since, that stage is yet to be reached, there is no propriety in staying the underlying proceedings under Section 138 of the NI Act, 1881 till the decision of the larger Bench.

31. In any event, Mr. Lakhawat, the learned Counsel, would urge, it is settled position in law that the mere fact that a decision is referred to a larger Bench does not dilute the precedential authority of such decision. Thus this Court need not defer the decision on the Applications/Petitions which have been extensively heard.

32. To begin with, a resume of the provisions of the IBC 2016, which bear upon the determination of the question in controversy. Section 3(11) of IBC 2016 defines "debt", as under :

> "(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"

33. Chapter II of IBC 2016 makes the fasciculus of provisions in regard to the corporate insolvency resolution process. Under Section 6, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process. Section 7 provides for initiation of corporate insolvency resolution process by financial creditor. Section 9 provides for initiation of corporate insolvency resolution process by operational creditor.

34. Section 14(1) of IBC 2016, which provides for Moratorium, reads as under :

> "**14. Moratorium**. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely : -
>
> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any Court of law, tribunal, arbitration panel or other authority;
>
> (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right of beneficial interest therein;
>
> (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
>
> (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
>
> [*Explanation*. - For the purpose of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other

authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.]

35. Chapter III makes the provisions in relation to insolvency resolution process qua a person. Section 94 provides for insolvency resolution process at the instance of the debtor. Section 95 enables a creditor to initiate insolvency resolution process. They read as under :

> "**94. Application by debtor to initiate insolvency resolution process.** - <u>(1) a debtor who commits a default may apply</u>, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.
>
> (2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.
>
> (3) An application under sub-section (1) shall be submitted <u>only in respect of debts which are not excluded debts</u>.
>
> (4) A debtor shall not be entitled to make an application under sub-section (1) if he is -
>
> (a) an undischarged bankrupt;

(b) undergoing a fresh start process;

(c) undergoing an insolvency resolution process; or

(d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.

95. Application by creditor to initiate insolvency resolution process. - (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) <u>A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against</u> -

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to -

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified."

36. Section 96 of IBC, with which we are primarily concerned in these proceedings, provides for interim moratorium in the wake of insolvency resolution application under Section 94 or Section 95. Section 96 reads as under :

"96. Interim-Moratorium. - (1) When an application is filed under section 94 or section 95 -

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period -

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

37. Section 101 deals with the Moratorium. It reads as under :

> "**101. Moratorium.** - (1) When the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.
>
> (2) During the moratorium period -
>
> (a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
>
> (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
>
> (c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

> (3) Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.
>
> (4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

38. A conjoint reading of the aforesaid provisions would indicate that the Parliament with a view to ensure that there is no depletion of assets of the corporate debtor or a person against whom insolvency resolution process has been initiated in different modes and the debtor is revived as a running concern, insulating it/him from the claims of creditors during the period of insolvency resolution process, has introduced the device of moratorium.

39. While appreciating the interplay between the provisions contained in Section 14 and section 96, or, for that matter, Section 101 of the IBC 2016, the object of IBC 2016, in general, and the device of moratorium, in particular, deserves to be kept in view. The Parliament has undoubtedly used different expressions in Section 14 and Section 96 of the IBC 2016. Yet, while construing the terms used in the said provisions, the overarching object of the mechanism of moratorium cannot be lost sight of.

40. The Statement of Objects and Reasons indicates that IBC 2016 was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firm, individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an effective legal framework for timely resolution of insolvency and bankruptcy.

41. In the case of **P. Mohanraj (supra)**, a three-judge Bench of the Supreme Court emphasised that the object of a moratorium provision like Section 14, was to ensure that there is no depletion of corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefiting all stakeholders, which would include workmen of the corporate debtor.

42. At this juncture, the object of the provisions contained in Chapter XVII of the Negotiable Instruments Act, 1881, which came to be introduced by the amending Act, 1988, deserves to be noted. Chapter XVII was introduced to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments.

43. In the case of **Mosaraf Hossain Khan V/s. Bhagheeratha Engg. Ltd.**[10], the Supreme Court enunciated that the object of the provision of Section 138 of the NI Act, is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. Dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

44. In regard to the nature of the liability of the corporate entity, which could be enforced by resorting to the prosecution for an offence punishable under Section 138 of the NI Act, 1881, and the applicability of the moratorium qua the prosecution under Section 138 of the NI Act, 1881, in the case of **P. Mohanraj (supra)**, the Supreme Court enunciated that the word "proceedings" covers in its fold a prosecution for an offence punishable under Section 138 of the NI Act, 1881. The

10 (2006) 3 SCC 658

observations in paragraph Nos.31, 35.2, 35.3 and 36 are instructive, and, hence, extracted below :

> "31. It can thus be seen that regard being had to the object sought to be achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process. Given this fact, it is difficult to accept that *noscitur a sociis or ejusdem generis* should be used to cut down the width of the expression "proceedings" so as to make such proceedings analogous to civil suits.
>
> .....
>
> 35.2 A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding. This is for the reason that a Section 138 proceeding would be a legal proceeding "in respect of" a debt. "In respect of" is a phrase which is wide and includes anything done directly or indirectly – see Macquarie Bank Ltd. v. Shilpi Cable Technologies

Ltd.[11] (at page 709) and Giriraj Garg v. Coal India Ltd.[12] (at pages 202-203). This, coupled with the fact that the Section is not limited to 'recovery' of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.

35.3 When the language of these Sections is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96, and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these Sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor.

36. For all these reasons, therefore, given the object and context of Section 14, the expression "proceedings" cannot be cut down by any rule of construction and must be given a fair meaning consonant with the object and context. It is conceded before us that criminal proceedings which are not directly related to transactions evidencing debt or liability of the corporate debtor would be outside the scope of this expression." (emphasis supplied)

11 (2018) 2 SCC 674

12 (2019) 5 SCC 192

45. The Supreme Court went on to examine the co-relation of Section 14 with the other provisions of IBC 2016, especially Section 32-A, and enunciated that, a moratorium provision does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end.

46. While considering the question whether natural persons are covered under Section 14 of IBC 2016, after following the pronouncement in the case of **Aneeta Hada V/s. Godfather Travels & Tours (P) Ltd.**[13], which enunciated that a proceeding under Section 138 read with 141 of the Act, 1881 cannot be initiated or continued against the directors / persons in management or control of corporate debtor, without the corporate debtor being impleaded as an accused, the Supreme Court enunciated the law as under :

> "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

13 (2012) 5 SCC 661

> 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 supplied)

47. The thrust of the submission on behalf of the Applicants/Petitioners was that, in view of the difference in the terminology used in Section 96 of the IBC 2016, the aforesaid distinction drawn in the matter of applicability of moratorium under Section 14 qua natural persons does not apply with equal force. Emphasis was laid on the expressions "in relation to all the debts" used in sub-section (a) of Section 96(1), and "any legal action or proceedings" and "in respect of any debt" used in sub-clauses (i) and (ii) respectively, of clause (b) of Section 96(1).

48. As noted above, an endeavour was made to drive home the point that, in **P Mohanraj (supra)**, the Supreme Court was concerned with the moratorium qua corporate insolvency resolution process initiated under Chapter II of IBC 2016. Reliance was placed on the observations in para 35.2 (extracted above), to the effect that a legal action or proceeding in respect of any debt would, on its plain language, include a section 138 proceeding, as it would be a legal proceeding "in respect of" a debt. And "in respect of" is a phrase which is wide and includes anything done directly or indirectly. Thus, any legal proceeding even indirectly relatable to recovery of any debt would be covered.

49. The prosecution for an offence punishable under Section 138 of the NI Act, 1881, if viewed in the context of the consequences that the conviction may entail with fine double the amount of the cheque and/or compensation, is essentially for the recovery of the debt or liability towards the discharge of which a dishonoured cheque was drawn. The provisions contained in Section 96 must receive an expansive interpretation, was the substratum of the submissions on behalf of the Applicants/Petitioners.

50. The response on behalf of the Respondent No.1 -complainant was that the question sought to be raised is no longer *res integra* and stands answered by the binding judgments of the Supreme Court. Taking the Court through the provisions of Section 141 of the Act, 1881, especially the nature of vicarious liability fastened on the directors / persons in charge of the affairs of the corporate entity, it was submitted that the debt or liability remains that of the corporate entity and does not assume the character of personal debt of the directors / responsible persons.

51. At this stage, reference to the judgments of the Supreme Court, which were pressed into service in support and negation of the submissions canvassed, would be advantageous.

52. In the case of **Ajay Kumar Radheyshyam Goenka (supra),** the facts were that the Appellant – Ajay Kumar was the Promoter and Managing Director of a corporate entity namely M/s. Rainbow Papers Ltd. The Respondent – Tourism Finance Corporation of India Ltd., had extended financial facilities to the corporate entity. A cheque drawn by the corporate entity towards the discharge of the part of the liability was dishonoured on presentment, and, eventually, that led to filing of a complaint under Section 138 read with 141 of the NI Act, 1881. In the meanwhile, the operational creditor filed an application under Section 9 of the IBC 2016 before the NCLT. The Appellant filed an application for discharge before the learned Magistrate. As the learned Magistrate and the High Court did not accede to the prayer of the Appellant, an SLP was filed before the Supreme Court.

53. In a leading judgment, two Honourable Judges of the Supreme Court considered the question :

> whether in the wake of the initiation of the insolvency resolution process under IBC 2016, a

prosecution for an offence punishable under Section 138 read with 141 can simultaneously continue ?

54. And after appraisal of the provisions of IBC 2016 and Negotiable Instruments Act, 1881, and the objects of two enactments, enunciated the law as under :

> "16. The issue whether the respondent is a Secured Financial Creditor or an Unsecured Financial Creditor within the meaning of the said Code is not something we can deal with as that is the matter of the proceedings under the said Code or any appeal preferred therefrom. The only issue with which we are concerned with is whether during the pendency of the proceedings under the said Code which have been admitted, the present proceedings under the N.I.Act can continue simultaneously or not.
>
> 17. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts is quite different and would not intercede each other. In fact, a bare reading of Section 14 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.

18. It cannot be said that the process under IBC whether under Section 31 or Section 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 the 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.

19. 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."

55. Evidently, the judgment in the case of **Ajay Kumar Radheyshyam Goenka (supra)**, arose out of the corporate insolvency resolution process. The Supreme Court has noted the submissions canvassed on behalf of the parties in relation to the decision in the case of **P. Mohanraj (supra)**, and the Supreme Court has taken a view which was in consonance with its prior decision in the case of **P. Mohanraj (supra)**. The Supreme Court has in terms observed that the object of IBC 2016 and the NI Act, 1881 are distinct and would not intercede each other. The extinguishment of the debt, consequent to the insolvency resolution process under IBC 2016, would not ipso facto result in extinguishment of criminal proceeding. Nor can the termination of the proceeding against the corporate entity would result in automatic exoneration of the directors / responsible persons from the offence punishable under Section 138 of the Act, 1881.

56. Then came the decision of the two-judge Bench of the Supreme Court in the case of **Rakesh Bhanot (supra),** wherein the precise question; that is sought to be raised in these applications / Petitions, was considered by the Supreme Court. The question was formulated by the Supreme Court, as under :

> "Whether the proceedings initiated against the appellants / Petitioners (natural persons) under Section 138 read with section 141 of the NI 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 ?

57. To appreciate the ratio in the case of **Rakesh Bhanot (supra)**, with greater clarity, it may be advantageous to note the facts in the backdrop of which the said decision was rendered.

58. The Respondent therein had initiated a prosecution for an offence punishable under Section 138 read with Section 141 of the NI Act, 1881 against M/s. Arjun Mall Retail Holdings Pvt. Ltd., and its directors, including Rakesh Bhanot – Appellant. During the pendency of the said complaint, the Appellant filed an application before the NCLT under Section 94 of IBC to initiate the personal insolvency resolution process. Upon the admission of the Petition, the Appellant sought stay to the prosecution on the premise that the interim moratorium under Section 96 was triggered. The learned Magistrate as well as the High Court repelled the contention of the Appellant. The Supreme Court considered the question, whether the prosecution under Section 138 read with 141 of the NI Act, is required to be stayed, in view of the operation of the interim moratorium under Section 96 of the IBC 2016, consequent to initiation of insolvency resolution process by the debtor under Section 94.

59. The two-judge Bench of the Supreme Court, after an analysis of the judgments in the cases of **P. Mohanraj (supra)**, and following the three-judge Bench judgment in the case of **Ajay Kumar Radheyshyam Goenka (supra)**, answered the aforesaid question to the effect that the prayers of the Appellants / Petitioners to quash the prosecution under Section 138 of the Act, 1881, relying on the interim moratorium under Section 96 of IBC 2016 cannot be entertained. The observations of the Supreme Court in paragraph Nos.11 to 13 and 17 to 18 are material, and, hence, extracted below :

> "11. Admittedly, the appellants / petitioners are facing trial for the offence under section 138 / 141 of the N.I. Act, 1881, at the instance of the respondents / complainants. While so, they initiated the personal insolvency proceedings under the IBC and sought exemption from the section 138 proceedings before the trial Court, referring to interim moratorium provided under Section 96 IBC. <u>It is to be noted that upon the application being admitted, the moratorium provisions under the IBC offer protection only to the corporate debtor, i.e., the company, and do not extend protection against civil liability to personal guarantors by specific exclusion or to any individual who is prosecuted for committing a criminal act</u>.

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. <u>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</u>

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.

13. 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. The acceptance of the resolution plan under Section 31 IBC or its implementation thereof will have no effect on the prosecution under Section 138 of the N.I. Act, 1881. Similarly, the acceptance of the report by the resolution professional under Section 100 and the moratorium under Section 101, which reprises Section 96, will not bar the continual of any criminal action. The cause of action for prosecution under Section 138 of NI Act commences on the dishonor of the cheque and the failure to pay the amount unpaid because of dishonour, within 15 days from the date of receipt of notice demanding payment. It is pertinent to mention here that the prosecution can be only with respect to the amount unpaid by dishonour of the cheque irrespective of the actual debt. The distinction between the right to sue based on a dishonoured cheque by initiating a civil suit and launching a prosecution under Section 138 of the Negotiable Instruments Act is significant. In case of former, the interim moratorium can operate, but not in case of later.

……….

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."
>
> (emphasis supplied)

60. It is pertinent to note that, the Supreme Court has observed that the decision in the case of **Dilip B Jiwrajka (supra)**, on which reliance was placed on behalf of the Petitioners/Applicants, was of no assistance to the Appellant therein, as in the case of **Dilip B Jiwrajka (supra),** the Supreme Court was dealing with the constitutional validity of certain provisions of IBC and the applicability of the moratorium to the provisions under Section 138 of the Act, was not the subject matter of consideration in the said case.

61. It would be profitable to immediately notice the manner in which three-judge Bench of the Supreme Court exposited the import of Section 96 of IBC 2016 in the case of **Dilip B. Jiwrajka (supra).** The observations in paragraph Nos.57 and 58 are instructive, and, hence, extracted below :

> "57. Section 96, as its marginal note indicates, deals with an "interim-moratorium". In terms of Section 96, the interim moratorium takes effect on the date of the application. In other words, the very submission of an application under Section 94 or Section 95 triggers the interim moratorium which then ceases to have effect on the date of the admission of the application (under Section 100). The consequences which flow from an

interim moratorium are specified in clause (b) of sub-section (1) of Section 96. The impact of the interim-moratorium under Section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in clause (b)(i) and clause (b)(ii) of sub-section (1) of Section 96 are "in respect of any debt". These words indicate that the interim-moratorium which is intended to operate by the legislature is primarily in respect of a debt as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim-moratorium is to restrain the initiation or the continuation of legal action or proceedings against the debt.

58. This must be contra-distinguished from the provisions for moratorium which are contained in Section 14 in relation to the CIRP under Part II. Section 14(1)(a) provides that on the insolvency commencement date, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including proceedings in execution shall stand prohibited by an order of the adjudicating authority. Clause (b) of sub-section (1) of Section 14 empowers the adjudicating authority to declare a moratorium restraining the transfer, encumbrance, alienation or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein. Significantly, the moratorium under Section 14 operates on the order passed by an adjudicating authority. The purpose of the moratorium under Section 96 is protective. The object of the moratorium is to insulate the corporate debtor from the

institution of legal actions or the continuation of legal actions or proceedings in respect of the debt."

(emphasis supplied)

62. The provisions contained in Sections 94, 95 and 96 are required to be read in juxtaposition. The emphasis cannot be laid on the expression "in relation to all the debts" in clause (a) and "in respect of any debt" in clause (b) of sub-section (1) of Section 96, only. The opening words of sub-section (1) of Section 96 are of material significance. Interim moratorium under Section 96 operates "when an application is filed under Sections 94 or 95". Under Section 94, a debtor who commits default may apply for initiating the insolvency resolution process. Thus, a person who makes an application under Section 94 must be a debtor. Likewise, under Section 95, the creditor who applies for initiating insolvency resolution process is enjoined under sub-section (4) to furnish details and documents relating to "the debts owed by the debtor to the creditor or creditors." Sections 94 and 95 thus, make it abundantly clear that the person who initiates insolvency resolution process or against home insolvency resolution process is initiated must be a debtor in the first instance.

63. It is well recognized, the shareholders or the directors of the company are not the owners of the property of the company. It has an independent juristic existence. When a corporate entity incurs a debt, either by pledging the credit of its property or otherwise, the debt remains that of the corporate entity. Such debt does not become the debt of the directors of the company. Thus, in a case where a cheque is drawn towards the discharge of such debt by the company on an account maintained by the company, the debt or liability is primarily that of the company. The directors of the company or persons in charge of the affairs of, and responsible to, the company, are liable to be prosecuted on account of deeming provisions contained in Section 141 of the Act, 1881. That, however, does not alter the character of the debt in discharge of which the corporate entity has drawn the cheque.

64. It would be contextually relevant to note that, sub-section (2) of Section 94 as well as sub-section (2) of Section 95, make provisions in relation to a partnership firm. Under sub-section (2) of Section 95, the creditor may apply for initiating the insolvency resolution process against one or more partners of the firm or a firm, where any partnership debt is owed to him. Thus, the distinction between the corporation as a juristic person and its directors cannot be lost sight of, when construing the provisions contained in Section 96 read with Sections 94 or 95 of IBC 2016. To put it in other words, the debt referred to in Section 96 must be a debt of the person by or against whom the insolvency resolution process is initiated under Sections 94 or 95, as the case may be.

65. It would be contextually relevant to note that, in a different context, the Supreme Court was called upon to examine the width of the applicability of the provisions contained in Section 96 of the IBC 2016 in the case of **Saranga Anilkumar Aggarwal V/s. Bhavesh Dhirajlal Sheth and Ors.**[14]. In the said case, the home buyer / complainant had lodged a consumer dispute before the Consumer Fora. The said complaint was allowed. During the pendency of the execution proceedings before the Consumer Fora, SBI initiated personal insolvency proceedings under Section 95 of IBC 2016 against the Appellant in her capacity as the guarantor for the credit facilities extended to another entity. Invoking the provisions of the interim moratorium under Section 96 of IBC 2016, the Appellant moved an application before the NCDRC to stay the execution of the penalty order, *sine die*. It was urged that the initiation of the personal insolvency resolution under Section 95 brought into effect immediate and automatic interim moratorium called "any legal action or proceedings pending in respect of any debt", inclusive of the proceedings for execution of the orders passed by the Consumer Fora. NCDRC did not accede to the said prayer.

66. In the appeal, the Supreme Court considered the question whether the execution of regulatory penalty orders passed under Section 27 of the Consumer Protection Act can be stayed in view of the

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interim moratorium provisions envisaged by Section 96 of IBC 2016. The Supreme Court exposited that the statutory protection applies strictly to a “debt” as defined under the IBC. It does not extend to regulatory penalties arising from infractions of consumer welfare legislation. The purpose of the interim moratorium under Section 96 is to provide a temporary, targeted breathing room for individuals to restructure personal liabilities, not to act as a blanket shield against regulatory non-compliance.

67. Drawing distinction between the corporate moratorium under Section 14 and the personal interim moratorium under Section 96, the Supreme Court clarified that Section 14 is much broader in scope, freezing all execution and enforcement actions against a corporate debtor to preserve its overall valuation. In contrast, Section 96 is limited in its scope, staying only “legal actions or proceedings in respect of any debt”. The legislative intent behind limiting the scope of interim moratorium under Section 96 IBC must be respected, and a blanket stay on all regulatory penalties would defeat the objectives of consumer protection laws.

68. Another significant approach delineated by the Supreme Court in the case of **Saranga Anilkumar Aggarwal (supra)**, was the implications of the “excluded debt” under Section 79(15) of the IBC 2016, in the matter of the operation of the moratorium. Under Section 79(15), "excluded debt" is defined as under :

> "(15) "excluded debt" means -
> (a) liability to pay fine imposed by a Court or tribunal;
> (b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;
> (c) liability to pay maintenance to any person under any law for the time being in force;
> (d) liability in relation to a student loan; and
> (e) any other debt as may be prescribed;"

69. Laying emphasis on clauses (a) and (b) of sub-section (15) of Section 79, the Supreme Court in the case of **Saranga Anilkumar Aggarwal (supra)**, emphasised that, liabilities arising from court-imposed fines, penalties or damages for negligence or breach of obligations are explicitly excluded from being discharged or restructured under the resolution process. The NCDRC penalties and compensatory damages for structural delays fall squarely within this category of "excluded debts". Consequently, they remain completely unaffected by the commencement of individual insolvency proceedings.

70. In the context of the controversy at hand, the aforesaid decision in the case of **Saranga Anilkumar Aggarwal (supra),** is of critical salience from two perspectives. First, in the said case, personal insolvency resolution process was initiated by the creditor under Section

95 and not by the debtor himself under Section 94, which was the case in **Rakesh Bhanot (supra)**. Therefore, the distinction sought to be drawn by Ms.Nehra, learned Counsel for the Petitioner, in the matter of the applicability of the interim moratorium under Section 96, in the cases of initiation of insolvency resolution process by the debtor himself under Section 94, and such initiation by the creditor under Section 95, falls through.

71. Second, the decision in the case of **Saranga Anilkumar Aggarwal (supra)** also substantially addresses the thrust of the submission on behalf of the Applicants/Petitioners that the conviction under Section 138 read with 141 of the NI Act, 1881, may entail the consequences of payment of fine and/or compensation by the natural persons, in the capacity of the directors/responsible persons of the corporate entity, and, therefore, if the said test is applied, the moratorium becomes operational. The Supreme Court has clarified that the liability to pay a fine imposed by the Court or Tribunal falls in the category of "excluded debt" as provided under Section 79(15), and, resultantly, the imposition of fine and/or direction for payment of compensation remained unaffected by the commencement of individual insolvency proceedings.

72. This leads me to the decision in the case of **Dineshchand Surana Vs Uco Bank (supra)**, which has referred the matter to the larger Bench. As noted above, the parties were heard on the import of the recent decision in the case of **Dineshchand Surana Vs Uco Bank (supra)** and the learned Counsel for the respective parties made an endeavour to place reliance on the relevant observations in the judgment in the case of **Dineshchand Surana Vs Uco Bank (supra),** which suit their respective cases.

73. For instance, Mr. Bhanushali, after taking the Court through the observations contained in paras 29 and 74, laid emphasis on the observations in para 120, wherein the Supreme Court observed that the reasoning adopted by the three-judge Bench in the case of **P. Mohanraj (supra)**, for calling Section 138 of the NI Act, a "civil sheep in criminal wolf's clothing" is based primarily on how the proceedings under section 138 come to be prosecuted.

74. While the Supreme Court in **Dineshchand Surana (supra)**, agreed that the procedure for the prosecution of the offence of cheque dishonour makes a departure from the procedure ordinarily followed under the CrPC, yet such differences, in the opinion of the Court, was only because cheque dishonour has been statutorily designated as a criminal offence and would not be regarded so in the absence of Section 138. Eventually, the Supreme Court observed that, where the injury continues to remain civil but the act causing it has intentionally been made criminal by way of a statutory provision, the Bench found it difficult to accept that the offence is a "civil sheep in criminal wolf's clothing". In the case of **Dineshchand Surana (supra)**, the Supreme Court went on to emphasise the compensatory aspect of the provisions contained in Section 138 of the Act, 1881.

75. Mr. Bhuta, learned Counsel for the Applicants joined Mr. Bhanushali in laying emphasis on the observations of the Supreme Court in paragraph Nos.131 and 133, especially where the Supreme Court observed that, the expression "legal action or proceeding in respect of any debt" when read stand alone would undoubtedly include proceedings under Section 138 of the NI Act. A reading of the said expression with the qualifier "in respect of any debt" would also not exclude Section 138 proceedings considering that the dishonoured cheque thereunder must be drawn for the payment in whole or in part, of any legally enforceable debt or liability.

76. Mr. Bhanushali would urge that the Supreme Court has given its imprimatur to the construction of the word "debt" in the case of **Sheetal Gupta Vs National Spot Exchange Ltd (supra).**

77. In contrast, Mr. Lakhanwat, learned Counsel for Respondent No.1 would submit that the decision in the case of **Dineshchand Surana (supra)**, in effect, reiterates the earlier pronouncements that the natural persons cannot draw any mileage out of the initiation of insolvency resolution process and the proceedings against the natural persons are not at all required to be stayed by invoking the provisions contained in Section 96 of IBC.

78. The Supreme Court has underscored the predominantly criminal nature and objective of Section 138 of the Act, 1881. Having made it explicitly clear that the moratorium under Section 96 of IBC 2016 cannot be used to interdict the criminal aspect of Section 138 proceedings, the Supreme Court has referred the question whether, the compensatory aspect of the moratorium is stayed by the operation of the moratorium under Section 96 of IBC.

79. Mr. Lakhanwat placed reliance on the following observations of the Supreme Court in the case of **Dineshchand Surana (supra)** :

> "158. For the reasons in the aforesaid, we find that the moratorium provisions under Part III of the IBC must be made applicable on the compensatory aspect of Section 138 of the NI Act owing to the inherently civil nature of the same. Therefore, once the criminal court exercising jurisdiction over a complaint under Section 138, orders compensation under Section 395 of the BNSS, then the moratorium would be made applicable if the recovery of compensation remains pending. Similarly, the moratorium provision would not put a temporary bar on the initiation of Section 138 proceedings. The same may be initiated and taken to it its logical conclusion. The drawer of the cheque, if convicted must discharge his personal criminal liability by serving the sentence of imprisonment or paying the fine imposed. However, if the court has adjudicated that compensation ought to be

given, then the recovery thereof must be temporarily halted. The impact of IBC proceedings on the compensatory aspect of Section 138 of the NI Act must be the same as how such proceedings would affect any other civil legal action or proceeding in respect of any other debt. We say so because the assumption of 'debt' is inherent in the provision under Section 138 of the NI Act……..

………..

166. Therefore, we have no qualms in observing that for an individual undergoing personal insolvency, the moratorium under Sections 96 and 101 of the IBC respectively, would stay the operation of the recovery of compensation, if any, ordered by the criminal court while adjudicating the complaint under Section 138 of the NI Act.

171. The position of law in this regard has been reaffirmed by the dicta of this Court in Ajay Kumar Radheshyam Goenka (supra), P. Mohanraj (supra), as well as Rakesh Bhanot (supra). Therefore, the extension of criminal liability under Section 138 of the NI Act, to the directors of the company by the operation of Section 141 is well established canon of law.

187. In such view of the matter, we may with a view to obviate any confusion, clarify that moratorium under Sections 96 and 101 respectively, when triggered by the insolvency proceedings of the individual director of such a corporate debtor which is also undergoing insolvency or liquidation under Part II of the IBC, stays the recovery of compensation ordered under Section 395 of the BNSS during the proceedings under Section 138 of the NI Act.

> 193. We may, at the cost of repetition, reiterate that the moratorium provisions would not operate in respect of the criminal aspect of Section 138 and the director(s) of the corporate debtor cannot escape personal criminal liability, as clarified in Rakesh Bhanot (supra)."
>
> (emphasis supplied)

80. At this juncture, to correctly understand the enunciation of the Supreme Court in the case of **Dineshchand Surana (supra),** it is necessary to also extract the observations in paragraph 133, which read as under :

> "133. We are conscious of the fact that the commission of the criminal offence of cheque dishonour results in the civil injury of non-payment of 'debt'. However, in our considered view, to make moratorium provisions under the IBC applicable on proceedings under Section 138 of the NI Act, solely because of the civil nature of the injury is untenable in light of the objective sought to be achieved by the enactment of Section 138. We may even go so far as to say that the applicability of moratorium provisions on Section 138 proceedings makes the same equivalent to a debt recovery mechanism, which could never have been the intention of the legislature." (emphasis supplied)

81. The aforesaid observations of the Supreme Court in the case of **Dineshchand Surana (supra),** make it explicitly clear that the Supreme Court has not departed from the law enunciated in the cases of **Ajay Kumar Radheyshyam Goenka (supra)**, and **Rakesh Bhanot (supra)**. The

Supreme Court has, at the cost of repetition, reiterated that the moratorium provisions would not operate in respect of criminal aspect of Section 138 and the directors of the corporate debtors cannot escape from the personal liability in the event they are found guilty of the offence punishable under Section 138 read with 141 of the Act, 1881. The moratorium under Sections 96 and 101 respectively, when triggered by the insolvency proceedings of the individual director of such a corporate debtor which is also undergoing insolvency or liquidation under Part II of the IBC, stays the recovery of compensation ordered under Section 395 of the BNSS during the proceedings under Section 138 of the NI Act.

82. Therefore, the principal submission on behalf of the Applicants / Petitioners that the trial itself is required to be stayed during the currency of the interim moratorium under Section 96 of IBC, does not find support, even from the decision in the case of **Dineshchand Surana (supra)**. At best, the criminal Court may be called upon to examine the said aspect at the stage of the consideration on the aspect of the imposition of punishment, particularly a direction to pay the compensation qua the natural persons under Section 395 of BNSS or at the stage of effecting recovery of the compensation from such directors. However, even from the point of view of the moratorium on the compensatory aspect, there is no justification to stay the trial of the complaint for the offence punishable under Section 138 read with Section 141 of the Act, qua the individual directors.

83. As regards the reference of the question to the larger Bench, the legal position is no longer res integra. It is well recognized, the reference of correctness of the view recorded in a judgment to a larger Bench does not dilute the precedential value of the referred judgment. A useful reference can be made to the decision of the Supreme Court in the case of **Ashok Sadarangani and Anr. V/s. Union of India and Ors.**[15], wherein it was enunciated that the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.

84. In the case of Union Territory of **Ladakh and Ors. V/s. R1 : Jammu and Kashmir National conference and Anr.**[16], the Supreme Court has again emphasised that it is not open, unless specifically directed by the Supreme Court, to await an outcome of a Reference or a Review Petition. It is also not open to a High Court to refuse to follow the judgment of the Supreme Court by stating that it has been doubted by the latter co-ordinate Bench. The observations in para 35 read as under :

15 AIR 2012 SC 1563
16 (2024) 18 SCC 643

> "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……."

85. In the respectful understanding of this Court, the two-judge Bench decision of the Supreme Court in the case of **Dineshchand Surana (supra)**, cannot be said to have taken a view which is completely contrary to the one recorded in the decisions in the cases of **Ajay Kumar Radheyshyam Goenka (supra)** and **Rakesh Bhanot (supra)**. Nay the two-judge Bench observed in no unequivocal terms that the criminal aspect of the prosecution under Section 138 of the Act, 1881 would not be affected by the moratorium provisions of the IBC 2016 and the directors of the corporate debtor cannot escape personal criminal liability.

86. In this view of the matter, this Court is not inclined to accede to the submission on behalf of the Applicants/ Petitioners that the proceedings are required to be stayed till the decision of the reference by the larger Bench.

87. At this juncture, it is also necessary to note the stage of the underlying proceedings before the learned Magistrates :

Sr. No.	Case Details	Stage
1	NSEL V/s. Mohan India 9649/SS/2005 and 10 other complaints. (Cheque amount – 675 Crores) HC expedited	For further cross-examination of C.W.1
2	NSEL V/s. Lotus 243/SS/2017 (Cheque amount – 252 Crores) HC Expedited	For final arguments
3	NSEL V/s. Metkore Alloys 2216/SS/2017, 10560/SS/2016 (Cheque Amount – 18 Crores) HC Expedited	For recording statement under Section 313 of Cr.P.C.
4	NSEL V/s. White Water Foods 9357/SS/2026, 9358/SS/2016 (Cheque amount – 84 Crores)	For further cross – examination of bank witness

88. As the underlying proceedings in almost all the matters have reached an advanced stage and the trial in the complaints are pending since 10 or more years, this Court does not consider it appropriate to stay the trial, till the decision by the larger Bench.

89. The conspectus of aforesaid consideration is that the trial Court has proceeded on the premise that, for the applicability of the moratorium under Section 96 of the IBC 2016, qua the prosecution under Section 138 of the Act, 1881, the debt ought to have been incurred by the debtor in his personal capacity and not as a feature of vicarious liability.

90. Incontrovertibly, the debt in question is that of the corporate entity and the concomitant factors to constitute an offence punishable under Section 138 of the Act, 1881, are in relation to the failure of the corporate entity to pay the amount covered by the respective cheques, in discharge of which the cheques were drawn by the corporate entity. The Applicants / Petitioners have been arraigned by invoking the provisions contained in Section 141 of the Act, 1881.

91. The decisions in the cases of **Ajay Kumar Radheyshyam Goenka (supra)** and **Rakesh Bhanot (supra)**, authoritatively enunciate that, in a case of the present nature, the initiation of the insolvency resolution process, either under Part II or III does not preclude the continuation of the prosecution for an offence punishable under Section 138 of the Act, 1881.

92. Reliance on a decision of the learned Single Judge of this Court in the case of **Sheetal Gupta (supra)**, is of no assistance to the Applicants / Petitioners as the subsequent decisions of the Supreme Court in the cases of **Ajay Kumar Radheyshyam Goenka (supra)** and **Rakesh Bhanot (supra)**, have enunciated in clear and explicit terms that the moratorium under Section 96 of IBC 2016 does not operate qua a prosecution under Section 138 of the Act, 1881, in relation to the individual director of the corporate entity.

93. Reference of the questions to the larger Bench in the case of **Dineshchand Surana (supra)**, does not assist the cause of the Applicants / Petitioners as the Supreme Court in the said judgment has reiterated multiple times that, the criminal aspect of the prosecution for an offence punishable under Section 138 of the Act, 1881 cannot be stayed by invoking the provisions of interim moratorium under Section 96 of the IBC 2016 and the reference is made for an authoritative pronouncement as to whether the moratorium provisions of Part III of IBC should be made applicable to the proceedings under Section 138 of the Act, 1881 and only to the compensatory aspect.

94. In the meanwhile, till the reference is decided by the larger Bench, the precedential value of the decisions in the cases of **Ajay Kumar Radheyshyam Goenka (supra)** and **Rakesh Bhanot (supra),** remains intact.

95. For the foregoing reasons, the Applications / Petitions deserve to be dismissed.

96. Hence, the following order :

ORDER

(i) The Applications / Petitions stand dismissed.

(ii) Rule discharged.

(iii) In view of the dismissal of the Applications / Petitions, interim orders stand vacated and all Interim Application (s), if any, also stand disposed.

[N. J. JAMADAR, J.]

97. At this stage, Mr. Bhanushali, learned Counsel for the Applicants seeks continuation of the interim relief.

98. Since the complaints are pending for almost 10 years and in the light of the view this court is persuaded to take, the prayer for continuation of the stay to the trial before the Magistrates', does not seem justifiable.

99. Hence, the oral application for stay stands rejected.

[N. J. JAMADAR, J.]