ABC 2025(I) 758 (DEL)
ACQUITTAL & BAIL CASES

HIGH COURT OF DELHI

(Amit Mahajan, J.)

CRL.M.C. 6170/2022 & CRL.M.A. 24285/2022

&

CRL.M.C. 6178/2022 & CRL.M.A. 24297/2022

Decided on : 17 December 2024

GANESH CHANDRA BAMRANA & OTHERS *- Petitioner(s).*

Versus

RUKMANI GUPTA & ORS. *- Respondent(s).*

Law Covered :- ***(A) Negotiable Instruments Act, 1881 – S. 138 – Corporate Insolvency & Dishonour of Cheques – Effect of Moratorium Under IBC – Cheques issued before the initiation of Corporate Insolvency Resolution Process (CIRP) but presented during the moratorium period cannot form the basis of a prosecution under Section 138 NI Act – Held, once the National Company Law Tribunal (NCLT) imposes a moratorium under Section 14 of the Insolvency & Bankruptcy Code (IBC), financial institutions are prohibited from allowing debit transactions without the written approval of the Interim Resolution Professional (IRP) – Individuals who cease to be in charge of the company due to CIRP cannot be prosecuted for cheque dishonour – Petitioners were not responsible for the conduct of the company's affairs when the cheques were presented – Proceedings quashed – Reference made to Govind Prasad Todi & Anr. v. Govt. of NCT of Delhi & Anr. (Paras 10-15, 20-25)***

(B) Insolvency & Bankruptcy Code, 2016 – S. 14 – Moratorium & Effect on Pending Criminal Proceedings – Imposition of a moratorium under Section 14 IBC suspends all legal proceedings against the corporate debtor, including those under Section 138 NI Act – Held, criminal prosecution for cheque dishonour cannot continue against the company during the moratorium – However, proceedings against individuals are assessed based on their role at the time of cheque dishonour – IRP assumes control over the corporate debtor's accounts post-admission of CIRP – Reliance placed on Govind Prasad Todi & Anr. v. Govt. of NCT of Delhi & Anr. (Paras 18-22)

Facts :- *The petitioners, including the suspended director & authorised signatory of the accused company, sought quashing of proceedings under Section 138 NI Act. They argued that post-initiation of CIRP under Section 7 IBC, control over the corporate debtor vested with the*

IRP, rendering the company incapable of issuing cheques. The High Court held that since the cheques were presented post-moratorium, the petitioners could not be held liable for dishonour.

Law of Relief :- ***(i) Cheque Dishonour Liability – CIRP Initiation Shields Individuals from Prosecution – Once the IRP assumes control under IBC, suspended directors & signatories are not liable under Section 138 NI Act.***

(ii) Moratorium Prohibits Cheque Encashment – Bars Prosecution – Held, NCLT-imposed moratorium under Section 14 IBC prevents banks from processing cheques – Offence does not arise.

(iii) Lack of Mens Rea – Petitioners Had No Control Over Corporate Affairs – Directors ceased to be responsible for the company's financial transactions post-CIRP – Proceedings quashed.

(iv) Judicial Precedent Supports Relief – Reference made to Govind Prasad Todi & Anr. v. Govt. of NCT of Delhi & Anr. – Court reiterated that moratorium under IBC precludes prosecution of corporate debtors & responsible individuals unless mens rea is established.

Counsel :- ***For Appellant(s):*** *Mr. Mr. P.S. Bindra, Adv.*

Cases Referred :-

Govind Prasad Todi & Anr. V. Govt. of NCT of Delhi & Anr.: 2023 SCC OnLine Del 3717 (Para 11)

JUDGMENT

Amit Mahajan, J.:-

1. The present petitions are filed seeking quashing of the summoning order dated 01.04.2022 (hereafter 'the impugned order') passed by the learned Metropolitan Magistrate ('MM'), Rouse Avenue Court, Delhi in CC No. 9170/2020 for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'), and all consequential proceedings arising therefrom.

2. Briefly stated, the case of the petitioners is that Petitioner No. 1 being the suspended director and Petitioner No. 2 being the Authorised Signatory of the accused company had issued six cheques on behalf of the company in compliance of the order 24.07.2019 passed by the National Consumer Disputes Redressal Commission in Execution Application 93/2017.

3. Subsequently, two cheques dated 23.07.2019 amounting to ₹5,00,000/- each were presented to the Bank and were duly

honoured. Thereafter, the company was admitted to Corporate Insolvency Resolution Process ('CIRP') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC') and moratorium under Section 14 of the IBC was imposed on 31.10.2019.

4. The cheques in question bearing nos. 787733 and 787753 dated 15.01.2020 and 15.03.2020 respectively for a sum of ₹10,00,000/- each were presented for encashment and the same were returned by the bank as dishonoured for the reason 'Drawer Signature to operate account not received'.

5. Consequently, the complaint being – CC No. 9170/2020 was filed by the respondent.

6. The learned counsel for the petitioners submits that in view of the moratorium, the cheques were incapable of encashment and hence, the petitioners cannot be held liable for offence under Section 138 of the NI Act. He submits that by virtue of Section 17 of the IBC, from the date of appointment of the IRP, the management of the affairs of the corporate debtor vest in the IRP and the petitioners ceased to have any role in the affairs of the company.

7. He submits that the offence under Section 138 of the NI Act was committed on the date when the petitioners were neither "in charge of" nor "responsible for the conduct of the business of the company".

8. The limited issue to be addressed in this case is whether proceedings under Section 138 of the NI Act can continue against individuals after the commencement of the CIRP proceedings against the accused company.

9. It is evident that insolvency proceedings against the company were initiated under the provisions of the IBC, and an order under Section 14 of the IBC was issued on 31.10.2019. The IBC explicitly provides that when a corporate debtor is undergoing proceedings before the adjudicating authority (NCLT), the control and management of the corporate debtor are vested in the Interim Resolution Professional ('IRP').

10. It is undisputed that the cheques in question were dated 15.01.2020 and 15.03.2020, respectively. However, the IRP was appointed on 31.10.2019, prior to these dates. Consequently, the

account was blocked due to the order issued by the NCLT, and this cannot be attributed to the account holder. As a result of the NCLT's order, the authority and control of the account holder over the account ceased to exist.

11. A coordinate bench of this Court in **Govind Prasad Todi & Anr. V. Govt. of NCT of Delhi & Anr.: 2023 SCC OnLine Del 3717**, quashed the summoning order in similar circumstances, observing that once a moratorium under Section 14 of the IBC is in effect, proceedings under Section 138 of the NI Act against the corporate debtor cannot continue. It was held as under:

> *"11. In the present case, admittedly, the corporate insolvency resolution process proceedings were admitted against M/s. Ajanta on February 4, 2020. In my opinion in view of the corporate insolvency resolution process proceeding, the moratorium under section 14 kicks in on the same day. The corporate insolvency resolution process vide e-mail dated February 7, 2020 had, in accordance with the provisions of the Insolvency and Bankruptcy Code, directed all the financial institutions not to permit any debit transactions from the account of M/s. Ajanta without written approval. The relevant portion of the e-mail reads as under:*
>
> > *'… To not to allow any debit transactions from the account without written approval or instructions of the interim resolution professional…'*
>
> *13. As is clear from the above, once the corporate insolvency resolution process proceedings have been admitted, the proceedings against the corporate debtor cannot continue. The only question that remains to be answered is whether the petitioners can continue to be prosecuted under section 138 of the Negotiable Instruments Act, in view of them being natural persons.*
>
> *15. Since from the date of the admission of the corporate insolvency resolution process proceedings, it was the interim resolution professional who was in-charge of and responsible for the conducting the business of the company at the time when the cheques were presented for encashment, it is thus clear that the role of the natural persons had ceased.*
>
> *16. The instrument, namely, the cheque on the basis of which the complaint was filed could not have been encashed by the financial institutions in view of the mandate of section 14 of the Insolvency and Bankruptcy Code read with sections 17 and 18 of the Insolvency and*

Bankruptcy Code.

18. On the basis of the combined reading, it is the interim resolution professional who had the authority to operate the bank accounts and on the date of presentation, the petitioners cannot be stated to be in control and management of the affairs of M/s. Ajanta." (emphasis supplied)

12. It is reiterated that the cheques in question were dishonoured for the reason 'Drawer Signature to operate account not received'. In view of this Court, the ingredients for constituting the offence punishable under Section 138 of the NI Act occurred post imposition of moratorium. The petitioners herein therefore cannot be held vicariously responsible for dishonour of cheque.

13. For the reasons stated hereinabove, the present petitions are allowed and the impugned order along with any consequential proceedings arising therefrom, is quashed.

14. The petitions are disposed of in the aforesaid terms.

15. A copy of this order be placed in both the matters.

***Result*:-** Petitions allowed. Impugned order and consequential proceedings quashed.