IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO Nos. 1107 and 1108 of 2024
Reserved on: 22.09.2025
Date of Decision: 30.10.2025.

---

1. **Cr. MMO No. 1107 of 2024**

M/s Ram Hari Motors Pvt. Ltd.& Anr ...Petitioners

Versus

State Bank of India ...Respondent

---

2. **Cr.MMO No.1108 of 2024**

M/s Ram Hari Motors Pvt. Ltd.& others ...Petitioners

Versus

State Bank of India ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Petitioners	:	Mr Sumit Raj Sharma, Advocate, in both the petitions.
For the Respondent	:	Mr Arvind Sharma, Advocate, in both the petitions.

Rakesh Kainthla, Judge

The petitioners have filed the present petitions for quashing the orders dated 12.08.2024 passed by learned Chief

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Judicial Magistrate, Mandi, District Mandi, H.P. (learned Trial Court) vide which the applications filed under Section 14(1) and Section 101 of the Insolvency and Bankruptcy Code, 2016 (IBC) for stay of proceedings were partly allowed. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present petitions are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the complainant is a body corporate engaged in banking activities. The accused No.1 is a company and is functioning through its Directors, including accused Nos. 2 and 3. Accused No.2 represented to the bank that he was managing the affairs of accused No.1 as its CMD and authorised signatory. Accused Nos. 2 and 3, being active Directors-cum-guarantors of the company, were responsible for its business affairs and management. The bank extended E-DFS facility of ₹3,50,00,000/- on interest to accused No.1 through accused No.2 for the dealership of the Chevrolet car on 31.05.2013. The accused

failed to maintain the account regularly and repay the amount as per the terms and conditions. The accused No.1 issued a cheque through the accused No. 2 in favour of the complainant bank for ₹2,00,00,000/- drawn on IDBI Bank. The complainant presented the cheque to the bank, but it was dishonoured with an endorsement "funds insufficient". The complainant issued a legal notice asking the accused to repay the amount. The notice was returned with an endorsement, "addressee refused to accept it, hence return to the sender." The notice is deemed to be served upon the accused, but he failed to repay the money. Hence, the complaint was filed to take action as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to the accused Gagan Deep Kaur and Gursev Singh for the commission of offences punishable under Section 138 of the NI Act.

4. The accused filed applications under Section 14(1) and Section 101 of the IBC for the stay of the proceedings in terms of the orders dated 14.02.2020 and 22.12.2020 passed by the National Company Law Tribunal (NCLT) Bench at Chandigarh. It

was asserted that Ravinder Kumar Goel was appointed as Interim Resolution Professional (IRP) as per Section 16(5) of the IBC. NCLT ordered the liquidation of accused No. 1, Ram Hari Motors. The complainant has raised a claim before the committee of creditors. Therefore, it was prayed that the applications be allowed and the proceedings be stayed.

5. The applications were opposed by the respondent-Bank. A rejoinder was filed to the reply. The learned Trial Court held that the proceedings under Section 138 read with Section 141 of the NI Act were covered by Section 14(1) (a) of the IBC, but the said moratorium only applies to the corporate body and not to a natural person. Consequently, the proceedings were ordered to be stayed against accused No. 1 but ordered to continue against accused Nos. 2 and 3. The matters were listed for recording the statement of the accused under Section 313 Cr.P.C on 14.08.2024.

6. Being aggrieved by the orders passed by the learned Trial Court, the petitioners have filed the present petition for setting aside the orders dated 12.08.2024, asserting that the learned Trial Court had wrongly taken cognizance against petitioner Nos 1 and 2. It was not disclosed that petitioners No.1

and 2 were in charge and responsible to the company for the conduct of its business or that they consented, connived or were negligent, which averments are necessary for taking cognisance. The allegations made in the complaint are absurd and inherently improbable. No person would issue a cheque of ₹2,00,00,000/- instead of remitting the amount in instalments. The proceedings are actuated by *mala fides*. Learned Trial Court erred in dismissing the applications for the stay of the proceedings. Therefore, it was prayed that the present petitions be allowed and the orders passed by the learned Trial Court be set aside.

7. I have heard Mr Sumeet Raj Sharma, learned counsel for the petitioners and Mr Arvind Sharma, learned counsel for the respondent-Bank.

8. Mr Sumeet Raj Sharma, learned counsel for the petitioners, submitted that the learned Trial Court erred in dismissing the applications seeking the stay of the proceedings. The learned Trial Court erred in taking cognisance of the commission of an offence punishable under Section 138 of the NI Act. The NCLT has ordered the liquidation of accused No.1, and the proceedings are liable to be stayed. Learned Trial Court erred

in dismissing the applications. Therefore, he prayed that the present petitions be allowed and the proceedings pending before the learned Trial Court be ordered to be quashed.

9. Mr Arvind Sharma, learned counsel for the respondent-Bank, submitted that the complainant had specifically asserted in para 3 of the complaint that accused No. 2 is the authorised signatory and accused Nos. 2 and 3 are the active guarantors of the company who are responsible for its business affairs as well as management. The learned Trial Court had rightly held that the proceedings cannot be stayed against a natural person, but will only be stayed against a juristic person who has been ordered to be liquidated. There is no infirmity in the orders passed by the learned Trial Court. Hence, he prayed that the present petitions be dismissed.

10. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

11. The law relating to quashing of FIR was explained by the Hon'ble Supreme Court in ***B.N. John v. State of U.P., 2025 SCC OnLine SC 7*** as under: -

"**7.** As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in ***State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335,*** wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

> "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> > (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.*
> >
> > (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of a Magistrate within the purview of Section 155(2) of the Code.
> >
> > (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in

support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable based on which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings, and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge." *(emphasis added)*

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1), it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed."

12. This position was reiterated in ***Ajay Malik v. State of Uttarakhand, 2025 SCC OnLine SC 185,*** wherein it was observed:

"**8.** It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (***i***) the criminal complaint has been filed with *mala fides*; (***ii***) the FIR represents an abuse of the legal process; (***iii***) no *prima facie* offence is made out; (***iv***) the dispute is civil in nature; (***v.***)

the complaint contains vague and omnibus allegations; and (*vi*) the parties are willing to settle and compound the dispute amicably (***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***)

13. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

14. It was laid down by the Hon'ble Supreme Court in ***Rakesh Bhanot v. Gurdas Agro (P) Ltd.***, ***(2025) 6 SCC 781: (2025) 258 Comp Cas 193: 2025 SCC OnLine SC 728*** that the initiation of the proceedings under the IBC will only bar the continuation of proceedings under Section 138 of the NI Act against the juristic person and not against the natural person. It was observed at page 800:

> "**18.** From the above provisions, it is clear that the term "corporate person" includes a company as defined under Section 2(20) of the Companies Act, 2013, and a limited liability partnership. However, there is a subtle difference in the protection available to the Directors and the Partners. In case of a partnership firm, the interim moratorium protects not only the firm, but also the Partners. But in the case of a company, such protection is available only to the company and not to its Directors. That apart, the object of the interim moratorium can be no different from that of the moratorium specified under Section 14. It is also clear from Section 14 that the protection from legal action during the period of moratorium is not available to the surety, or, in other words, to a personal guarantor. The use of the words "all the debts" and "in respect of any debt" in sub-

section (1) of Section 96 is not without a purpose, as the moratorium is intended to offer protection only against a civil claim to recover the debt. Hence, such a period of moratorium prescribed under Section 14 or 96 is restricted in its applicability only to protection against civil claims which are directed towards recovery and not from criminal action.

xxxxxx

20. The above provisions specifically relate to cheque dishonour cases, and the persons responsible for such dishonour may be criminally prosecuted and subjected to penal action, as per the conditions specified under the NI Act, 1881.

21. Admittedly, the appellant-petitioners are facing trial for the offence under Sections 138/141 of the NI Act, 1881, at the instance of the respondent complainants. While so, they initiated the personal insolvency proceedings under IBC and sought exemption from Section 138 proceedings before the trial court, referring to the interim moratorium provided under Section 96 IBC. It is to be noted that upon the application being admitted, the moratorium provisions under 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.

22. 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 maximisation of asset value. The application under Section 94 or 95 would fall under Chapter III, 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 of by following the procedures in Sections 97 to 119. The application filed under Section 94 is scrutinised by the resolution professional, and a report is submitted as contemplated under Section 99, recommending either the approval or rejection of the application. The interim moratorium, which commences on the presentation of the application, will expire on the admission of the application by an order of the adjudicating authority under Section 100. Upon admission, the moratorium under Section 101 comes into operation. The interim moratorium under Section 96 and the moratorium under Section 101 IBC are designed to offer a breathing space to the corporate debtor, allowing them to reorganise 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 appellant-petitioners, having filed insolvency applications as personal guarantors under Section 94 IBC, cannot extend this protection to avoid prosecution under Section 138 of the NI Act, 1881.

23. Upon filing of the application under Section 94 IBC, 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 Sections 96(*b*)(*i*) and (*ii*), the term "legal action or proceedings" is 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 the recovery of debt by invoking the principles of *noscitur a sociis*. The purpose of the 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 not to recover any debt. This moratorium serves as a critical mechanism, allowing the debtor to reorganise their financial affairs without the immediate threat of creditor actions. The unequivocal language of this provision reflects the legislative intent to provide a protective shield for debtors during the insolvency process.

24. On the other hand, the proceedings under Section 138 of the NI Act, 1881, pertain to the dishonour of cheques issued by the respective appellant-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 IBC may result in the extinguishment of the actual debt by restructuring or through the process of liquidation. But such extinguishment will not absolve its Directors from criminal liability. Section 141 of the NI 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 NI Act, 1881, is personal and hence continues to bind natural persons, irrespective of any moratorium applicable to the corporate debtor.

25. 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 NI 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 continuation of any criminal action. The cause of action for prosecution under Section 138 of the NI Act commences on the dishonour 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 only be 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 the case of the former, the interim moratorium can operate, but not in the case of the latter.

26. In the ***Mohanraj case*** [***P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258: (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818:(2021) 14 Comp Cas-OL 1***], the dishonoured cheques were issued by the company and hence, the complainant initiated Section 138 proceedings against the company and its Directors. The question that arose for consideration was whether the institution or continuation of a proceeding under Sections 138/141 of the NI Act, 1881, can be said to be covered by the moratorium provision, namely, Section 14 IBC. The petitioners in the connected writ petitions therein were the erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor, and they were all premised upon the fact that Section 138 proceedings are covered by Section 14 IBC and hence, cannot continue against the corporate debtor and consequently, against the petitioners therein.

27. This Court in the ***Mohanraj case [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818 : (2021) 14 Comp Cas-OL 1]***, after a detailed analysis of the provisions relating to moratorium under Sections 14, 96 and 101 IBC, concluded that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, and the natural persons mentioned therein, continuing to be statutorily liable under the NI Act, 1881. In doing so, it was clarified that the moratorium under IBC does not extend to criminal proceedings. Further, it was emphasised that IBC's objective is to address the corporate debtor's financial distress and should not be misconstrued as a means to avoid personal criminal accountability.

28. For better appreciation, the relevant portion of the said judgment is extracted hereunder: (***Mohanraj case [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258: (2021) 3 SCC (Civ) 427: (2021) 2 SCC (Cri) 818: (2021) 14 Comp Cas-OL 1***], SCC p. 351, para 102)

> "*102.* Since the corporate debtor would be covered by the moratorium provision contained in Section 14 IBC, by which continuation of Sections 138/141 proceedings against the corporate debtor and initiation of Sections 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paras 51 and 59 in ***Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241 : (2012) 172 Comp Cas 75]*** would then become applicable. The legal impediment contained in Section 14 IBC would make it impossible for such a proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 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."

29. Similarly, in ***Narinder Garg [Narinder Garg v. Kotak Mahindra Bank Ltd., (2022) 19 SCC 623: (2022) 20 Comp Cas-OL 675]***, this Court reiterated that IBC's moratorium does not bar criminal proceedings under Section 138 of the NI Act. For better appreciation, the relevant portion of the said judgment is extracted hereunder: (SCC p. 624, para 4)

"4. A subsidiary issue was also about the liability of natural persons, like a Director of the Company. In para 102 of its judgment [***P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818 : (2021) 14 Comp Cas-OL 1***], this Court observed that the moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act."

30. Even recently, a larger Bench of this Court in ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corpn. Of India Ltd. [Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corpn. Of India Ltd., (2023) 10 SCC 545: (2024) 1 SCC (Cri) 128: (2023) 237 Comp Cas 601]***, of which one of us (J.B. Pardiwala, J.) is a member, after considering the scope and object of IBC and the interplay with the NI Act, 1881 in detail, has held as follows: (SCC pp. 584-85 & 587-88, paras 72-75, 81-82 & 84)

"72. It is true that by virtue of Section 238 IBC, the provisions of CrPC [to be read as Code] shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But, no provision of IBC bars the continuation of the criminal prosecution initiated against the Directors and officials.

73. It is equally true that once the corporate debtor comes under the resolution process, its erstwhile Managing Director(s) cannot continue to represent the company. Section 305(2) CrPC states that where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial, and such appointment need not be under the seal of the cor-

poration. Therefore, it is only the resolution professional who can represent the accused Company during the pendency of the proceedings under IBC. After the proceedings are over, either the corporate entity may be dissolved or it can be taken over by a new management, in which event the company will continue to exist. When a new management takes over, it will have to make arrangements for representing the company. If the company is dissolved as a result of the resolution process, obviously, proceedings against it will have to be terminated. But even then, its erstwhile Directors may not be able to take advantage of the situation. This is because, this Court in ***Aneeta Hada[Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241 : (2012) 172 Comp Cas 75***], even while overruling its decision in ***Anil Hada v. Indian Acrylic Ltd.[Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1: 2001 SCC (Cri) 174 : (2000) 99 Comp Cas 36]***, as not laying down the correct law insofar as ***Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1: 2001 SCC (Cri) 174 : (2000) 99 Comp Cas 36]*** states that the Director or any other officer can be prosecuted without impleadment of the company, proceeded to hold that the matter would stand on a different footing where there is some legal impediment as the doctrine of *lex non cogit ad impossibilia* gets attracted. It was specifically observed that the decision in ***Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1: 2001 SCC (Cri) 174: (2000) 99 Comp Cas 36]*** is overruled with the qualifier as stated in para 51. Considering the same, the ratio of the decision of this Court in ***Ajit Balse [Ajit Balse v. Ranga Karkere, (2015) 15 SCC 748: (2016) 3 SCC (Civ) 465: (2016) 3 SCC (Cri) 379]*** upon which strong reliance is placed on behalf of the appellant is of no avail.

74. What follows from the aforesaid is that for difficulty in prosecuting the corporate debtor under Section 138 of the NI Act after the approval of the resolution plan un-

der IBC, we need not let the natural persons, i.e. the signatories to the cheques/Directors of the corporate debtor, escape prosecution. How can one allow the natural persons to escape liability on such a specious plea? In such a situation, the Latin maxim *lex non cogit ad impossibilia* is attracted, which means law does not compel a man to do what he cannot possibly perform. *Broom's Legal Maxims* contains several illustrative cases in support of the maxim. This maxim has been referred to with approval by this Court in ***State of Rajasthan v. Shamsher Singh [State of Rajasthan v. Shamsher Singh, 1985 Supp SCC 416: 1985 SCC (Cri) 421***].

75. Thus, where the proceedings under Section 138 of the NI Act had already commenced and during the pendency, the plan is approved or the company gets dissolved, the Directors and the other accused cannot escape from their liability by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act. They will have to continue to face the prosecution in view of the law laid down in ***Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661: (2012) 3 SCC (Civ) 350: (2012) 3 SCC (Cri) 241: (2012) 172 Comp Cas 75]***. Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile Directors can no longer represent it.

***

81. This Court in ***Lalit Kumar Jain v. Union of India [Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321: (2021) 4 SCC (Civ) 527: (2021) 15 Comp Cas-OL 1]*** has held that the approval of the resolution plan per se does not operate as a discharge of guarantors' liability. That is because:

(*a*) An *involuntary act* of the principal debtor leading to loss of security would not absolve a guarantor of its liability.

> (*b*) *A discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability*.

> *82*. The same principle is applicable to the signatory/Director in the case of Sections 138/141 proceedings. The signatory/Director cannot take advantage of the discharge obtained by the corporate debtor by operation of law under IBC.
>
> ***
>
> *A litigant cannot take advantage of its own wrong (Nullus commodum capere potest de injuria sua propria)*
>
> *84*. This Court, while upholding the validity of Section 32-A IBC (***Manish Kumar case [Manish Kumar v. Union of India, (2021) 5 SCC 1: (2021) 3 SCC (Civ) 50: (2021) 225 Comp Cas 1]***) has held that: "*The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away*." That is a very important object, and the same should not be permitted to be defeated by accepting the argument that permits the signatory/Director to enjoy the fruits of their own wrong." (emphasis supplied)

31. 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 only to postpone any civil actions to recover any debt. The deterrent effect of Section 138 is critical to maintain trust in the use of negotiable instruments like cheques in business dealings. Criminal liability for dishonouring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however, subject to the satisfaction of other conditions in the NI Act, 1881. Therefore, allowing the respective appellant-petitioners to evade prosecution under Section 138 by invoking the moratorium would undermine the very purpose of the NI Act, 1881, which is to preserve the integrity and credi-

> bility of commercial transactions, and the personal responsibility persists, regardless of the insolvency proceedings and their outcome.
>
> **xxxxx**
>
> **33.** For the foregoing discussion, the prayer of the appellant-petitioners to stay the prosecution under Section 138 of the NI Act, 1881, relying on the interim moratorium under Section 96 IBC, cannot be entertained. Therefore, the judgments/orders [***Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2023 SCC OnLine P&H 7240], [Sandeep Gupta v. Shri Ram Steel Traders, 2023 SCC OnLine Del 2786] , [Gurdas Agro (P) Ltd. v. Arjun Mall Retail Holding (P) Ltd., 2023 SCC OnLine P&H 7243] , [Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2023 SCC OnLine P&H 7241] , [Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2023 SCC OnLine P&H 7242] , [Sanjeev Narula v. Elkay International Ltd., 2024 SCC OnLine P&H 3165] , [Shiva Shakti Grains (India) (P) Ltd. v. Kaur Chand Munish Kumar, 2024 SCC OnLine P&H 3404] , [Ashok B. Jeswani v. Redington India Ltd., (2024) 248 Comp Cas 248 : 2023 SCC OnLine Mad 8029] , [Pacific Infotech (P) Ltd. v. Redington India Ltd., 2024 SCC OnLine Mad 8346] , [Jitender Singh Sodhi v. CIT, 2024 SCC OnLine P&H 14106] , [Yogesh Jogindernath Mehra v. State of Maharashtra, 2024 SCC OnLine Bom 3978]*** passed by the different High Courts affirming the orders of the trial court, which had rightly refused to stay Section 138 proceedings, need not be interfered with by us.

15. Therefore, the orders passed by the learned Trial Court ordering the continuation of the proceedings against accused nos. 2 and 3 cannot be faulted.

16. It was submitted that the learned Trial Court erred in taking cognisance of the commission of an offence punishable under Section 138 of the NI Act. The copy of the complaint

(annexure A-1) shows that the complaint was filed on 10.06.2016, and the notice of accusation was put to the accused on 22.09.2018. The matter was listed for recording the statement of the accused under Section 313 of Cr.P.C. as per the order dated 12.08.2024. Thus, it is apparent that the petitioners have approached the Court to assail the orders of cognizance after an inordinate delay. It was laid down by the Delhi High Court in ***Sanyam Bhushan v. State (NCT of Delhi), 2024 SCC OnLine Del 4545,*** that a person cannot approach the Court for quashing the criminal proceedings after an inordinate delay. It was observed:

> "**43.** At the outset, I find merit in the submission made by the learned counsel for the Complainant that the present set of petitions is liable to be dismissed on the ground of delay and laches, as also for the failure of the petitioners to avail of their alternate efficacious remedy in the form of Revision Petitions under Section 397 of the Cr. P.C.
>
> **44.** It need not be emphasised that powers under Section 482 of the Cr. PCs are discretionary in nature, and though there may not be a total ban on the exercise of such power where the situation so warrants, at the same time, there are limitations of self-restraint that are recognised and followed by the Courts in exercising this jurisdiction. One such limitation is where the petitioner had an alternate efficacious remedy; however, they did not avail of the same within the period of limitation and thereafter filed the petition under Section 482 of the Cr. P.C. to overcome the objection of limitation. Similarly, the Courts have refused to entertain a petition under Section 482 of the Cr.

> P.C., where it is filed with unexplained delay and laches, and in the meantime, the trial has proceeded.
>
> **45.** In ***Prabhu Chawla*** (Supra), the Supreme Court quoted with approval its earlier judgment in ***Madhu Limaye*** (Supra), wherein it had been held that though the availability of an alternate efficacious remedy of a Revision under Section 397 of the Cr. P.C. does not affect the amplitude of the inherent power under Section 482 of the Cr. P.C. that the High Court possesses, at the same time, easy resort to inherent power is not to be allowed except under compelling circumstances; it should not invade areas set apart for specific power under the Cr. P.C. itself. It was held that while it is true that Section 482 of the Cr. P.C. is pervasive; it should not subvert legal interdicts written into the same Code, such as, for instance, in Section 397(2) of the Cr. P.C.
>
> **46.** This Court in ***Vipin Kumar Gupta*** (Supra), placing reliance on its earlier judgment in ***Rajesh Chetwal v. State Neutral Citation no. 2011: DHC: 4313***, held that though there is no period of limitation prescribed for filing of a petition under Section 482 of the Cr. P.C., the principles of inordinate delay and laches shall be applicable, and where such petitions are filed with an inordinate delay and laches, this itself shall be a ground to dismiss the same."

17. In the present case, the petitioners had a remedy of approaching the Court when they were ordered to be summoned or when notice of accusation was put to them, but they failed to avail that remedy. It was laid down in ***Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181*** that once the Competent Court has framed the charges, the person aggrieved may invoke the revisional jurisdiction, and the High Court should

not exercise its inherent jurisdiction under Section 482 of Cr.P.C., except in rare cases. It was observed at page 145: -

> "**7.** If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out — as has been done in the instant case — the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. *To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course*. We hasten to add even in such exceptional cases, the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence." (Emphasis supplied)

18. In the present case, no exceptional circumstances are shown to set aside the order of cognisance.

19. Thus, in these circumstances, there is no reason to quash the proceedings pending before the learned Trial Court. Hence, the present petitions fail, and are ordered to be dismissed.

20. The observation made herein before shall remain confined to the disposal of the petitions and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

30th October, 2025.
(Nikita)