



**In the High Court for the States of Punjab and Haryana at  
Chandigarh**

**140**

**CRM-M-21102-2023 (O&M)**

Raj Kumar Choudhary

... Petitioner

VERSUS

Surender Singh and others

... Respondents

**140-I**

**CRM-M-21114-2023 (O&M)**

Sapan Mohan Gupta

... Petitioner

VERSUS

Surender Singh and others

... Respondents

Date of Decision:- 21.04.2026

**CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA**

Present:- Mr. Deeptanshu Jain, Advocate and  
Ms. Nimisha, Advocate for the petitioner(s).

Mr. Nitin Kant Setia, Advocate and  
Mr. Sahib Sabharwal, Advocate,  
for respondents No.1 and 2.

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**SUBHAS MEHLA, J.** (Oral)

1. The present petitions under Section 482 of BNSS, 2023 have been filed for quashing of impugned order dated 28.04.2022 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Gurugram, in complaint case bearing No.NACT/10445/2022 titled 'Surender Singh and another Vs. Ashiana Landcraft Realty Pvt. Ltd. and others'.



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2. Learned counsel for the petitioner(s) *inter-alia* contended that the cheques in dispute are post dated cheques, bearing dates 01.12.2021, 15.12.2021 and 31.12.2021. These cheques were handed over to the JDs before the Haryana Real Estate Regulatory Authority Gurugram on date 09.09.2021. However, these cheques were returned dishonoured vide return memo dated 10.02.2022 with remarks “Account Blocked”. The bank account had been attached, by virtue of order dated 16.09.2021, passed by HRERA, because of which cheques in question could not be honoured. Moreover, this kind of dishonor of cheque (i.e. Account Blocked) does not fall within the ambit of the section 138 Negotiable Instrument Act 1881. Learned counsel, while drawing the attention of this Court to Annexure P-6, further submitted that, by virtue of an order dated 11.01.2022, passed by National Company Law Tribunal (NCLT), Kolkata Bench, Corporate Insolvency Resolution Process (CIRP) was admitted and Moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 (IBC), was declared and Interim Resolution Professional (IRP) was also appointed on the same day. That due to admission of CIRP and appointment of IRP, effective control of management of the company, including the bank accounts was shifted to IRP by virtue of section 17 of the IBC. Thus, petitioners cannot be said to be liable for not honouring the demand notice issued by the Respondent No. 1 and 2/complainants under section 138 NI Act. To support his contentions, learned counsel relied upon the judgment given by two judge bench of the Hon’ble Supreme Court in case titled as “***Vishnoo Mittal versus Shakti Trading Company [(2025) 9 SCC 417]***” by submitting that proceedings, under section



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138 NI Act, against the Directors, are not maintainable, where moratorium under section 14 IBC commences prior to issuance of notice of dishonor.

3. *Per Contra* learned counsel for the respondents contended that Directors and signatories of dishonoured cheques cannot escape criminal liability under Section 138 by invoking moratorium under IBC. He further submitted that moratorium applies only to the corporate debtor and not to individuals responsible under Section 141 of NI Act. He relied upon the judgment of this court in a case titled as “**Rakesh Juneja and another versus M/s Maruti Suzuki India Ltd. and another** [2025 (4) RCR (Criminal) 318] wherein a judgment of three judge bench of Hon’ble the Supreme Court in a case titled as ‘**Ajay Kumar Radheyshyam Goenka versus Tourism Finance Corporation of India Ltd.**, [(2023) 10 SCC 545]’ was relied upon by this court. The relevant contents of the judgment are:

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11. The discussion above makes it clear that the imposition of a moratorium and appointment of an IRP only protects the corporate entity that has filed for insolvency and not the private persons involved with it. Such private persons have been specifically made vicariously liable by virtue of Section [141](#) of the NI Act for the acts perpetrated by them in the name of the corporate entity. Further still, it is settled law that the proceedings under the NI Act cannot only be continued but also initiated against the accused arraigned by virtue of Section [141](#) of the NI Act, even after the accused company is admitted to the insolvency process. Reliance in this regard can be placed on the judgment rendered by a three Judge bench of the Hon'ble Supreme Court in **P. Mohanraj v. M/s Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258** where,



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speaking through Justice Rohinton Fali Nariman, the following was opined:

*"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 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 versions 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.**"*

12. A three Judge bench of the Hon'ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited (2023) 10 SCC 545***, speaking through Justice Sanjay Kishan Kaul, the following was observed:

*"16. **We have no hesitation** in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. **In fact, a bare reading of Section [14](#) of the 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***



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**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.

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

18. **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.** "

(emphasis added)

Rendering a concurring opinion in **Ajay Kumar Radehyshyam Goenka (Supra)**, Justice Jamshed Burjor Pardiwala, opined as follows:

"108. Thus, the upshot of all the decisions referred to above is where the proceedings under section [138](#) of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the



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*pendency, the company gets dissolved, **the signatories/directors cannot escape from their penal liability under section 138 of the NI Act by cities 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.***

109.1 may draw my final conclusions as under:

109.1 After passing of the resolution plan under Section [31](#) of the IBC by the adjudicating authority & in the light of the provisions of Section [32A](#) of the IBC, **the criminal proceedings under section 138 of the NI Act will stand terminated only in relation to the corporate debtor** if the same is taken over by a new management.

109.2 **Section 138 proceedings in relation to the signatories/directors who are liable/covered by the two provisos to Section 32A(1) will continue in accordance with law.** "

xxx ”

4. Learned counsel for the petitioner(s), limited his prayer to the extent that petitioners are ready to join the proceedings before the trial court, and he may be allowed to join the proceedings.

5. Heard.

6. This Court finds merit in the contentions raised by the learned counsel for the Respondents. The legal position has already been settled in judgment passed by Hon'ble the Supreme Court in ***P. Mohanraj v. M/s Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258*** and ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited (2023) 10 SCC 545***. Hon'ble Apex Court has held that the proceedings under the NI Act cannot only be continued but also initiated against the accused arraigned by virtue of Section 141 of the NI Act, even after the accused company is admitted to the insolvency process. Thus, this court does not find any merit in the present petition.



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However, keeping in view the limited prayer made by learned counsel for the petitioner(s) that the petitioners are ready to join the proceedings before the learned trial Court, the present petitions are disposed of and the petitioners are directed to join proceedings before the learned trial Court within a period of 2 weeks from the date of receipt of certified copy of this order and move appropriate application after appearing before learned trial court. The trial Court is directed to decide their application(s) expeditiously in accordance with law. It is made clear that if they fail to appear before the trial Court within stipulated time, then the relief granted by this Court shall be deemed to be withdrawn.

7. A copy of this order be placed on the file of connected case.

**21.04.2026**

*Geeta*

**( SUBHAS MEHLA )  
JUDGE**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No