

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 306 of 2018

IN THE MATTER OF:

Shah Brothers Ispat Pvt. Ltd.

...Appellant

Vs

P. Mohanraj & Ors.

....Respondents

Present:

**For Appellant: Mr. Sulabh Rewari and Ms. Neha Mathen,
Advocates**

**For Respondents: Mr. Yugal Kishore Prasad and Mr. Sunil Prem
Lalla, Advocates.**

ORDER

31.07.2018: The Appellants filed complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short 'NI Act') before the Metropolitan Magistrate 59th Court, Kurla, Mumbai. CC No.552/SS/2017 was filed prior to initiation of Corporate Insolvency Resolution Process i.e. prior to 6th June, 2017. Another complaint u/s 138 of NI Act being CC No.690/SS/2017 was filed after 6th June, 2017, i.e. after the order of moratorium. The Respondent – Directors moved before the Adjudicating Authority and argued that during the period of moratorium proceeding petition under Section 138 of NI Act was not maintainable. This was opposed by the Appellants but the Adjudicating Authority (National Company Law Tribunal) Single Bench, Chennai by order dated 24th May, 2018 passed in MA/102/IB/2018 in CP/507/IB/2017 directed the Appellants to withdraw the complaint case filed under Section 138 of NI Act treating it as a proceeding filed after order of moratorium with observation that such action amounts to deliberate attempt on the part of Appellant and sheer misuse of the process of law.

2. The question arises for consideration in this appeal is whether the order of moratorium will cover a criminal proceeding under Section 138 of NI Act, which provides punishment of imprisonment for a term which may extend to three years or with fine which may extend to twice the amount of cheque or with

both?

3. The Company cannot be imprisoned, therefore aforesaid punishment under Section 138 cannot be imposed against the company (Corporate Debtor) However, fine can be imposed by a court of competent jurisdiction on the Company (Corporate Debtor), if find guilty. The Directors of the Company (Corporate Debtor) being parties so can be imprisoned or fine may be imposed on them.

4. Section 14 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') relates to moratorium, which reads as follows:

“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 or 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;

(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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

5. Learned counsel appearing on behalf of the Respondent submitted that the proceeding under Section 138 of the NI Act is covered by clause of Sub-section (1)(a) of Section 14 of I&B Code, therefore, proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority cannot proceed.

6. We do not agree with such submission as Section 138 is a penal provision, which empowers the court of competent jurisdiction to pass order of imprisonment or fine, which cannot be held to be proceeding or any judgment or decree of money claim. Imposition of fine cannot held to be a money claim or recovery against the Corporate Debtor nor order of imprisonment, if passed by the court of competent jurisdiction on the Directors, they cannot come within the purview of Section 14. Infact no criminal proceeding is covered under Section 14 of I&B Code.

7. The Adjudicating Authority having failed to appreciate law, we have no option but to set aside the impugned order dated 24th May, 2018 passed in MA/102/IB/2018 in CP/507/IB/2017. The court of competent jurisdiction may proceed with the proceeding under Section 138 of NI Act, even during the period of moratorium. The appeal is allowed with aforesaid observations. I. A. Nos. 820/2018, 821/2018, 822/2018 and 823/2018 stands disposed of. No Cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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