2026:DHC:6083

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 20.07.2026***
***Pronounced on: 30.07. 2026***
***Uploaded on: 30.07.2026***

\+ **CRL.M.C. 2494/2023**

**SHRI AMARJEET SINGH** .....Petitioner
Through: Mr.Praveen Suri, Adv. (through VC)

versus

**SHRI HARDEEP SINGH** .....Respondent
Through: None.

**CORAM:**
**HON'BLE MS. JUSTICE MADHU JAIN**

## J U D G M E N T

**MADHU JAIN, J.**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the petitioner under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, assailing the order dated 17.11.2022 passed by the learned Metropolitan Magistrate, NI Act-05, West District, Tis Hazari Courts, Delhi in ***Complaint Case No. 11995/2018,*** titled ***Shri Amarjeet Singh v. Shri Hardeep Singh***, whereby the proceedings in the said complaint case were stayed.

***FACTUAL MATRIX***

3. The dispute arises out of a friendly loan transaction between the parties. The petitioner alleges that, in June 2015, the respondent approached

him for a loan of ₹30 lakhs owing to financial difficulties. Pursuant thereto, the petitioner advanced the said amount and the parties executed a loan agreement dated 06.07.2015. Towards repayment of the loan, the respondent issued six post-dated cheques of ₹5 lakhs each.

4. Two of the cheques were honoured, while the petitioner, at the request of the respondent, deferred presentation of the remaining four cheques. When the said cheques were eventually presented in July 2018, all four were dishonoured with the remarks *"Insufficient Funds"* and *"Payment Stopped by Drawer"*. Consequently, after issuance of the statutory demand notice dated 08.08.2018 and the respondent's failure to make payment within the prescribed period, the petitioner instituted Complaint Case No. 11995/2018 under Section 138 of the Negotiable Instruments Act, 1881. The respondent was summoned in the complaint and, after the mediation proceedings failed, notice under Section 251 Cr.P.C. came to be framed against him.

5. During the pendency of the complaint proceedings, the parties arrived at a settlement on 13.03.2020. According to the petitioner, although the respondent made certain payments pursuant thereto, he repeatedly defaulted in complying with the settlement terms despite furnishing successive undertakings before the learned Trial Court assuring payment of the outstanding amount.

6. In view of the repeated defaults, the petitioner moved an application under Sections 421 and 431 Cr.P.C. seeking recovery of the unpaid settlement amount. By a detailed order dated 21.03.2022, the learned Metropolitan Magistrate allowed the application and directed the concerned SDM to recover the remaining amount of ₹13 lakhs as fine in the manner of arrears of land revenue by attachment of the respondent's movable and

immovable properties.

7. While the recovery proceedings were pending, the respondent continued to seek time for payment and, on 23.09.2022, once again undertook before the learned Trial Court to clear the outstanding amount in instalments. It is the petitioner's case that, despite receiving a total sum of ₹13.50 lakhs out of the settled amount of ₹20 lakhs, the respondent failed to pay the remaining ₹6.50 lakhs.

8. On 17.11.2022, the respondent produced before the learned Metropolitan Magistrate certain orders passed by the National Company Law Tribunal and the National Company Law Appellate Tribunal in proceedings initiated under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '*IBC*'). Relying upon the order dated 26.04.2022 passed by the NCLT, whereby an interim moratorium under Section 96 of the IBC had come into operation, the learned Metropolitan Magistrate vide order dated 17.11.2022 stayed further proceedings in Complaint Case No. 11995/2018.The relevant extracts of the impugned judgment are reproduced hereinbelow:

> *"Ld. Counsel for the accused has furnished an order dt. 26.04.22, passed by NCLT Bench, u/s 95 IBC, wherein moratorium has been initiated against the accused from 30.03.22 and any pending legal action or proceeding in respect of any debt of the personal guarantor has been stayed. The appointment letter of insolvency resolution professional has been submitted. Further, an order dt. 31.10.22 passed by the NCLAT has been furnished wherein liberty has been given to the accused to move an application u/s 12A of IBC. The accused has also furnished order dt. 12.07.22, passed by the NCLT wherein the firm of the accused persons has been declared under moratorium in terms of Section 14 IBC. All the documents are*

> *taken on record. Let a copy of all the documents be supplied to the Ld. Counsel for the complainant.*
>
> *Ld. Counsel for the complainant has submitted that the matter was settled for Rs. 20 lakhs out of which the complainant has received Rs. 13.50 lakhs till date. It has been submitted on behalf of the accused that since the firm of the accused and the accused himself has undergone insolvency proceedings, further time is sought to make the remaining payment of Rs. 6.50 lakhs to the complainant.*
>
> *In view of the order dt. 26.04.22, passed by the NCLT, the proceedings against the accused are hereby stayed."*

9. Aggrieved thereby, the petitioner has filed the present petition contending, inter alia, that the learned Trial Court erroneously stayed the proceedings under Section 138 of the Negotiable Instruments Act,1881 and that the impugned order was passed without affording the petitioner an effective opportunity of hearing.

***SUBMISSIONS ON BEHALF OF THE PETITIONER***

10. Learned counsel for the petitioner submits that the learned Trial Court has erred in staying the proceedings under Section 138 of the Negotiable Instruments Act,1881 solely on the ground that an interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 had come into operation. It is contended that the issue is no longer *res integra* in view of the judgment of the Supreme Court in ***Rakesh Bhanot v. Gurdas Agro (P) Ltd., (2025) 6 SCC 781***, wherein it has been categorically held that the moratorium contemplated under Sections 96 and 101 of the IBC does not bar the continuation of criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881. Reliance is placed, inter alia, on

paragraphs 25 and 31 of the said judgment, wherein the Supreme Court has held that while the moratorium may postpone civil proceedings for recovery of debt, it does not impede criminal prosecution under Section 138 of the Negotiable Instruments Act.

11. It is further submitted that the respondent had entered into a settlement with the petitioner and had paid a substantial portion of the settled amount. However, despite repeatedly undertaking before the learned Trial Court to clear the remaining liability, the respondent failed to honour the terms of the settlement and, instead, sought stay of the proceedings by relying upon the insolvency proceedings initiated under the IBC.

12. Learned counsel submits that the learned Metropolitan Magistrate, by the impugned order dated 17.11.2022, stayed the complaint proceedings merely on the basis of the order dated 26.04.2022 passed by the NCLT, without appreciating that the moratorium under Section 96 of the IBC has no application to criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881.

13. It is also contended that the impugned order was passed without supplying copies of the orders relied upon by the respondent and without affording the petitioner an effective opportunity of being heard, thereby causing serious prejudice to the petitioner.

14. Learned counsel further submits that in view of the law subsequently declared by the Supreme Court in ***Rakesh Bhanot*** (supra), the very foundation of the impugned order no longer survives. It is, therefore, prayed that the order dated 17.11.2022 be set aside and the learned Trial Court be directed to proceed further with Complaint Case No. 11995/2018 in

accordance with law, including the proceedings initiated pursuant to the order dated 21.03.2022.

***ANALYSIS AND FINDINGS***

15. I have heard the learned counsel for the petitioner and have gone through the material on record.

16. The principal issue which arises for consideration in the present petition is whether the learned Trial Court was justified in staying the proceedings under Section 138 of the Negotiable Instruments Act, 1881 by invoking the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016.

17. Before adverting to the rival submissions, it would be apposite to briefly examine the scope of Section 96 of the Insolvency and Bankruptcy Code, 2016. Section 96 provides for an interim moratorium upon the filing of an application under Sections 94 or 95 of the Code. During the period of such moratorium, any pending legal action or proceeding in respect of any debt is deemed to have been stayed, and no creditor is entitled to initiate or continue legal proceedings in respect of such debt.

18. At this stage, this Court deems it apposite to refer to Section 96 of the Insolvency and Bankruptcy Code, 2016. The relevant provision is extracted hereinbelow:

> *"**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 70(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."*

19. The controversy, however, is whether the expression *"legal action or proceeding in respect of any debt "*occurring in Section 96 encompasses criminal proceedings initiated under Section 138 of the Negotiable Instruments Act.

20. The aforesaid issue is no longer *res integra*. The Supreme Court, in ***Rakesh Bhanot v. Gurdas Agro (P) Ltd., (2025) 6 SCC 781***, has authoritatively held that the moratorium contemplated under Sections 96 and 101 of the Insolvency and Bankruptcy Code does not extend to criminal prosecution under Section 138 of the Negotiable Instruments Act,1881 . The Supreme Court has observed that while the moratorium postpones civil actions for recovery of debt, it does not impede criminal proceedings, which are intended to ensure the credibility of negotiable instruments and maintain commercial discipline.

21. The Supreme Court in ***Rakesh Bhanot** (supra)***,** held that the object of the moratorium is not to obstruct criminal prosecution but merely to defer civil proceedings for recovery of debt. The Court observed as under:

> ***"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 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 dishonouring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however subject to 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 credibility of commercial transactions and the personal responsibility persists, regardless of the insolvency proceedings and its outcome."*

22. In view of the law declared by the Supreme Court in ***Rakesh Bhanot*** (*supra*), the basis on which the impugned order came to be passed cannot be sustained. The proceedings before the learned Trial Court arise out of a complaint under Section 138 of the Negotiable Instruments Act, ,1881 which are criminal in nature. Mere initiation of insolvency proceedings against the respondent under the Insolvency and bankruptcy code, 2016 does not constitute a valid ground for staying the complaint proceedings.

23. The petitioner has also contended that the impugned order was passed without supplying copies of the NCLT and NCLAT orders relied upon by the respondent and without affording an effective opportunity of hearing. However, in view of the authoritative pronouncement of the Supreme Court on the legal issue involved, this Court does not consider it necessary to examine the said contention in detail, as the impugned order is liable to be set aside on the substantive legal ground itself.

24. In the opinion of this Court, once the impugned order staying the proceedings is set aside, it would be for the learned Trial Court to consider

the stage of the proceedings and pass appropriate orders in accordance with law. This Court refrains from issuing any specific direction in that regard, leaving it open to the learned Trial Court to proceed from the stage at which the proceedings came to be stayed.

***CONCLUSION***

25. Consequently, the impugned order dated 17.11.2022 cannot be sustained and is accordingly set aside.

26. The complaint proceedings are restored to the file of the learned Trial Court, which shall proceed further in accordance with law, uninfluenced by the observations contained in the impugned order.

27. Accordingly, the petition is allowed. Pending application(s), if any, also stand disposed of in the above terms.

28. A copy of this order be sent to the concerned learned Trial Court for necessary compliance and information.

**MADHU JAIN**
**(JUDGE)**

**JULY 30, 2026/ys//RM**