IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CNR No: PHHC011305372023

2026:PHHC:115526

CRM-M-51017-2023 (O&M)

Dilpesh Lakshman Bhagatni **...Petitioner**

Versus

Raj Singh Chillar **...Respondent**

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	23.07.2026
2	The date when the judgment is pronounced	21.08.2026
3	The date when the judgment is uploaded on the website	21.08.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Bhrigu Dhami, Advocate and
Mr. Deepak Aggarwal, Advocate
for the petitioner.
(through VC)

Mr. A. S. Walia, Advocate
for the respondent.

MANISHA BATRA, J.

1. The present petition has been filed under Section 482 Cr.P.C. seeking for setting aside the order dated 21.09.2023 passed by the Court of learned Judicial Magistrate First Class, Chandigarh in Complaint No. NACT/12474/2017 titled ***Raj Singh Chillar v. ED Developers Pvt. Ltd. and others***, filed under Sections 138 and 142 of the Negotiable Instruments

Act, 1881 *(for short 'N. I. Act')* read with Section 420 of IPC, whereby the application filed by the petitioner seeking stay of the proceedings in view of the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 ***(for short 'IBC')*** was dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent-complainant Raj Singh Chillar alleging that he was induced by one Prakash Asnani and his son, who were known to him through his brother-in-law, to invest in a residential project namely **"Bhagtani Enclave"** at Andheri (West), Mumbai being developed by accused No.1-ED Developers Private Limited. It was represented that the project was being managed by its Directors, namely Mukesh Lakshman Bhagtani, Dilpesh Lakshman Bhagtani **(the present petitioner)** and Lakshman Purshotam Bhagtani and that possession of the flat would be delivered by the end of the year 2016. It is further alleged that acting upon the aforesaid representations, the complainant initially paid a sum of ₹30,00,000/- by way of three cheques in November 2015 towards earnest money. Thereafter, on the assurance that the buyer's agreement would shortly be executed, another sum of ₹30,00,000/- was paid by three post-dated cheques. Despite repeated requests, neither the allotment letter nor the buyer's agreement were ever supplied and no progress was made in respect of the promised flat.

3. As per the further allegations, when the complainant demanded back the amount of money invested by him, a cheque of ₹76,20,000/- was issued but, on the request of the accused owing to financial difficulties after demonetisation, the complainant agreed not to present the same. In lieu

thereof, cheque No.000909 dated 31.08.2017 for a sum of ₹84,30,000/- drawn on Bank of India, Yari Road Branch, Mumbai, was issued towards discharge of the complainant's claim including interest. The aforesaid cheque was presented by the complainant through his banker but was dishonoured with the remarks "Payment Stopped by Drawer". Thereafter, a statutory legal notice dated 25.10.2017 was served upon all the accused demanding payment of the cheque amount. Since the amount remained unpaid within the prescribed period, the present complaint was filed by the respondent/complainant.

4. Upon presentation of the complaint, the learned trial Court summoned the accused persons, including the present petitioner, to face trial for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner appeared before the trial Court, furnished bail and pleaded not guilty.

5. During the pendency of the complaint, insolvency proceedings under Section 95 of the IBC were initiated against the petitioner before the National Company Law Tribunal, Mumbai *(for short 'NCLT)* by one Kunal Tushar Vora. According to the petitioner, an interim moratorium under Section 96 of the IBC came into operation with effect from 27.07.2023. On that basis, the petitioner moved an application before the learned trial Court praying that further proceedings in the complaint under Section 138 of the N. I. Act be stayed till the moratorium continued. Notice of the application was issued to the complainant, who filed reply opposing the same. The petitioner also filed a rejoinder. Vide order dated 21.09.2023, the learned Judicial Magistrate dismissed the said application, giving rise to the present petition.

6. It is argued by learned counsel for the petitioner that the learned trial Court has committed a patent error in declining to stay the proceedings despite the admitted initiation of insolvency proceedings against the petitioner under Section 95 of the IBC. It is argued that by virtue of Section 96 of the IBC, an interim moratorium automatically commences from the date of filing of the insolvency application and all legal proceedings in respect of any debt stand deemed to be stayed. However, the learned Magistrate erroneously proceeded on the basis of principles governing corporate insolvency under Section 14 of the IBC, whereas the petitioner's case squarely falls under Part III of the Code relating to insolvency of individuals and personal guarantors. According to learned counsel, the distinction between Sections 14 and 96 has been completely overlooked. The proceedings under Section 138 of the N. I. Act are legal proceedings in respect of a debt and are liable to remain stayed during the operation of the interim moratorium under Section 96 of the Code. It is, thus, prayed that the impugned order dated 21.09.2023 be set aside and the proceedings before the trial Court be stayed till the insolvency proceedings attain finality. To fortify his arguments, learned counsel for the petitioner has relied upon ***P. Mohanraj and others v. Shah Brothers Ispat Pvt. Ltd., 2021 (2) RCR (Criminal) 711***.

7. On the other hand, learned counsel appearing for the respondent-complainant has opposed the petition and supported the order passed by the learned trial Court. It is submitted that the application filed by the petitioner was rightly dismissed as the proceedings under Section 138 of the N. I. Act cannot be permitted to be stalled merely on account of the initiation of insolvency proceedings. It is further submitted that the complaint discloses

that the complainant had invested a total amount of ₹60,00,000/- in the project of accused-company on the assurances extended by its Directors, including the present petitioner. Despite receiving the entire consideration, neither the promised flat was delivered nor were the requisite documents executed. Ultimately, in discharge of the admitted liability, cheque bearing No.000909 dated 31.08.2017 for ₹84,30,000/- was issued, which, upon presentation, was dishonoured with the remarks "Payment Stopped by Drawer". Despite service of the statutory legal notice, the accused failed to honour their liability, thereby attracting the penal provisions of Section 138 of the Negotiable Instruments Act. It is submitted that the petitioner cannot be permitted to defeat or indefinitely delay the prosecution by taking shelter under the provisions of the Insolvency and Bankruptcy Code. The respondent, therefore, prays for dismissal of the present petition and continuation of the proceedings before the trial Court.

8. This Court has considered the submissions advanced by learned counsel for the parties and has perused the material placed on record.

9. The facts relevant for adjudication of the present petition are not in dispute. The complainant instituted the aforementioned under Section 138 of the N. I. Act against ED Developers Pvt. Ltd. and its Directors, including the present petitioner, in respect of a dishonoured cheque. The complaint was instituted on 07.12.2017 and cognizance therein was taken on 08.12.2017. The proceedings before the learned trial Court have thereafter progressed substantially. The petitioner, during the pendency of the aforesaid criminal proceedings, approached the NCLT by filing a petition under Section 95 of the IBC. The said petition was filed on 27.07.2023. On the strength of such

filing, the petitioner moved an application before the learned trial Court seeking stay of the proceedings under Section 138 of the N. I. Act, primarily contending that an interim moratorium under Section 96 of the IBC had commenced from the date of filing of the application under Section 95. The learned trial Court, however, declined the prayer. Aggrieved thereof, the petitioner has approached this Court.

10. Thus, the short issue which arises for consideration is whether the petitioner, merely by virtue of an application having been filed under Section 95 of the IBC and the consequent interim moratorium under Section 96 thereof, can seek stay of the criminal proceedings pending against him under Section 138 read with Section 141 of the N. I. Act. The precise controversy has been authoritatively settled by the Hon'ble Supreme Court in ***Rakesh Bhanot v. M/s Gurdas Agro Pvt. Ltd., 2025 (2) RCR (Criminal) 485***. In the said case also, the accused, during the pendency of proceedings under Section 138 of the N. I. Act, had initiated personal insolvency proceedings under the IBC and sought to have the criminal proceedings adjourned *sine die* by invoking the interim moratorium under Section 96 of the IBC. The Hon'ble Supreme Court specifically considered the common question as to whether proceedings under Section 138 read with Section 141 of the N. I. Act were liable to be stayed on account of the interim moratorium under Section 96 of the IBC. While answering the said question, the Hon'ble Supreme Court drew a clear distinction between proceedings for recovery of a debt and criminal proceedings arising out of dishonour of a cheque. It was held that the expression "legal action or proceedings" occurring in Section 96 has to be read in the context in which it occurs, namely, proceedings **"in respect of any**

debt". Such protection cannot be construed as extending to every criminal proceeding against the debtor. The Court accordingly held that the interim moratorium under Section 96 applies to civil proceedings relating to recovery of debts and does not extend to criminal prosecution under Section 138 of the N. I. Act

11. The distinction is significant. Proceedings under Section 138 of the N. I. Act are not proceedings for recovery of the underlying debt. They are penal proceedings arising from the statutory consequence attached to the dishonour of a cheque and failure to make payment in accordance with the statutory requirement. The fact that the dishonoured cheque may have been issued towards discharge of a debt does not alter the nature of the prosecution. The Hon'ble Supreme Court has reiterated that proceedings under Sections 138/141 of the N. I. Act operate independently of insolvency proceedings and that a person cannot absolve himself of his personal criminal liability merely by invoking proceedings under the IBC.

12. It is also apposite to notice that the ratio ultimately laid down in ***Rakesh Bhanot's case (supra)*** is not an isolated proposition but is founded upon and is in continuation of the consistent line of authority of the Hon'ble Supreme Court on the interplay between the IBC and proceedings under Sections 138/141 of the N. I. Act. In ***P. Mohanraj's case (supra),*** which has been in fact relied upon by the petitioner also, the Hon'ble Supreme Court held that the moratorium under Section 14 of the IBC operates in respect of the corporate debtor, whereas the natural persons covered by Section 141 of the N. I. Act continue to remain statutorily liable. The same principle was

reiterated in ***Narinder Garg and others v. Kotak Mahindra Bank Ltd. and others, (2022) SCC OnLine SC 517***.

13. It would also be apposite to examine the distinction between the moratorium contemplated under Section 14 and the interim moratorium contemplated under Section 96 of the IBC. Section 14 operates in the case of a corporate debtor upon commencement of the corporate insolvency resolution process, whereas Section 96 comes into operation upon filing of an application under Section 94 or Section 95 in respect of personal insolvency. Though the two provisions operate in different contexts, the object of the moratorium is not to confer immunity from criminal liability. The Hon'ble Supreme Court in ***Rakesh Bhanot's case (supra)***, after examining the scheme of Sections 14, 96 and 101 of the IBC, has categorically held that the protection afforded by the moratorium under either provision is essentially directed towards civil claims for recovery of debt and cannot be extended to criminal proceedings. The Hon'ble Court specifically observed that the use of the expressions "all the debts" and "in respect of any debt" in Section 96 is intended to protect the debtor against civil claims directed towards recovery and not against criminal action. Thus, while Section 14 affords protection to the corporate debtor during the insolvency resolution process, and Section 96 affords interim protection to a debtor in personal insolvency proceedings, neither provision can be construed as creating a shield against prosecution under Section 138 of the Negotiable Instruments Act.

14. The aforesaid distinction assumes significance in the present case. The petitioner seeks to equate the protection available to a debtor under Section 96 with the moratorium available to a corporate debtor under Section

14 and, on that basis, seeks to halt the criminal prosecution pending against him. Such an approach cannot be accepted. The Hon'ble Supreme Court has made it clear that, notwithstanding the difference in the nature and stage of the moratorium under Sections 14 and 96, the protection under both provisions is confined to civil claims concerning the debt and does not extend to criminal prosecution. Indeed, the Court has expressly held that whether the moratorium is under Section 14 or Section 96, the liability of natural persons under Section 141 of the N. I. Act remains unaffected. Thus, the petitioner cannot derive any greater protection merely because the insolvency proceedings invoked by him are proceedings under Section 95 and the interim moratorium is referable to Section 96 of the IBC.

15. Reliance can also be placed upon ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd., (2023) 10 SCC 545***, wherein the Hon'ble Supreme Court, after considering the scope and object of the IBC and its interplay with the N. I. Act, held that no provision of the IBC bars the continuation of criminal prosecution initiated against the Directors and officials of the corporate debtor. The Hon'ble Court further held that, even after the corporate debtor comes under the resolution process, the natural persons, namely, the signatories to the cheques and Directors of the corporate debtor, cannot be permitted to escape prosecution or liability under Section 138 of the N. I. Act.

16. It is equally important to notice that the petitioner is seeking to invoke the interim moratorium not for the purpose of preventing recovery proceedings in respect of the debt, but for the purpose of bringing to a halt a criminal prosecution which had already commenced much prior to the

initiation of proceedings under the IBC. The complaint in the present case was instituted in the year 2017 and cognizance was taken on 08.12.2017, whereas the petition under Section 95 of the IBC was filed by the petitioner only on 27.07.2023. The subsequent invocation of the insolvency jurisdiction, therefore, cannot retrospectively destroy the criminal liability arising from the alleged dishonour of the cheque nor can it furnish a statutory shield against continuation of the prosecution.

17. The object of the moratorium under the IBC is to afford the debtor breathing space in relation to his debts and to facilitate the insolvency resolution process. It was never intended to operate as an immunity from criminal liability. The Hon'ble Supreme Court has, in fact, specifically observed that the interim moratorium under Section 96 and the moratorium under Section 101 are designed to provide breathing space to the debtor for reorganisation of his financial affairs, but are not intended to shield individuals from personal criminal liabilities arising from their acts.

18. In the considered opinion of this Court, accepting the petitioner's interpretation would result in enlarging the statutory protection under Section 96 beyond the language and purpose of the provision. It would also have the effect of permitting an accused facing prosecution under Section 138 of the N. I. Act to suspend the criminal process merely by initiating insolvency proceedings. Such an interpretation has expressly been rejected by the Hon'ble Supreme Court. The fact that someone has invoked the jurisdiction of the NCLT under Section 95 of the IBC as against the petitioner, therefore, does not confer upon him any right to seek stay of the criminal proceedings under Section 138 of the N. I. Act.

19. Consequently, this Court finds no illegality, perversity or jurisdictional error in the impugned order whereby the learned trial Court declined to stay the proceedings under Section 138 of the N. I. Act. The petitioner cannot claim the protection sought merely on account of pendency of proceedings under Section 95 of the IBC or the operation of the interim moratorium under Section 96 thereof. Accordingly, the present petition is dismissed. The proceedings before the learned trial Court shall continue in accordance with law.

20. It is, however, clarified that any observation made herein is only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the complaint or the defence of the petitioner.

21.08.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*