HC-KAR

CNR: KAHC010208832026

NC: 2026:KHC:39877
CRL.P No. 4568 of 2026
*C/W CRL.P No. 4572 of 2026*
*CRL.P No. 4575 of 2026*
*AND 4 OTHERS*

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30TH DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE M.NAGAPRASANNA**

**CRIMINAL PETITION NO. 4568 OF 2026**

**C/W**

**CRIMINAL PETITION NO. 4572 OF 2026**

**CRIMINAL PETITION NO. 4575 OF 2026**

**CRIMINAL PETITION NO. 4583 OF 2026**

**CRIMINAL PETITION NO. 4594 OF 2026**

**CRIMINAL PETITION NO. 4598 OF 2026**

**CRIMINAL PETITION NO. 4625 OF 2026**

**IN CRL.P No. 4568/2026**

**BETWEEN:**

ASHISH ASHOK BAJAJ,
S/O ASHOK CHUNNILAL BAJAJ,
AGED ABOUT 49 YEARS,
R/AT VILLA NO.9, SIDRA 1,
DUBAI HILLS ESTATE,
HADAEQ SHEIKH BIN RASHID,
DUBAI, UNITED ARAB EMIRATES.
REP. BY HIS POWER OF ATTORNEY HOLDER
ASHOK CHUNNILAL BAJAJ.

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO,
ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,
AGED ABOUT 72 YEARS,
R/AT RAHEJA BUNGALOW, OPPOSITE BHANU APARTMENTS, SHRI G.B. JUKAR ROAD,
RUIA PARK, JUHU, MUMBAI 400049.

ALSO AT: RAHEJA CHAMBER, 4TH FLOOR,
LINKING ROAD AND MAIN AVENUE,
SANTACRUS (WEST), MUMBAI 400054.

...RESPONDENT

(BY SRI HARISH KUMAR V L, ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO 1. SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII ACJM, BENGALURU IN C.C.NO.57806/2021 (DOCUMENT NO.7) REJECTING THE PETITIONERS FOR THE OFFENCE P/U/S 138 OF N.I ACT APPLICATION FOR RECALL OF THE STAY ORDER DATED 20.07.2024 AND ETC.

**IN CRL.P NO. 4572/2026**

**BETWEEN:**

CHAMPA ASHOK BAJAJ,
W/O ASHOK CHUNNILAL BAJAJ,
AGED ABOUT 73 YEARS,
R/AT NO. 704, 7TH MAIN,
H.A.L. 2ND STAGE, INDIRANAGAR,
BENGALURU – 560008.
REP. BY HIS POWER OF ATTORNEY HOLDER
ASHOK CHUNNILAL BAJAJ.

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO,

ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,
AGED ABOUT 72 YEARS,
R/AT RAHEJA BUNGALOW,
OPPOSITE BHANU APARTMENTS,
SHRI G.B. JUKAR ROAD, RUIA PARK,
JUHU, MUMBAI 400049.

ALSO AT:
RAHEJA CHAMBER, 4TH FLOOR,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ (WEST),
MUMBAI - 400054.

...RESPONDENT

(BY SRI HARISH KUMAR V L, ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO 1. SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII A.C.J.M BENGALURU IN C.C.NO.57811/2021 FOR THE OFFENCES P/U/S 138 OF N.I ACT (DOCUMENT NO.7), REJECTING THE PETITIONER;S APPLICATION FOR RECALL OF THE STAY ORDER DATED 20.07.20242 AND ETC.

**IN CRL.P NO. 4575/2026**

**BETWEEN:**

KOMAL ASHISH BAJAJ,
W/O ASHISH ASHOK BAJAJ,
AGED ABOUT 45 YEARS,
R/AT VILLA NO.9, SIDRA 1,

DUBAI HILLS ESTATE,
HADAEQ SHEIKH BIN RASHID,
DUBAI, UNITED ARAB EMIRATES.
REP. BY HIS POWER OF ATTORNEY HOLDER
ASHOK CHUNNILAL BAJAJ

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO,
ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,
AGED ABOUT 72 YEARS,
R/AT RAHEJA BUNGALOW,
OPPOSITE BHANU APARTMENTS,
SHRI G.B. JUKAR ROAD,
RUIA PARK, JUHU,
MUMBAI 400049.

ALSO AT:
RAHEJA CHAMBER, 4TH FLOOR,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ (WEST),
MUMBAI - 400054.

...RESPONDENT

(BY SRI HARISH KUMAR V L, ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO 1. SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII A.C.J.M BENGALURU IN C.C.NO.57807/2021 (DOCUMENT NO.7) REJECTING THE PETITIONER'S APPLICATION FOR RECALL

OF THE STAY ORDER DATED 20.07.2024 AND ETC.

**IN CRL.P NO. 4583/2026**

**BETWEEN:**

ASHISH ASHOK BAJAJ,
KARTHA OF ASHISH ASHOK BAJAJ HUF,
S/O ASHOK CHUNNILAL BAJAJ,
AGED ABOUT 49 YEARS,
R/AT VILLA NO.9, SIDRA 1,
DUBAI HILLS ESTATE,
HADAEQ SHEIKH BIN RASHID,
DUBAI, UNITED ARAB EMIRATES.
REP. BY HIS POWER OF ATTORNEY HOLDER
ASHOK CHUNNILAL BAJAJ.

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO,
ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,
AGED ABOUT 72 YEARS,
R/T RAHEJA BUNGALOW,
OPPOSITE BHANU APARTMENTS,
SHRI G.B. JUKAR ROAD,
RUIA PARK, JUHU, MUMBAI - 400049.

ALSO AT:
RAHEJA CHAMBER, 4TH FLOOR,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ (WEST),
MUMBAI - 400054.

...RESPONDENT

(BY SRI HARISH KUMAR V L, ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO A) SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII ACJM, BENGALURU IN CC.NO.57812/21 FOR THE P/U/S 138 OF NI ACT (DOCUMENT NO. 7), REJECTING THE PETITIONER'S APPLICATION FOR RECALL OF THE STAY ORDER DATED 20.07.2024 AND ETC.

**IN CRL.P NO. 4594/2026**

**BETWEEN:**

SANDEEP ASHOK BAJAJ,
S/O ASHOK CHUNNILAL BAJAJ,
AGED ABOUT 45 YEARS,
R/AT NO. 704, 7TH MAIN,
H.A.L. 2ND STAGE, INDIRANAGAR,
BENGALURU-560008.
REP. BY HIS POWER OF ATTORNEY HOLDER,
ASHOK CHUNNILAL BAJAJ.

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO, ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,
AGED ABOUT 72 YEARS,
R/AT RAHEJA BUNGALOW,
OPPOSITE BHANU APARTMENTS,
SHRI G B JUKAR ROAD,
RUJA PARK, JUHU, MUMBAI-400049.

ALSO AT: RAHEJA CHAMBER,
4TH FLOOR, LINKING ROAD AND
MAIN AVENUE, SANTACRUZ (WEST),
MUMBAI-400054.

...RESPONDENT

(BY SRI HARISH KUMAR V L, ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO A) SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII ACJM, BENGALURU IN CC. 57809/21 (DOCUMENT NO. 7), REJECTING THE PETITIONER'S APPLICATION FOR RECALL OF THE STAY ORDER DATED 20.07.2024 AND ETC.

**IN CRL.P NO. 4598/2026**

**BETWEEN:**

ASHOK CHUNNILAL BAJAJ,
S/O CHUNNILAL H BAJAJ,
AGED ABOUT 73 YEARS,
R/AT NO. 704, 7TH MAIN, HAL 2ND STAGE,
INIDRANAGAR, BENGALURU – 560008.

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO,
ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,
AGED ABOUT 72 YEARS,
R/AT RAHEJA BUNGALOW, OPPOSITE BHANU
APARTMENTS, SHRI G.B. JUKAR ROAD,

RUIA PARK, JUHU, MUMBAI 400049.

ALSO AT: RAHEJA CHAMBER, 4TH FLOOR,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ (WEST), MUMBAI 400054.

...RESPONDENT

(BY SRI HARISH KUMAR V L.,ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO A) SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII ACJM, BENGALURU.IN CC NO 57808/21 (DOCUMENT NO. 6), REJECTING THE PETITIONER'S APPLICATION FOR RECALL OF THE STAY ORDER DATED 20.07.2024 AND ETC.

**IN CRL.P NO. 4625/2026**

**BETWEEN:**

SANDEEP ASHOK BAJAJ,
KARTHA OF SANDEEP ASHOK BAJAJ HUF,
S/O ASHOK CHUNNILAL BAJAJ,
AGED ABOUT 45 YEARS,
R/AT NO. 704, 7TH MAIN,
H.A.L. 2ND STAGE, INDIRANAGAR,
BENGALURU-560008
REP. BY HIS POWER OF ATTORNEY HOLDER,
ASHOK CHUNNILAL BAJAJ,
S/O CHUNNILAL H BAJAJ.

...PETITIONER

(BY SRI SAI PRANAV H.L FOR SRI NAGESH MORO,
ADVOCATES)

**AND:**

DEEPAK BHAGWANDAS RAHEJA,
S/O BHAGWANDAS SEWARAM RAHEJA,

AGED ABOUT 72 YEARS,
R/AT RAHEJA BUNGALOW, OPPOSITE BHANU APARTMENTS, SHRI G B JUKAR ROAD,
RUJA PARK, JUHU, MUMBAI-400049.

ALSO AT: RAHEJA CHAMBER, 4TH FLOOR,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ (WEST), MUMBAI-400054

...RESPONDENT

(BY SRI HARISH KUMAR V L.,ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO A) SET ASIDE THE IMPUGNED ORDER DATED 31.12.2025 PASSED BY THE LEARNED XXXIII ACJM, BENGALURU IN C.C.57810/21 (DOCUMENT NO. 7), REJECTING THE PETITIONER'S APPLICATION FOR RECALL OF THE STAY ORDER DATED 20.07.2024 AND ETC.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

## ORAL ORDER

Petitioners – complainants in all these petitions, knock at the doors of this Court calling in question orders dated 31.12.2025, passed by the XXXIII Additional Chief Judicial Magistrate, Bengaluru, in C.C.Nos.57806/2021, 57811/2021, 57807/2021, 57812/2021, 57809/2021, 57808/2021 and 57810/2021 impugned in the respective petitions and also seek a direction to the concerned Court to dispose the aforesaid cases expeditiously.

2. Heard Sri Sai Pranav H.L., learned counsel for petitioner and Sri Harish Kumar V.L., learned counsel for respondent and have perused the material on record.

3. Facts in brief, germane, are as follows:

Conglomeration of these petitions, preferred by different complainants against the same accused, depicts that the accused has had several transactions with the complainants. The complainants in the cases at hand were issued cheques owing to the transactions between them. The cheques get dishonoured and the dishonouring of the cheques lead the complainants to approach the concerned Court invoking Section 200 of the Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I.Act' for short). During the subsistence of the proceedings, the Company of the respondent - accused undergoes proceedings under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code' for short).

Upon an application made by the respondent - accused, interim moratorium as obtaining under Section 96 of the Code is imposed *qua* the respondent - accused on the score that he is the personal guarantor of the Company. The accused then files applications before the concerned Court, seeking stay of all further proceedings in the light of the interim moratorium so declared under Section 96 of the Code. The concerned Court stays the entire proceedings.

4. The complainants, realising the folly in the orders passed by the concerned Court, file applications seeking recall of the order on the score that the interim moratorium issued under Section 96 of the Code will not control the proceedings initiated under Section 138 of the N.I.Act. The concerned Court fails to recall the order on the score that it has become *functus officio* and therefore, the orders could not be recalled. Therefore, the petitioners - complainants in all these cases are at the doors of this Court.

5. The issue lies in a narrow compass as to whether the interim moratorium being issued under Section 96 of the Code

would halt the proceedings before the concerned Court instituted for the offence punishable under Section 138 of the N.I.Act.

6. The answer is an unequivocal and an emphatic "No", with a twist. The proceedings would get stalled only insofar as the Company upon which the moratorium is issued under Section 14 of the Code and not the directors of the Company. Therefore, the directors of the Company who have been in the realm of the affairs of the said Company while issuing the cheques must face the proceedings under Section 138 of the N.I.Act. The Apex Court, right from the judgment of the three Judges Bench rendered in the case of **P. MOHANRAJ v. SHAH BROS. ISPAT (P) LTD.** reported in **2021 SCC ONLINE SC 152,** has elucidated and further reiterated in several other judgments with regard to the role of the directors and the Company once the moratorium is declared.

7. In the case at hand, interim moratorium is declared *qua* the accused under Section 96 of the Code. The Apex Court in the case of **DINESHCHAND SURANA v. UCO BANK**

reported in **2026 SCC OnLine SC 987,** while considering the issue of whether proceedings can be stalled against the directors of the Company or otherwise when interim moratorium is declared under Section 96 of the Code, has held as follows:

"…. …. ….

**II. <u>Applicability of the Moratorium provisions under Part III of the IBC to the proceedings under Section 138 of the NI Act</u>**

**(i) <u>Inapplicability of moratorium provisions on the criminal aspect of Section 138 proceedings</u>**

**129.** Sections 96 and 101 respectively of the IBC fall under Part III thereof which relates to "*Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms*". Section 96 of the IBC provides for interim-moratorium after the filing of insolvency application and reads thus:

*"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*

***(b) <u>during the interim-moratorium period</u>—***

***(i) <u>any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed;</u>*** *and*

*(ii) <u>the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.</u> (…)"*

(Emphasis supplied)

**130.** Similarly, Section 101 of the IBC deals with the operation of moratorium on any legal action or proceeding in respect of any debt after the insolvency application comes to be admitted. Section 101 reads thus:

> *"101. Moratorium.—*
>
> *(1) When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.*
>
> ***(2) <u>During the moratorium period</u>—***
>
> **(a) <u>any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed</u>;**
>
> (b) <u>the creditors shall not initiate any legal action or legal proceedings in respect of any debt</u>; and
>
> (c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein; (…)"

(Emphasis supplied)

**131.** In our opinion, **the expression "*legal action or proceeding in respect of any debt*" ought to be read in a manner that is consistent with the objective of the penal provisions in the NI Act. A bare textual reading of Sections 96 and 101 respectively of the IBC would, in our considered view, be misleading. We say so because the expression any "*legal action or proceeding*" when read stand alone would undoubtedly include proceedings under Section 138 of the NI Act. A reading of the said expression with the qualifier "*in respect of any debt*" would also not exclude Section 138 proceedings considering that the dishonoured**

**cheque thereunder must be drawn for the payment in whole or in part, of any legally enforceable debt or liability.**

**132. Despite the plain statutory reading of Sections 96 and 101 of the IBC respectively, we are of the view that the proceedings under Section 138 of the NI Act should not receive protection of moratorium. We say so because the predominant nature of the offence of cheque dishonour is criminal. As discussed in the aforesaid portions of this exposition, Section 138 proceeding culminates with the imposition of punishment of either imprisonment or fine or both.** It is trite that the punishment of imprisonment imposes personal criminal liability and the imposition of fine may result in criminal consequences for both a natural and/or juristic person.

**133.** We are conscious of the fact that the commission of the criminal offence of cheque dishonour results in the civil injury of non-payment of 'debt'. However, in our considered view, **to make moratorium provisions under the IBC applicable on proceedings under Section 138 of the NI Act, solely because of the civil nature of the injury is untenable in light of the objective sought to be achieved by the enactment of Section 138. We may even go so far as to say that the applicability of moratorium provisions on Section 138 proceedings makes the same equivalent to a debt recovery mechanism, which could never have been the intention of the legislature.**

**134.** The moratorium provisions in the IBC must be made available having regard to the consequence of the "*legal action or proceeding*". The natural consequence of a Section 138 proceedings is criminal liability in the form of either imprisonment or fine or both. The exclusion of criminal liability, especially for the purposes of personal insolvency under Part III is evident from Section 79(15) of the IBC which provides the definition of "excluded debt". Section 79(15) of the IBC reads thus:

*"79. Definitions.—*

*(…)*

*(15) "excluded debt" means—*

*(a) <u>liability to pay fine imposed by a court or tribunal</u>;*

*(b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;*

*(c) liability to pay maintenance to any person under any law for the time being in force;*

*(d) liability in relation to a student loan; and*

*(e) any other debt as may be prescribed; (…)"*

(Emphasis supplied)

**135.** The exclusion of 'fines' from the operation of IBC provisions under Part III indicates that the protection under the moratorium provisions is not available for all forms of liabilities irrespective of whether the imposition of such liability would lead to the depletion of the insolvent person's assets. The exclusion of penalties and fines from the definition of 'debt' for the purposes of individual insolvency has been discussed by this Court in *Saranga Anilkumar Aggarwal* v. *Bhavesh Dhirajlal Sheth*, (2025) 4 SCC 629 : (2025) 255 Comp Cas 681.

**136.** This Court, in *Anilkumar Aggarwal* (supra), observed that regulatory punitive actions are also excluded from the operation of moratorium for the reason that they are meant to act as a measure of deterrence against future violations. Therefore, the penalties arising out of such punitive actions cannot be included within the definition of 'debt' under IBC. The relevant observations of this Court in the said judgment are reproduced below:

*"32. <u>It is well settled that there exists a distinction between punitive actions and criminal proceedings. While a criminal proceeding is initiated by the State against an accused to determine guilt and impose penal consequences, punitive actions in the regulatory sphere, such as those imposed by Ncdrc, are meant to ensure compliance with the law and to act as a deterrent</u>*

*against future violations.* Section 27 of the CP Act empowers consumer fora to impose penalties to ensure adherence to consumer protection norms. These penalties do not arise from any "debt" owed to a creditor but rather from the failure to comply with the remedial mechanisms established under consumer law. Unlike a criminal prosecution, which requires the establishment of mens rea, the penalties imposed by Ncdrc are regulatory in nature and aim to protect the public interest rather than to punish criminal behaviour.*

*33. Further, a distinction must be drawn between the moratorium applicable to a corporate debtor under Section 14 IBC and the interim moratorium applicable to individuals and personal guarantors under Section 96 IBC. The former is much broader in scope and stays all proceedings against the corporate debtor, including execution and enforcement actions. However, Section 96 IBC is more limited in its scope, staying only "legal actions or proceedings in respect of any debt". Unlike corporate insolvency proceedings, where the goal is a comprehensive resolution of the company's liabilities, individual insolvency proceedings are designed primarily for restructuring personal debts and providing relief to the debtor. The legislative intent behind limiting the scope of the interim moratorium under Section 96 IBC must be respected, and a blanket stay on all regulatory penalties would result in defeating the objectives of consumer protection laws.*

*34. **The moratorium under Section 96 IBC is intended to provide temporary relief to debtors by preventing certain proceedings against them during the resolution process. However, this protection is not absolute and does not extend to all categories of debts. The legislative intent behind the moratorium is to ensure that the debtor's assets are preserved for an efficient resolution process and to prevent creditors from taking unilateral actions that may frustrate the objective of insolvency proceedings. However, the statutory scheme of the IBC makes it clear that the protection***

***under the moratorium does not cover all forms of liabilities, particularly those classified as "excluded debts" under Section 79(15) IBC.***

***---xxx---***

*37. Furthermore,* ***the rationale behind excluding such liabilities from the moratorium is rooted in public policy considerations. If damages arising from legal violations, consumer protection claims, or penalties imposed by courts and tribunals were to be shielded under the moratorium, it would create an unfair advantage for errant entities and individuals, allowing them to evade their legal obligations under the guise of insolvency. The IBC, being a special law meant to balance the interests of all stakeholders, does not intend to provide relief to those who have been held liable for statutory breaches or misconduct.***

*38. The penalties imposed by Ncdrc arise due to non-compliance with consumer protection laws and serve a regulatory function rather than constituting "debt recovery proceedings". This distinction is crucial. The IBC is designed to deal with insolvency resolution and financial distress, whereas consumer protection laws exist to uphold consumer rights and ensure fair business practices. The penalties under Section 27 of the CP Act are aimed at compelling compliance and cannot be equated with recovery of an outstanding debt. The appellant cannot claim that such penalties fall within the scope of a debt moratorium, as they do not constitute financial liabilities owed to a creditor but rather statutory obligations enforced to uphold consumer rights. Allowing the stay of such penalties would effectively enable businesses to flout consumer protection mandates by merely initiating insolvency proceedings, which would be an unintended and dangerous consequence of a misinterpretation of the law."*

(Emphasis supplied)

**137. What is discernible from the aforesaid is that even though the object of the moratorium under Part III is to provide temporary relief to the debtor by enabling a stay on such proceedings that would result in depletion of his assets, yet there are certain forms of liabilities which are not protected even though their consequence might also be depletion of the monies or assets of the debtor.**

**138.** The rationale underlying the exclusion of some liabilities especially those mentioned in "excluded debts" under Section 79(15) is rooted in public policy considerations. The proceedings under the IBC are also required to balance between the interests of the debtors and public policy considerations. Therefore, errant persons ought not to be afforded the protection of moratorium in respect of violations that are discouraged in the interest of social or economic policy.

**139.** We find it apposite to also briefly address the distinction drawn between Section 138 of the NI Act and Section 27 of the Consumer Protection Act, 1986 by this Court in *Anilkumar Aggarwal* (supra). It was observed that the moratorium provisions have been made applicable on Section 138 proceedings because the assumption of debt is inherent to the offence itself unlike the penal provisions under the Consumer Protection Act. It is worth noting that this Court made such an observation only with a view to address the argument that the provisions under Section 138 of the NI Act and Section 27 of the Consumer Protection Act were both penal and hence, moratorium, if operable in respect of Section 138 proceedings, ought to be applicable on the penalties under Section 27 of the Consumer Protection Act. Since the question before the Bench therein did not pertain to the applicability of moratorium provisions on Section 138 of the NI Act, the dictum of this Court in *P. Mohanraj* (supra) was followed and accordingly a distinction was drawn. We find it necessary to distinguish the decision in *Anilkumar Aggarwal* (supra) on this count as the Bench therein had no occasion to deal with the nature and objective of Section 138 of the NI Act.

**140. There is no gainsaying that the nature of Section 138 of the NI Act is predominantly criminal as the provision utilizes punishment as a measure of deterrence to ensure the integrity and credibility of the use of cheques in commercial transactions. This coupled with the exclusion of the 'liability of fine' from the definition of 'debt' for the purposes of proceedings and protections under the IBC, leaves no manner of doubt in our minds that the proceedings under Section 138 cannot be stayed by way of Sections 96 and 101 of the IBC respectively. If the protection of moratorium is granted to the persons accused of cheque dishonour, it would tantamount to allowing evasion of criminal liability. We say so because any debt which is not considered to be an 'excluded debt' and in respect of which legal action or proceedings are stayed, can also be discharged if in case the accused person is declared bankrupt. In our opinion, it cannot be the intention of the Parliament that such fine, which is imposed as a personal criminal liability, be treated as debt for the purposes of protection of the moratorium provisions.**

…. …. ….

**II. Whether the proceedings under Section 138 of the NI Act are protected during the moratorium period provided under Part-III of the IBC?**

**199.** Having discussed the dual objective and nature of the proceedings under Section 138 of the NI Act, we have found that the applicability of moratorium provisions to the same is rife with complexity. **If Section 138 proceeding in its entirety is stayed by the operation of moratorium, then it would do violence to the avowed object of attaching criminal consequences to the wrong of cheque dishonour. On the other hand, if the Section 138 proceedings are kept outside the purview of moratorium, then it would be detrimental to the interests of the debtor as well as other creditors whose claims are similarly placed but are kept secondary due to adoption of methods of payments other than cheques.**

**200.** Therefore, it is imperative to balance between the objectives sought to be achieved by both the legislations. We have attempted to balance the provisions of both the NI Act and the IBC by bifurcating the offence of cheque dishonour into (i) criminal aspect of the offence (Tier I), and (ii) compensatory aspect of the Section 138 proceedings (Tier II).

**201. The criminal aspect of Section 138 proceedings results in punishment including imprisonment, fine or both. This makes it sufficiently clear that moratorium provisions under Part III of the IBC cannot be made applicable on the criminal impact of Section 138 of the NI Act. We have said so because Section 79(15) of the IBC which defines "excluded debts" has excluded the 'liability to pay fine' from debts in respect of which legal actions and proceedings are stayed by the operation of moratorium under Part III of the IBC. We are of the view that allowing Section 138 proceedings to enjoy the benefit of moratorium, especially in light of such express exclusion of criminal liability, is not a good law.**

**202.** We have also dealt with the compensatory aspect of Section 138 proceedings and have taken the view that the same is in the nature of a civil remedy that would result in the depletion of the assets of the individual debtor if not stayed. Therefore, we are of the view that the moratorium provisions under Part III of the IBC must be made applicable in respect of recovery of compensation in Section 138 proceedings.

**203.** Therefore, operation of moratorium depends upon the stage of the Section 138 proceeding."

(Emphasis supplied)

The Apex Court in terms of the afore-quoted judgment holds that the interim moratorium under Section 96 of the Code would not enure to the benefit of the directors of a Company and they would face the proceedings under Section 138 of the N.I.Act.

8. The learned counsel appearing for the respondent would submit that the Apex Court in the case of **DINESHCHAND SURANA** *supra*, has referred the matter to a larger Bench. Before the reference, it is necessary to notice the issues that the Apex Court has formulated in **DINESHCHAND SURANA**. It reads as follows:

"…. …. ….

**C. ISSUES FOR DETERMINATION**

**45.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

i. Whether the proceedings under Section 138 of the NI Act are initiated with the object to recover the money from the debtor?

ii. Whether the proceedings under Section 138 of the NI Act are protected during the moratorium period provided under Part-III of the IBC, i.e., under Sections 96 and 101 respectively during the insolvency proceedings as well as Sections 124 and 128 respectively during the bankruptcy proceedings?

iii. Whether the proceedings under Section 138 of the NI Act against the individual directors and other persons vicariously liable under Sections 141 of the NI Act for the actions of the corporate debtor would benefit from the moratorium provisions in Part-III of the IBC in cases of personal insolvency or bankruptcy?"

The issue referred to the larger Bench in **DINESHCHAND SURANA** *supra* is as follows:

"…. …. ….

**211.** The three-Judge Bench constituted may refer to the following questions:

(i) Whether the provisions of Section 138 of the NI Act and the objective underlying the enactment thereof indicate that it is quasi-criminal in nature with a tilt towards the criminal side?

(ii) Whether the moratorium provisions under Part III of the IBC should be made applicable on the entire proceedings under Section 138 of the NI Act or only to the compensatory aspect thereof?"

It is trite law that reference to a larger bench by the Apex Court would not take away the effect of the judgment that binds till the reference is answered and the said judgment is distinguished or reversed by a larger Bench. Therefore, I deem it appropriate to follow the law laid down by the Apex Court in

**DINESHCHAND SURANA** *supra* and as is followed by all other Courts, where interim moratorium *qua* the directors of the Company would not become applicable to proceedings under Section 138 of the N.I.Act. It is this that was projected by the complainants before the concerned Court while seeking recalling of the orders. Therefore, the orders granting stay in favour of the respondent - accused in all these cases stand obliterated and the proceedings in the respective cases shall continue.

9. For the aforesaid reasons, the following:

**ORDER**

a. The criminal petitions are allowed.

b. The orders dated 20-07-2024 and 31-12-2025 passed by the XXXIII Additional Chief Judicial Magistrate, Bengaluru, in C.C.Nos.57806/2021, 57811/2021, 57807/2021, 57812/2021, 57809/2021, 57808/2021 and 57810/2021 stand quashed. The proceedings against the respondent - accused shall continue.

c. It is for the Court to take the issue to its logical conclusion, in accordance with law.

Ordered accordingly.

**Sd/-**
**(M.NAGAPRASANNA)**
**JUDGE**

NVJ
List No.: 1 Sl No.: 90