2025 INSC 445

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE/CIVIL ORIGINAL JURISDICTION

CRIMINAL APPEAL NO. 1607 OF 2025
(Arising out of SLP (Crl.) No. 6087 OF 2023)

RAKESH BHANOT … APPELLANT(S)

VERSUS

M/S.GURDAS AGRO PVT. LTD. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1608 OF 2025
(Arising out of SLP (Crl.) No. 9316 OF 2023)

SANDEEP GUPTA … APPELLANT(S)

VERSUS

SHRI RAM STEEL TRADERS AND ANOTHER … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1609 OF 2025
(Arising out of SLP (Crl.) No. 12328 OF 2023)

RAKESH BHANOT … APPELLANT(S)

VERSUS

M/S.GURDAS AGRO PVT. LTD. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1610 OF 2025
(Arising out of SLP (Crl.) No. 12327 OF 2023)

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RAKESH BHANOT … APPELLANT(S)

VERSUS

M/S.GURDAS AGRO PVT. LTD. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1611 OF 2025
(Arising out of SLP (Crl.) No. 12329 OF 2023)

RAKESH BHANOT … APPELLANT(S)

VERSUS

M/S.GURDAS AGRO PVT. LTD. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1612 OF 2025
(Arising out of SLP (Crl.) No. 6835 OF 2024)

SANJEEV NARULA … APPELLANT(S)

VERSUS

M/S. ELKAY INTERNATIONAL LTD. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 1613-1649 OF 2025
(Arising out of SLP (Crl.) Nos. 9104 – 9140 OF 2024)

M/S.SHIVA SHAKTI GRAINS (INDIA) PVT.LTD & ANR. ETC. .. APPELLANT(S)

VERSUS

M/S.KAUR CHAND MUNISH KUMAR ETC. … RESPONDENT(S)

WITH

W.P. (C) NO.469 OF 2024

VIJAY CHETAN LILARAMANI & ANOTHER … PETITIONER(S)

VERSUS

UNION OF INDIA AND OTHERS … RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 1650-1652 OF 2025
(Arising out of SLP (Crl.) NOS. 272-274 of 2025)

ASHOK B JESWANI AND ANOTHER ETC. … APPELLANT(S)

VERSUS

M/S.REDINGTON INDIA LIMITED … RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 1653-1688 OF 2025
(Arising out of SLP (Crl.) NOS. 4822-4857 of 2025)

JITENDER SINGH SODHI AND ANOTHER ETC. … APPELLANT(S)

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX
AND ANOTHER ETC. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1689 OF 2025
(Arising out of SLP (Crl.) No. 15852 OF 2024)

YOGESH JOGINDERNATH MEHRA AND ANR. … APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA AND ANR. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1690 OF 2025
(Arising out of SLP (Crl.) No. 15813 OF 2024)

YOGESH JOGINDERNATH MEHRA AND ANR. … APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA AND ANR. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1691 OF 2025
(Arising out of SLP (Crl.) No. 15933 OF 2024)

YOGESH JOGINDERNATH MEHRA AND ANR. … APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA AND ANR. … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1692 OF 2025
(Arising out of SLP (Crl.) No. 15905 OF 2024)

YOGESH JOGINDERNATH MEHRA AND ANR. … APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA AND ANR. … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. Since the facts and issues involved in all these cases are common, they are clubbed together and disposed of, by this common judgment.

3. All these appeals are filed against the orders passed by different High Courts, which dismissed the petitions filed under Section 482 of the Criminal Procedure Code, 1973[1] and thereby affirmed the orders passed by the trial Court rejecting the applications filed for staying the proceedings under Section 138 of the Negotiable Instruments Act, 1881[2], *sine die* till the conclusion of the proceedings initiated under Section 94 of the Insolvency and Bankruptcy Code, 2016[3], before the National Company Law Tribunal. A writ petition has also been filed for declaration and direction that section 138 proceedings shall be deemed to be stayed during the operation of the moratorium period under section 96 IBC. The details of the cases are tabulated below:

Case No.	**Name of the**	**Order impugned**	**Order impugned**

1 For short, "Cr.P.C"
2 For short, "N.I. Act, 1881"
3 For short, "IBC"

	parties	**before this Court**	**before the High Court**
SLP(Crl) No.6087 of 2023	Rakesh Bhanot v. M/s. Gurdas Agro Pvt. Ltd	Order dated 23.3.2023 passed by the High Court of Punjab and Haryana, Chandigarh in CRM – M –37169/ 2022 (O&M)	Order dated 23.05.2022 passed by the Judicial Magistrate First Class, Bathinda in complaint No. COMA 1059/2019
SLP(Crl) No.9316 of 2023	Sandeep Gupta v. M/s. Sri Ram Steel Traders and another	Order dated 15.5.2023 passed by the High Court of Delhi at New Delhi, in Crl.M.C. No.381 of 2022	Order dated 03.12.2021 passed by the Metropolitan Magistrate Patiala House Courts, New Delhi, in CT No.12161/2018
SLP(Crl) No.12328 of 2023 SLP(Crl) No.12327 of 2023 SLP(Crl) No.12329 of 2023	Rakesh Bhanot v. M/s. Gurdas Agro Pvt. Ltd	Order dated 23.03.2023 passed by the High Court of Punjab and Haryana, Chandigarh in CRM – M – 59371/ 2022 (O&M) Order dated 07.02.2023 passed by the High Court of Punjab and Haryana, Chandigarh in CRM – M –39859/ 2022 (O&M) Order dated 23.03.2023 passed by the High Court of Punjab and Haryana, Chandigarh in CRM – M –39885/ 2022 (O&M)	Order dated 12.09.2022 passed by the Judicial Magistrate First Class, Bathinda in complaint No. COMA 89/2016 Order dated 23.05.2022 passed by the Judicial Magistrate First Class, Bathinda in complaint No. COMA 1060/2019 Order dated 23.05.2022 passed by the Judicial Magistrate First Class, Bathinda in complaint No. COMA 1061/2019
SLP(Crl) No.6835 of 2024	Sanjeev Narula v. M/s. Elkay International Ltd	Order dated 06.3.2024 passed by the High Court of Punjab and Haryana, Chandigarh in	Order dated 18.01.2024 passed by the Judicial Magistrate First Class, Faridabad in complaint

		CRM – M – 9799/ 2024 (O&M)	No. NACT– 719/2016.
SLP (Crl) Nos. 9104 -9140 of 2024	M/s. Shiva Shakti Grains (India) Pvt. Ltd and Another Etc. v. M/s.Kaur Chand Munish Kumar Etc.	Order dated 12.03.2024 passed by the High Court of Punjab and Haryana, Chandigarh in CRM – M – 12807/ 2019 etc. cases	Complaint in No. NACT– 704/2017 dated 21.11.2017 as well as the summoning orders dated 14.09.2018 issued by the Judicial Magistrate First Class, Sri Muktsar Sahib and all consequential proceedings.
W.P(C) No. 469/2024	Vijay Chetan Lilaramani and another v. Union of India and others	(i)to declare that the proceedings under section 138 r/w 141 of the Negotiable Instruments Act, 1881, shall be covered under moratorium imposed by section 96 of the IBC or shall deemed to be stayed during operation of the moratorium under section 96 of the IBC; and (ii)to direct that the trial pending before the Additional Chief Metropolitan Magistrate, Bengaluru in CC No. 54895/2023 stands deemed to be stayed, during the continuation of moratorium under the IBC.	-
SLP(Crl) Nos.272-274 of 2025	Ashok B. Jeswani and another v. M/s.Redington India Ltd	Order of the High Court of Madras dated 07.12.2023 in Crl.OP. No. 24506 of 2023 and dated 06.06.2024 in Crl. M. P. Nos.7782 and 7783 of 2024 in Crl.RC No.911 of 2024	Stay further proceedings with respect to the recovery of debt u/s. 138 of the N.l. Act, 1881, qua the appellants in view of Sections 94, 96 and 101 of the IBC.

SLP(Crl) Nos. 4822-4857 of 2025	Jitender Singh Sodhi and another v. Deputy Commissioner of Income Tax and another	Order dated 13.03.2024 passed by the High Court of Punjab and Haryana, Chandigarh in CRM – M – 52874/ 2023 etc. cases	Order dated 21.08.2023 passed by the Judicial Magistrate First Class, Chandigarh, in Complaint No. NACT / 3656/2015
SLP(Crl) No.15852 of 2024	Yogesh Jogindernath Mehra and another v. State of Maharashtra and another	Order dated 15.10.2024 passed by the High Court of Bombay, in Criminal Writ Petition (ST) No. 11799 of 2024	Stay the proceedings in CC No.186/SS/ 2018 pending before the 30th Metropolitan Magistrate, Kurla, Mumbai
SLP(Crl) No.15813 of 2024	Yogesh Jogindernath Mehra and another v. State of Maharashtra and another	Order dated 15.10.2024 passed by the High Court of Bombay, in Criminal Writ Petition (ST) No. 11800 of 2024	Stay the proceedings in CC No.186/SS/ 2018 pending before the 30th Metropolitan Magistrate, Kurla, Mumbai
SLP(Crl) No.15933 of 2024	Yogesh Jogindernath Mehra and another v. State of Maharashtra and another	Order dated 15.10.2024 passed by the High Court of Bombay, in Criminal Writ Petition (ST) No. 11950 of 2024	Stay the proceedings in CC No.186/SS/ 2018 pending before the 30th Metropolitan Magistrate, Kurla, Mumbai
SLP(Crl) No.15905 of 2024	Yogesh Jogindernath Mehra and another v. State of Maharashtra and another	Order dated 15.10.2024 passed by the High Court of Bombay, in Criminal Writ Petition (ST) No. 12390 of 2024	Stay the proceedings in CC No.186/SS/ 2018 pending before the 30th Metropolitan Magistrate, Kurla, Mumbai

4. The common legal question that arises for consideration herein is, whether the proceedings initiated against the appellants / petitioners under Section 138 read with Section 141 of the N.I. Act, 1881 should be stayed in view of the interim

moratorium under Section 96 IBC having come into effect upon the appellants / petitioners' filing applications under Section 94 IBC. In view of the commonality of issues involved in all the cases, we need not necessarily review the facts of each case individually.

5. However, for ease of reference, the facts leading to the appeal arising out of S.L.P (Crl.) No.6087 of 2023, in a nutshell are as under:

5.1. The respondent *viz*., M/s Gurdas Agro Pvt. Ltd. filed a complaint under Section 138 of the N.I. Act, 1881, against M/s Arjun Mall Retail Holdings Pvt. Ltd. through its Director- Kiran Bhanot, Kiran Bhanot (wife of the appellant), Rakesh Bhanot (appellant herein), and Arjun Bhanot (their son). It was alleged in the complaint that the accused issued four cheques each for Rs.50,00,000/- drawn on UCO Bank, Mid Corporate Industrial Area, Ludhiana, in order to discharge their legally enforceable liability. When the cheques were presented for encashment, the same were returned with the endorsement "Funds Insufficient". After issuance of a legal notice and upon the failure of the accused to make payment within the stipulated time, the respondent / complainant preferred a complaint under Section 138 of the N.I. Act, 1881. The said complaint was taken on file as COMA No.1059/2019 and is pending adjudication before the Judicial Magistrate First Class, Bhatinda.

5.2. During the pendency of the aforesaid proceedings under section 138 of the N.I. Act, 1881, the appellant Rakesh Bhanot filed an application in CP(IB) No.147/CHD/PB/2021 under Section 94 IBC before the National Company Law Tribunal, Chandigarh Bench, for personal insolvency. His wife, who is a co-accused, also filed a similar application. The said applications are pending adjudication. Pending the said proceedings, the appellant moved an application before the trial Court for adjourning the section 138 proceedings *sine die,* in view of the pendency of section 94 IBC petition as well as the injunctive provision as envisaged under section 96 IBC.

5.3. The trial Court, *vide* order dated 23.05.2022, rejected the aforesaid application. Aggrieved by the same, the appellant approached the High Court of Punjab and Haryana, Chandigarh, by filing a criminal petition bearing No.CRM-M-37169-2022 (O&M) under Section 482 Cr.P.C. By order dated 23.03.2023, the said criminal petition came to be dismissed by the High Court. Challenging the same, the appellant is before us with the present appeal.

6. The other appeals as well as the writ petition arising out of similar set of facts, have been filed by the respective appellants / petitioners before this court.

7. The learned counsel appearing for all the parties, including the applicant(s) / intervenor(s), made detailed submissions with respect to the issues at hand. In order to avoid repetition, they are concisely outlined as under:

7.1. <u>On the side of the appellants / petitioners</u>

(i) There is a complete and unequivocal bar on continuation of proceedings of the N.I. Act, 1881, in view of pendency of the insolvency proceedings before the National Company Law Tribunal, as envisaged under Section 96 IBC.

(ii) Once the proceedings under Section 94 IBC have been initiated before the Adjudicating Authority for personal insolvency resolution process, on account of the appellants / petitioners having become personally insolvent, necessarily all further proceedings under Section 138 of the N.I. Act, 1881, would remain stayed in terms of Section 96(1)(b) IBC.

(iii) The legislative intent behind the IBC is to provide a structured framework for debt resolution, while ensuring that debtors are afforded a fair opportunity to reorganize their financial affairs. The moratorium is designed to prevent creditors from taking coercive actions that could further destabilize the debtors' financial situation.

(iv) There is fine distinction in the statute between “Corporate Insolvency Resolution Process” and “Personal Insolvency Resolution Process”. In case, where a Company is a corporate debtor and insolvency proceedings are initiated against such corporate debtor under Section 7 or Section 9 IBC, the Adjudicating Authority under Section 14(1) IBC passes an order to declare a moratorium. On the other hand, Section 94 IBC provides for a situation wherein a debtor may approach the Adjudicating Authority for initiation of Personal Insolvency Resolution Process. Similarly, Section 95 IBC provides for a situation wherein a creditor may approach the Adjudicating Authority for initiation of Personal Insolvency Resolution Process against an individual. Section 96(1) IBC provides that in either case, whether under Section 94 or Section 95, (a) Interim moratorium comes into effect on the date of the application itself; (b) This moratorium is in respect of all debts; (c) This moratorium shall cease to have effect on the date of admission of such application; (d) During this period, all pending legal action or proceedings in respect of any debt shall be deemed to have been stayed; (e) Creditors of debt shall not initiate any legal action or proceeding in respect of any debt.

(v) In the present case, the moratorium came into effect in a proceeding under Section 96 IBC and not under Section 14 IBC. However, the High Court erroneously relied on the judgment in *P.Mohanraj v. Shah Brothers Ispat Pvt. Ltd*.[4],

4 (2021) 6 SCC 258

as in that case, this court was concerned only with the proceedings under section 14 IBC and not section 96 IBC. Hence, the observations made therein can be read only in the context of a moratorium under section 14 IBC.

(vi) Further, the reliance placed in the decision in *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd*.[5], is misconceived, since the said judgement merely holds that the moratorium under Section 14 IBC shall not protect the signatories and the directors of the corporate debtor because the said moratorium is only with respect to the corporate debtor, and not the individuals.

(vii) Once the application under Section 94 or 95 IBC has been admitted, Section 101 IBC states that "the debtor shall not transfer, alienate, encumber, or dispose of any of his assets of his legal rights or beneficial interest therein" thereby imposing an express bar on the individual/director/signatory/cheque from making any payment in relation to the dishonoured cheque. Thus, when the law prohibits payment, it would create a dichotomy to simultaneously proceed against the said individual under Section 138 read with Section 141 of the N.I. Act 1881 for dishonour of the cheque and failure to make the payment to purge/compound the said offence. Hence, the appellants / petitioners cannot be penalised for not performing an act expressly barred by law.

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5 (2023) 10 SCC 545

(viii) In *State Bank of India v. V.Ramakrishnan*[6] while adjudicating on the applicability of moratorium under Section 14 IBC to personal guarantors, it was held by this Court that personal guarantors are covered by the moratorium under Section 96 IBC, while stating the protection of moratorium under these sections 96 and 101 IBC is far greater than the moratorium under section 14 IBC.

(ix) The IBC must prevail over Section 138/141 of the N.I. Act, 1881, for the want of the non-obstante provision of Section 238. Further, it will override anything inconsistent contained in any other enactment, including the Income-Tax Act, 1961. Reference can be in this connection made to *Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. & Ors.*[7], which made it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.

(x) Reference was made to the decision in *Dilip B. Jiwrajka vs. Union of India*[8], wherein, while upholding the constitutional validity of Sections 95-100 IBC, this court explained the concept of a moratorium under Section 14 of Part II vis-à-vis interim moratorium under Section 96 of Chapter III of Part III. Ultimately, it was *inter alia* concluded that the purpose of the interim moratorium under section 96 is to protect the debtor from further legal proceedings.

6 (2018) 17 SCC 394
7 (2000) 5 SCC 694
8 (2023) SCC OnLine SC 1530) : (2024) 5 SCC 435

(xi) Thus, according to the learned counsel, the proceedings under section 138 r/w 141 of the N.I. Act, 1881, which is concerned with the dishonour of the alleged cheques under the signatures of the appellants / petitioners, would undoubtedly fall within the prohibition contained in section 96 IBC. However, the Courts below erred in rejecting the petitions filed for staying the 138 proceedings till the conclusion of the insolvency proceedings pending before the Tribunal. Hence, the impugned orders passed by them are liable to be set aside.

7.2. <u>On the side of the applicant(s) / intervenor(s)</u>

Since the decision on the question of law involved herein, shall impact on the applicants / intervenors undergoing insolvency proceedings, they sought to make their submissions.

(i) The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted in order to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. Further, it was enacted with an object to maximize the wealth of person undergoing insolvency proceedings, to enable a purposeful and constructive interpretation.

(ii) On initiation of insolvency proceedings under IBC, Section 14 provides for a moratorium during which all legal proceedings against the insolvent Company stand stayed. Whereas, on the filing/initiation of personal insolvency, moratorium under Sections 96 and 101 IBC come into effect. When the moratorium comes into effect, then, no legal proceeding against him can be initiated for recovery of any debt. Generally, when an individual is prosecuted even for dishonour of cheque, then in effect, he is being prosecuted for "non-payment of debt". As such, such legal proceedings are covered under Sections 96 and 101 IBC and the same do not lie/ cannot be continued. Therefore, all types of debt recovery proceedings are stayed and all types of assets of the individual are pooled to pay-off the debts.

(iii) During moratorium under section 14 IBC, the Company is protected from any civil or legal proceedings including Section 138 of the N.I. Act, 1881 proceedings. Similarly, when the resolution of debts of an individual takes place under the aegis of personal insolvency under IBC, in such a situation, continuing with the offence of cheque dishonour case shall double jeopardize the individual, since he has already utilized all his assets to enter into a resolution and shall have no means to compound/settle the offence of cheque dishonour and shall be forced to face criminal prosecution. Therefore, similar protection under Section 96 IBC

ought to be granted to the individual under personal insolvency as is available to the Company under Section 14 IBC on the initiation of insolvency process.

(iv) The proceedings under Section 138 / 141 of the N.I. Act, 1881 *qua* the Directors are civil in nature and should be considered as such for the cases which lie under Section 96/101 IBC. The role of Directors has to be specific, meaning thereby that the liability under Section 138/141 of the N.I. Act, 1881, is vicarious in nature. Similarly, the offences under all the statutes, whether under the Companies Act, Income Tax Act, or any other Act, where punishment may be imposed by way of fine, must be considered under the domain of the provisions of section 96/101 IBC.

(v) Thus, according to the learned counsel, the benefit of moratorium under Section 96 IBC and Section 101 IBC be extended to the individuals against criminal proceedings pending under Section 138 of N.I. Act, 1881, as the same is in consonance with the scope and intent of the legislature.

7.3. <u>On the side of the respondents</u>

(i) The IBC is meant to resolve genuine financial distress, and not to shield individuals from criminal liability.

(ii) Furthermore, the interim moratorium under Section 96 IBC is intended to operate in respect of debt as opposed to a debtor and that the purpose of interim moratorium under Section 96 is to restrain the initiation or continuation of legal action or proceedings against the debt. The words used both in clause (b) (i) and clause (b) (ii) of Section 96(1) are "in respect of any debt" and therefore, moratorium would strictly apply to the security interest created by the debtors / appellants / petitioners herein in their personal capacity, wherein personal guarantee is given in respect of a debt and in no manner can be stretched to include the criminal proceedings under Section 138 of the N.I. Act, 1881, since the same is not *qua* the debt, but is built on the principle of not honouring the cheques, when presented for encashment which in turn attract the criminal liability and fines.

(iii) The interim moratorium under Section 96 IBC will not apply to the criminal proceedings under Section 138 of the N.I. Act, 1881 and hence, there is no bar for continuation of the said proceedings. In this regard, reference was made to the decisions of this Court in *P.Mohanraj (supra)***,** and *Narinder Garg and Others v. Kotham Mahindra Bank Ltd., and Others*[9].

(iv) Reliance was also placed on the Report of the Insolvency Law Committee of 2020, Chapter V of which explained the scope of moratorium, and according to

9 (2022) SCC OnLine SC 517

which, the moratorium provisions under Part III IBC were not meant to stay actions against the corporate debtor or other third parties involved in the debt. Therefore, the Committee agreed that the moratorium and interim moratorium under Part III should be interpreted only to be limited to the ‘debtor’ and its assets.

(v) Section 138 of the N.I. Act, 1881, was enacted to enhance the credibility of cheques in commercial transactions and penalize the wilful dishonour of such instruments. It criminalizes the act of dishonouring cheques due to insufficiency of funds or other similar reasons. Section 141 extends liability to individuals who were in charge of and responsible for the conduct of the company’s business at the time of the offence. On the other hand, the appellants / petitioners attempted to use the insolvency proceedings before the National Company Law Tribunal in order to stay the section 138 proceedings pending before the trial court. Thus, they cannot absolve themselves of personal liability merely by citing insolvency proceedings under the IBC.

(vi) As reiterated in *P. Mohanraj* (supra), “proceedings under Section 138/141 of the N.I. Act, 1881 are distinct and operate independently of insolvency proceedings.” Any contrary interpretation would render creditors powerless and undermine the effectiveness of the N.I. Act, 1881.

(vii) Whether moratorium is under Section 14 or Section 96 IBC, the provision of section 141 is equally applicable and remains the same. The judgement of this court in *P.Mohanraj (supra)* holding that "it is clear that the moratorium provision contained in Section 14 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", would be applicable in the case of moratorium under Section 96 IBC as well.

(viii) On proper appreciation of facts, the courts below rightly dismissed the petitions filed by the appellants and hence, the same need not be interfered with by this court.

8. We have considered the contentions made by the learned counsel appearing for all the parties and also perused the materials available on record.

9. *Vide* order dated 16.05.2023 in SLP (Crl) No.6087 of 2023 titled "*Rakesh Bhanot v. M/s Gurdas Agro Pvt. Ltd.*", this Court granted an order of stay of further proceedings in COMA No.1059 of 2019. Following the same, an order of interim stay of further proceedings pending before the trial Court was subsequently granted in all other connected matters as well.

10. At the outset, it will be useful to refer to the relevant provisions of law connected to the issues at hand, which are as follows:

(A) The Insolvency and Bankruptcy Code, 2016.

*"**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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(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.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not

paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

[(3) The provisions of sub-section (1) shall not apply to—

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

(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.“

*“**Section 94 - Application by Debtor to Initiate Insolvency Resolution Process:***

“(1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.

(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.

(4) A debtor shall not be entitled to make an application under sub-section (1) if he is—(a) an undischarged bankrupt; (b) undergoing a fresh start process;(c) undergoing an insolvency resolution process; or (d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.”

*“**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) 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."

*"**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) During the moratorium period—

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(4) The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

10.1. From the above provisions, it is clear that the term "Corporate Person" includes a company as defined under Section 2(20) of the Companies Act, 2013, and a Limited Liability Partnership. However, there is a subtle difference in the protection available to the Directors and the Partners. In case of a partnership firm, the interim moratorium protects not only the firm, but also the partners. But in case of a company, such protection is available only to the company and not to its directors. That apart, the object of interim moratorium can be no different from that of the moratorium specified under Section 14. It is also clear from Section 14 that the protection from legal action during the period of moratorium is not available to the surety or in other words, to a personal guarantor. The use of the words "all the debts" and "in respect of any debt" in Sub-section (1) of Section 96 is not without a purpose, as the moratorium is intended to offer protection only against civil claim to recover the debt. Hence, such period of moratorium prescribed under Section 14 or 96 is restricted in its applicability only to protection against civil claims which are directed towards recovery and not from criminal action.

(B) Negotiable Instruments Act, 1881.

*"**138. Dishonour of cheque for insufficiency, etc., of funds in the account.—***

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

***141. Offences by companies**.—*

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well

as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

10.2. The above provisions specifically relate to cheque dishonour cases, and the persons responsible for such dishonour, may be criminally prosecuted and subjected to penal action, as per the conditions specified under the N.I. Act, 1881.

11. Admittedly, the appellants / petitioners are facing trial for the offence under section 138 / 141 of the N.I. Act, 1881, at the instance of the respondents /

complainants. While so, they initiated the personal insolvency proceedings under the IBC and sought exemption from the section 138 proceedings before the trial Court, referring to interim moratorium provided under Section 96 IBC. It is to be noted that upon the application being admitted, the moratorium provisions under the IBC offer protection only to the corporate debtor, i.e., the company, and do not extend protection against civil liability to personal guarantors by specific exclusion or to any individual who is prosecuted for committing a criminal act.

12. The legislative intent behind the Insolvency and Bankruptcy Code (IBC) is to provide a structured framework for the resolution of corporate debtors' financial distress, facilitating their rehabilitation and ensuring the maximization of asset value. The application under Section 94 or 95 would fall under Chapter III of the IBC. An application under Section 94, when taken out by a debtor in the capacity of a personal guarantor of a company, to declare him/her as insolvent, is to be disposed by following the procedures in Sections 97 to 119. The application filed under Section 94 is scrutinized by the Resolution Professional and a report is submitted as contemplated under Section 99 recommending either the approval or rejection of the application. The interim moratorium which commences on the presentation of the application will expire on the admission of the application by an order of the adjudicating authority under Section 100. Upon admission, the moratorium under Section 101 comes into operation. The interim moratorium

under Section 96 and the moratorium under Section 101 IBC are designed to offer a breathing space to the corporate debtor, allowing them to reorganize their financial affairs without the immediate threat of creditor actions. However, this moratorium is not intended to shield individuals from personal criminal liabilities arising from their actions outside the scope of corporate debt restructuring. The respective appellants / petitioners, having filed insolvency applications as personal guarantors under Section 94 IBC, cannot extend this protection to avoid prosecution under Section 138 of the N.I. Act, 1881. Upon filing of the application under section 94 IPC, a moratorium comes into effect, designed to protect the debtors from any legal actions concerning their debts. Specifically, Section 96 IBC provides that any legal proceedings pending against the debtor concerning any debt shall be deemed to have been stayed. The term “any legal action or proceedings” does not mean “every legal action or proceedings”. In sub-clauses 96 (b) (i) and (ii), the term “legal action or proceedings” are followed by the term “in respect of any debt”. The term “legal action or proceedings” would have to be understood to include such legal action or proceedings relating to recovery of debt by invoking the principles of noscitur a sociis. The purpose of interim moratorium contemplated under Section 96 is to be derived from the object of the act, which is not to stall the proceedings unrelated to the recovery of the debt. The protection is not available against penal actions, the object of which is to not recover any debt.

This moratorium serves as a critical mechanism, allowing the debtor to reorganize their financial affairs without the immediate threat of creditor actions. The clear and unequivocal language of this provision reflects the legislative intent to provide a protective shield for debtors during the insolvency process.

13. On the other hand, the proceedings under Section 138 of the N.I. Act, 1881, pertain to the dishonor of cheques issued by the respective appellants / petitioners in their personal capacity. These proceedings are distinct from the corporate insolvency proceedings and are aimed at upholding the integrity of commercial transactions by holding individuals accountable for their personal actions. The scope and nature of the proceedings under the IBC may result in extinguishment of the actual debt by restructuring or through the process of liquidation. But such extinguishment will not absolve its directors from the criminal liability. Section 141 of the N.I. Act, 1881 enables the prosecution of the persons in charge of the affairs and responsible for the conduct of the business of the company along with the company. The statutory liability against the directors under Section 138 of the N.I. Act, 1881, is personal and hence, continues to bind natural persons, irrespective of any moratorium applicable to the corporate debtor. The acceptance of the resolution plan under Section 31 IBC or its implementation thereof will have no effect on the prosecution under Section 138 of the N.I. Act, 1881. Similarly, the

acceptance of the report by the resolution professional under Section 100 and the moratorium under Section 101, which reprises Section 96, will not bar the continual of any criminal action. The cause of action for prosecution under Section 138 of NI Act commences on the dishonor of the cheque and the failure to pay the amount unpaid because of dishonour, within 15 days from the date of receipt of notice demanding payment. It is pertinent to mention here that the prosecution can be only with respect to the amount unpaid by dishonour of the cheque irrespective of the actual debt. The distinction between the right to sue based on a dishonoured cheque by initiating a civil suit and launching a prosecution under Section 138 of the Negotiable Instruments Act is significant. In case of former, the interim moratorium can operate, but not in case of latter.

14. In *Mohanraj* case, the dishonoured cheques were issued by the company and hence, the complainant initiated the section 138 proceedings against the company and its directors. The question that arose for consideration was, whether the institution or continuation of a proceeding under section 138/141 of the N.I. Act, 1881, can be said to be covered by the moratorium provision, namely, section 14 IBC. The petitioners in the connected writ petitions therein, were the erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor and they were all premised upon the fact that Section 138 proceedings are covered by Section 14 IBC and hence, cannot

continue against the corporate debtor and consequently, against the petitioners therein. This Court, after a detailed analysis of the provisions relating to moratorium under sections 14, 96 and 101 IBC, concluded that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, and the natural persons mentioned therein, continuing to be statutorily liable under the N.I. Act, 1881. In doing so, it was clarified that the moratorium under the IBC does not extend to criminal proceedings. Further, it was emphasized that the IBC's objective is to address the corporate debtor's financial distress and should not be misconstrued as a means to avoid personal criminal accountability. For better appreciation, the relevant portion of the said judgment is extracted hereunder:-

> *"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 persons 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."*

15. Similarly, in *Narinder Garg (supra)*, this Court reiterated that the IBC's moratorium does not bar criminal proceedings under Section 138 of the NI Act. For better appreciation, the relevant portion of the said judgment is extracted hereunder:-

> *"4. A subsidiary issue was also about the liability of natural persons like a Director of the Company. In paragraph 77 of its judgment, this Court observed that the moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act."*

16. Even recently, a larger bench of this Court in *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corpn. of India Ltd.*[10], of which one of us (J.B. Pardiwala, J) is a member, after considering the scope and object of the IBC and the interplay with the N.I. Act, 1881 in detail, has held as follows:

> ***"72.*** *It is true that by virtue of Section 238 IBC, the provisions of Cr.P.C (to be read as Code) shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But, no provision of IBC bars the continuation of the criminal prosecution initiated against the Directors and officials.*
>
> ***73.*** *It is equally true that once the corporate debtor comes under the resolution process, its erstwhile Managing Director(s) cannot continue to represent the company. Section 305(2)CrPC states that where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. Therefore, it is only the resolution professional who can represent the accused Company during the pendency of the proceedings under IBC. After the proceedings are over, either the corporate entity*

10 (2023) 10 SCC 545 : (2024) 1 SCC (Cri) 128 : 2023 SCC OnLine SC 266

may be dissolved or it can be taken over by a new management in which event the company will continue to exist. When a new management takes over, it will have to make arrangements for representing the company. If the company is dissolved as a result of the resolution process, obviously proceedings against it will have to be terminated. But even then, its erstwhile Directors may not be able to take advantage of the situation. This is because, this Court in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , even while overruling its decision in Anil Hada v. Indian Acrylic Ltd. [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174] , as not laying down the correct law insofar as Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174] states that the Director or any other officer can be prosecuted without impleadment of the company, proceeded to hold that the matter would stand on a different footing where there is some legal impediment as the doctrine of lex non cogit ad impossibilia gets attracted. It was specifically observed that the decision in Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. Considering the same, the ratio of the decision of this Court in Ajit Balse [Ajit Balse v. Ranga Karkere, (2015) 15 SCC 748 : (2016) 3 SCC (Civ) 465 : (2016) 3 SCC (Cri) 379] upon which strong reliance is placed on behalf of the appellant is of no avail.

74. *What follows from the aforesaid is that for difficulty in prosecuting the corporate debtor under Section 138 of the NI Act after the approval of the resolution plan under IBC, we need not let the natural persons i.e. the signatories to the cheques/Directors of the corporate debtor escape prosecution. How can one allow the natural persons to escape liability on such specious plea? In such a situation the Latin maxim lex non cogit ad impossibilia is attracted which means law does not compel a man to do which he cannot possibly perform. Broom's Legal Maxims contains several illustrative cases in support of the maxim. This maxim has been referred to with approval by this Court in State of Rajasthan v. Shamsher Singh [State of Rajasthan v. Shamsher Singh, 1985 Supp SCC 416 : 1985 SCC (Cri) 421] .*

75. *Thus, where the proceedings under Section 138 of the NI Act had already commenced and during the pendency the plan is approved or the company gets dissolved, the Directors and the other accused cannot escape from their liability by citing 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. They will have to continue to face the prosecution in view of the law laid down in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 :*

(2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] . Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile Directors can no longer represent it.

….…..…..…

81. *This Court in Lalit Kumar Jain v. Union of India [Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321 : (2021) 4 SCC (Civ) 527] has held that the approval of the resolution plan per se does not operate as a discharge of guarantors' liability. That is because:*
(a) an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability.
(b) a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability.

82. *The same principle is applicable to the signatory/Director in the case of Sections 138/141 proceedings. The signatory/Director cannot take benefit of discharge obtained by the corporate debtor by operation of law under IBC.*
…..…

Litigant cannot take advantage of its own wrong (Nullus commodum capere potest de injuria sua propria)

84. *This Court while upholding the validity of Section 32-A IBC (Manish Kumar case [Manish Kumar v. Union of India, (2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50]) has held that "The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away." That is a very important object and the same should not be permitted to be defeated by accepting the argument that permits the signatory/Director to enjoy the fruits of their own wrong."*

17. 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 dishonoring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however subject to satisfaction of other conditions in the N.I. Act, 1881. Therefore, allowing the respective appellants / petitioners to evade prosecution under Section 138 by invoking the moratorium would undermine the very purpose of the N.I. 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.

18. In view thereof, the contention of the appellants that the decisions relied on by the High Court dealt with the proceedings under section 14 IBC and not the proceedings under section 96 IBC, cannot be countenanced by us. Furthermore, the decision in *Dilip B. Jiwrajka (supra)* is not relevant to the facts of the present case, as the issue therein was relating to the constitutional validity of certain provisions of the IBC and the applicability of moratorium to a proceedings under Section 138 of the N.I. Act, 1881 was not the subject matter.

19. For the foregoing discussion, the prayer of the appellants / petitioners to stay the prosecution under Section 138 of the N.I. Act, 1881, relying on the interim moratorium under Section 96 IBC, cannot be entertained. Therefore, the judgments / orders passed by the different High Courts affirming the orders of the trial court,

which had rightly refused to stay the section 138 proceedings, need not be interfered with by us.

20. In fine, all the criminal appeals and writ petition are dismissed.

21. Pending application(s), if any, shall stand closed.

.....J.
[J.B. Pardiwala]

.....J.
[R. Mahadevan]

NEW DELHI
APRIL 01, 2025.