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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 55/2023 & CRL.M.A. 627-628/2023

BHUPINDER SINGH SAWHNEY Petitioner

Through: Mr. Arvind Nayyer, Sr. Advocate Mr.
Aditya Gauri, Mr. Aman Vivek, Mr.
Vineet Kumar, Mr. Dhananjaya Sud,
Mr. Chaitnya Bansal and Ms. Damini
Sreshtha, Advs.

versus

YOGESH TRADING COMPANY & ORS. Respondent

Through: Mr. Sanjeev Goyal, Adv. for R-1
Mr. Sharique Hussain, Adv. for R-4
Mr. Zorawar Sigh and Mr. Hitesh
Mahkar, Adv for R-2.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **10.01.2023**
CRL.M.A. 627/2023

Exemption allowed subject to just exceptions.

W.P.(CRL) 55/2023 alongwith CRL.M.A. 628/2023 (Stay)

1. This petition has been filed seeking stay on all legal actions of proceedings instituted under the NI Act against the petitioner in view of the interim moratorium imposed on the petitioner by virtue of Section 96 of the Insolvency and Bankruptcy Code, 2016. The Ld. Senior Counsel for the petitioner has contended that the petitioner was the signatory of cheques issued on behalf of the company M/s. Koutons Retail India Limited in favour of the complainant (the respondent herein). The company had incurred various liabilities in relation to the financing facilities that it had taken from various entities. Since it failed to honour its obligations to these



financial institutions, proceedings under SARFAESI Act were initiated as also a winding a petition under the Companies Act, 1956. On 13th May, 2013, Official Liquidator was pointed by this Court as a Provisional Liquidator of the company. In the meantime since the petitioner who was a director of the company became personally insolvent he filed a petition under Section 94 of the Insolvency and Bankruptcy Code (IBC) and approached the Hon'ble NCLT with an application in that regard [Company Petition (IB No.757/2022)]. Notice was issued by the Hon'ble NCLT on 31st October, 2022. It is, therefore, contended by the Ld. Senior Counsel for the petitioner that the provisions of Section 96 (1) (b) of the IBC would trigger an interim moratorium and, therefore, proceedings pending against the petitioner under Section 138 of the NI Act would also be stayed. The Ld. Senior Counsel for the petitioner has relied upon the decisions of the High Court of Punjab & Haryana in **Vijay Kumar Ghai v. Preet Pal Singh Babbar**, (2022) SCC OnLine P&H 1672 where the Court has deliberated upon the scope and purview of Section 96 provisions in relation to a Section 138 NI Act proceeding. Reliance was also placed on a decision of this Court in **Manish Jain v. Indian Renewal Energy Development Agency**, CRL.M.C. 4265/2022 dated 02nd September, 2022 in a similar situation where the proceedings before the Ld. Trial Court had been stayed by this Court. Ld. Senior Counsel for the petitioner contended that as per the decision of the Hon'ble Supreme Court in **P. Mohanraj & Ors. v. Shah Brothers Ispat Private Limited**, (2021) 6 SCC 258 the Hon'ble Supreme Court has held that the word “*proceedings*” in Section 14 of the IBC covers proceedings under Section 138 of the NI Act. He, therefore, further contends that the same interpretation would apply to the word “*proceedings*”



in Section 96 of the IBC Act.

2. Learned counsel for the respondent No.1 refutes the contentions of the Ld. Senior Counsel for the petitioner stating that the judgment of the High Court of Punjab & Haryana is distinguishable on the fact that it related to the cheques issued by the guarantor and in this case the cheques had been issued by the petitioner in his capacity as a director and the authorized signatory of the company. The company in this petition is not under IBC although it is undergoing winding up.

3. A perusal of the petition would show that there is a list of pending cases filed against the petitioner by various complainants which are arrayed as respondents in this petition, which is extracted herein below:

- i. Yogesh Trading Company v. Koutons Retail India Limited & Ors., C.C. No. 530261 of 2016 at Tis Hazari Court (Central), New Delhi
- ii. Berry Cotts Private Limited v. Koutons Retail India Limited & Ors., C.C. No. 511991 of 2016 at Tis Hazari Court (Central), New Delhi
- iii. DBS Bank Limited v. Koutons Retail India Limited & Ors., C.C. No. 26345 of 2016 at Patiala House Court, New Delhi
- iv. IFCI Factors Limited v. Koutons Retail India Limited & Ors., C.C. No. 629862 of 2016 at Saket Court (South East), New Delhi
- v. Akaal Enterprises v. Koutons Retail India Limited & Ors., C.C. No. 540036 of 2016 at Tis Hazari Court (Central), New Delhi
- vi. Pujan Apparels v. Koutons Retail India Limited & Ors., C.C. No. 15270 of 2016 at Rohini Court (North West), New Delhi
- vii. Prominent Advertising Services v. Koutons Retail India Limited & Ors., C.C. No. 491 of 2016 at Patiala House Court, New Delhi



- viii. S.E. Investments Limited v. Bhupinder Singh Sawhney, C.C. No. 48055 of 2016 at Karkardooma Court (East), New Delhi
- ix. Standard Chartered Bank v. Koutons Retail India Limited & Ors., C.C. No. 49512 of 2016 at Patiala House Court, New Delhi
- x. Anuj Sharma v. Koutons Retail India Limited & Ors., C.C. No. 49512 of 2016
- xi. Yasmeen v. Koutons Retail India Limited & Ors., C.C. No. 2271 of 2017 at Karkardooma Court (East), New Delhi
- xii. S.M. Enterprises v. Koutons Retail India Limited & Ors., C.C. No. 535170 of 2016 at Tis Hazari Court (Central), New Delhi
4. Issue notice to all the respondents to this petition on the petitioner taking steps to serve them through all permissible modes including SMS/email/WhatsApp.
5. Counsels for respondent Nos.1, 2 and 4 are present in Court and accept notice on behalf of the parties.
6. Till the next date of hearing, the proceedings before the Ld. Trial Court in these matters shall be stayed *qua* the petitioner. It is made clear that proceedings as regards the other accused will continue regardless.
7. List on 27th April, 2023.
8. Reply regarding the legal issue which has been raised by the petitioner to be filed by the respondents together with judgments to be relied upon with an advance copy to the counsel for the petitioner who may file rejoinder.
9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 10, 2023/MK