$~53 and 55

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

% ***Date of Decision : 20.11.2026***

\# **CNR No.DLHC010057372025**

\+ **CRL.M.C. 868/2025, CRL.M.A.4034/2025, CRL.M.A.12113/2025**

(53) GETAMBER ANAND AND OTHERS .....Petitioners

Through: Mr. Krish Kalra, Adv.

versus

VAIBHAV RAHEJA .....Respondent

Through: Mr. Akshay Srivastava, Mr. Suryansh Vashisht, Ms. Divya Sharma and Ms. Avani Sharma, Advs.

\# **CNR No.DLHC010065232025**

\+ **CRL.M.C. 977/2025, CRL.M.A.4496/2025, CRL.M.A.12104/2025**

(55) GETAMBER ANAND AND OTHERS .....Petitioners

Through: Mr. Krish Kalra, Adv.

versus

VANI RAHEJA .....Respondent

Through: Mr. Akshay Srivastava, Mr. Suryansh Vashisht, Ms. Divya Sharma and Ms. Avani Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. These petitions were heard at length on 29.10.2026 and 18.11.2026 and have been further heard today.

2. The petitioners are as under:-

i. GETAMBER ANAND (petitioner no.1)

ii. PUNEET ARORA (petitioner no.2)

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

iii. UDAIVIR ANAND (petitioner no.3)

iv. M/s ATS INFRASTRUCTURE LIMITED (petitioner no.4)

3. The petitioners assail the common order dated 03.07.2024 passed by the learned JMFC, (NI Act), Digital Court-01, South District, Saket Courts, New Delhi in CC NI Act 121/2020 and CC NI Act 6747/2022 and the common order dated 05.11.2024 passed by the learned Principal District and Sessions Judge, South, Saket Courts, New Delhi in Criminal Revision No.305/2024 and Criminal Revision No.304/2024. CRL.M.C. 868/2025 pertains to CC NI Act 121/2020 (Vaibhav Raheja v. ATS Infrastructure Ltd. & Ors.) and Criminal Revision No. 305/2024, and CRL.M.C. 977/2025 pertains to CC NI Act 6747/2022 (Vani Raheja v. ATS Infrastructure Ltd. & Ors.) and Criminal Revision No. 304/2024.

4. By way of the said orders, the applications filed on behalf of the petitioners no. 1 and 3 seeking stay of the proceedings *qua* them in CC NI Act 121/2020 and CC NI Act 6747/2022, on the strength of the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), were dismissed, and the revision petitions preferred by the petitioners against such dismissal were also dismissed.

5. The factual conspectus is that the cheques in question were issued by the petitioner no.4. The petitioner nos.1 and 3, being the directors of petitioner no.4, are arrayed as accused by virtue of Section 141 of the Negotiable Instruments Act, 1881 ("NI Act"). The petitioners no. 1 and 3 sought stay of the proceedings on the strength of interim moratorium under Section 96 of the IBC arising from the Insolvency Petitions filed under Section 95 of the IBC by creditors against them namely, CP (IB) No. 196/2024 (Yes Bank Ltd. v. Mr. Getamber Anand) and RCP (IB) No.

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

17(PB)/2024 (Vistra ITCL (India) Ltd. v. Getamber Anand) against petitioner no.1 and CP(IB) No. 289/2024 (IDBI Trusteeship Services Ltd. v. Udaivar Anand) against petitioner no.3.

6. By interim orders dated 11.02.2025 (in CRL. MC. 868/2025) and 13.02.2025 (in CRL. MC. 977/2025), this Court kept the proceedings in abeyance *qua* the directors facing insolvency proceedings, while also making it clear that the proceedings *qua* the company and the other directors may continue in accordance with law. The learned Trial Court was also directed not to pass any final order.

7. On 01.04.2026, in a Special Leave Petition (SLP (Crl.) No. 5570/2026) filed by the respondent in CRL. M.C. 868/2025 (Vaibhav Raheja), the Supreme Court observed as under:-

> *"4. At this juncture, we are informed that the main matter is listed before the High Court of Delhi on 07.04.2026. We hope and also request the High Court to finally dispose of the matter at the earliest."*

8. Thereafter, on 10.04.2026, the Supreme Court tagged the aforesaid SLP with the SLP (Crl.) No. 6024/2026 filed by the respondent in CRL. M.C. 977/2025 (Vani Raheja).

9. It transpires during the course of hearing that there is no moratorium in subsistence *qua* petitioner no.1 (Getamber Anand). CP (IB) No. 196/2024 was dismissed as withdrawn by the NCLT, New Delhi on 30.07.2024, and RCP (IB) No. 17(PB)/2024 was dismissed as settled by the NCLT, Principal Bench, New Delhi on 27.01.2026.

10. The Insolvency Petition *qua* the petitioner no.3 was admitted under Section 100 of the IBC by order dated 20.03.2025 passed by the NCLT, New Delhi, whereupon a moratorium under Section 101 of the IBC commenced. In terms of Section 101(1) of the IBC, the said moratorium was

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

to cease to have effect at the end of 180 days from the date of admission. Although the said period of 180 days has expired, it is informed during the hearing today, that an interim order dated 27.03.2025 has been passed by NCLAT which directs that personal insolvency resolution process *qua* the petitioner no.3 shall go on, however, no repayment plan shall be finalized.

11. I have given my thoughtful consideration to the matter.

12. There is no merit in the present petitions. The reasons are as under:

i. The question is squarely covered by the judgment of the Supreme Court in ***Rakesh Bhanot v. Gurdas Agro(P) Ltd.*** (2025) 6 SCC 781 in which the Supreme Court held that the object of moratorium is not to stall the criminal prosecution but only to postpone the civil actions to recover any debt. It was concluded in ***Rakesh Bhanot*** as under:

> ***"31.*** *For the foregoing discussion, we are of the opinion that the object of moratorium or for that purpose, the provision enabling the debtor to approach the Tribunal under Section 94 is not to stall the criminal prosecution, but to only postpone any civil actions to recover any debt. The deterrent effect of Section 138 is critical to maintain the trust in the use of negotiable instruments like cheques in business dealings. Criminal liability for dishonouring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however subject to satisfaction of other conditions in the NI Act, 1881. Therefore, allowing the respective appellant-petitioners to evade prosecution under Section 138 by invoking the moratorium would undermine the very purpose of the NI Act, 1881, which is to preserve the integrity and credibility of commercial transactions and the personal responsibility persists, regardless of the insolvency proceedings and its outcome.*
>
> ***32.*** *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 [Dilip B. Jiwrajka v. Union of India, (2024) 5 SCC 435 : (2024) 242 Comp Cas 358] is not relevant to the facts of the present case, as the issue therein was relating to the constitutional validity of certain provisions of IBC and the applicability of moratorium to a*

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

proceedings under Section 138 of the NI Act, 1881 was not the subject-matter.

33. *For the foregoing discussion, the prayer of the appellant-petitioners to stay the prosecution under Section 138 of the NI Act, 1881, relying on the interim moratorium under Section 96 IBC, cannot be entertained. Therefore, the judgments/orders [Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2023 SCC OnLine P&H 7240] , [Sandeep Gupta v. Shri Ram Steel Traders, 2023 SCC OnLine Del 2786] , [Gurdas Agro (P) Ltd. v. Arjun Mall Retail Holding (P) Ltd., 2023 SCC OnLine P&H 7243] , [Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2023 SCC OnLine P&H 7241] , [Rakesh Bhanot v. Gurdas Agro (P) Ltd., 2023 SCC OnLine P&H 7242] , [Sanjeev Narula v. Elkay International Ltd., 2024 SCC OnLine P&H 3165] , [Shiva Shakti Grains (India) (P) Ltd. v. Kaur Chand Munish Kumar, 2024 SCC OnLine P&H 3404] , [Ashok B. Jeswani v. Redington India Ltd., (2024) 248 Comp Cas 248 : 2023 SCC OnLine Mad 8029] , [Pacific Infotech (P) Ltd. v. Redington India Ltd., 2024 SCC OnLine Mad 8346] , [Jitender Singh Sodhi v. CIT, 2024 SCC OnLine P&H 14106] , [Yogesh Jogindernath Mehra v. State of Maharashtra, 2024 SCC OnLine Bom 3978] passed by the different High Courts affirming the orders of the trial court, which had rightly refused to stay Section 138 proceedings, need not be interfered with by us."*

ii. The reasoning in ***Rakesh Bhanot (Supra)*** turns on the object of the moratorium. According to the Supreme Court, the same does not enure for the benefit of postponing or stalling any criminal prosecution. The relevant observations of the Court are as under:

"23. *Upon filing of the application under Section 94 IBC, 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 Sections 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*

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

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 reorganise 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."

iii. The judgment of the Supreme Court in ***Dinesh Chand Surana v. UCO bank,*** 2026 SCC OnLine SC 987, does not unsettle the aforesaid view. In paragraph 140 thereof, the Supreme Court held that the proceedings under Section 138 of the NI Act cannot be stayed by way of Section 96 and 101 of the IBC. The relevant observations read as under:-

"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) Applicability of moratorium provisions on the compensatory aspect of Section 138 proceedings"

iv. The Supreme Court also clearly observed in Paragraphs 193 thereof that the moratorium provisions would not operate in respect of the criminal aspect of Section 138 and the directors of the corporate debtors cannot escape personal criminal liability. Paragraph 193 is

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

reproduced as under:

> *"193. We may, at the cost of repetition, reiterate that the moratorium provisions would not operate in respect of the criminal aspect of Section 138 and the director(s) of the corporate debtor cannot escape personal criminal liability, as clarified in Rakesh Bhanot (supra)."*

v. Further, it has been clarified in ***Dinesh Chand Surana (Supra)*** that any benefit of the moratorium is confined to the compensatory aspect of Section 138 proceedings. In this regard, it has been observed in paragraph 204 as under:

> ***"III. Whether director(s) liable under Section 141 of the NI Act would enjoy the benefit of moratorium in respect of Section 138 proceedings, while undergoing personal insolvency?***
>
> ***204.*** *We have answered the aforesaid question in the affirmative. We find it apposite to reiterate that the benefit of moratorium is available only in respect of the compensatory aspect of Section 138 proceedings."*

vi. In paragraphs 210 and 211 of ***Dinesh Chand Surana (Supra)***, the Supreme Court has referred certain questions to a larger Bench. However, there is no direction to keep the ongoing prosecution in abeyance. Until the reference is answered, the law laid down in ***Rakesh Bhanot*** governs. In ***Union Territory of Ladakh v. Jammu and Kashmir National Conference***, 2023 INSC 804 the Supreme Court has held as under:

> *"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it*

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

vii. As regards the moratorium, it has already been noticed that there is no moratorium in subsistence *qua* petitioner no.1. Even as regards the petitioner no.3, the situation appears to be somewhat nebulous. The order of the NCLAT, referred to by the learned counsel for the petitioners, does not, in terms, extend the moratorium. It makes no reference to the Moratorium under section 101 of the IBC, and was passed within a week of the admission order, when the moratorium was in any case in operation. Even assuming that it continues by implication, the result would be the same, since a moratorium under Section 96 or Section 101 of the IBC would not result in stay of the prosecution under Section 138 of the NI Act.

viii. It is also noticed that no moratorium is claimed in favour of the petitioner no. 2 or petitioner no.4 (the drawer of the cheques). It would be anomalous to keep the prosecution of the persons arrayed under Section 141 NI Act in abeyance, while the prosecution of the company proceeds.

13. Accordingly, CRL.M.C. 868/2025 and CRL.M.C. 977/2025 are dismissed.

14. The trial Court shall proceed with CC NI Act No. 121/2020 and CC NI Act No. 6747/20222 against all the accused in accordance with law and endeavour to conclude the same expeditiously.

15. If, after compensation is ordered, a moratorium under the IBC is

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57

shown to subsist in favour of any of the petitioner no. 1-3, it shall be open to them to raise the plea at the stage of recovery.

16. The petitions are disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

NOVEMBER 20, 2026/r

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:42:57