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IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 22.12.2025
Judgment pronounced on : 09.02.2026

+ **CRL.M.C. 1484/2025**

SOMWATIPetitioner

versus

SURESH JAIN Respondent

+ **CRL.M.C. 1536/2025**

ROSHAN LAL HUFPetitioner

versus

SURESH JAIN Respondent

Advocates who appeared in this case:

For the Petitioner(s) : Mr. S.K. Bhaduri, Adv. through V.C. & Ms. Neetu Gupta & Mr. Prem Prakash, Advs.

For the Respondent : Mr. Rishi Kapoor & Mr. Sumeet Kapoor, Advs.

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HON'BLE MR JUSTICE AMIT MAHAJAN



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JUDGMENT

1. The present petitions are filed under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 seeking quashing of the orders dated 08.01.2025 passed by the learned Magistrate, Tis Hazari Courts, Delhi in CC No. 3480/2021 and 3481/2021 (hereafter '**impugned orders**') whereby the complaints filed by the petitioners under Section 138 of the Negotiable Instruments Act, 1881 were adjourned *sine die* after allowing applications of the respondent under Sections 96 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**').
2. Briefly stated, the petitioner in CRL.M.C. 1484/2025 allegedly advanced a friendly loan to the respondent and for the purposes of securing the said loan the respondent had issued a cheque bearing no. 175894 dated 12.03.2021 for ₹10,00,000/- to the petitioner. It is alleged that the said cheque was presented for encashment but was returned with the remarks "Payment stopped by Drawer" on 22.03.2021.
3. It is alleged that the petitioner in CRL.M.C. 1536/2025 advanced a friendly loan to the respondent of ₹17,00,000/- and the respondent in order to refund the said loan amount issued a cheque bearing no. 175895 dated 12.03.2021 for ₹17,00,000/-. It is alleged that the said cheque was presented for encashment but was returned with the remarks "Payment stopped by Drawer" on 22.03.2021.
4. It is alleged that the respondent failed to pay the said amounts even after receipt of legal notices and the petitioners filed complaint



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cases under Section 138 of the NI Act against the respondent. This led to filing of complaints being CC No. 3480/2021 and CC No. 3481/2021 respectfully.

5. Thereafter, Punjab National Bank, being the financial creditor of M/s Magppie International Limited (Corporate Debtor), filed an application under Section 95(1) of the IBC read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Personal Guarantors Rules') and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations') for initiating insolvency resolution process against the Respondent being the personal guarantor of the Corporate Debtor. Mr. Deepak Mittal was appointed as the Resolution Professional in the matter.

6. The respondent filed applications under Section 96 read with Section 238 of the IBC seeking stay of proceedings in CT No. 3480/2021 and 3481/2021. The learned Magistrate *vide* separate impugned orders allowed the applications of the respondent and adjourned the proceedings *sine die* in CT No. 3480/2021 and 3481/2021. This led to filing of the present petitions.

7. The learned Magistrate noted that upon Punjab National Bank filing an application under Section 95 of the IBC against the respondent,



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the interim moratorium period commenced as stipulated under Section 96(1)(a) in relation to all debts of the personal guarantor. It was further noted that the proceedings under Section 138 of the NI Act would be covered within the meaning of ‘any legal action or proceedings’ which shall be stayed during the interim moratorium period as provided in Section 96 of the IBC.

8. The learned Counsel for the petitioners submitted that the impugned orders are not sustainable in the eyes of law. He submitted that the proceedings under Section 138 of the NI Act are not recovery proceedings and are penal in nature. He submitted that a person may face imprisonment or fine or both for the offence under Section 138 of the NI Act.

9. He submitted that the Hon’ble Apex Court in the case of ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation India Ltd. : (2023) 10 SCC 545*** held as under:

“16. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. In fact, a bare reading of Section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act. We are unable to appreciate the plea of the learned counsel for the Appellant that because Section 138 of the N.I. Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin”. to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the N.I. Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the N.I. Act. It is not a recovery of the amount with interest as a debt recovery



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proceedings would be. They are not akin to suit proceedings.”

10. He submitted that, the Hon’ble Apex Court in the case of ***Rakesh Bhanot v. Gurdas Agro Pvt. Ltd : (2025) 6 SCC 781*** had discussed the applicability of Sections 94 and 96 of the IBC in a complaint case under Section 138 of the NI Act and in the said case had concluded as follows:

“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.”

11. *Per Contra*, the learned counsel for the respondent submitted that there is no infirmity in the impugned orders. He submitted that the fundamental purpose of the moratorium under Section 96 of the Insolvency and Bankruptcy Code is to provide comprehensive protection to individual debtors undergoing personal insolvency proceedings by staying all debt-related actions and ensuring orderly,



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consolidated resolution without fragmentation from parallel proceedings.

12. He submitted that, in the present case, the respondent took personal loans and issued cheques in his individual capacity to discharge that personal debt. Allowing Section 138 proceedings to continue would directly contradict the legislative intent behind the moratorium, as it would create an anomalous situation where the same underlying debt is being resolved through IBC proceedings while simultaneously subjecting the debtor to penal consequences and compensation orders in criminal courts.

13. He submitted that the judgment of *Rakesh Bhanot v. Gurdas Agro Pvt Ltd (Supra)* deals in the subject matter of vicarious liability of a corporate debtor under section 141 of the NI Act and is not applicable to the facts of the present case where the subject proceedings pertain to personal liability of the respondent.

14. He submitted that this Court in the case of *Sandeep Gupta v. Shri Ram Steel Traders and Anr. : 2023 SCC OnLine Del 2786* drew a distinction between the scenarios of the proceedings under Section 138 of the NI Act pertaining to liability of the Company of which the accused was in charge as opposed to where the personal liability of the accused is in question. The relevant paragraphs of the judgment have been reproduced below:

17. In the present case, the petitioner's application for insolvency before NCLT related to the personal liability of the Petitioner in his



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capacity as a surety in contracts of guarantee to Respondent no. 2. However, the Petitioner in the proceedings pending before the Ld. MM, Patiala House Court was facing trial as a 'Natural Person' under Section 141 of the NI Act i.e., for liability of the Company of which the Petitioner was the Managing Director/person in charge. 18. The case would have been different if the personal liability of the petitioner was in question. In that case, the moratorium will apply to the petitioner. But in the present case, the proceedings pending before the MM were for bouncing of cheques issued by company where petitioner was the Managing Director. The debt of the Respondent No. 2 company is not the personal debt of the petitioner. The petitioner is arrayed as an accused in his capacity as a Managing Director.

Analysis

15. Since the petitioners have assailed the impugned orders whereby the application of the respondent under Section 96 of the IBC was allowed and the proceedings under Section 138 of the NI Act were adjourned *sine die*, it will be apposite to discuss the statutory law with respect to Section 96 of the IBC. Section 96 of the IBC has been reproduced below:

“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.”



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16. Section 96 of the IBC provides that interim moratorium period shall commence from the date of filing of an application under Section 95 of the IBC and during the said period, any legal action or proceeding pending in respect of any debt shall be deemed to be stayed. The interim moratorium under Section 96 of the IBC has been designed to allow corporate debtors to reorganise their financial affairs without an immediate threat of creditor actions.

17. Section 138 of the NI Act provides that when any cheque drawn by a person for discharging any legally enforceable 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, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or both.

18. It is pertinent to note that the proceedings under Section 138 of the NI Act are aimed at upholding the integrity of commercial transactions by holding the offenders accountable with penal consequences. Such proceedings cannot be merely categorised to be recovery proceedings considering the penal consequences imposed upon the offender by virtue of this provision.

19. The question as to whether proceedings under the NI Act shall be



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covered under “any legal action or proceeding” as provided in Section 96(1)(b)(i) has been subject matter of debate in a number of cases.

20. The Hon’ble Apex Court in a recent decision in ***Rakesh Bhanot v. Gurdas Agro Pvt. Ltd (Supra)*** taking note of conflicting views of various High Courts has clarified that the even though Section 96 of the IBC provides that any legal action or proceedings pending against the debtor shall be deemed to have been stayed during the interim moratorium, the term “any legal action or proceedings” does not mean “every legal action or proceedings”. The Hon’ble Apex Court has observed that the protection provided under Section 96 of the IBC is not available against penal actions, the object of which is to not recover any debt.

21. The Hon’ble Apex Court in ***Rakesh Bhanot v. Gurdas Agro Pvt. Ltd (Supra)*** further observed that allowing accused persons to evade prosecution under Section 138 of the NI Act by invoking the moratorium would undermine the very purpose of the NI Act and refused the prayer to stay prosecution under Section 138 of the NI Act during the moratorium under Section 96 of the IBC.

22. It is the contention of the respondent that the judgment of ***Rakesh Bhanot v. Gurdas Agro Pvt Ltd (Supra)*** deals in the subject matter of vicarious liability of a corporate debtor under section 141 of the NI Act and is not applicable to the facts of the present case where the subject proceedings pertain to dishonoured cheques issued by the respondent in



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his personal capacity.

23. The aforesaid contention of the respondent holds no merit as the Hon'ble Apex Court in ***Rakesh Bhanot v. Gurdas Agro Pvt Ltd (Supra)*** has categorically held that the protection awarded to corporate debtors under Section 96 of the IBC is not available against penal actions. Section 138 of the NI act as noted above, are not merely recovery proceedings and have penal consequences for the offender. Thus, the question of the protection under Section 96 of the IBC being extended to the respondent for the offence committed under Section 138 of the NI Act in his personal capacity, does not arise.

24. The Hon'ble Apex Court in ***Rakesh Bhanot v. Gurdas Agro Pvt Ltd (Supra)*** held as under:

“22. 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 maximisation of asset value. The application under Section 94 or 95 would fall under Chapter III 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 of by following the procedures in Sections 97 to 119. The application filed under Section 94 is scrutinised 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 reorganise their financial affairs without the immediate threat of creditor actions. However, this moratorium is not intended to shield



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individuals from personal criminal liabilities arising from their actions outside the scope of corporate debt restructuring. The respective appellant-petitioners, having filed insolvency applications as personal guarantors under Section 94 IBC, cannot extend this protection to avoid prosecution under Section 138 of the NI Act, 1881.

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 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.

24. On the other hand, the proceedings under Section 138 of the NI Act, 1881, pertain to the dishonour of cheques issued by the respective appellant-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 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 NI 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 NI Act, 1881, is personal and hence, continues to bind natural persons, irrespective of any moratorium applicable to



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the corporate debtor.

25. 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 NI 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 dishonour 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.

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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.”

25. The learned counsel for the respondent relied upon the judgment passed by the coordinate bench of this Court in ***Sandeep Gupta v. Shri Ram Steel Traders and Anr.*** (*Supra*) to contend a distinction has been



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carved out in proceedings under Section 138 of the NI Act if the same pertained to personal debt of the director as opposed to debt of the company of which he was in charge or a guarantor. It is relevant to note that the said judgment was also challenged before the Hon'ble Apex Court in **Rakesh Bhanot v. Gurdas Agro Pvt Ltd** (*Supra*) and the Hon'ble Apex Court while deciding the issue in the terms as noted above held as under:

“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.”

26. It is pertinent to note that the above said observations of this Court in **Sandeep Gupta v. Shri Ram Steel Traders and Anr.** (*Supra*) were not in nature of *ratio decidendi* of the aforesaid case but were merely a passing reference made while disallowing the prayer to stay



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proceedings under Section 138 of the NI Act, in view of the interim moratorium under Section 96 of the IBC, where the accused had signed a cheque in his capacity as managing director of his company, which was later dishonoured.

27. The Hon'ble Apex Court in *Rakesh Bhanot* (*supra*) categorically held that the object of the moratorium is not to stall criminal prosecution but to only postpone any civil action to recover debt. It was held that the deterrent effect of Section 138 of the NI Act is crucial to maintain the trust in business dealings and allowing a person to evade prosecution under Section 138 of the NI Act by invoking the moratorium would undermine the very purpose for which the NI Act was brought by the legislature i.e., to preserve the credibility and integrity of commercial transactions. The proceedings under the NI Act do not fall within the category of “any legal action or proceedings” as provided in Section 96 (1)(b)(i) of the IBC and therefore cannot be stalled to the extent of criminal liability by claiming interim moratorium.

28. Section 138 of the NI Act prescribes a punishment and compensation for the offence committed by an accused person for dishonour of the cheque. The Court, in proceedings under section 138 of the NI Act does not aid in recovery of debt but only awards punishment to the offender and compensation to the victim by way of fine imposed on the offender. Considering the aforesaid, the proceedings under Section 138 of the NI Act, initiated against the



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respondent by the petitioners could not have been adjourned *sine die* by the learned Magistrate, after initiation of the interim moratorium period under Section 96 of the IBC for further proceedings.

29. In view of the above, the impugned orders are set aside.
30. Both the matters shall be listed before the learned magistrate on 25.02.2026 for further proceedings.
31. A copy of this order be placed in both the matters.
32. A copy of the order be communicated to the Principal District and Sessions Judge for necessary compliance.

AMIT MAHAJAN, J

FEBRUARY 09, 2026
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