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

+ **CRL.M.C. 6880/2023 & CRL.M.A. 25708/2023**

RAJIV CHOPRA & ANR.

.....Petitioners

Through: Mr. Ashish Choudhury and Mr.
Abhishek Arora, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for the
State.

Mr. Sataroop Das, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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09.07.2025

1. This hearing has been done through hybrid mode.

CRL.M.A. 16924/2025 (seeking dismissal of the present petition)

2. The present application under Section 528 of the BNSS filed on behalf of respondent no. 2 seeking following prayers:-

“I. Dismiss the present petition in light of Judgment dated 01.04.2025 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1607/2025;
II. Pass such other and further order(s) that this Hon'ble Court may deem fit in the interest of justice.”

3. Issue notice.

4. Learned counsel appearing on behalf of the petitioner/non-applicant accepts notice and fairly submits that the issue in the present petition has been decided by Hon'ble Supreme Court in Criminal Appeal No. 1607/2025 titled '**Rakesh Bhanot vs M/s Gurdas Agro Pvt. Ltd.**'.

5. The present petition had been filed seeking quashing of judgment and order dated 25.07.2023 passed by the Additional Sessions Judge in Criminal



Revision No. 246/2023. The impugned order was passed by learned Sessions Judge by setting aside the order dated 02.01.2023 passed by learned Metropolitan Magistrate in Cr No. 2195/2019 titled Swatch Group (India) Pvt. Ltd. Vs. Prime Retail India Ltd. & Ors., disposing of an application under Section 96 of Insolvency and Bankruptcy Code, 2016 filed on behalf of the petitioner herein seeking stay of the proceedings under Section 138 of the NI Act.

6. Learned Metropolitan Magistrate vide the said order dated 02.01.2023 allowed the application of the petitioners and granted interim-moratorium under Section 96 of the IBC, 2016. The said order was challenged by respondent no. 2, as pointed out hereinabove, in Criminal Revision No. 246/2023 and *vide* the impugned order dated 25.07.2023 the same was set aside.

7. In '**Rakesh Bhanot vs M/s Gurdas Agro Pvt. Ltd.**', the issue before Hon'ble Supreme Court is enumerated in paragraph 4 of judgment which reads as under:-

“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 I 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.”

8. The final decision on the said issue is as under: -

“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.”

9. A perusal of the record would reflect that the aforesaid judgment covers the issue raised in the present petition.

10. In view thereof, the present application is allowed and disposed of accordingly.

11. The captioned petition challenging the impugned order dated 25.07.2023 is hereby dismissed.

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12. In view of the above, the present petition is dismissed with the aforesaid directions and disposed of accordingly.

13. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.



14. Order be uploaded on the website of this Court forthwith.

JULY 09, 2025/sn/yg

AMIT SHARMA, J