

(2026) 01 DEL CK 1401

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No. 8431 Of 2023, Criminal Miscellaneous Application Nos. 31481 Of 2023 & 15190 Of 2024

Kishore Laxmnarayan Biyani & Anr.

APPELLANT

Vs

Kotak Mahindra Bank Limited & Anr

RESPONDENT

Date of Decision : 15-01-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138
Insolvency and Bankruptcy Code, 2016 — Section 7, 14, 14(1), 17

Citation : (2026) 01 DEL CK 1401

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : Madhav Khurana, Petrushka Das Gupta, Mridul Yadav, Raghav Mittal, Shaurya Singh, Tulika Bhatnagar, Kashvi Bansal, Vaishnavi Viswanathan

Final Decision : Allowed

Judgement

Vikas Mahajan, J

1. The present petition has been filed under Section 482 CrPC praying quashing of summoning order dated 24.01.2023 whereby the petitioners were summoned to stand trial for the offence under Section 138 of Negotiable Instruments Act, 1881 [in short ?N.I. Act?].
2. Further prayer has been made for quashing of order dated 23.05.2023 whereby the petitioners were directed to furnish their bail bonds.
3. The aforesaid orders came to be passed in complaint under Section 138 NI Act being CC No.3106/2022 titled as Kotak Mahindra Bank Ltd. v. Future Retail Ltd. & Ors. which is stated to be pending before the Court of Judicial Magistrate First Class (JMFC), (N.I. Act), West District, Digital Court-01, Tis Hazari Court, New Delhi.
4. The case set out in the present petition is that the petitioners herein were the

directors of respondent no.2/company namely, M/S Future Retail Ltd. (hereinafter 'the company?'). The said company had availed credit facility from respondent no.1/bank, against which undated cheques were issued to respondent no.1/bank.

5. The aforesaid complaint case under Section 138 of N.I. Act filed by respondent no.1/bank pertains to two such cheques issued to it by the company, the details of which are as under:

(i) Cheque No.081660 for an amount of Rs.3,48,39,892.00.

(ii) Cheque No.081659 for an amount of Rs.50,00,00,000.00.

6. The aforesaid two cheques were presented for encashment by respondent no.1/bank, but the same were returned unpaid with the cheque return memo dated 29.04.2022 with the remarks "kindly contact drawer/drawee bank and present again".

7. Respondent no.1/bank, once again presented the said two cheques on 01.07.2022 for clearing, however, the cheques were again returned unpaid by the drawee bank with a cheque return memo dated 02.07.2022, containing the same remarks. This was followed by issuance of demand notice dated 14.07.2022 by respondent no.1/bank, which got dispatched on 21.07.2022, in terms of Section 138 of N.I. Act, to respondent no.2/company, as well as, to the petitioners.

8. As per the case of respondent no.1/bank in its complaint, the said notices were received by the petitioners between 23.07.2022 and 26.07.2022. Since the payment was not made within a period of 15 days from the receipt of notice, as stipulated therein, respondent no.1/bank filed complaint under Section 138 of N.I. Act on 02.09.2022.

9. Thereafter, the two impugned orders came to be passed.

10. Mr. Madhav Khurana, learned Senior Counsel appearing on behalf of the petitioners submits that a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 [in short, 'IBC?'] against the respondent no.2/company was admitted by the NCLT vide its order dated 20.07.2022 which led to initiation of CIRP against it.

11. Further, vide same order, Interim Resolution Professional [hereinafter, referred as "IRP"] was also appointed, and the moratorium in terms of Section 14(1) of IBC came into play.

12. He submits that even taking the earliest date i.e. 23.07.2022 as date of service of demand notice dated 14.07.2022, which was dispatched on 21.07.2022, the 15 days period for making payment in terms thereof would expire on 07.08.2022 i.e. after initiation of CIRP was ordered against respondent no.2 on 20.07.2022.

13. He submits that during the said 15 days, as well as, when the offence under Section 138 of N.I. Act was completed and the cause of action arose to file a complaint under the said provision i.e. on 07.08.2022, the petitioners were not in charge of respondent no.2/company, the corporate debtor, as they had been suspended from their position as directors thereof, hence it was not possible for them to ensure the payment of the said two cheques in compliance of the demand made in the notice dated 14.07.2022, dispatched on 21.07.2022 and admittedly served on the petitioners after the order dated 20.07.2022 of the NCLT. Therefore, the complaint under section 138 of NI Act is not maintainable against the petitioner nor they can be held guilty for the offence under the said provision.

14. In support of his contention, Mr. Khurana has placed reliance on the decision of the Hon?ble Supreme Court in Vishnool Mittal v. Shakti Trading Company, (2025) 9 SCC 417.

15. Per contra, Ms. Vaishnavi Viswanathan, learned counsel appearing on behalf of respondent no.1/bank submits that the petitioners were in charge of, and responsible for, the conduct of business of respondent no.2/company at the time cheques in question were issued and were presented. Therefore, their subsequent suspension upon initiation of CIRP does not extinguish the liability for the acts of their omission or commission at a prior point in the statutory chain of events under Section 138 of N.I. Act.

16. She has placed reliance on the decision of the Hon?ble Supreme Court in S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 SCC OnLine SC 1382.

17. Having heard the learned counsel for the parties, a short question which arises for consideration of this Court is whether the complaint under Section 138 of N.I. Act could have been filed and continued against the petitioners with regard to dishonour of cheques issued by respondent no.2/company, when CIRP proceedings had been initiated and IRP had been appointed prior to giving of demand notice to them.

18. The controversy is no more res integra. In Vishnool Mittal (supra), an identical issue had arisen before the Hon?ble Supreme Court. In the said case, the cheques had been issued by a private limited company which were dishonoured on 07.07.2018, and the legal notice dated 06.08.2018 under Section 138 of N.I. Act was issued to the director of the company namely, Vishnool Mittal, who failed to make the payment. Consequently, a complaint was filed for the offence under Section 138 of N.I. Act in September, 2018.

18.1. In the meanwhile, on 25.07.2018, the insolvency proceedings against the said private limited company commenced and a moratorium under Section 14 of IBC was imposed. On the same day i.e. 25.07.2018, the IRP also came to be appointed.

18.2. In the factual backdrop, the Hon?ble Supreme Court placing reliance on

Section 17[17. Management of affairs of corporate debtor by interim resolution professional. – (1) From the date of appointment of the interim resolution professional, - (a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional; (b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional; (c) ****
**** **** the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;] of IBC, observed that when the notice was issued to the director of the said company, he was not incharge of the corporate debtor as he was suspended from his position as director thereof from the day IRP was appointed on 25.07.2018, and all the powers vested with the Board of Directors were to be exercised by the IRP. Thus, all the bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the director of the said private limited company to repay the amounts. Accordingly, the Hon?ble Supreme Court quashed the summoning order, as well as, the complaint filed under Section 138 of N.I. Act. The relevant paragraphs from Vishnool Mittal (supra) read thus:

“13. The bare reading of the above provision shows that the appellant did not have the capacity to fulfil the demand raised by the respondent by way of the notice issued under clause (c) of the proviso to Section 138 NI Act. When the notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from his position as the Director of the corporate debtor as soon as IRP was appointed on 25-7-2018. Therefore, the powers vested with the Board of Directors were to be exercised by the IRP in accordance with the provisions of IBC. All the bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the appellant to repay the amount in light of Section 17 IBC.

14. Additionally, we have been informed on behalf of the appellant that, after the imposition of the moratorium, the IRP had made a public announcement inviting the claims from the creditors of the corporate debtor and the respondent has filed a claim with the IRP.

15. Keeping in mind the above observations and distinguishing facts and circumstances of this case from that of P. Mohanraj [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818 : (2021) 14 Comp Cas-OL 1], we are of the considered view that the High Court ought to have quashed the case against the appellant by exercising its power under Section 482CrPC.

16. Therefore, we allow this appeal by setting aside the impugned order dated 21-12-2021 [Vishnool Mittal v. Shakti Trading Co., (2022) 17 Comp Cas-OL 342 : 2021 SCC OnLine P&H 4434] and quash the summoning order dated 7-9-2018. Further, we hereby quash Complaint Case No. 15580/2018, pending before the

Chief Judicial Magistrate Court, Chandigarh, filed by the respondent against the appellant.”

(emphasis supplied)

19. In *Govind Prasad Todi v. Govt. of NCT of Delhi*, 2023 SC OnLine Del 3717, a Coordinate Bench while dealing with identical factual matrix, observed that when Resolution Professional has been appointed, the control of the operation of the bank accounts of the corporate debtor is taken over by the RP, the directors of the corporate debtor cannot be said to be in control of the affairs of the company. Accordingly, it was held that the erstwhile directors of the corporate debtor cannot be summoned under Section 138 of NI Act.

20. Reference may also be had to the decision of yet another Coordinate Bench of this court in *Innoventive Industries Ltd. vs Govt. of NCT of Delhi*, 2025 SCC Online Del 5743, wherein under similar set of facts, this Court relying upon *Vishnoo Mittal* (supra), held as under:

“55. Applying the aforesaid principles to the facts in hand, herein Company as well the Directors were left with no control over the management and affairs of the Company, which got taken over by the RP/Liquidator, much prior to the presentation of the cheques. The Directors of the Petitioner Company, could not have been held liable, once the proceedings under IBC had commenced, prior to institution of the Complaint under Section 138 of N.I. Act.

56. Therefore, to say that the proceedings under Section 138 of N.I. Act can be continued against the Directors, would be against the principles of vicarious liability of the Directors for the debts of the Company, since the Directors can be only be held vicariously liable for the acts of the Company, once the Company has been found to be liable.

57. In the present case, the IBC proceedings had already got commenced in January, 2017 i.e. almost six months prior to the proceedings under S. 138 NI Act. At the time when the Legal Notice dated 02.07.2017 was issued by the Complainant, the entire powers of Board of Directors, had come to be vested in the RP. Therefore, they were no powers either with the Company or that the Board of Directors and they had no managerial authority to pass any Board Resolution for repayment of the amounts under the impugned cheques.”

(emphasis supplied)

21. In the case in hand, as noted above, the two cheques in question were returned unpaid for the second time on 02.07.2022. The demand notices dated 14.07.2022 issued by respondent no.1/bank, which were dispatched on 21.07.2022, were received by the petitioners between 23.07.2022 and 26.07.2022. Even on the basis of the earliest date of service of demand notice i.e. 23.07.2022, the 15 days period for making payment in terms of demand notice had expired on 07.08.2022.

22. Thus, the offence under Section 138 of N.I. Act was complete on 07.08.2022 and it is thereafter, that the cause of action arose for filing the complaint under the said provision. However, in the meanwhile, the NCLT, Mumbai admitted the petition under Section 7 of IBC; initiated CIRP against respondent no.2/ company; appointed the IRP, and imposed a moratorium under Section 14 of IBC, vide order dated 20.07.2022.

23. Clearly, even prior to the dispatch of the demand notice by respondent no.1/ bank on 21.07.2022, the IRP had been appointed and moratorium was also imposed on 20.07.2022, therefore, during the notice period of 15 days which commenced with the service of demand notice on 23.07.2022, the petitioners were not having any control over the bank accounts of respondent no.2/ company, as the power to operate the said accounts had vested with the IRP in accordance with the provisions of Section 17 of IBC. In other words, the petitioners in their capacity as erstwhile directors were not incharge of respondent no.2/company's [corporate debtor] affairs nor were having any authority to operate its bank accounts and to ensure honouring, or to prevent the dishonouring, of two cheques in question. Therefore, the petitioners could not have been summoned under section 138 of NI Act, and holding them guilty for the alleged offence does not arise.

24. The Reliance placed by the respondent's counsel on S.P. Mani (supra) is misplaced. Unlike instant case, S.P. Mani (supra) was not a case where CIRP had been initiated and moratorium was imposed against the company which had drawn the cheques, rendering its directors incapacitated to operate the account of company to facilitate honouring of cheques.

25. In view of the above discussion, the present petition is allowed. Consequently, the impugned summoning order dated 24.01.2023 is quashed. Further, the complaint case being CC No.3106/2022 titled as Kotak Mahindra Bank Ltd. v. Future Retail Ltd. & Ors. pending before the Court of Judicial Magistrate First Class (JMFC), (N.I. Act), West District, Digital Court-01, Tis Hazari Courts, New Delhi, and all proceedings emanating therefrom in respect of the petitioners herein, are quashed.

26. Consequently, the pending applications also stand disposed of.