
(2025) 07 BOM CK 0223

In the Bombay High Court, Nagpur Bench

Case No : Criminal Application (Apl) Nos .1679, 1680, 1681, 1685, 1686, 1687
Of 2024

Mr Yatendra Singh S/O Rajendra Singh Panwar

APPELLANT

Vs

Ganga Iron Steel And Trading Company Through Its Director
Mr Mukesh Omprakash Agrawal

RESPONDENT

Date of Decision : 03-07-2025

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141, 141(1), 141(2)
Insolvency Bankruptcy Code 2016 — Section 3(7), 3(8), 3(19), 10, 13, 14, 14(1),
14(1)(a), 17, 30(6), 31, 32A, 33, 33(1), 34(1), 52, 54(1), 56
Companies Act, 2013 — Section 2(20), 2(60)
Limited Liability Partnership Act, 2008 — Section 2, 2(2)(n)

Citation : (2025) 07 BOM CK 0223

Hon'ble Judges : Urmila Joshi Phalke, J

Bench : Single Bench

Advocate : Yash Venkatraman, Pragya Nawandar, Darasingh Sindhu

Final Decision : Disposed Of

Judgement

Urmila Joshi Phalke, J

1. These applications are filed by applicants for quashing Criminal Case Nos.691/2023; 696/2023; 695/2023; 693/2023; 692/2023; and 694/2023 filed under Section 138 read with 141 of the Negotiable Instruments Act (the NIA).

2. Brief facts necessary for disposal of applications are as under:

Applicants were Directors of company namely "Venus Rolling Mills Private Limited" which is arraigned as accused No.1 in above mentioned criminal cases. The non-applicant company is also involved in business of manufacturing and processing of Steel and Iron Goods. In the year 2015, accused No.1 company and the non-applicant company entered into business for purchasing goods from the non-applicant company. As per allegations, the accused company obtained goods on credit and huge amount was due from the accused company. Allegedly,

applicant No.1, being Director of the said company, against the said dues issued 16 cheques drawn on Federal Bank, Nagpur Branch, which came to be "dishonoured". Cheque Nos.003874, 003875, and 003876 drawn in favour of the non-applicant company dated 29.10.2022 of Rs.25.00 lacs each were issued in favour of the non-applicant company. The said cheques were returned with endorsement "account closed" and, therefore, Criminal Complaint No.691/2023 was registered against accused No.1 company and applicant Nos.1 to 4.

Cheque Nos.004340, 004341, and 004342 dated 31.10.2022 of Rs.25.00 lacs drawn on the Federal Bank were also deposited and the same were returned as "dishonoured" and, therefore, Criminal Complaint No.696/2023 was registered.

Cheque Nos.004554 and 004555 dated 2.11.2022 of Rs.50.00 lacs each were also returned as "dishonoured" with endorsement "account closed". Regarding the same, Criminal Complaint No.695/2023 was registered.

Cheque Nos.003871; 003872; and 003873 dated 28.10.2022 of Rs.25.00 lacs each and cheque Nos.003868; 003869 and 003870 dated 27.10.2022 of Rs.25.00 lacs each and cheque Nos.004343 and 004344 dated 1.11.2022 were also returned with endorsement "account closed" and, therefore, Criminal Complaint No.693/2022; 692/2023, and 694/2023 were registered.

The process is issued in all complaints by the Additional Chief Judicial Magistrate, Nagpur.

3. As per contentions of applicants, applicant No.1 Mr.Yatendra Singh s/o Rajendra Singh Panwar was Director from 3.6.2005, till commencement of CIRP Proceeding, applicant No.2 was Director from 4.3.2014 to 10. 6.2017; applicant No.3 was Director from 14.5.2015 till commencement of proceeding of Corporate Insolvency Resolution Process (CIRP); and applicant No.4 was Director from 3.6.2005 to 21.5.2015.

4. As per contentions of applicants, applicant No.2 Smt.Neha Panwar resigned as Director of the accused company on 10.6.2017 and applicant No.4 Mr.Narendra Singh s/o Rajendra Singh Panwar resigned as Director on 21. 5.2015. Their resignation letters along with DIR-11 i.e. notice of resignation are filed on record. In the year 2018, the accused company issued said cheques as security to the non-applicant company. Thereafter, the accused company in the year 2019 suffered major losses in business and, therefore, applied for initiation of proceeding by filing CP No.(IB) 350/MB/C-III/2019 before the National Company Law Tribunal, Mumbai (the NCLT Mumbai). Vide order dated 22.4.2019, the NCLT Mumbai admitted the petition of the company and declared moratorium thereby prohibiting initiation or continuation of any suits or proceedings against the accused company. One Mr.Devendra Singh was appointed as Resolution Professional for the purposes of the CIRP, thereby suspending applicant Nos.1 and 3 as Directors of the company in the year 2019. On 3.5.2019, Resolution Professional made public announcement notifying the initiation of the CIRP and intimated the non-applicant company also. On 9.5.2019, Resolution Professional

intimated the non-applicant company not to deposit cheques. The Committee of Creditors (COC) constituted by the Resolution Professional could not reach a successful Resolution Plan for the accused company. It unanimously resolved to liquidate the accused company. Accordingly, the Resolution Professional filed an application under Section 33 of the Insolvency Bankruptcy Code 2016 (IBC 2016) before the NCLT Mumbai to initiate liquidation of the accused company and appointed Resolution Professional as official liquidator. On 25.10.2022, the non-applicant company issued statutory notice under Section 138 of the NIA to applicants along with the accused company alleging that cheques issued against discharge of liability are "dishonoured".

5. As per contentions of applicants, applicant Nos.2 and 4, resigned long back of issuance of cheques and, therefore, they were not persons incharge of the company and holding any responsibilities towards issuance of said cheques. Applicant Nos.1 and 3 ceased to be incharge of the business since CIRP was initiated by order of NCLT Mumbai. Cheques were presented on 29.10.2022 despite of the non-applicant company was informed by Resolution Professional as to initiation of the CIRP and the accused company was undergoing liquidation, the criminal complaints were filed. Subsequent to the criminal complaints, on 30.3.2023, the accused company was sold to one company namely "Shantech International Private Limited". Accordingly, the said certificate was issued on 14.9.2023. The liquidation proceeding was closed on 18.6.2024. "Shantech International Private Limited" filed IA No.610/2024 denying liability to pay dues prior to the liquidation proceeding, but the same was rejected by the NCLT Mumbai vide its order dated 18.6.2024 by holding that any remaining dues or debts against erstwhile accused company shall be paid by the successful auction purchaser.

6. Thus, contentions of applicants are that at the time of issuance of cheques in the year 2022, they were not the incharge of the said company and, therefore, they cannot be held liable to pay said dues and on that ground seeking quashing of criminal proceedings.

7. The said applications are strongly opposed by the non-applicant company on the ground that cheques were issued against discharge of Legal and Enforceable Debt. Said cheques were dishonoured. Demand notices were issued by the non-applicant company and as dues are not paid, applicant Nos.1 to 4 being Directors of the said company and were incharge of the said company are liable to pay the said amount and, therefore, the process is rightly issued against them. In view of that, applications deserve to be rejected.

8. Heard learned counsel Shri Yash Venkatraman for applicants, who submitted that applicant Nos.2 and 4 ceased to be Directors as they resigned long back. Applicant No.2 resigned on 10.6.2017. Whereas, applicant No.4 resigned on 21.5.2015 and, therefore, they ceased to be Directors since the date of resignation and they had no control over accused No.1 company. There was a bar in operation of the account maintained by the company.

As far as applicant accused Nos.1 and 3 are concerned, they ceased to be incharge of the business since CIRP was initiated by order of the NCLT, Mumbai. There was a bar in operation of the account maintained by accused No.1 company. Thus, applicant No.1 ceased to have any authority for signing cheques. He submitted that the entire proceeding under Section 138 of the NIA was initiated after moratorium was declared by the NCLT Mumbai thereby prohibiting initiation or continuation of any suit or proceeding against the accused. Despite the non-applicant company was intimated on 9.5.2019 not to deposit said cheques, cheques were deposited. He further submitted that from declaration of moratorium on 22.4.2019 the authority for signing the cheques remained with the Resolution Professional and therefore, cheques in question which are subject matter of the complaints were not valid cheques and, therefore, there was no question of dishonour of cheques and consequent proceedings under Section 138 of the NIA.

In support of his contentions, he placed reliance on following decisions:

1. Vishnoolal Mittal vs. Shakti Trading Company, reported in 2025 SCC OnLine SC 558;
 2. Criminal Writ Petition No.1134/2023 (Manoj Toshniwal and ors vs. Alucast Engineering Pvt.Ltd. and anr) decided on 5.12.2023;
 3. DCM Financial Services Limited vs. J.N.Sareen and anr, reported in (2008)8 SCC 1, and
 4. Nikhil P.Gandhi vs. State of Gujarat and anr, reported in 2016 SCC OnLine Gujarat 1856.
9. Per contra, learned counsel for the non-applicant company submitted that cheques were issued against discharge of Legal and Enforceable Debt which came to be dishonoured. By complying necessary requirements, the complaints are filed by the non-applicant company. He submitted that issue is covered under Section 141(1) of the NIA. The applicants are Directors of the said company and were responsible for the day to day affairs of the company and, therefore, they are responsible to pay the amount. Thus, vicarious criminal liability can be inferred against the applicants who are Directors of the said company. Therefore, applications are devoid of merits and liable to be rejected.

In support of his contentions, learned counsel for the non-applicant company placed reliance on following decisions:

1. P.Mohanraj vs. Shah Brothers, reported in AIR 2021 SCC 1308;
2. Ajaykumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd., reported in AIR OnLine 2023 SC 437;
3. Criminal Application (APL) No.1478/2023 (K & K Foundry Pvt.Ltd. And ors vs. M/s.Goyal Iron and Steel (Nagpur) Pvt.Ltd.) decided by this court on 29. 4.2024;

4. Sunita Palita and ors vs. M/s.Panchami Stone Quarry, reported in 2022 LiveLaw (SC) 647;
5. S.P.Mani and Mohan Dairy vs. Dr.Snehalatha Elangovan, reported in 2022 LiveLaw (SC) 772;
6. K.K.Ahuja vs. V.K.Vora and anr, reported in AIR 2011 SC (CRI) 2259;
7. Nag Leathers Pvt.Ltd. vs. Dynamic Marketing Partnership, reported in AIR OnLine 2011 SC 675;
8. Bir Singh vs. Mukesh Kumar, reported in AIR OnLine 2019 SC 577, and
9. Sunil Todi and ors vs. State of Gujarat and anr, reported in AIR 2022 SC 147.
10. On hearing both sides, it reveals that the issue involved in all these applications is as to whether criminal proceedings are maintainable after moratorium is declared and initiation of all proceedings and continuation or any suits or proceedings against the accused company is prohibited in view of order passed by the NCLT Mumbai dated 22.4.2019.
11. The allegations in the complaint can be summarized as follows:
 1. Present applicants are Directors who are managing functions of the accused company;
 2. Applicant No.1 had issued total 16 cheques on behalf of the accused company for purchasing goods from the non-applicant company;
 3. Applicant No.1 executed agreement to sale in favour of the non-applicant company for plot No.RM29, Butibori Industrial Area, Nagpur, in order to pay for the outstanding amount;
 4. It is alleged that said cheques presented to the bank were dishonoured with the endorsement of account closed; and
 5. The non-applicant company through his various complaints claims Rs.7,04,10,101/- which includes interests at 24% p.a., the statutory notice under section 138 of the NIA to that effect has been issued on 25.10.2022.

These allegations are to be considered in the light of the following facts:

1. applicant No.2 was Director for the period 4.3.2014 to 10.6.2017 and on 10.6.2017 she tendered her resignation and DIR Form No.11 is on record;
2. Applicant No.4 was Director for the period 3.6.2005 to 21.5.2025 and tendered his resignation on 21.5.2025, the DIR Form No.11 is on record;
3. In the year 2019, the accused company initiated CIRP by filing CP No.(IB) 350/MB/C-III/2019 before the the NCLT Mumbai;
4. Vide order dated 22.4.2019, the NCLT Mumbai admitted the petition of the company and declared moratorium thereby prohibiting initiation or continuation

of any suit or proceedings against the accused company;

5. By the said order, Mr.Devendra Singh was appointed as Resolution Professional for the purposes of the said CIRP, thereby suspending applicant Nos.1 and 3 as Directors of the company in the year 2019;

6. On 3.5.2019, Resolution Professional made public announcement notifying initiation of CIRP in respect of the accused company;

7. On 9.5.2019, the Resolution Professional intimated the non-applicant company not to deposit cheques;

8. The Committee of Creditors (COC) constituted which could not reach a Successful Resolution Plan for the accused company and, therefore, Resolution Professional filed an application under Section 33 of the IBC 2016 before the NCLT Mumbai to initiate the liquidation of the accused company and appoint Resolution Professional as the official liquidator;

9. On 25.10.2022, the non-applicant company issued statutory notice under Section 138 of the NIA and process was issued by the Additional Chief Judicial Magistrate on 31.10.2022 against applicants.

10. On 30.3.2023, the accused company was sold to another company i.e. "Shantech International Private Limited" and Sale certificate was issued on 14.9.2023;

11. Liquidation proceedings closed on 18.6.2024; and

12 The NCLT Mumbai vide order dated 18.6.2024 while rejecting IA No.610/2024 filed by the said "Shantech International Private Limited" thereby holding that any remaining liabilities or debts against erstwhile company shall be paid by the successful auction purchaser.

12. Before advertng to the issue raised in these applications, it is necessary to advert relevant provisions of the NIA as well as the IBC 2016.

13. Section 3(7) of the IBC, defines "corporate person" means a company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

14. Section 3(8) defines "Corporate Debtor", reads as follows: -

"Corporate debtor" means a corporate person who owes a debt to any person."

15. Section 3(19) of the Insolvency and Bankruptcy Code, 2016 (IBC) defines an "insolvency professional" as a person who is: (1) enrolled under Section 206 with an insolvency professional agency (IPA) as a member, and (2) registered with the Insolvency and Bankruptcy Board of India (IBBI) (the Board) as an

insolvency professional (IP) under Section 207.

16. Section 14 of the IBC deals with moratorium which reads as under:

“Section 14: Moratorium.

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

17. Section 17 of the IBC deals with management of affairs of corporate debtor by interim resolution professional, which is reproduced as under:

“17. (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 suspended¹ 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;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

18. Section 32A deals with liability for prior offences etc, which is reproduced as under:

Section 32A. Liability for prior offences, etc.

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not--

(i) A promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.--For the purposes of this sub-section, it is hereby clarified that,--

(i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) Nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfills the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.]

19. Section 33 deals with limitation of liquidation, which is reproduced as under:

Section 33. Initiation of liquidation. (1) Where the Adjudicating Authority,--

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as

laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority 3[under section 31 or under sub-section (1) of section 54,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section

(3) , if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

20. Section 138 of the NIA, defines as to the dishonour of cheques for

insufficiency etc. of funds in the account. For constituting an offence in terms of the said provision, the following ingredients are to be satisfied:-

- (1) A cheque must be drawn;
- (2) It must be presented and returned unpaid inter alia with the remarks "insufficient funds";
- (3) A notice for payment should be served on the accused;
- (4) The accused has failed to make the payment of the said amount to the payee within 15 days from the date of receipt of notice".

21. Section 141 of the NIA deals with offences by companies, which is reproduced as under:

"141. Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. —For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm".

22. Thus, what is required under Section 141 is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not

fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time.

23. Thus, liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. If being Director, Manager, Secretary are not liable by their designations, they are liable if they are discharging the duty by holding responsibility in the day to day affairs of the company and, therefore, only persons who can be said to be connected with the commission of crime who are incharge of the said company.

24. Section 141 of the NIA, provides for constructive liability to launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company.

25. In the light of the above legal provisions, there is no dispute that there was business transaction between the accused company and the non-applicant company since 2015. As per allegations, 16 cheques were issued against the outstanding amount of Rs.7,04,10,101/-. The said cheques bear various dates mentioned in the complaints. The cheques were issued, admittedly, on various dates in the year 2022. Undisputedly, prior to issuance of alleged cheques, in the year 2015, i.e. on 21.5.2015, applicant No.4 tendered his resignation. Thus, he ceased to be Director since 21.5.2015. The resignation letter and Form No.DIR-11 is at Annexure-II. Similarly, applicant No.2 Neha also tendered her resignation on 10.6.2017. Her resignation letter and DIR Form No.11 are also below Annexure-II. The order passed by the NCLT Mumbai on 22.4.2019 discloses that the company petition is filed by accused company under Section 10 of the IBC 2016 read with Rule 7 of the IBC (application to adjudicating authority) and Rules 2016 for initiation of CIRP. The NCLT Mumbai on perusal of the petition and documents came to conclusion that there are debts and corporate applicant has committed default in repayment of debts and passed the order, which is reproduced as under-

“(i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution

of any judgment, decree, or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Applicant any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner of lessor where such property is occupied by or in the possession of the Corporate Applicant.

(ii) That the supply of essential goods or services to the Corporate Applicant; if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(iv) That the order of moratorium shall have effect from 22.04.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Applicant under Section 33, as the case may be.

(v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(vi) That this Bench hereby appoints Mr.Devendra Singh, registration No. as IBBI/ IPA-002/IP-N00001/2016-17/10001 having address at ATS Greens Paradiso, Flat No.02054, Tower 2, Plot NO.GH-03, Sector ChI-04, Greater Noida 201308 e-mail dev_singh2006@yahoo.com as interim Resolution Professional to carry the functions as mentioned under the Code.

(vii) Accordingly, this petition is admitted.

(viii) The Registry is hereby directed to communicate this order to the Corporate Applicant and the IRP immediately.

26. Thus, it reveals that prior to the issuance of cheques in question, the NCLT Mumbai by order dated 22. 4.2019 prohibited initiation of proceeding and continuation of the proceeding in view of declaration of moratorium. Annexure-IV shows that various steps were taken by the Resolution Professional from 30.4.2019 till 6.3.2020. It includes the public announcement made by the Resolution Professional dated 3.5.2019 notifying the initiation of the CIRP in respect of the accused company. It also shows that the Resolution Professional intimated the non-applicant company not to deposit the cheques much prior to the dates mentioned by the non-applicant company alleging that these cheques are issued from 27.10.2022 till 2.11.2022. Thus, contention of the non-applicant company that cheques were issued for the period 27.10.2022 to 2.11.2022 by applicant No.1 appears to be incorrect as steps taken by Resolution Professional

show that on 9.5.2019 itself the non-applicant company was intimated not to deposit cheques. Therefore, allegation of issuance of cheques on the above said dates is falsified by the said document.

27. In view of Section 21 of the IBC, the Committee of Creditors was constituted by the Resolution Professional which could not reach a Successful Resolution Plan for the accused company and, therefore, it was resolved to liquidate the accused company and, therefore, the Resolution Professional filed an application IA No.88/2021 under Section 33(3) read with 14 of the IBC 2016 before the NCLT Mumbai came to be disposed of on 9.6.2022. The NCLT Mumbai allowed the said IA and the corporate debtor "Venus Rolling Mills Private Limited" is ordered to be liquidated which is at Annexure-V. The operative portion of order passed by the NCLT Mumbai is hereby reproduced for reference:

"ORDER

- a. Mr.Devendra Singh, having Registration No.IBBI/IPA-002/IP-N00001/2016-17/10001 and having office at ATS Greens Paradiso, Flat No.02054, Tower - 2 , Plot No.GH-03, Sector - CHI- 04, Greater Noida, UP - 201308 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration of Rs.38,27,000/- according to Liquidation fees (B) as per Regulation 4 of the IBBI (Liquidation Process) Regulation 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code will have powers of the board of directors, key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, subject to Section 52 of the Code,

no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A.No.88 of 2011 is hereby allowed and disposed of.”

28. Thus, it reveals that moratorium was declared vide order dated 22.4.2019 and liquidation process was initiated and liquidator was appointed by the NCLT Mumbai vide order dated 9.6.2022 much prior to the alleged issuance of cheques dated 27.10.2022 to 2. 11.2022. The legal notice is also issued by the non-applicant company on 25.10.2022 calling upon present applicants to pay the amount. In fact, by order dated 9. 6.2022, it is specifically directed by the NCLT Mumbai that liquidator appointed under Section 34(1) of the Code will have all powers of the Board of Directors, Key Manager Personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator. It is specifically held that by the NCLT Mumbai that all powers of the Board of Directors, key managerial personnel, partners of the corporate debtor cease to exist. All these powers henceforth vest with the liquidator.

29. The above said directions show that on the issuance of the alleged cheques, applicant Nos.1 and 3 ceased to have powers of the Directors and they ceased to be directors and all powers were vested with the liquidator. Therefore, there is substance in the contention that cheques were issued as a security in the year 2018 itself. After moratorium was declared, the steps taken by the Resolution Professional specifically show that on 9. 5.2019 itself the Resolution Professional intimated the non-applicant company not to deposit cheques. The record further shows that on 24.4.2019 itself the NCLT Mumbai admitted the petition of the company and declared moratorium thereby prohibiting initiation or continuation of any suits or proceedings against the accused company. The order dated 9.6.2022 passed by the NCLT Mumbai shows that having liquidation process, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

30. Now, the important question arises is, whether criminal case under Section 138 and 141 of the NIA can be said to be a proceeding said to be covered by the moratorium provision Section 14 of the IBC. The said aspect is considered by the Hon'ble Apex Court in the case of P.Mohanraj vs. M/s.Shah Ispat Private Limited

supra wherein the Hon'ble Apex Court in paragraph No.14 observed as follows:

"We now come to the language of Section 14(1) (a). It will be noticed that the expression "or" occurs twice in the first part of Section 14(1)(a)– first, between the expressions "institution of suits" and "continuation of pending suits" and second, between the expressions "continuation of pending suits" and "proceedings against the corporate debtor...". The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is important to note that an award of an arbitration panel or an order of an authority is also included. This being the case, it would be incongruous to hold that the expression "the institution of suits or continuation of pending suits" must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of "suits" which are proceedings in civil courts instituted by a plaint (see Section 26 of the Code of Civil Procedure, 1908). Therefore, it is clear that the expression "institution of suits or continuation of pending suits" is to be read as one category, and the disjunctive "or" before the word "proceedings" would make it clear that proceedings against the corporate debtor would be a separate category. What throws light on the width of the expression "proceedings" is the expression "any judgment, decree or order" and "any court of law, tribunal, arbitration panel or other authority". Since criminal proceedings under the Code of Criminal Procedure, 1973 ["CrPC"] are conducted before the courts mentioned in Section 6, CrPC, it is clear that a Section 138 proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor. Let us now see as to whether the expression "proceedings" can be cut down to mean civil proceedings *stricto sensu* by the use of rules of interpretation such as *eiusdem generis* and *noscitur a sociis*".

31. Thus, in view of the observations of the Hon'ble Apex Court, the proceeding under the NIA would certainly be proceeding in a court of law in respect of transactions between the accused company (corporate debtor) and the non-applicant company.

32. Learned counsel for applicants submitted that since the date of declaration of moratorium i.e. 22.4.2019 the applicants had no control over the accused No.1 company. By order dated 22.4.2019 itself the initiation or continuation of any suits or proceedings against the accused company is prohibited. In view of order passed by the NCLT Mumbai dated 9.6.2022, the Board of Directors, Key Managerial Personnel and partner of the corporate debtor shall cease to have effect and the powers are vested with the liquidator. It is further clarified by the said orders that all powers of the board of directors, key managerial personnel, and corporate debtor cease to exist. All these powers from the date of order i.e. 9. 6.2022 were vested with the liquidator. Thus, from these dates the authority for signing cheques remained with the Resolution Professional who was subsequently appointed as a Liquidator and, therefore, cheques in questions

which are subject matter of the complaints were not valid cheques.

33. Learned counsel for the non-applicant placed reliance on the decisions in the cases of P.Mohanraj vs. M/s.Shah Ispat Private Limited supra; Ajaykumar Radheshyam Goenka supra; and Criminal Application (APL) No.1478/2023 supra wherein it was held that the moratorium granted by the order issued under section 14 of the IBC can only be obtained by a corporate debtors and not by natural person such as the present appellant who was the director of the corporate debtor.

In para No.77 of the judgment, in the case of P.Mohanraj vs. M/s.Shah Ispat Private Limited supra, the Hon'ble Apex Court observed that for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the NIA. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the NIA.

34. In the case of Vishnool Mittal supra, as relied by learned counsel for applicants, the Hon'ble Apex Court distinguished facts in the case of P.Mohanraj vs. M/s.Shah Ispat Private Limited supra and observed that since the facts of that case were completely different and the present case is thus distinguishable from it. In P.Mohan Raj supra, certain cheques drawn by the appellants therein were dishonoured on 03.03.2017 and 28.04.2017. Thereafter, demand notices dated 31.03.2017 and

05.05.2017 were issued by the complainant. The moratorium was imposed on 06.06.2017, which is clearly after the lapse of 15 days from the date of demand notices. In other words, in that case, the cause of action under Section 138 of the NIA Act arose before the imposition of the moratorium and on these facts, this Court had held that Section 14 of the IBC bars or stays proceedings only against the corporate debtor and proceedings can be continued or initiated against the natural persons.

35. In the case in hand, moratorium was declared much prior to the issuance of the cheques on 22.4.2019. Even, the application under Section 33 of the IBC was decided by order dated 9.6.2022 in IANo.88/2021, whereas various cheques were issued allegedly from 27. 10.2022 to 2.12.2022. Therefore, the observations in the case of P.Mohan Raj supra are not helpful to the non-applicant company.

Similarly, in Ajaykumar Radheshyam Goenka supra, moratorium was declared after initiation of 138 proceedings.

Similar is the situation in the case of K & K Foundry Pvt.Ltd. And ors vs. M/s.Goyal Iron and Steel (Nagpur) Pvt.Ltd. supra.

36. Perusal of the provisions of Section 138 of the NIA reveals that cause of action arises only when amount remains unpaid even after expiry of 15 days from the date of receipt of the notice.

37. In the present case, notices are issued on 25. 10.2022 i.e. after the application under Section 33 of the IBC 2016 was decided by the NCLT Mumbai.

38. Learned counsel for the non-applicant company placed reliance on various decisions to show that persons who are incharge of the company and are responsible to the company for the conduct of the business are liable for the penal action in view of Section 141 of the NIA.

39. Here, the facts of the present case show that on the date of issuance of the alleged cheques, applicant Nos.1 and 3 ceased to be incharge of the business in view of the order passed by the NCLT Mumbai dated 9.6.2022.

40. Thus, in the present case, on 22.4.2019 the NCLT Mumbai declared moratorium and management of the corporate debtor was taken over by the interim order by the NCLT Mumbai as per Section 17 of the IBC.

41. A bare reading of Section 17 of the IBC shows that the applicant Nos.1 and 3 and the accused company did not have capacity to fulfill the demand raised by the non-applicant by way of notice issued under clause (c) of the proviso to Section 138 of the NIA as issued after the moratorium was declared. When the notice was issued to the applicants, they were not incharge of the corporate debtor as they were ceased to be Directors of the corporate debtor. As soon as the Resolution Professional was appointed by order dated 22.4.2019, the powers vested with the Board of Directors were further ceased by the order of the NCLT Mumbai dated 9.6.2022 I.e. prior to issuance of cheques. Therefore, powers vested with Board of Directors were to be exercised by the Resolution Professional who subsequently were appointed as liquidators in accordance with provisions of the IBC.

42. The Hon'ble Apex Court in the case of Asmita Sarang vs. Yogesh Badoni and anr, reported in 2023 SCC OnLine Bom 528 in paragraph Nos.31 and 32 observed as follows:

"31. Admittedly, NCLT, Bench at Mumbai vide its order dated 08/01/2019, passed the prohibitory order (referred hereinabove). As a consequence thereof, the company was prohibited from transferring or alienating or disposing of any of its assets. Meaning thereby, the amount in the bank account of the Corporate Debtor/company came to be freezed. Insolvency Resolution Professional was appointed. He took over the charge of management of the Corporate Debtor/company There is communication on record indicating the Corporate Debtor to have expressed its inability to pay the amount of dishonoured cheques on account of moratorium imposed vide order dated 08/01/2019. The concern bank of Corporate Debtor/company was also informed the operation of bank account was taken over by Insolvency Resolution Professional. As a consequence, the

Insolvency Resolution Professional became the authority to operate the bank account. As a further consequence, signature of earlier person, who was authorized to operate the bank account, came to be replaced with that of the Insolvency Resolution Professional. The cheques came to be presented on 11/04/2019 and 02/05/2019 i.e. long after moratorium was imposed. When the cheques were presented for encashment, the respondents were no longer in control and management of day to day affairs of the Corporate Debtor. It is not known as to whether there were sufficient funds in the bank account of Corporate Debtor to honour the cheques.

32. It is reiterated that the cheques were bounced for the reason "Drawer's Signature Differ". In view of this Court, the ingredients for constituting the offence punishable under Section 138 of NI Act occurred post imposition of moratorium. The respondents herein therefore could not be blamed. True, mens-rea is not an essential ingredient of the offence punishable under Section 138 of NI Act. As such, ingredients of the offence punishable under Section 138 read with Section 141 of NI Act do not get attracted against any of the respondents herein. The Revisional Court was therefore justified in setting aside the order of issuance of process. This Court is in respectful agreement with what has been observed in the case of Rajesh Meena (supra) (referred hereinabove). Reliance on the judgment in the case of Narinder Garg (supra), would be of no consequence, since no natural person was arraigned as accused. Had they been there, what would have been their defence and consequential judgment thereon, is nothing but hypothesis. In the case of Narinder Garg (supra), it is an order and not the judgment. Full facts of said case are not before this Court."

43. Considering submissions, there is substance in the submission that once the moratorium was imposed and liquidation proceeding has been completed and powers of the Directors in view of the order of the NCLT Mumbai are assigned to the Resolution Professional appointed subsequently as liquidator and applicant Nos.1 and 3 ceased to be Directors and powers vested with the Board of Directors were to be exercised by the liquidator/Resolution Professional in accordance with the provisions of the IBC. All transactions of the corporate debtor to be carried out by the Resolution Professional, hence applicant Nos.1 and 3 were not the person incharge of the company and was not having any authority to sign the cheques and, therefore, cheques in question which are subject matter of the complaints were not valid cheques. On the contrary, documents substantiate the contentions of the applicants that cheques were issued in 2018 as a security and while taking steps after moratorium was declared on 9.5.2019, Resolution Professional intimated the non-applicant not to deposit the cheques.

44. In the light of the above facts and circumstances, all applications deserve to be allowed by setting aside and quashing the orders impugned passed by learned Additional Chief Judicial Magistrate and Special Judge under Section 138 of the NIA summoning orders of the present applicants. Criminal Case Nos.691/2023;

696/2023; 695/2023; 693/2023; 692/2023; and 694/2023 pending before learned Additional Chief Judicial Magistrate and Joint Civil Judge Court No.13 are hereby quashed and set aside.

Criminal Applications stand disposed of accordingly. Pending applications, if any, also stand disposed of.