Before Vikas Bahl, J.

BEST ZONE BUILDER & DEVELOPERS PVT. LTD—*Petitioners*

versus

VEENA RANI AND ANOTHER—*Respondents*

CRM-M No.16275 of 2021

February 8, 2022

Negotiable Instruments Act, 1881—Ss.138, 141 and 142—Insolvency and Bankruptcy Code, 2016—S.9—Dishonour of cheque—Order to deposit 20% of compensation—Held, in view of judgment passed by Hon'ble Supreme Court passed in Surinder Singh Deswal alias Colonel S.S.Deswal v. Virender Gandhi reported as (2019) 11 SCC 341, word "may" in Section 148 of Negotiable Instruments Act is to be generally construed as "rule" or "shall" and thus, not to direct to deposit, is to be taken as exception for which, special reasons are to be assigned by Appellate Court—Appellate Court required to direct appellant as matter of rule to deposit at least 20% of amount as compensation awarded by trial Court—Further, proceedings under Sections 138 and 141 of the N.I.Act have to continue against erstwhile Managing Director and Director of company—Therefore, order to company to pay 20% of the compensation/fine set aside—Direction to erstwhile Managing Director and Director of company to pay 20% of compensation/fine amount upheld.

Held that, a perusal of the above judgment of the Hon'ble Supreme Court would show that it had been observed that the word "may" in section 148 of the N.I.Act is to be generally construed as a "rule" or "shall" and thus, not to direct to deposit, is to be taken as an exception for which, special reasons are to be assigned by the Appellate Court. The said observation of the Hon'ble Supreme Court would show that the appellate court is required to direct the appellant as a matter of rule to deposit at least 20% of the amount of compensation awarded by the trial court and the same has been done in the present case by the Appellate Court, by virtue of the impugned order.

(Para 30)

Further held that, this Court has considered the argument of the learned senior counsel for petitioners no.2 and 3 to the effect that the

present case is an exceptional case for exempting the deposit of 20% in view of the order passed by the Tribunal (Annexure P-5) declaring moratorium under Section 14 of IBC, but does not accept the same, as the Hon'ble Supreme Court in P. Mohanraj's case (supra) had specifically observed that the proceedings under sections 138 and 141 of the N.I. Act have to continue against the erstwhile Managing Director and the Director of the company. In fact, treating the said case to be an exceptional case for not directing petitioners no.2 and 3 to deposit the money would be in the teeth of the judgment of the Hon'ble Supreme Court in P. Mohanraj's case (supra) and would infringe upon the statutory powers of the appellate court under section 148 of NI Act.

(Para 31)

Further held that, keeping in view the above said facts and circumstances, the present petition qua petitioner no.1 is allowed and qua petitioners no.2 and 3 is dismissed. The impugned order dated 13.01.2021 (wrongly mentioned as 13.01.2020 in the Order) is set aside to the extent that the Petitioner No.1- company has been directed to pay 20% of the compensation/fine. The direction in the impugned order to the Petitioner nos. 2 and 3 to pay 20% of the compensation/fine amount, is upheld.

(Para 32)

Anand Chhibbar, Senior Advocate
with L.S.Sidhu, Advocate
for the petitioner no.1.

Bipan Ghai, Senior Advocate
M.S.Bindra, Advocate
for petitioners no.2 & 3.

H.S.Brar, Senior Advocate
with
Kanwal Goyal, Advocate
for respondent no.1.

Karanbir Singh, AAG,
Punjabfor respondent no.2.

VIKAS BAHL, J.(ORAL)

(1) This order will dispose of four criminal miscellaneous petitionsfiled by the same set of petitioners.

(2) The first petition, i.e. CRM-M-16275-2021 has been filed

by three petitioners, i.e. Best Zone Builder & Developers Pvt. Ltd. through Interim Resolution Professional Parvinder Singh, Manmohan Singh and Paramjit Kaur, wherein challenge is to the order dated 13.01.2021 (wrongly mentioned as 2020 in the order), passed by the Additional Sessions Judge, Chandigarh in Criminal Appeal no.75 dated 19.02.2020 whereby the application for directing the petitioners to deposit 20% of the compensation / fine amount awarded by the trial Court, has been allowed and the petitioners have been directed to pay 20% of the compensation / fine amount in compliance of the said order within 60 days from the date of passing of the order. The said order has been passed in the proceedings initiated by Veena Rani-respondent no.1, under Section 138/141/142 of the Negotiable Instruments Act, 1881 (in short "N.I. Act").

(3) The second petition, i.e. CRM-M-16332-2021 has been filed by the same three petitioners challenging a similar order dated 13.01.2021 (wrongly mentioned as 2020 in the order) passed by the Additional Sessions Judge, Chandigarh, in Criminal Appeal no.74 dated 19.02.2020 whereby the application for directing the petitioners to deposit 20% of the compensation / fine amount awarded by the trial Court, has been allowed and the petitioners have been directed to pay 20% of the compensation / fine amount in compliance of the said order within 60 days from the passing of the order. The said order has been passed in the proceedings initiated by Rita Sondhi- respondent no.1 under Section 138/141/142 of the N.I. Act.

(4) The third petition, i.e. CRM-M-16365-2021 has been filed by the same three petitioners challenging a similar order dated 13.01.2021 (wrongly mentioned as 2020 in the order) passed by the Additional Sessions Judge, Chandigarh, in Criminal Appeal no.72 dated 19.02.2020 whereby the application for directing the petitioners to deposit 20% of the compensation / fine amount awarded by the trial Court, has been allowed and the petitioners have been directed to pay 20% of the compensation / fine amount in compliance of the said order within 60 days from the passing of the order. The said order has been passed in the proceedings initiated by Rohit Sondhi- respondent no.1 under Section 138/141/142 of the N.I. Act.

(5) The fourth petition, i.e. CRM-M-16335-2021 has been filed by the same three petitioners challenging a similar Order dated 13.01.2021 (wrongly mentioned as 2020 in the Order) passed by the Additional SessionsJudge, Chandigarh, in Criminal Appeal no.73 dated 19.02.2020 whereby the application for directing the petitioners to

deposit 20% of the compensation / fine amount awarded by the trial Court, has been allowed and the petitioners have been directed to pay 20% of the compensation / fine amount in compliance of the said order within 60 days from the passing of the order. The said order has been passed in the proceedings initiated by Rohit Sondhi- respondent no.1 under Section 138/141/142 of the N.I. Act.

(6) Since the issue involved and the questions of law which arise inthe above four cases are common, thus, with the consent of all the learned counsel, CRM-M-16275-2021 is taken up as the lead case and the facts havebeen taken from the said petition.

(7) Respondent no.1-Veena Rani had filed a complaint under Section 138 read with Sections 141, 142 of the N.I. Act against the petitioners on 15.12.2018. Petitioner no.1 is the company which was impleaded as a party through petitioner no.2, who was stated to be the Managing Director of the company.Petitioner no.3 was stated to be a Director of the company. The said complaint was filed on the allegations that the complainant along with her family members including Mohit Sondhi, Rita Sondhi, Rohit Sondhi and M/s Devika Infrastruture Pvt. Ltd. were owners of property measuring 15 kanals 06 marlas regarding which the said family members had entered into an agreement to sell dated 28.11.2016 with petitioner no.1 through its Managing Director, i.e., petitioner no.2. It had been further alleged that the total sale consideration for the same was Rs.3.95 crore and in order to discharge the said liability, the accused persons got a cheque dated 04.11.2018, amounting to Rs.1 crore, issued and same was stated to have been issued from the personal account of petitioner no.2 on behalf of petitioner no.1 company, with the consent of petitioner no.3. Three other cheques were issued in favour of Rohit Sondhi in discharge of liability of accused company-petitioner no.1. The said cheques were dishonoured and legal notice was issued on 13.11.2018 and the same was received back with the remark "refused". It had been alleged in para 10 of the complaint that accused no.2 / petitioner no.2 was the authorised signatory and accused no.3/ petitioner no.3 was the Director of the accused company and accused no.2 and 3 / petitioners no.2 and 3 respectively, took care of the day to day business affairs of accused no.1/petitioner no.1 and hence, all the accused persons were responsible for conducting the business affairs of accused no.1-petitioner no.1 jointly and severally. The Judicial Magistrate Ist Class, Chandigarh, vide judgment dated 29.01.2020, convicted the petitioners for the offence under Section 138 of the N.I. Act and

sentenced the accused persons/ petitioners to undergo rigorous imprisonment for a period of two years for commission of offence under Section 138 of the N.I. Act and the accused / petitioners were also directed to pay compensation to the complainant jointly and severally to the tune of double the amount of the cheque, i.e. Rs.2 crore within a period of one month of expiry of period prescribed for appeal or its disposal. The fact that three other complaints were filed and the petitioners were convicted in the same, was also noticed in the judgmentand it was observed that sentence awarded in all orders, shall run concurrently.

(8) The petitioners filed an appeal against the judgment of conviction and sentence dated 29.01.2020 in the Court of Sessions Judge, U.T. Chandigarh. On 19.02.2020, the sentence of the petitioners no.2 and 3 was suspended during the pendency of the appeal. On 30.09.2020, respondent no.1/ complainant had filed an application for directing the present petitioners / appellants in the appeal, to deposit 20% of the compensation / fine awarded by the trial Court in view of Section 148 of the N.I. Act and in view of the judgment passed by the Hon'ble Supreme Court passed in ***Surinder Singh Deswal alias Colonel S.S.Deswal*** versus ***Virender Gandhi***[1]. Another application dated 13.07.2020 was filed by the complainant / respondent no.1 seeking issuance of direction to the appellants (petitioners herein) to surrender their passports. The Additional Sessions Judge vide the impugned order dated 13.01.2021 decided the said two applications filed by the complainant and the application for deposit of 20% of the compensation / fine imposed, was allowed and the present petitioners (appellants therein) were directed to pay 20% of the compensation / fine amount in compliance of the order of the trial Court within 60 days from the date of passing of the impugned order. As far as the second application was concerned, the same was disposed of with a direction that in case, the petitioners intended to go abroad in connection with their business, they would seek prior permissionof the Court.

(9) On 19.02.2021, the National Company Law Tribunal, Chandigarh Bench, Chandigarh (in short "Tribunal") while exercising powers of adjudicating authority under the Insolvency and Bankruptcy Code, 2016 in a petition filed under Section 9 of the Insolvency and Bankruptcy Code (in short "IBC"), after considering the facts and circumstances of the case, had admitted the petition under Section 9 of

[1] (2019) 11 SCC 341

the IBC and had declared moratorium in terms of Section 14 of the IBC and alsoappointed an Interim Resolution Professional.

(10) As has been detailed hereinabove, the petitioners, who are accused persons in complaint under Section 138 of the N.I. Act, have filed the present petitions challenging the order dated 13.01.2021 (wrongly mentioned as 13.01.2020). Since the order dated 19.02.2021 was passed after the date of passing of the impugned order, thus, the present petitions have been filed by three petitioners, out of which petitioner no.1-company has filed the petitions through Interim Resolution Professional, i.e. Parvinder Singh. Petitioners no.2 and 3have also filed joint petitions challenging the impugned order.

(11) Learned senior counsel Mr.Anand Chhibbar assisted by Mr.L.S.Sidhu, Advocate, who represent petitioner no.1-company, has vehemently argued that in the present case in view of the order passed by theTribunal dated 19.02.2021 vide which, moratorium was declared in terms of Section 14 of the IBC and the Interim Resolution Professional had been appointed, no proceedings under Section 138 of the N.I. Act could be continued against petitioner no.1-company. It has further been submitted that the condition to deposit 20% of compensation moreso, as far as the same has been imposed on petitioner no.1, cannot legally be sustained. In support of his contention, reliance has been placed upon judgment of the Hon'ble Supreme Court in ***P.Mohanraj & Ors.*** versus ***M/s. Shah Brothers Ispat Pvt. Ltd.***[2]**.** It has been highlighted that a perusal of the said judgment would show that after considering the law on the point, a detailed judgment has been passed by the Hon'ble Supreme Court holding that till the time the moratorium period is continuing, the proceeding under Section 138, if initiated, cannot continue. Further specific reference has been made paragraph 115 to highlight that in a case where a petition under Section 482 Cr.P.C. to quash the proceedings against the corporate debtor had been rejected by the High Court by observing that Section 14 of the IBC did not apply to Section 138 of the N.I. Act proceedings, the same was set aside and the complaint and proceedings arising therefrom, were directed to be continued against the Managing Director and the Directors' only whereas, the proceedings against the corporate debtor-company were quashed / set aside.

(12) Further reference has been made to paragraph 101, 102 and

[2] (2021) 6 SCC 258

103of the said judgment to argue that it had been specifically observed that the corporate debtor would be covered by the provision of moratorium provision contained in Section 14 of IBC, and the legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be initiated against the corporate debtor and thus, the view of the Bombay High Court and Calcutta High Court to the contrary, was set aside and it was affirmatively held that proceedings under Sections 138, 141 of the Act against a corporate debtor is covered by Section 14(1) (a) of IBC.

(13) It has further been submitted that it is not in dispute that moratorium continues till date and since the proceedings under Section 138 /141 of the N.I. Act cannot continue against the corporate debtor, thus as a necessary corollary, order directing petitioner no.1 company to deposit 20% of the amount of compensation, is bad in law and deserves to be set aside on the said ground alone.

(14) Mr.Bipan Ghai, Senior Advocate, assisted by Mr.MS Bindra, Advocate, who represent petitioners no.2 and 3, has vehemently argued that a perusal of complaint under Section 138 read with Sections 141 and 142 of the N.I. Act would show that the alleged agreement to sell dated 28.11.2016 was between the company through its Managing Director and the complainant and her family members. It has further been highlighted thatthe debt, if any due, would be of the company, i.e. accused no.1 / petitioner no.1 and in case the proceedings under Sections 138/141 of the N.I. Act are to be suspended or cannot continue against petitioner no.1 company, then as a necessary corollary, the same cannot be continued against petitioners no.2 and 3. It is argued that even as per the judgment of conviction dated 29.01.2020, petitioners no.2 and 3 have been held to be vicariously liable being the Managing Director and the Director of the petitioner no.1 company.

(15) Learned senior counsel for petitioners no.2 and 3 has further argued that in Section 148 of the N.I. Act, the word used is “may” and even while considering the said words “may” and “shall”, the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal's*** case (supra) had observed that the appellate Court still had the power not to direct the deposit of the money although as an exception, for which special reasons had to be recorded. It has further been submitted that in the present case, special reasons were brought to the notice of the Court below with respect to the proceedings having been initiated under the IBC but the said contention has not been considered in the impugned

order to be an exceptional factor in order to exempt the petitioners from depositing the amount of 20% of the compensation / fine. It has also been argued that to direct petitioners no.2and 3 to deposit 20% of the compensation / fine in the absence of proceedings being continued against petitioner no.1, would be illegal and would cause severe prejudice to petitioners no.2 and 3, who are only vicariously liable in the present case.

(16) Mr.H.S.Brar, Senior Advocate assisted by Mr.Kanwal Goyal, Advocate, for respondent no.1, has vehemently opposed the present petition and has sought its dismissal. It has been stated that from the facts of the case it is apparent that the cheque in question, had been dishonoured, the date of filing of complaint under Section 138 of the N.I. Act as well as the order of conviction and filing of the appeal, are all prior to 19.02.2021, i.e. the date when moratorium in terms of Section 14 IBC had been declared and the Interim Resolution Professional had been appointed. It has further beensubmitted that the matter in issue is no longer *res integra* inasmuch as, the judgment of the Hon'ble Supreme Court in ***P.Mohanraj's*** case (*supra*) would fully cover the case and the petition qua petitioners no.2 and 3 in any case, has to be outrightly rejected.

(17) Learned senior counsel for respondent no.1 has further highlighted paragraph 102 and also paragraph 110 to 121 of the judgment in ***P.Mohanraj's*** case (*supra*). It has been argued that a reading of paragraph 102 would show that moratorium contained in Section 14 IBC would apply at best to the corporate debtor and the natural person who have been mentioned in Section 141, would continue to be statutory liable under Chapter XVII of the N.I. Act. Even paragraph 110, which deals with individual cases of the Directors therein, has been relied upon, to contend that the impugned order issuing proclamation under Section 82 Cr.P.C.against the Director, was upheld and the appeals challenging the said order were dismissed, by observing that the moratorium order would not cover the appellant therein, who was stated to be a Director. It has further been argued that petitioner no.2 had issued the cheque and the same bears his signature and thus, he is the drawer of the cheque and at any rate, a person who is the drawer of the cheque, cannot be absolved of his statutory liability. It has alsobeen argued that the petitioners have been convicted by the Court of Judicial Magistrate Ist Class, Chandigarh and it is only in appeal that the impugned orders have been passed by the Sessions Judge, U. T. Chandigarh, in exercise of its power under Section 148

and it is not open to the petitioners to raise arguments on merits of the case as it has been held by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (supra) that as a rule, the deposit has to be made by the persons who have filed the appeal. In the present case, it has been submitted that all three petitioners have been convicted and have filed appeal against conviction and thus, the impugned order(s) has been correctly passed and deserves to be upheld.

(18) This Court has heard learned counsel for the parties and hasperusedthe record.

The following chronological facts are not in dispute:-

I. On **04.11.2018**, the cheque in question for an amount of Rs.1 crore had been issued.

II. On **15.12.2018**, complaint under Sections 138, 141, 142 of the N.I. Act had been filed.

III. On **29.01.2020**, judgment was passed by the Judicial Magistrate Ist Class, Chandigarh convicting all three petitioners of offence under section 138 of the N.I. Act and also directing the petitioners jointlyand severally to deposit double the amount of the cheque, i.e. Rs. 2crores, within a period of one month.

IV. On **18.02.2020**, appeal was filed by the petitioners against the judgment of conviction and sentence dated 29.01.2020 in the Courtof Sessions Judge, U.T. Chandigarh.

V. On **19.02.2020**, the benefit of suspension of sentence was granted to petitioners no.2 and 3 during the pendency of the appeal.

VI. On **30.09.2020**, (page 66 of paperbook in CRM-M-16275-2021) application had been filed by respondent no.1/complainant for seeking directions to the petitioners to deposit 20% of the amount of compensation / fine awarded by the trial Court.

VII. On **13.01.2021** (wrongly mentioned as 13.01.2020 in the order), the impugned order had been passed directing the petitioners to deposit 20% of the compensation/ fine amount within a period of 60 days from the date of passing of the said order.

VIII. On **19.02.2021** (Page 78 of paperbook in CRM-

M-16275-2021) order had been passed by the Tribunal admitting the petition under Section 9 of the IBC and declaring moratorium in terms of Section 14 of IBC and Interim Resolution Professional had also been appointed.

IX. On **31.03.2021/08.04.2021**, the present petition had been drafted, wherein, petitioner no.1-company was represented through Interim Resolution Professional-Parvinder Singh.

(19) The short issue which arises for consideration in the present matter is, whether once moratorium has been declared in terms of Section 14 of the IBC and Interim Resolution Professional has been appointed on 19.02.2021, then, the order directing the petitioners to deposit the amount of 20% of the amount of compensation / fine could be held to be legally sustainable against petitioner no.1 which is the company (corporate debtor) and petitioners no.2 and 3, who were the Managing Director and the Director of the company respectively, on the date of the filing of the complaint.

(20) The above issue is no longer *res integra* as the Hon'ble Supreme Court in a detailed judgment in ***P.Mohanraj's*** case (*supra*) dealt with the same. Relevant portion of the said judgment is reproduced hereinbelow:-

> **"6. The important question that arises in this appeal is whether the institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision, namely, Section 14 IBC.Interpretation of Section 14 IBC**
>
> 14. Having heard learned counsel, it is important at this stage to set out Section 14 of the IBC, which reads as follows:
>
> "14. Moratorium.- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or asimilar grant or right during the moratorium period.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services criticalto protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to-

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(3) The order of moratorium shall have effect fromthe date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolutionplan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approvalor liquidation order, as the case may be."

15. A cursory look at Section 14(1) makes it clear that subject to the exceptions contained in sub sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall mandatorily, by order, declare a moratorium to prohibit what follows in clauses

(a) to (d). Importantly, under sub-section (4), this orderof moratorium does not continue indefinitely, but has effect only from the date of the order declaring moratorium till the completion of the corporate insolvency resolution process which is time bound, either culminating in the order of the Adjudicating Authority approving a resolution plan or in liquidation.

18. This definition being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability. This is made clear by Section 96(3) and Section 101(3) which contain the same language as Section 14(3)(a), these Sections speaking of 'debts' of the individual or firm. Equally important is Section 14(3)(b), by which a surety in a contract of guarantee of a debt owed by a corporate debtor cannot avail of the benefit of a moratorium as a result of which a creditor can enforce a guarantee,though not being able to enforce the principal debt during the period of moratorium - see State Bank of India v. V. Ramakrishnan, (2018) 17 SCC 394 (at paragraph 20)

["V. Ramakrishnan"].

19. 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 panelor 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" wouldmake 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, 1973 it isclear that a Section 138 proceeding being conducted before a Magistrate would certainly be a proceeding in acourt of law in respect of a transaction which relates to a debt owed by the corporate debtor.**

30. It can be seen that paragraph 8.11 refers to the very judgment under appeal before us, and cannot thereforebe said to throw any light on the correct position in law which has only to be finally settled by this Court. However,

paragraph 8.2 is important in that the object ofa moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. Also, the judgment of this Court in Swiss Ribbons (P) Ltd. v. Unionof India , (2019) 4 SCC 17 states the raison d'etre for Section 14 in paragraph 28 as follows:

"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. TheCode is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, theresolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelineswithin which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

31. It can thus be seen that regard being had to the object sought to be achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having to pay compensation

which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner asthe institution, continuation, or execution of a decree insuch suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process. Given this fact, it is difficult to accept that noscitur a sociis or ejusdem generis should be used to cut down the widthof the expression "proceedings" so as to make such proceedings analogous to civil suits.

32. Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein being also interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor's assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space tocontinue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur.

"32A. Liability for prior offences, etc.-(1) Notwithstanding anything to the contrarycontained 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 beenapproved by the Adjudicating Authority under

Section 31, if the resolution plan results in thechange 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) ofSection 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.

31. The raison d'etre for the enactment of Section 32A has been stated by the Report of the Insolvency Law Committee of February, 2020, which is as follows:

"**17. LIABILITY of CORPORATE DEBTOR FOR OFFENCES COMMITTED PRIOR TO INITIATION of CIRP**

Section 17 of the Code provides that on commencement of the CIRP, the powers of management of the corporate debtor vest with the interim resolution professional. Further, the powers of the Board of Directors or partners of the

corporate debtor stand suspended, and are to be exercised by the interim resolution professional. Thereafter, Section 29A, read with Section 35(1)(f), places restrictions on related parties of the corporate debtor from proposing a resolution plan and purchasing the property of he corporate debtor in the CIRP and liquidation process, respectively. Thus, in most cases, the provisions of the Code effectuate a change in control of the corporate debtor that results in a clean break of the corporate debtor from its erstwhile management. However, the legal form of the corporate debtor continues in the CIRP, and may be preserved in the resolution plan. Additionally, while the property of the corporate debtor mayalso change hands upon resolution or liquidation, such property also continues to exist, either as property of the corporate debtor, or in the hands of the purchaser.

However, even after commencement of CIRP or after its successful resolution or liquidation, the corporate debtor, along with its property, would be susceptible to investigations or proceedingsrelated to criminal offences committed by it prior to the commencement of a CIRP, leading to the imposition of certain liabilities and restrictions on the corporate debtor and its properties even after they were lawfully acquired by a resolution applicant or a successful bidder, respectively.

Liability where a Resolution Plan has been Approved

It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it had submitted for approval of the Adjudicating Authority. Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower on an average, even where the corporate debtor did not commit any offence and was not subject to investigation, due to adverse selection by

resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors, including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty bound to penalise the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced.

Given this, the Committee felt that a distinction must be drawn between the corporate debtor which may have committed offences under the control of its previous management, prior to the CIRP, and the corporate debtor that is resolved, and taken over by an unconnected resolution applicant. While the corporate debtor's actions prior to the commencement of the CIRP must be investigated and penalised, the liabilitymust be affixed only upon those who were responsible for the corporate debtor's actions in this period. However, the new management of the corporate debtor, which has nothing to do with such past offences, should not be penalised for the actions of the erstwhile management of the corporate debtor, unless they themselves were involved in the commission of the offence, or were related parties, promoters or other persons in management and control of the corporate debtor at the time of or any time following the commission ofthe offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29A.

Thus, the Committee agreed that a new Section should be inserted to provide that where the corporate debtor is successfully resolved, it should not be held liable for any offence committedprior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related

party, promoter or other person in management and control of the corporate debtor at the time ofor any time following the commission of the offence.

Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise, regardless of the fact that the corporate debtor's liability has ceased."

40. This Court, in **Manish Kumar v. Union of India, 2021 SCC Online SC 30** , upheld the constitutional validity of this provision. This Court observed:

"326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court'sjurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to thecorporate debtor as also its property, it hardlyfurnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the applicationthe management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is

concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision."

41. Section 32A cannot possibly be said to throw any light on the true interpretation of Section 14(1) (a) as the reason for introducing Section 32A had nothing whatsoever to do with any moratorium provision. At the heart of the Section is the extinguishment of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the Adjudicating Authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32A(1) operates only after the moratorium comes to an end. At the heart of Section 32A is the IBC's goal of value maximisation and the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability.

42. Unfortunately, the Section is inelegantly drafted. The second proviso to Section 32A(1) speaks of persons who are in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor and who are, directly or indirectly, involved in the commission of "such offence", i.e., the offence referred to in sub-section (1), "as per the report submitted or complaint filed by the investigating authority ...". The report submitted herein refers to a police report under section 173 of the CrPC, 1973 and complaints filed by investigating authorities under special Acts, as opposed to private complaints. If the language of the second proviso is taken to interpret the language of Section 32A(1) in that the "offence committed" under Section 32A(1) would not include offences based upon complaints under section 2(d) of the CrPC, 1973 the width of the language would be cut down and the object of Section 32A(1) would not be achieved as all prosecutions emanating from private complaints would be excluded. Obviously, Section 32A(1)

cannot be read in this fashion and clearly incudes the liability ofthe corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process. Doubtless, a Section 138 proceeding would be included, and would, after the moratorium period comes to an end with a resolution plan by a new management being approved by the Adjudicating Authority, cease tobe an offence qua the corporate debtor.

The Nature of proceedings under Chapter XVII of the Negotiable Instruments Act.

44. This brings us to the nature of proceedings under Chapter XVII of the Negotiable Instruments Act. Sections 138 to 142 of the Negotiable Instruments Act were added by Chapter XVII by an Amendment Act of 1988. Section 138 reads as follows:

"138. Dishonour of cheque for insufficiency, etc., of fundsin the account.-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out ofthat account for the discharge, in whole or in part, of anydebt 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, without prejudice to any other provision of this Act, 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 with both:

Provided that nothing contained in this Section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of

information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to thepayee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation .-For the purposes of this Section, "debt or other liability" means a legally enforceable debt or other liability."

45. Section 138 contains within it the ingredients of the offence made out. The deeming provision is important in that the legislature is cognizant of the fact that what is otherwise a civil liability is now also deemed to be an offence, since this liability is made punishable by law. Itis important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The explanation to Section 138 makes it clear that such debt or other liability means a legally enforceable debt orother liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138. This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, **would show that it is really a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law.** Further, though the ingredients of the offence are contained in the first part of Section 138 when the cheque is returned by the bank unpaid for the reasons given in the Section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

46. Likewise, under Section 139, a presumption is raised that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. To rebut this presumption, facts must beadduced which, on

a preponderance of probability (not beyond reasonable doubt as in the case of criminal offences), must then be proved. Section 140 is also important, in that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section, thus making it clear that strict liability will attach, mens rea being no ingredient of the offence. Section 141 then makes Directors and other persons statutorily liable, provided the ingredients of the section are met. Interestingly, for the purposes of this Section, explanation

(a) defines "company" as meaning any body corporate and includes a firm or other association of individuals.

47. We have already seen how the language of Sections 96 and 101 would include a Section 138/141 proceeding against a firm so that the moratorium stated therein would apply to such proceedings. If Shri Mehta's arguments were to be accepted, under the same Section, namely, Section 141, two different results would ensue- so far as bodies corporate, which include limited liability partnerships, are concerned, the moratorium provision contained in Section 14 of the IBC would not apply, butso far as a partnership firm is concerned, being covered by Sections 96 and 101 of the IBC, a Section 138/141 proceeding would be stopped in its tracks by virtue of the moratorium imposed by these Sections. Thus, under Section 141(1), whereas a Section 138 proceeding against a corporate body would continue after initiation of the corporate insolvency resolution process, yet, the same proceeding against a firm, being interdicted by Sections 96 and 101, would not so continue. This startling result is one of the consequences of acceptingthe argument of Shri Mehta, which again leads to the position that inelegant drafting alone cannot lead to such startling results, the object of Sections 14 and 96 and 101 being the same, namely, to see that during the insolvency resolution process for corporate persons/individuals and firms, the corporate body/firm/individualshould be given breathing space to recuperate for a successful resolution of its debts - in the case of a corporate debtor, through a new

management coming in; and in the case of individuals and firms, through resolution plans which are accepted by a committee of creditors, by which the debtor is given breathing space in which to pay back his/its debts, which would result in creditors getting more than they would in a bankruptcy proceeding against an individual or a firm.

48.Section 142 is important and is set out hereunder:

"142. Cognizance of offences.-(1) Notwithstanding anything containe in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises underclause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint maybe taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a)if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise throughan account, the branch of the drawee bank wherethe drawer maintains the account, is situated. Explanation.-For the purposes of clause (a), where a cheque is delivered for collection at any branchof the bank of the payee or holder in due course, then, the cheque shall be deemed to have beendelivered to

the branch of the bank in which the payee or holder in due course, as the case may be,maintains the account."

45. A cursory reading of Section 142 will again make it clear that the procedure under the CrPC has been departed from. First and foremost, no court is to take cognizance of an offence punishable under Section 138 except on a complaint made in writing by the payee orthe holder in due course of the cheque - the victim. Further, the language of Section 142(1) (b) would again show the hybrid nature of these provisions inasmuch as a complaint must be made within one month of the date on which the "cause of action" under clause (c) of the proviso to Section 138 arises. The expression "cause of action" is a foreigner to criminal jurisprudence, and would apply only in civil cases to recover money. Chapter XIII of the CrPC, consisting of Sections 177 to 189, is a chapter dealing with the jurisdiction of the criminal courts in inquiries and trials. When the jurisdiction of a criminal court is spoken of by these Sections, the expression "cause of action" is conspicuous by its absence.By an Amendment Act of 2002, various other sections were added to this Chapter. Thus, underSection 143, it is lawful for a Magistrate to pass a sentence of imprisonment for a term not exceeding one year and a fine exceeding INR 5,000/- summarily. This provision is again an important pointer to the fact that the payment ofcompensation is at the heart of the provision in that a fine exceeding INR 5000/-, the sky being the limit, can be imposed by way of a summary trial which, after application of section 357 of the CrPC, 1973 results in compensating the victim up to twice the amount of the bounced cheque. Under Section 144, the mode of service of summons is done as in civil cases, eschewing the mode contained in sections 62 to 64 of the CrPC, 1973. Likewise, under Section 145, evidence is to be given by the complainant on affidavit, as it is given in civil proceedings, notwithstanding anything contained in the CrPC. Most importantly, by Section 147, offences under this Act are compoundable without any intervention ofthe court, as is required by section 320(2) of the CrPC, 1973.

46. By another amendment made in 2018, the hybrid nature

of these provisions gets a further tilt towards a civil proceeding, by the power to direct interim compensation under Sections 143A and 148 which are set out herein below:

"143-A. Power to direct interim compensation.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant-

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub- section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by thecomplainant.

(5) The interim compensation payable under this Section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this Section."

148. Power of Appellate Court to order payment pending appeal against conviction.- (1) Notwithstanding

anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be aminimum of twenty per cent of the fine orcompensation awarded by the trial Court:

Provided that the amount payable under this sub- section shall be in addition to any interim compensation paid by the appellant under Section 143-A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court onsufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of theappeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

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67. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, though couched in language making the act complained of an offence, is really in order to get back through a summary proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given our analysis of

Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited herein above, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 of the IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding.

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Whether natural persons are covered by Section 14 IBC

101. As far as the Directors/persons in management or control of the corporate debtor are concerned, a Section 138/141 proceeding against them cannot be initiated or continued without the corporate debtor - see Aneeta Hada (supra). This is because section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the company for the conduct of the business of the company, as well as the company. The Court, therefore, in Aneeta Hada (supra) held as under: "51. We have already opined that the decision in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. **Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of lex non cogit ad impossibilia gets attracted."**

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56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not

to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to beunderstood in the context."

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58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag- net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and,

accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us herein above."

102. **Since the corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, 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 Negotiable Instruments Act. 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 continuingto be statutorily liable under Chapter XVII of the Negotiable Instruments Act.**

103. **CONCLUSION**

104. **In conclusion, disagreeing with the Bombay High Court and the Calcutta High Court judgments in Tayal Cotton Pvt. Ltd. v. State of Maharashtra , 2018 SCC Online Bom 2069 : (2019) 1 Mah LJ 312 and M/s MBL Infrastructure Ltd. v. Manik Chand Somani, CRR 3456/2018 (Calcutta High Court; decided on 16.04.2019), respectively, we hold that a Section 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) of the IBC.**

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Criminal Appeals arising out of SLP (Criminal) Nos.10587/2019, 10857/2019, 10550/2019, 10858/2019, 10860/2019, 10861/2019, 10446/2019.

110. Leave granted. On the facts of these cases, all the complaints filed by different creditors of the same appellant under Section 138 read with section 141 of the Negotiable Instruments Act were admittedly filed long before the Adjudicating Authority admitted a petition under Section 7 of the IBC and imposed moratorium on 19.03.2019.

111. Given our judgment in Civil Appeal No.10355 of 2018, the said moratorium order would not cover the appellant in these cases, who is not a corporate debtor, but a Director thereof. Thus, the impugned order issuing a proclamation under section 82 CrPC, 1973 cannot be faulted with on this ground. The appeals are therefore dismissed.

Criminal Appeal arising out of SLP (Criminal) Nos.2246-2247 of 2020

112. Leave granted.

113. In this case, the two complaints dated 12.03. 2018 and 14.03.2018 under Section 138 read with section 141 of the Negotiable Instruments Act were filed by the respondent against the corporate debtor along with persons in charge of and responsible for the conduct of business of the corporate debtor. On 14.02.2020, the Adjudicating Authority admitted a petition under Section 9 of the IBC against the corporate debtor and imposed a moratorium. The impugned interim order dated 20.02.2020 is for the issuance of non-bailable warrants against two of the accused individuals.

114. Given our judgment in Civil Appeal No.10355 of 2018, the moratorium provision not extending to persons other than the corporate debtor, this appeal also stands dismissed.

Criminal Appeal arising out of SLP (Criminal) No.2496 of 2020

115. Leave granted. In the present case, a complaint under Section 138 read with section 141 of theNegotiable

Instruments Act was filed by Respondent No.1 against the corporate debtor together with its Managing Director and Director on 15.05.2018. It is only thereafter that a petition under Section 9 of the IBC, filed by Respondent No.1, was admitted by the Adjudicating Authority and a moratorium was imposed on 30.10.2018. The impugned judgment dated 16.10.2019 held that a petition under section 482, CrPC, 1973 to quash the said proceeding would be rejected as Section 14 of the IBC did not apply to Section 138proceedings.

116. The impugned judgment is set aside in view of our judgment in Civil Appeal No.10355 of 2018, and the complaint is directed to be continued against the Managing Director and Director, respectively.

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Writ Petition (Criminal) Nos.330/2020, 339/2020, Writ Petition (Civil) No.982/2020, Writ Petition (Criminal) Nos.297/2020, 342/2020, Writ Petition (Civil) No.1417/2020, 1439/2020, 18/2021, Writ Petition (Criminal) No.9/2021, 26/2021.

120. All these writ petitions have been filed under Article 32 of the Constitution of India by erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor. They are all premised upon the fact that Section 138 proceedings are covered by Section 14 of the IBC and hence, cannot continue against the corporate debtor and consequently, against the petitioners.

121. Given our judgment in Civil Appeal No.10355 of 2018, all these writ petitions have to be dismissed in view of the fact that such proceedings can continue against erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor."

(21) A perusal of paragraph 6 of the above judgment would show that the question which arose before the Hon'ble Supreme Court was whether the institution or continuation of proceedings under Sections 138, 141 of the N.I. Act can be said to be covered by the provision of moratorium as stipulated under Section 14 of IBC or not. The Hon'ble Supreme Court after considering Section 14 of IBC as

well as the provision of Section 143- A and 148 of the N.I. Act held and observed in paragraph 102 that since the corporate debtor would be covered by the moratorium provision contained in Section 14 of IBC, thus, the legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or to be instituted against the corporate debtor and it was further observed that forthe period of moratorium, the proceedings under Section 138 and 141 of the N.I. Act cannot continue or be initiated against the corporate debtor because of the statutory bar, but however, the same could continue against the naturalpersons mentioned in Section 141 of the N.I. Act, as the moratorium provision contained in Section 14 of IBC would only apply to the corporate debtor and not to the natural persons mentioned in Section 141 of the N.I. Act. Even the individual cases which had been considered and dealt with by the Hon'ble Supreme Court in paragraph 110, 115 and 121 would show that where the Hon'ble Supreme Court had found that the complaint under Section 138 of the N.I. Act was prior in time to the order declaring moratorium under Section 14 of IBC, then in such like situations, the proceeding of the case under Section 138 of NI Act against the Managing Director or the Director of the company were ordered to continue and not against the corporate debtor. Paragraph 115 and 116 of the judgment of the Hon'ble Supreme Court would show that a petition under Section 482 Cr.P.C. for quashing of the proceeding even with respect to corporate debtor had been rejected under Section 482 by the High Court by observing that Section 14 of IBC did not apply to Section 138 of the N.I. Act proceedings. The said judgment of the High Court was set aside and it was directed that the complaint would continue only against the Managing Director and the Directors' respectively. The Hon'ble Supreme Court of India had considered the provisions of Section 14 of the IBC in Paragraph 14 of the judgment. A perusal of the said section would show that it was specifically provided that subject to provisions of Sub-section (2) and (3), on the insolvency commencement date, the adjudicating authority shall, by order, declare moratorium for prohibiting the institution of suits or continuation of pending suits or **proceedings** against the corporate debtor and also prohibiting as to what has been detailed in sub-clause (b), (c) and (d) of Section 14(1). In paragraph 67, it was concluded by the Hon'ble Supreme Court of India that the quasi-criminal proceedings contained in Chapter XVII of the Negotiable Instruments Act would amount to a "**proceeding**" within the meaning of Section 14 (1) (a) of IBC. A perusal of paragraph 31 and 32 of the above- mentioned judgment

would show that it has been observed that the object of the provision of moratorium such as Section 14, is to see that there is no depletion of the corporate debtors' assets during the insolvency resolution process. It had been further observed that the continuance of the proceedings under Section 138 would result in the assets of the corporate debtor (Petitioner no. 1 in the present case) being depleted, as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced and would thus, directly impact the corporate insolvency resolution process.

(22) In the present case, it is an admitted position that the moratorium as ordered by the National Company Law Tribunal (Annexure P-5) is still continuing. In case, the Petitioner no. 1 (Corporate Debtor) is directed to deposit 20% of the amount of compensation / fine awarded by thetrial Court, as has been ordered in the impugned order, then the same would amount to depletion of the assets of the corporate debtor which wouldddirectly impact the corporate insolvency resolution process and would be in the teeth of the ratio of law laid down by the Hon'ble Supreme Court ofIndia in ***P. Mohanraj*** (*supra*). No contrary judgment or meaningful argument has been addressed by the Learned Senior Counsel for the Respondent to counter the said proposition of law. Specific reference in this regard could be made to Paragraph 30, 31, 32, 67, 102 and 115 of the said judgment.

(23) It would be relevant to note that at page 63 of the paper book in the order dated 13.01.2021 (wrongly mentioned as 13.01.2020), the request of learned counsel for the petitioners for seeking an adjournment for one week to place on record a copy of the order dated 06.01.2021 passed by the Tribunal with respect to the appointment of Interim Resolution Professional, has been noticed. However, adjournment had not been granted and thedetailed impugned order had been passed on the same date. This Court has specifically put it to learned senior counsel for the parties as to whether any order dated 06.01.2021 was passed moreso, in light of the fact that even arguments had been addressed in the impugned order with respect to the declaration of moratorium under Section 14 of IBC and have been noticed inpara 7 of the impugned order (page 69 of the paper book) and the said argument has even been rejected in the impugned order. This Court inquired from both the learned senior counsel that the order dated 19.02.2021 is subsequent to passing of the impugned order and thus, they should affirmatively state as to whether there is any order

dated 06.01.2021 or not. Learned senior counsel for the petitioners have jointly submitted that there isno order dated 06.01.2021 and it has been stated that the first order declaring the moratorium under Section 14 of IBC and appointing Interim Resolution Professional is the order annexed with the present petition dated 19.02.2021 (Annexure P-5). It has further been stated that even a perusal of the order dated 19.02.2021 would show that no reference has been made to any order dated 06.01.2021 and a perusal of paragraphs 14 and 15 of the said order would make it clear that the first instance on which the moratorium has been declared and the Interim Resolution Professional has been appointed, is on 19.02.2021. It has been submitted that apparently, since the proceeding under Section 9 of IBC had been initiated thus, either on the basis of wrong understanding or in anticipation of the order declaring moratorium, the said argument had been raised before the Additional Sessions Judge, Chandigarh, which had been rejected. It is reaffirmed that neither there is any order dated 06.01.2021 nor any such order has been placed on record in the present petition nor the same had been placed on record before the Additional Sessions Judge, Chandigarh. Learned senior counsel for petitioner no.1 has submitted that the order dated 19.02.2021 being subsequent to the impugned order, would not make any difference inasmuch as, the moratorium is still continuing and the point at issue, which has been raised and considered on behalf of petitioner no.1, is still available to petitioner no.1 at the time of adjudication of the present petition. It has also been submitted that the said order dated 19.02.2021 at any rate, has been passed within a period of 2 months from the order dated 13.01.2021 (wrongly mentioned as 13.01.2020 in the order) and thus, has been passed prior to the lapse of the period which had been provided to deposit 20% of the compensation / fine amount awarded by the trial court.

(24) Learned senior counsel for respondent no.1 has not disputed thefact that there is no order dated 06.01.2021 and has also not disputed the factual averments as made by learned senior counsel for petitioner no.1. No argument has been addressed on behalf of the respondents to contend that in case declaration of the moratorium or appointment of Interim Resolution Professional is subsequent to the impugned order then the plea on the basis of the judgment of the Hon'ble Supreme Court in ***P.Mohanraj's*** case (supra) would not be available to petitioner no.1. In fact on behalf of respondent no.1 reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***P.Mohanraj's*** case (supra).

(25) From the above submissions, it is apparent that there is no order dated 06.01.2021 and the first order declaring moratorium under Section 14 of the IBC and appointing Interim Resolution Professional is dated 19.02.2021. No order dated 06.01.2021 has been placed on record. No reference of the said order dated 06.01.2021 has been made in the order dated 19.02.2021. Even order dated 19.02.2021 has been passed within a period of 2 months from the date of the impugned order and thus, 60 days period within which the petitioners were directed to deposit the money had not lapsed on 19.02.2021 as the petitioners had time upto 20.03.2021 to make the said deposit. The plea available to petitioner no.1 on the basis of judgment of Hon'ble Supreme Court in ***P.Mohanraj's*** case (supra) would thus be available as admittedly the moratorium period is still continuing and the said aspect has not been disputed by respondent no.1, who has herself relied upon the judgment of Hon'ble Supreme Court in ***P.Mohanraj's*** case (*supra*).

(26) Thus, keeping in view the above said facts and circumstances, the said direction qua petitioner no.1 is not sustainable and accordingly, isset aside qua petitioner no.1.

(27) The other important question before this Court is as to whether the direction issued in the impugned order with respect to petitioners no.2 and 3 to deposit 20% of the compensation/fine amount as awarded by the trial Court, could be sustained or not.

(28) A reading of the judgment of the Hon'ble Supreme Court aswell as the individual cases dealt with by the Hon'ble Supreme Court would show that even during the period of moratorium, the proceedings under Section 138/141 are to be continued against the Managing Director and the Director i.e., the natural persons who have been impleaded as party. Specific reference is made to Paragraph 102, 110, 115, 120 and 121 of the judgment in ***P. Mohanraj***'s case (supra). Further, in paragraph 18 of the judgment, it was observed that a surety in a contract of guarantee of a debt, owed by a corporate debtor, cannot avail the benefit of moratorium and as a result of which, a creditor can enforce a guarantee, though, is not able to enforce the principal debt during the period of moratorium. Argument of the learned senior counsel for petitioner no. 2 and 3 to the effect that in case, the petitioner no. 1 – corporate debtor is not being proceeded against then, petitioner no. 2 and 3 could also not be proceeded against as they are vicariously liable, deserves to be rejected in view of the specific observations made by the Hon'ble Supreme Court in ***P. Mohanraj's***

case (*supra*). Apart from the above-said paragraphs of the said judgment, it would also be relevant to note Paragraph 101 of the judgment in which, the judgment of the Hon'ble Supreme Court in ***Aneeta Hada*** versus ***Godfather Travels and Tours Pvt. Ltd.***[3] has been noticed moreso, paragraph 51 wherein it had been observed that although the impleadment of the company is necessary to proceed against the director/managing director but it would be needless to emphasize that the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted and after considering the same, the Hon'ble Supreme Court has observed in Paragraph 102 that the legal impediment contained in Section 14 IBC would make it impossible for the proceedings under Section 138/141 to continue against the corporate debtor but the same are to continue against the natural persons mentioned in Section 141 of NI Act.

(29) A reading of the present complaint would show that petitioners no.2 and 3 have been impleaded as accused persons on account of their being the Managing Director and Director of the company, respectively and as detailed in paragraph 10 of the complaint under Section 138 of NI Act, (page 26 of the paperbook in CRM-M-16275-2021) they were the persons who were alleged to have been managing the day to day business affairs of petitioner no.1 / accused no.1 company and were responsible for the conductof the business of petitioner no.1-company, jointly and severally. Once as per the law laid down by the Hon'ble Supreme Court the continuance of proceedings against the natural persons, i.e. petitioners no.2 and 3 in the present case, is permitted then, as a natural corollary, all the provisions contained in the Negotiable Instruments Act could be invoked against petitioners no.2 and 3. Section 148 of the N.I. Act provides that the appellate court has the power to order payment of a minimum of 20% of compensation/ fine awarded by the trial court, pending appeal against conviction. The said section starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure in an appeal against conviction under Section 138 of the N.I. Act, the appellate Court has the power to direct the appellant to deposit such sum which maybe a minimum of 20% of the fine or compensation awarded by the trial Court. Sub section- 2 requires that the said amount shall be deposited within 60 days from the date of the order or within such further period not exceeding 30

[3] 2012 (5) SCC 661

days as may be directed by the Court on sufficient cause shown. Thus, the amount has to be deposited within a maximum period of90 days. It is not in dispute in the present case that the petitioners no.2 and 3 have been convicted and that they have preferred an appeal, which is pending. The proceedings against petitioners no.2 and 3, as per the judgment of the Hon'ble Supreme Court in ***P.Mohanraj's*** case (supra) is neither liable to be quashed nor liable to be set side nor liable to be kept suspended. The order passed by the appellate Court directing petitioners no.2 and 3 todeposit 20% of the compensation/fine amount as awarded by the trial court, is thus, absolutely legal and in accordance with the provision of Section 148 of the N.I. Act. The arguments of learned senior counsel for petitioners no.2 and 3 to the effect that in Section 148 the term employed is "may" and not "shall" and the present case is a case where the said direction should not have been issued moreso, in view of the order dated 19.02.2021, cannot be accepted. The Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (supra) had observed as under:-

> "8. Now so far as the submission on behalf of the appellants that even considering the language used in section 148 of the N.I. Act as amended, the appellate Court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant -accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of section 148 of the N.I. Act as amended is concerned, considering the amended section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending section 148 of the N.I. Act, though it is true that in amended section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant-Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original

complainant or even on the application filed by the Appellant-Accused under section 389 of the Cr.P.C., 1973 to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in section 148 of the N.I. Act, but also section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in section 148 of the N.I. Act and also section 138 of the N.I. Act.

9. Now so far as the submission on behalf of the appellants, relying upon section 357(2) of the Cr.P.C., 1973 that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended section 148 of the N.I. Act is that "notwithstanding anything contained in the Code of Criminal Procedure.....". Therefore irrespective of the provisions of section 357(2) of the Cr.P.C., 1973

> pending appeal before the first appellate court, challenging the order of conviction and sentence under section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court."

(30) A perusal of the above judgment of the Hon'ble Supreme Court would show that it had been observed that the word "may" in Section 148 of the N.I. Act is to be generally construed as a "rule" or "shall" and thus, notto direct to deposit, is to be taken as an exception for which, special reasons are to be assigned by the Appellate Court. The said observation of the Hon'ble Supreme Court would show that the appellate court is required to direct the appellant as a matter of rule to deposit at least 20% of the amount of compensation awarded by the trial court and the same has been done in the present case by the Appellate Court, by virtue of the impugned order.

(31) This Court has considered the argument of the learned senior counsel for petitioners no.2 and 3 to the effect that the present case is an exceptional case for exempting the deposit of 20% in view of the order passed by the Tribunal (Annexure P-5) declaring moratorium under Section 14 of IBC, but does not accept the same, as the Hon'ble Supreme Court in ***P.Mohanraj's*** case (supra) had specifically observed that the proceedings under Sections 138 and 141 of the N.I. Act have to continue against the erstwhile Managing Director and the Director of the company. In fact, treating the said case to be an exceptional case for not directing petitioners no.2 and 3 to deposit the money would be in the teeth of the judgment of the Hon'ble Supreme Court in ***P.Mohanraj's*** case (*supra*) and would infringe upon the statutory powers of the appellate court under Section 148 of NIAct.

(32) Keeping in view the above said facts and circumstances, the present petition qua petitioner no.1 is allowed and qua petitioners no.2 and 3 is dismissed. The impugned order dated 13.01.2021 (wrongly mentioned as 13.01.2020 in the Order) is set aside to the extent that the Petitioner no.1- company has been directed to pay 20% of the compensation/fine. The direction in the impugned order to the Petitioner nos. 2 and 3 to pay 20% of the compensation/fine amount, is upheld.

(33) Since in all these cases, the complaint under Section

138/141 and order of conviction, are prior to the order dated 19.02.2021, thus, inview of finding in CRM-M 16275 of 2021, all the three petitions qua petitioner no.1 are allowed and qua petitioners no.2 and 3 are dismissed. The impugned orders dated 13.01.2021 (wrongly mentioned as 13.01.2020 in the order) are set aside to the extent that the Petitioner no.1-company has been directed to pay 20% of the compensation/fine. The direction in the impugned orders to the Petitioner nos. 2 and 3 to pay 20% of the compensation/fine amount is upheld.

Ritambhra Rishi