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Crl.O.P.No.30253 of 2018 and Crl.M.P.Nos.17780 of 2018 and Crl.M.P.No.5031 of 2019

**THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on	Delivered on
10~01~2022	12~01~2022

CORAM:  
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

**Crl.O.P.No.30253 of 2018**  
**and Crl.M.P.Nos.17780 of 2018 & 5031 of 2019**

1. Mr. A.R. Asaithambhee

2. Mrs. A. Amutha

.. Petitioners/Accused 2 and 3

.Vs.

S. Thangavel

.. Respondent/Defacto Complainant

**Prayer:** Petition filed under Section 482 of Cr.P.C.to call for the records in STC No.223 of 2018 pending before the Judicial Magistrate, Tiruchengode (Fast Track) at Tiruchengode.

For Petitioners : Mr. P.J. Sriganesh

For Respondent : Mr. N. Manokaran



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## **ORDER**

**WEB COPY** This petition has been filed to quash the proceedings initiated by the Respondent under Section 138 of the Negotiable Instruments Act pending on the file of the Judicial Magistrate, Tiruchengode in STC No.223 of 2018.

2. The allegations in the complaint is as follows:

2.a. Accused No.1 is a private limited company in which the Accused No.2 (1<sup>st</sup> Petitioner herein), is the Managing Director and the Accused No.3 (2<sup>nd</sup> Petitioner herein) is a Director. Both the Petitioners are taking active part in the conduct, business and day to day affairs of 1<sup>st</sup> accused company. 1<sup>st</sup> Accused Company borrowed an amount Rs.27,00,000/- in the month of February 2016 from the complainant. However, they have postponed the repayment as told and agreed to repay. Only in the month of February 2018, when the complainant approached and insisted the accused for repayment, the 2<sup>nd</sup> and 3<sup>rd</sup> accused represented by the 1<sup>st</sup> accused company issued three cheques in question drawn on State Bank of India, Tiruchengode Branch, dated 19.04.2018, each for Rs.9 lakhs. When the cheques were presented for collection on 19.04.2018 the same were returned unpaid to the complainant as “Funds Insufficient” on 20.04.2018. After



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issuing statutory notice to the accused on 17.05.2018 the complaint has been filed,

which was taken on file by the learned Judicial Magistrate, Tiruchengode in  
STC.223 of 2018. The same is sought to be quashed before this Court.

3. The Learned Counsel appearing the Petitioners submitted that said complaint filed under Section 138 of the Negotiable Instruments Act is not maintainable in the eye of law. As per the complaint, cheques were issued on 19.04.2018. It is His contention that the company is under the Corporate Insolvency Resolution Process (CIRP). On 13<sup>th</sup> June 2017 itself the National Company Law Appellate Tribunal (NCLT) passed order of Moratorium. Thereafter, 'Interim Resolutuion Professional (IRP)' was appointed on 23.04.2018. Hence it is his contention that once the Moratorium is declared, any complaint is initiated thereafter is barred under Insolvency and Bankruptcy Code. It is his further contention that under Section 17 of the Insolvency and Bankruptcy Code, 2016 makes it very clear that the powers of the board of directors or the partners of the corporate debtor shall stand suspended and be exercised by the interim resolution professional only. Similarly, Section 33 of the Insolvency and Bankruptcy Code, 2016 makes it clear that once the order of liquidation is passed



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and such order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor. Therefore, it is his contention that when the cheques in question were issued on 19.04.2018, the complaint lodged thereafter, that too much after the moratorium was enforced and Resolution Professional was appointed, the prosecution under Section 138 of Negotiable Instruments Act is not maintainable and the same is liable to be quashed.

4. Learned counsel appearing for the defacto complainant Mr.N. Manoharan submitted that the cheques in question were issued in the year 2016. Even the Petition filed before this Court to quash the proceedings itself indicate that the cheque was issued prior to the Corporate Insolvency Resolution process. Hence, submitted that bar under Section 14 of the I & B Code, 2016 will not apply. Further it is his contention that merely because the cheque dated 19.04.2018 that itself is not a decisive factor to hold that the cheque was issued later. Respondent's admission in the petition itself clearly indicates that the cheques were issued in the year 2016. At any event the learned counsel submitted that this Petition has been filed by the Directors. Further it is his contention that the moratorium will apply only to the Corporate Debtor and not against the directors.



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as per law laid down by the Honourable Apex Court. Hence, opposed quashment

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5. Perused the entire materials.

6. In the complaint it alleged that the present petitioners are the directors of the 1<sup>st</sup> accused company, and in charge of the day to day affairs of the company. They borrowed an amount of Rs.27,00,000/- from the complainant in the year 2016 and issued chques in the year 2018 i.e., on 19.04.2018. When the cheques were presented for collection the same were dishonoured. Though it was stated in the complaint that the cheque was issued on 19.04.2018, the Petition filed before this Court to quash the proceedings by the Petitioners indicate that they themselves admitted the fact that the cheques were issued in the year 2016 and later complaint filed by the respondent herein. It is not in dispute that the 1<sup>st</sup> Accused namely, M/s. Summer India Textiles Mills P. Ltd., is under the Corporate Insolvency Resolution Process (CIRP). Moratorium was declared by the National Company Law Board Tribunal (NCLT) on 13.06.2017. Thereafter Resolution Professional was also appointed.



**WEB COPY** 7. It is relevant to note that Section 17 (b) of the Insolvency and Bankruptcy Code, 2016, makes it very clear that once interim resolution professional is appointed, the powers of the Board of Directors or the partners of the corporate debtor shall stand suspended and be exercised by the interim resolution professional.

8. Similarly, Section 33 particularly, sub-clause (7) of Section 33 of the Code makes it very clear that when the order of liquidation is passed, it is deemed to be 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.

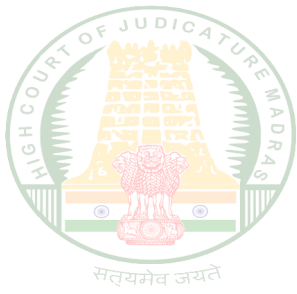
9. The above provisions makes it clear that the powers of the Board of Directors shall be suspended on the appointment of the Interim Resolution Professionals by the liquidator. But the question herein is whether the prosecution initiated against the company and directors maintainable in view of the above moratorium.



WEB COPY 10. The Apex Court in a judgment reported in ***P. Mohanraj and Others vs.***

***Shah Brothers Ispat Pvt. Ltd., [2021 SCC Online SC 152]*** after dealing with various judgements of the Apex Court in paragraph 103 held as follows:

*“103. 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 Instrument Act. This being the case, it is clear that the moratorium provision contained in Section 14 of*



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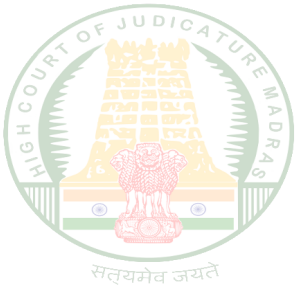
*the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."*

In such a view of the matter, the petitioners being the directors of the company, have to be prosecuted as per the above judgment.

11. The Apex Court in ***Bir Singh vs. Mukesh Kumar [Crl.A.No.230-231 of 2019 dated 06.02.2019 – Supreme Court]*** in paragraphs 37 and 38 has held as follows:

“ 37. A meaningful reading of the provisions of the **Negotiable Instruments Act** including, in particular, **Sections 20, 87 and 139**, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal





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provisions of [Section 138](#) would be attracted.

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38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.”

12. In such a view of the matter, when the petitioners themselves have admitted before this Court that the cheques were issued in the year 2016, merely because the different date is mentioned in the complaint, it is the matter of evidence. In such a view of the prosecution initiated by the respondent cannot be quashed. The Petition is liable to be dismissed.

13. In view of the same, the Criminal Original Petition is dismissed. Consequently connected Miscellaneous Petitions are closed.

**12.01.2022**

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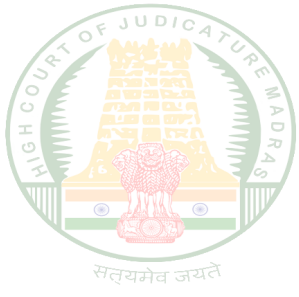
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**N. SATHISH KUMAR, J.**  
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Order in:  
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**12.01.2022**