

Sub: *Judgment¹ dated 01.03.2021 of the Hon'ble Supreme Court of India in the matter of P. Mohanraj & Ors. V. M/s Shah Brothers Ispat Pvt. Ltd. (Civil Appeal No. 10355/ 2018)*

Hon'ble Supreme Court has decided the question whether the institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be covered by the moratorium under Section 14 of the Code. The Hon'ble Supreme Court gave its observations on various provisions of the Code and made important rulings:

S.No.	Issue/ Theme	Observation/Ruling	Para/ Page No.
1.	Period for which moratorium under section 14 is effective.	The order of moratorium 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.	10/13
2.	Interpretation of expression "institution of suits or continuation of pending suits or proceedings" in Section 14(1)(a).	The expression "institution of suits or continuation of pending suits" is to be read as one category, and the disjunctive "or" before the word "proceedings" would make it clear that 'proceedings' against the corporate debtor would be a separate category.	14/16
3.	Whether arbitration proceedings included under moratorium imposed under section 14.	The award of an arbitration panel or an order of an authority is also included.	14/16
4.	Whether proceedings under section 138 of Negotiable Instruments	A Section138 proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor.	14/16-17

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	Act are “proceedings” under section 14 of IBC		
5.	Whether Rules of Interpretation can be used to nullify the expressed provision and its objective	Rules of construction of statutes, cannot be exalted to nullify the plain meaning of words used in a statute if they are designedly used in a wide sense. Importantly, where a residuary phrase is used as a catch-all expression to take within its scope what may reasonably be comprehended by a provision, regard being had to its object and setting, rules of construction cannot be used to colour an otherwise wide expression so as to whittle it down and stultify the object of a statutory provision.	22/33
6.	Objective of imposing moratorium under section 14.	<p>(a) 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.</p> <p>(b) Sections 14(1)(a) and (b) together 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 to continue as a going concern in order to ultimately rehabilitate itself.</p>	<p>23/35</p> <p>25/37</p>
7.	Whether moratorium imposed under section 14 and 85 are subject specific.	It is clear from the language of Section 85 that it is only in respect of debts, whereas the moratorium contained in Section 14 is not subject specific.	27/39
8.	Whether section 14(1) applies only to legal proceedings?	The only exception provision is contained in Section 14(3)(a) which is that “transactions” are the subject matter of Section 14(1). “Transaction” is a much wider expression than “debt” and subsumes it. Also, the expression “proceedings” used by the legislature in Section 14(1)(a) is not trammelled by the word “legal” as a prefix that is contained in the moratorium provisions <i>qua</i> individuals and firms.	27/39
9.	Nature of proceedings under section 138 NI Act.	<p>(a) A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding.</p> <p>(b) A Section 138 proceeding can be said to be a “civil sheep” in a criminal wolf’s” clothing, as it is the interest of the victim that is sought to be protected.</p>	<p>27/41</p> <p>43/62</p>
10.	Effect of quasi-criminal proceedings such as section 138 proceedings on CD.	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	24/36

		same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability and therefore, it is impossible to discern any difference between the impact of a suit and a section 138 proceeding.	
11.	32A and 14(1)(a) interplay.	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. Whereas section 14, 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 32(A)(1) operates only after the moratorium comes to an end.	33/48-49
12.	Whether section 138 of NI Act falls within moratorium under section 14.	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.	53/79
13.	Whether section 138 of NI Act falls within moratorium under section 33.	Whatever the company could do pre-liquidation is now vested in the liquidator, and in order to realise monies that are due to the company, there is no reason why the liquidator cannot institute a Section 138/141 proceeding against a defaulting debtor of the company.	65/96
14.	Conclusion	The moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor. The natural persons mentioned in Section 141 continue to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.	77/113