

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7861 of 2021****With****R/SPECIAL CRIMINAL APPLICATION NO. 7867 of 2021****With****R/SPECIAL CRIMINAL APPLICATION NO. 7913 of 2021****With****R/SPECIAL CRIMINAL APPLICATION NO. 7880 of 2021****With****R/SPECIAL CRIMINAL APPLICATION NO. 7888 of 2021****With****R/SPECIAL CRIMINAL APPLICATION NO. 7912 of 2021****With****R/SPECIAL CRIMINAL APPLICATION NO. 7971 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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AJAY VASANT TIKEKAR**Versus****GEELON INDUSTRIES PVT LTD THROUGH VIRAL KANTILAL GAJJAR**

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Appearance:**MR S M VATSA(6000) for the Applicant(s) No. 1****MR HARDIK P MODH(5344) for the Respondent(s) No. 1****MR DHAWAN JAYSWAL, APP for the Respondent(s) No. 2**

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CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 27/09/2023

COMMON CAV JUDGMENT

1. All these petitions are filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('the Code' for short) for quashing and setting aside the complaints being Criminal Case Nos.893 of 2021, 954 of 2021, 3074 of 2021, 3064 of 2021, 913 of 2021 and 916 of 2021 pending before the learned Additional Chief Judicial Magistrate, Surat under the provisions of Sections 138 of the Negotiable Instruments Act ('NI Act' for short).

2. As the common question of facts and law are involved in these petitions, at the request of learned advocates for the parties, they are heard together and disposed of by this common oral judgment.

3. Rule returnable forthwith. Learned advocate Mr.Hardik Modh waives service of notice of rule for respondent no.1 and learned advocate Mr.Dhawan Jayswal waives service of notice of rule for respondent no.2.

4. The impugned complaints are filed by the complainant for dishonour of the cheques with the

endorsement 'payment stopped by drawer', which are prayed to be quashed by way of these petitions.

5. Heard learned advocate Mr.Vatsa for the petitioners, learned advocate Mr.Modh for respondent no.1 and learned APP Mr.Jayswal, with for respondent no.2.

5.1 Learned advocate Mr.Vatsa for the petitioners submits that there are no outstanding legally enforceable debt or legal dues or other liabilities except for the supplies made on or before 23.9.2019; that the corporate insolvency resolution process as against the company commenced vide order dated 23.9.2019 and hence the liability of the Board of Directors of the company would cease on 23.9.2019 pursuant to their suspension in terms of moratorium declared under Section 14 of the IBC and the consequent appointment of an Interim Resolution Professional ('IRP' for short), that Section 14(2) read with Section 14(2A) of the IBC gives complete authorization to the IRP for supplies made during the subsistence of the said moratorium i.e. for the period after 23.9.2019; that the complainant is not clear about the quantum of legal liability and enforceable debt, as different figures are mentioned in the different complaints; that the cheques were additional security cheques and they could not have been presented.

5.2 Learned advocate Mr.Vatsa further submitted that the MOU executed on 2.5.2019 has been admitted in terms by the complainant and hence the cheques could have never been presented; that undisputedly, as is admitted by the complainant, a MOU was entered into between the complainant company and the accused company; that the MOU specifically declares that the security cheques were to be returned and fresh security cheques were to be handed over to the complainant; the same were not only retained by the complainant but were also presented for encashment; that the MOU which has been admitted by the complainant in the reply is an unimpeachable and undisputed document and the cheques were to be treated as security cheques and they were all undated cheques towards additional security and these cheques are different from post-dated cheques as such cheques become duly executed negotiable instruments on the date which is written or mentioned on that cheque and the said cheques were not to be used in the ordinary course to realize any legally enforceable debt as may be due and payable. He submitted that the petitioner is not a signatory to the said cheques and therefore the petitioner cannot be prosecuted for the offence under Section 138 of the NI Act. He, therefore, submitted that these petitions be allowed and the impugned complaints be quashed and set aside.

5.3 He relied on the following judgments in support of his submissions:

(1) M/s Associate Dwelling P. Ltd. And Others V/s M.K.Abhimanyue and others, in Criminal Petition No.6836 of 2020 by the Hon'ble Karnataka High court on 16.3.2022.

(2) Lalit Kumar Sharma and another V/s State of Uttar Pradesh and another, reported in (2008)5 SCC 638.

(3) Sunil Todi and Others V/s State of Gujarat and anr., reported in 2021 SCC Online SC 1174.

(4) Indus Airways Pvt.Ltd. And Others V/s Magnum Aviation Private Limited, reported in (2014) 12 SCC 539.

(5) Sudhir Kumar Bhalla V/s Jagdish Chand and others, reported in (2008)7 SCC 137.

(6) Suryalakshmi Cotton Mills Ltd. V/s Rajvir Industries Limited and others, reported in (2008) 13 SCC 678.

6. *Per contra*, learned advocate Mr.Modh for the respondent no.1-complainant has submitted that the complainant entered into MOU dated 2.5.2019 since M/s

Lakeland Chemicals (India) Ltd., failed to repay advanced which were given towards working capital; that the petitioners were issued in terms of the MOU and since the said company failed to discharge its payent obligation as per the MOU, the respondent deposited the said cheques; that the cheques were issued by the promoters/directors of the company as additional security, in terms of the MOU entered between the parties. He submitted that the legal impediment contained in Section 14 of the IBC would make it impossible for proceeding to continue or to be instituted against the corporate debtor but the same can be initiated or continue against natural persons including the persons mentioned in Section 141(1) and 141(2) of the Negotiable Instruments Act. He further submitted that the directors are vicariously liable for the acts committed on behalf of the company; that the present petitioners have issued the cheques on behalf of the company and therefore they are liable for the offence punishable under the provisions of the NI Act. He, therefore, prayed to dismiss these petitions.

He relied on the following decisions in support of his submissions:

(1) Ajaykumar Radheshyam Goenka V/s Tourism Finance Corporation of India Ltd. Reported in 2023 SCC Online SC

266.

(2) P.Mohandas and others V/s Shah Brothers Ispat Pvt. Ltd. Reported in (2021) 6 SCC 258;

(3) State Bank of India V/s V.Ramakrishnan and another reported in (2018) 17 SCC 394.

(4) Rathish Babu Unnikrishnan V/s State (Government of NCT of Delhi) and Another 2022 SCC Online SC 513.

(5) State of Madhya Pradesh V/s Yogendra Singh Jadon & Anr. Reported in (2020) 12 SCC 588.

(6) Neeharika Infrastructure Pvt.Ltd. V/s State of Maharashtra and Others, reported in 2021 SCC Online SC 315.

7. Learned APP Mr.Jayswal for the respondent no.2-state submitted that the facts of this case are subject matter of trial and this Court should not exercise inherent powers under Section 482 of the Code, which otherwise, should be exercised sparingly. He, therefore, prayed to dismiss all these petitions.

8. I have considered the rival submissions and perused the material on record. There is no dispute about proposition of law cited by both the sides in support of their contentions. I am considering the case of the present petitions in the facts and circumstances of the present case.

9. At the outset, the provisions of Sections 138, 141 and 142 of the NI Act are required to be seen, which read as under:

“138. Dishonour of cheque for insufficiency, etc., of funds in 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 of that account for the discharge, in whole or in part, of any debt 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 provisions of this Act, be punished with imprisonment for "a term which may extend to two year", 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 induce 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 cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee 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 purpose of this section, "debt or other liability"

means a legally enforceable debt or other liability."

"141 Offences by companies. (1) If the person committing an offence

under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the

company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the

offence and shall be liable to be proceeded against and proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any

person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

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

Explanation. For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) “Director”, in relating to a firm, means a partner in the firm.”

142. Cognizance of offences.—

[(1)] Notwithstanding anything contained 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 under clause (c) of the proviso to section 138: 2 [Provided that the cognizance of a complaint may be 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 through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]

“33. Initiation of liquidation.—

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(5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by

or against the corporate debtor:

95 Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor,

with the prior approval of the Adjudicating Authority.

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10. The provisions of the IBC, relevant for these petitions, are as under:

“14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the 11Adjudicating 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 the possession 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 a similar 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 critical to 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.

(4) The order of moratorium shall have effect from the 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 resolution plan 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 approval or liquidation order, as the case may be.”

“17. LIABILITY OF CORPORATE DEBTOR FOR OFFENCES

COMMITTED PRIOR TO INITIATION OF CIRP

17.1. 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 the 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 may also 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.

17.2. 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 proceedings related 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

17.3. 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.

17.4. 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.

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17.6. 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 liability must 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 of the offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29A.

17.7. 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 committed prior 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 of or any time following the

commission of the offence.

17.8. 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."

31. Approval of resolution plan. -

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred

to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

32. Appeal. - Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

32A. Liability for prior offences, etc.—(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under Section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

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

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

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

Provided further that every person who was a “designated partner” as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an “officer

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

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11. *In the case of P.J.Mohanraj (supra), it is held by the Hon’ble Apex Court in paragraph 77 as under:*

77.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 be understood 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 hereinabove.”

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 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.”

12. In the case of Ajaykumar Radheyshyam Goenka (supra), it is held by the Hon’ble Apex Court in paragraphs 85 and 86 as under:

“85. Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/directors cannot escape from their penal liability under Section 138 of the NI by citing its dissolution. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act.

86. I may draw my final conclusions as under:

(a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management.

(b) Section 138 proceedings in relation to the signatories/directors who are liable/covered by the two provisos to Section 32A(1) will continue in accordance with law.”

13. In view of the above provisions of law and the judgments of the Hon'ble Apex Court, more particularly, the newly added provision of Section 32A of IBC, the corporate debtor can be exonerated from the liability if the company is dissolved, however, the natural person i.e. the partners or directors of the same cannot escape penal liability under the provisions of the NI Act.

14. As per the provisions of Section 138 of the NI Act, if the cheque was dishonoured, statutory notice was issued, the amount is not paid within 15 days thereafter, the cause of action arises and if the complaint is filed within one month from the date of cause of action, the only question

before the criminal court is whether the cheque was issued, it was bounced, and despite the service of notice, the amount is not paid. There is no bar contained in any of the provisions of the IBC restraining the complainant to approach the criminal court to seek penal action under Section 138 of the NI Act. The signatory/director cannot take the benefit of discharge obtained by the corporate debtor by operation of law under the IBC.

15. Further, the facts of the cheques being issued, signature on the cheques, the cheques being issued in what capacity, the cheques being issued for legally enforceable debt or not, that the petitioners are/were directors of the company, what role the petitioners had in the day to day affairs of the company etc. are all facts which are required to be tested at the time of trial and the petitioner has failed to produce some impeachable and incontrovertible evidence beyond suspicion of doubt and all the contentions raised in these petitions are in the form of defence, which can be tested at the time of trial and not at the stage of quashing of the complaints.

16. In the case of *Neeharika Infrastructure Pvt.Ltd. (supra)*, it is held by the Hon'ble Apex Court in paragraph 80 as under:

“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under [Section 482 Cr.P.C](#) and/or under [Article 226](#) of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under [Section 173 Cr.P.C.](#), while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under [Section 482 Cr.P.C.](#) and/or under [Article 226](#) of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the [Code](#) of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under [Section 482 Cr.P.C.](#) is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power*

under [Section 482](#) Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under [Section 438](#) Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under [Section 173](#) Cr.P.C., while

dismissing/disposing of the quashing petition under [Section 482 Cr.P.C.](#) and/or under [Article 226](#) of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482 Cr.P.C.](#) and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

17. In view of the above discussion, it is an undisputed fact that from bare reading of the complaint, the necessary averments are made regarding the liability of the accused persons (vicarious liability) under Section 138 read with Section 141 of the NI Act. It also transpires that

Clause 9 of the MOU clearly refers to twelve cheques totalling to Rs.2,35,42,524/- of the personal bank account to be held as additional security. The petitioners have not disputed existence of MOU and cheques were issued in terms of the MOU. It also transpires that cheques were executed and issued by the directors of LCIL as an additional security, in terms of MOU entered between the parties. It is also now settled that directors are vicariously liable for the acts committed on behalf of the company. In view of Sections 138, 139 and 141 of the NI Act, it is also clear position of law that under provisions of Section 14 of IBC, the proceedings cannot continue against corporate debtor but can be initiated or continued against natural persons including persons mentioned under Sections 141(1) and 141(2) of the NI Act. It also transpires that MOU is executed between the parties, the contents of which are being interpreted differently by learned advocate for the parties, whether the cheques were issued as security or towards legally enforceable debt, are all matter of trial and this Court cannot conduct mini trial or roving inquiry at the stage of exercising the powers under Section 482 of of the Code, therefore, I am of the opinion that this is not a fit case to exercise powers under Article 226/227 of the Constitution of India read with Section 482 of the Code, as all the points raised herein need a full fledged trial. Let the trial Court decide all the contentions raised by

the parties after giving proper opportunity to the parties in the proceedings of trial of respective Criminal Cases in accordance with law and as expeditiously as possible.

18. Resultantly, all these petitions are dismissed. Rule is discharged.

(SANDEEP N. BHATT,J)

SRILATHA