

**IN THE COURT OF XVII ADDL. JUDGE, COURT OF
SMALL CAUSES & ACMM, MAYO HALL UNIT,
BENGALURU**

**PRESENT: Sri. RAJESH M. KAMATE, B.Com., LL.B(Spl.)
XVII ADDL. JUDGE, Court of Small
Causes & ACMM, Bengaluru.**

Dated this the 5th day of August 2023.

C.C.No.15384/2018

Complainant : **Mr. Vinay P. Ahuja.**
(By Sri/Smt.M.G.S. Adv.,)
Vs.

Accused : **M/s. Samruddhi Realty Ltd.,
& Others.**
(By Sri/Smt. B.K.. Adv.,)

ORDER ON I.A.NO.III

The accused No.1 has filed I.A.No.II U/Sec.305 of Cr.P.C. contending that accused No.1 is a company registered under Companies Act and same has been ordered for liquidation by the Hon'ble NCLT by its order dtd:13.03.2020 and as such as per the judgment of Hon'ble Apex Court in the case of P. Mohan Raj and Others Vs. M/s. Shah Brothers Ispat Pvt. Ltd., wherein it has been held that the proceedings cannot be proceeded against the company i.e., Corporate Debtors but the proceedings under the Directors can only be proceeded. It is further contended that Vistra (ITCL) India Ltd., has filed CP(IB) No.104/BB/2022

and CP(IB) No.105/BB/2022 before the NCLT Bengaluru Bench and order has been passed against Hemang Deepak Kumar Rawal and Ravindra Madhudi U/Sec.95(1) of Insolvency and Bankruptcy Code 2016 has commenced on the date of filing of this application and has ordered as per para 8 of the order that;

“During such interim-moratorium period -

a. Any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt”.

2. In view of the order passed by the Hon'ble NCLT against the director of M/s. Samruddhi Realty Ltd., to stay all legal proceedings pending in respect of any debt is deemed to have been stayed and that this Court cannot proceed against the accused No.1 company.

3. The accused has further relied upon the decision of Hon'ble High Court of Punjab and Haryana in a similar situation wherein it has been held that whenever any order is passed U/Sec.96 of IBC is applicable for the proceedings U/Sec.138 of N.I. Act would remain stayed. Further has relied upon decision of Hon'ble High Court of Bombay between Sheetal Gupta Vs. National Spot Exchange Ltd., wherein it has been held that proceedings U/Sec.138 of N.I. Act during moratorium period are stayed. It is also held that IBC is a special enactment and prevails over all the acts for the time in force and that the order of NCLT is binding to all the Courts as laid down in the judgment of above-mentioned case and if the application is allowed, no hardship will be caused to the complainant in the contrary, if it

is not allowed, it will subjudice the proceedings before the Hon'ble NCLT and prays to allow the application.

4. Per contra, the complainant has filed objection to the said application contending that the said application is not maintainable either in law or on facts and same is liable to be dismissed in limine. It is also contended that the complainant has filed the complaint against the accused persons for the offence punishable U/Sec.138 of N.I. Act against the company and its directors and that the ground urged in the application is vague as the accused sought to stop the proceedings against the accused No.1 as that one company by name M/s. Moonbeam Advisory Pvt. Ltd., has filed a claim petition against the accused No.1 company before the NCLT, Bangalore Bench in CP No.189/2018, in which the Hon'ble Tribunal is admitted by initiating corporate Insolvency Resolution Process in respect of the accused No.1. It is further contended that the accused Tribunal has appointed on Sri. Surendra Devasani who is qualified Resolution Professional to carry on the functions mentioned under the insolvency and bankruptcy code 2016 and various rules issued by the IBBI from time to time. It is further contended that this complaint filed against the accused for the punishment on dishonor of cheques issued by the accused U/Sec.138 of N.I. Act and as stated by the accused in Para 3(3) in their application the moratorium is declared prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor in any Court of law, tribunal, arbitration panel or other authority, but there is no moratorium declared prohibition on the criminal proceedings pending against the accused for the offence committed by them

and there is no exemption to the accused under criminal proceedings. It is also contended that even though the accused No.1 who seized from his functions they are liable to be punished for all the offences as representative of the accused No.1 company as committed during the course of business of company and the accused No.2 to 8 who are the Directors and in charge of the affairs of the company issues a cheque with acknowledge or with a supposed knowledge that the cheque in the eventuality of presentation would bounce, in that eventuality they would certainly face the criminal proceedings. It is further contended that there can be no stay of the proceedings U/Sec.138 of N.I. Act and the proceedings have no bearing and are entirely unrelated and unconnected with the pending petitions and even an order of appointing interim Resolution Professional (IRP) can have no effect on the proceedings U/Sec.138 and 141 of N.I. Act pending in Criminal Court, held cannot be stayed invoking the Section 466 of the Companies Act. The case is posted for cross-examination of complainant at this stage the accused has filed this application only to drag the proceedings and prays for dismissal of the application.

5. Heard the arguments.

6. The point that arises for my consideration is:

1) Whether the accused has made out reasonable grounds to stop further proceedings in this case as per Sec.305 of Cr.P.C.?

2) What Order?

7. My answers to the above points as follows:

Point No.1 : In the Negative,

Point No.2 : As per final Order,

for the following:

REASONS

8. Point No.1:-

Having regard to the rival contention of the parties, it goes to show that the present complaint is filed by the complainant against the accused persons for the offence punishable U/sec.138 of N.I. Act and after appearance of accused, the complainant has led his evidence and due to non-appearance of the accused and their counsel the cross of PW.1 has been taken as nil and at the stage of defence evidence the accused counsel has filed another application U/Sec.305 of Cr.P.C. as I.A.No.I which was dismissed with costs of Rs.1,000/-.

9. Now, again when the matter was posted for cross of PW.1 after recall this application is filed U/Sec.305 of Cr.P.C. contending that accused No.1 is a registered company which has been ordered for liquidation by the Hon'ble NCLT by its order dtd:13.03.2020 has filed CP(IB) No.104/BB/2022 & CP(IB) No.105/BB/2022 before the Hon'ble NCLT, Bengaluru Bench, where orders has been passed by holding that any legal action or proceedings in respect of any debt shall be deemed to have been stayed and the creditors of the debtor shall not initiate any legal action and as such on these grounds as prayed to stay the matter and also has furnished the photo copy of the order passed in I.A.No.116 of 2020 in C.P.(IB) No.104 &

105/BB/2020-22 and has relied upon the judgment of Hon'ble Apex Court reported in P. Mohan Raj & Others Vs. M/s. Shah Brothers Ispat Pvt. Ltd., and Vistra (ITCL) India Ltd., Per contra, the complainant has filed objections to dismiss the application on several grounds contending that the said orders will not come in the way to decide the offence U/Sec.138 of N.I. Act.

10. On perusal of the record it reveals that the petition for insolvency resolution is filed under insolvency and bankruptcy Code 2016 by the accused persons and the same has been allowed with a direction to stay any legal action or proceedings pending in respect of any debtors and has sought to stay the present proceedings as per the orders of Hon'ble National Company Law Tribunal, Bengaluru and in support of the said contention he has relied upon decision reported in P. Mohan Raj and Others Vs. M/s. Shah Brother Ispat Pvt. Ltd., and also (2000) 2 SCC 756 and Sheetal Gupta Vs. NSEL (Bombay):2023(1) Bombay C.R. (Cri.278) in which it has been held that during the interim-moratory period the proceedings against the company should be stayed from making any payments and also held that any legal action or proceedings in respect of any debt including U/Sec.138 of N.I. Act shall not proceeded against the company. With due respect to the said principles but, the Hon'ble Apex Court in a recent decision reported in 2023 SCC Online SC 266 between Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation Ltd., has clearly held that even after passing of resolution plan U/Sec.31 of IBC by the adjudicating authority and in the light of provision U/Sec.32(A) of IBC the criminal proceedings U/Sec.138 of NI Act will stand terminated only in respect of

corporate debtor if the same is taken over new management and U/Sec.138 proceedings in relation to signatories or directors who are liable/covered by two provisions U/Sec.32A(1) will continue in accordance with law and as such applying the said principles in the present case in hand and the proceedings U/Sec.138 of N.I. Act at this stage cannot be stayed by this Court.

11. Hence, in this case also even though the accused persons have preferred Appeal before Hon'ble NCLT, Bengaluru Bench in C.P.(IB) No.104 & 105/BB/2022 and in the said Order it has been observed that during interim-moratorium period any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt, but in view of the same the above legal position of Hon'ble Apex Court which squarely applies to the present set of facts and therefore, the order relied upon by the accused cannot be made applicable to this proceedings and even if a person or firm is declared as insolvent it can be prosecuted and punished for an offence U/Sec.138 of N.I. Act and therefore, the accused persons cannot escape from the criminal liability.

12. Apart from it, it is also observed that in this case after appearance of accused persons the matter was posted for cross of PW.1 and the same was taken as nil on 27.06.2019 and thereafter the application U/Sec.311 of Cr.P.C. was filed on 22.07.2019 to recall PW.1 which was allowed and at that stage accused counsel filed an application U/Sec.258 of Cr.P.C. on 02.08.2019 to stop the proceedings which was dismissed by my predecessor on 31.12.2019 and thereafter again the cross of

PW.1 was taken as nil on 08.01.2020 and matter was posted for defence evidence and again the same was taken as nil on 18.01.2020 and the matter was posted for arguments but no arguments were canvased for which the matter was posted for judgment on 25.02.2020. At that time another application U/Sec.311 of Cr.P.C. came to be filed by the accused persons on 06.03.2020 to recall PW.1 which was allowed and again even after sufficient opportunity the accused counsel did not cross-examined PW.1, the same was taken as nil on 06.02.2021 and matter was posted for arguments. Thereafter another application as I.A.No.4 came to be filed U/Sec.311 of Cr.P.C. on 03.03.2021 which was allowed, but the complainant remained absent, the Court notice was issued and thereafter the accused did not cross-examined PW.1 and the same was taken as nil on 18.09.2021 and on the same day the accused counsel filed application U/Sec.305 of Cr.P.C. for dismissal of the complaint and the same was again dismissed with costs of Rs.1,000/- on 07.09.2022 and the matter was posted for cross of PW.1 and accordingly, he was partly cross-examined on 12.01.2023.

13. Thereafter, this application U/Sec.305 of Cr.P.C. is filed by the accused on 31.01.2023 which shows that similar types of applications are filed by the accused at different stages and inspite of sufficient opportunity the accused has only partly cross-examined PW.1 and as such looking into the present application at this stage also goes to show that already the matter has been prolonged and protracted for long time which has resulted into delay in proceedings of the case in speedy manner as contemplated in the citation of Hon'ble Apex Court **between Indian Bank Association Vs. Union of India** and as

such considering the present facts looking into the material placed before the Court the present application also deserves to be dismissed with cost.

14. Therefore, in view of my discussion, I am of the opinion that the accused has not made out reasonable grounds to allow the application to stop the proceeding U/Sec.305 of Cr.P.C. and accordingly, **I answer Point No.1 in the Negative.**

15. **Point No.2** :- As per the discussion on Point No.1, I proceed to pass the following:

ORDER

**The I.A.No.III filed by the accused
U/Sec.305 of Cr.P.C to stop the
proceedings is hereby dismissed with cost
of Rs.1,000/-.**

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the Open Court on the 5th day of August 2023)

(Rajesh M. Kamate)
XVII ADDL. JUDGE,
Court of Small Causes &
ACMM, Bengaluru.