HC-KAR

NC: 2026:KHC:12000
CRL.RP No. 608 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 608 OF 2020

BETWEEN:

1. M/S IDEB PROJECTS PVT LTD,
NO.7, 9TH AND 10TH FLOOR,
DELTA BLOCK, SIGMA SOFT TECH PARK,
VARTHUR KODI, WHITEFIELD,
BENGALRUU - 560 066.

SINCE THE COMPANY IS LIQUIDATED
IT IS REPRESENTED BY IRP/RP.

2. MR. H.S. BEDI,
FORMER DIRECTOR OF
M/S IDEB PROJECECTS PVT LTD,
NO.7, 9TH AND 10TH FLOOR,
DELTA BLOCK, SIGMA SOFT TECH PARK,
VARTHUR KODI, WHITE FIELD,
BENGALURU - 560 066.

...PETITIONERS

(BY SRI. ANAND MUTTALLI, ADVOCATE)

AND:

1. M/S THYSSEN KRUPP ELEVATOR (INDIA)
PRIVATE LIMITED,
33RD CROSS ROD, 4TH BLOCK,
EAST JAYANAGAR,
BENGALURU - 560 011.

REPRESENTED BY ITS GENERAL MANAGER
AND AUTHORIZED SIGNATORY,
MR.LAXMIKANT.

…RESPONDENT

(BY SRI.NISHIT KUMAR SHETTY, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO i) SET ASIDE THE ORDER OF CONVICTION AND SENTENCE INCLUDING THE PAYMENT OF FINE DATED 06.08.2020 PASSED BY THE LXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN CRL.A.NO.1031/2018 BY ALLOWING THIS CRL.RP.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

Accused Nos.1 and 2 are before this Court in this Criminal revision petition filed under Section 397 read with Section 401 of Cr.PC with a prayer to set aside the judgment and order dated 07.05.2018 passed in C.C.No.10236/2010 by the Court of XXI Additional Chief Metropolitan Magistrate, Bengaluru City and the judgment and order dated 06.08.2020 passed in Crl.A.No.1031/2018 by the Court of LXVIII Additional City Civil and Sessions Judge, Bengaluru City.

2. Heard the learned counsel for the parties.

3. Respondent Company represented by its authorized signatory had initiated proceedings against the petitioners herein before the Jurisdictional Court of Magistrate, Bengaluru in C.C.No.10236/2010. It is the case of the Complainant Company that as per the request of the accused, Complainant Company had supplied 14 elevators to be commissioned in the housing project of accused. The total value of the 14 elevators including installation, commissioning and maintenance fee amounted to Rs.1,94,60,000/-, out of the same accused had paid totally for a sum of Rs.1,51,35,131/- for the period from 07.12.2005 to 20.11.2008. Towards partial payment of the balance amount, the cheque-in-question bearing No.650053 dated 12.03.2009 drawn on ICICI Bank, Indiranagar Branch, Bengaluru for a sum of Rs.23,02,863/- was issued by the accused in favour of the Complaint Company. As per the instructions of the accused, the cheque-in-question was presented for

realisation on 03.08.2009 through the banker of the complainant, namely ICICI Bank, CMS Branch, Bengaluru. The said cheque was dishonored by the drawee bank with a shara 'funds insufficient'. It is under these circumstances, a legal notice was got issued on behalf of the complainant to the accused which was duly served. In spite of service of notice, the accused had not paid the amount covered under the cheque-in-question to the complainant and it is under these circumstances, complainant had approached the Jurisdictional Court of Magistrate by filing the private complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act').

4. In the said proceedings, the Trial Court has convicted the accused Nos.1 and 2 for the offence punishable under Section 138 of the N.I.Act and accused No.2 who is the Managing Director of the accused No.1-Company was sentenced to pay fine of Rs.23,10,000/- (Rupees Twenty Three Lakhs Ten Thousand only) and in

default to undergo simple imprisonment for a period of six months. The said judgment and order of conviction and sentence passed by the Trial Court in C.C.No.10236/2010 was confirmed by the Appellate Court in Crl.A.No.1031/2016 by judgment and order dated 06.08.2020. It is under these circumstances, the petitioners are before this Court.

5. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that the complainant has failed to honour his commitment under Ex.P.16 and had failed to furnish a performance bank guarantee which was required to be valid till the warranty period. It is under these circumstances, the accused had withheld the payment under the cheque-in-question. He submits that accused No.1/Company has been liquidated and therefore prosecution as against accused Nos. 1 and 2 for offence punishable under Section 138 of the N.I.Act is bad.

6. *Per contra*, learned Counsel for the respondent has argued in support of the impugned judgment and order of conviction and sentence and submits that proceedings was initiated against accused Nos.1 and 2 prior to first accused company being liquidated. Therefore, accused Nos.1 and 2 cannot escape from their liability. He submits that transaction between the parties is proved and Ex.P18 would clearly go to show that contention now urged on behalf of the petitioners that payment under the cheque-in-question was withheld for non-performance of the obligation as provided under Ex.P16 is not correct. Accordingly, he prays to dismiss the petition.

7. In the present case, the transaction between the parties is not in dispute and it is also not in dispute that the cheque-in-question which was signed by the authorized representative of accused No.1-Company was handed over to the Complainant Company. It is also not in dispute that the said cheque was drawn on the bank account maintained by accused No.1-Company in ICICI

Bank, Indiranagar Branch, Bengaluru. The said cheque was dishonored when presented for realisation.

8. Accused No.2 is the Managing Director of the first accused Company and therefore, he is liable to be prosecuted for offence punishable under Section 138 of the N.I.Act, as provided under Section 141 of the N.I.Act. The Complainant Company has examined its authorized representative before the Trial Court as PW.1. PW.2 is the Bank Manager. PW.1 has reiterated the averments made in the private complaint during the course of his deposition Ex.P1 is the resolution of the Board of Directors of Complainant Company and Ex.P2 is the authorization letter of PW.1. Ex.P3 is the cheque-in-question. As stated earlier, the issuance of the cheque-in-question to the Complainant Company on behalf of the accused No.1-Company is not in dispute. The said cheque was dishonored by the drawee bank when presented for realisation. Therefore, a presumption arises against the

accused as provided under Section 139 read with 118 of the N.I.Act.

9. The Learned counsel for the petitioners has contended before this Court that parties had negotiated and entered into a memorandum of settlement as per Ex.16 dated 25.03.2008. He has submitted that Complainant Company which had agreed to submit a performance bank guarantee valid till the warranty period had not submitted the performance bank guarantee and it is under these circumstances, the amount covered under the cheque-in-question was withheld. Ex.P18 is the communication dated 20.07.2009 issued on behalf of the first accused Company by its authorized signatory to the Complainant Company. The same reads as follows:

> *"Sub: Payment towards supply of Elevator to our Spring Field Apartments Project.*
>
> *This is in continuation to the discussion undersigned had on 17th July 2009 requesting for holding the cheque issued by our office. We request you to hold the above referred cheque till 30th July 2009 as*

discussed and can be presented on 1st Aug 2009 and we will ensure that payment is cleared as promised."

10. A reading of the aforesaid communication which was addressed to the complainant Company by the accused Company would go to show that accused company had not mentioned in the said communication about the complainant not furnishing the performance bank guarantee, as provided under Ex.P16 memorandum of understanding and therefore, the payment under cheque issued by accused No.1-Company was being withheld and on the other hand in Ex.P18, a request is made on behalf of accused No.1-Company, pursuant to the discussion between the parties to withhold the cheque for a certain period and to present the same on 01.08.2009. It is specifically mentioned in Ex.P18 that in event the cheque is presented on 01.08.2009, it shall be ensured that payment under the cheque-in-question would be cleared.

11. Material on record would go to show that the cheque-in-question was thereafter presented by the Complainant Company on 03.08.2009 in compliance of the request made in Ex.P18 by the accused. Therefore, the contention of the learned counsel for the petitioners that the payment under the cheque-in-question was withheld for the reason that the Complainant Company had failed to furnish the performance bank guarantee as provided under Ex.P16 is liable to be rejected.

12. So far as the other contention urged on behalf of the petitioners that accused No.1-Company has been now liquidated and therefore, the Courts below were not justified in convicting and sentencing accused Nos.1 and 2 for offence punishable under Section 138 of the N.I.Act is concerned, it is trite that the managing director or the signatory of the company which has been liquidated subsequent to the initiation of proceedings under Section 138 of the N.I.Act cannot escape their liability. In the case of ***AJAY KUMAR RADHEYSHYAM GOENKA VS.***

TOURISM FINANCE CORPORATION OF INDIA LTD - 2023 SCC ONLINE SC 266 in paragraph No.106, it is observed as follows:

> *"106. 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 Act 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."*

13. The Hon'ble Supreme Court in the case of ***RAKESH BHANOT VS. GURDAS AGRO PVT. LTD - 2025 SCC ONLINE SC 728*** after referring to its earlier judgment in the case of ***P.MOHANRAJ AND OTHERS VS. SHAH BROTHERS ISPAT PRIVATE LTD*** - ***(2021) 6 SCC 258*** in paragraph number 26 and 27 has observed as follows:

"26. In *Mohanraj case* [*P. Mohanraj* v. *Shah Bros. Ispat (P) Ltd.*, (2021) 6 SCC 258, the dishonoured cheques were issued by the company and hence, the complainant initiated Section 138 proceedings against the company and its Directors. The question that arose for consideration was, whether the institution or continuation of a proceeding under Sections 138/141 of the NI Act, 1881, can be said to be covered by the moratorium provision, namely, Section 14 IBC. The petitioners in the connected writ petitions therein, were the erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor and they were all premised upon the fact that Section 138 proceedings are covered by Section 14 IBC and hence, cannot continue against the corporate debtor and consequently, against the petitioners therein.

27. This Court in *Mohanraj case* , after a detailed analysis of the provisions relating to moratorium under Sections 14, 96 and 101 IBC, concluded that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, and the natural persons mentioned therein, continuing to be statutorily liable under the NI Act, 1881. In doing so, it was clarified that the moratorium under IBC does not extend to criminal proceedings. Further, it was emphasised that IBC's objective is to address the corporate debtor's financial distress and should not be misconstrued as a means to avoid personal criminal accountability."

14. Under the circumstances, I do not find any merit in the contention argued on behalf of petitioners herein that the courts below were not justified in convicting and sentencing the petitioners for offence punishable under Section 138 of the N.I.Act. The presumption that arose against the accused in the present case stood un-rebutted and the accused had failed to put forward a probable defence defece. It is under these circumstances, the courts below have convicted the accused for offence punishable under Section 138 of the N.I.Act. and have sentenced accused No.2 to pay fine of Rs.23,10,000/- (Rupees Twenty Three Lakhs Ten Thousand only). In my considered opinion, even the order of sentence passed against the accused No.2 is just and proportionate and the same does not call for interference. Therefore, I do not find any good reason to entertain this Criminal revision petition. According to the following:

ORDER

i. The Criminal revision petition is ***dismissed.***

ii. The amount deposited by the petitioners before the Trial Court is permitted to be withdrawn by the Respondent complainant and at the request of learned counsel for the petitioners accused No.2 is granted time till the end of April, 2026 to deposit the fine amount before the Trial Court.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

KVR
List No.: 1 Sl No.: 57