



Moratorium and Criminal Liability under Negotiable Instrument Act: Reassessing Section 138/141 NI Act, 1881 in light of IBC, 2016

P. Mohanraj v Shah Brothers Ispat Pvt Ltd., Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corpn. of India Ltd and Vishnool Mittal v. M/s. Shakti Trading Company

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Introduction

The intersection between the Insolvency and Bankruptcy Code, 2016 ("IBC") and the Negotiable Instruments Act, 1881 ("NI Act") has led to significant jurisprudential development, particularly on the issue of whether criminal proceedings for dishonoured cheques under Section 138 NI Act can be sustained during the Corporate Insolvency Resolution Process ("CIRP"). The Supreme Court has addressed this question in a series of judgments that establish clear principles regarding the applicability of the moratorium under Section 14 IBC to such proceedings.

This Article examines the interpretative framework evolved by the Supreme Court, particularly in *P. Mohanraj v. Shah Brothers*, *Ajay Goenka v. Tourism Finance Corporation of India*, and *Vishnool Mittal v. Shakti Trading Company* in shaping the contours of liability for corporate debtors and their directors.

Provisions of the law under question

1. Section 14 IBC: It mandates a moratorium on the institution or continuation of proceedings against the corporate debtor during CIRP to ensure preservation of assets and to facilitate a collective resolution.
2. Section 138 NI Act: It criminalizes dishonour of cheques for insufficiency of funds, provided certain procedural requirements such as statutory notice and failure to pay are fulfilled.

Procedural History and Relevant Facts

In *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*¹, the Supreme Court clarified that proceedings under Section 138 NI Act fall within the scope of "proceedings" under Section 14(1)(a) of the IBC and thus are barred against the corporate debtor during the moratorium period. The Court reasoned that despite being penal in form, Section 138 is quasi-criminal and compensatory in substance, thereby aligning it with the civil nature of claims contemplated under the moratorium.

The Court carved out an exception for natural persons such as directors and authorized signatories of the Corporate Debtor. It held that the protection under Section 14 IBC is available only to the corporate debtor and not to individuals covered under Section 141 NI Act. This distinction ensures that while the company is shielded during CIRP, those responsible for the default can still be held accountable.

¹ (2021) 6 SCC 258



The judgment was followed and applied in *Ajay Goenka v. Tourism Finance Corporation of India*² wherein the director's attempt to quash Section 138 proceedings initiated prior to the CIRP was rejected. The Court upheld that personal liability of the Directors under the NI Act is independent and survives even after the initiation of CIRP against the company.

However, in *Vishnoo Mittal v. Shakti Trading Company*³, the Supreme Court considered a more nuanced scenario. The cheques were dishonored before CIRP but the statutory demand notice was issued post-initiation of CIRP, when the Interim Resolution Professional ("IRP") had taken control under Section 17 IBC. The director contended that he no longer had authority or capacity to comply. The Court agreed, holding that where managerial control is lost due to CIRP and cause of action arises thereafter, continuing criminal prosecution would be unjust.

Issues involved

1. Whether Section 138 proceedings are barred during CIRP under Section 14 IBC?
2. Whether directors and authorized signatories are personally liable during CIRP?
3. Whether prosecution can continue if the cause of action arises after CIRP has commenced and directors no longer control the company?

Analysis and application of Law to Facts

These rulings have operationalized a structured legal approach. *First*, proceedings under Section 138 NI Act cannot be initiated or continued against the corporate debtor once CIRP has commenced. *Second*, directors or signatories remain liable, reinforcing accountability for acts committed in corporate capacity. *Third*, if the cause of action under Section 138 arises after CIRP, and control has shifted to IRP, prosecution may be quashed qua the directors due to absence of culpability.

The jurisprudence balances competing interests. It preserves the corporate debtor's assets for resolution and protects the rights of cheque holders to seek redress. By insulating the corporate debtor while maintaining personal liability of functionaries, the law ensures both procedural fairness and commercial deterrence.

Conclusion

The evolving jurisprudence under the IBC and NI Act underscores the need to harmonize insolvency resolution mechanisms with penal statutes addressing financial default. The triad of Supreme Court decisions lays down a definitive legal roadmap. It provides immunity for the corporate debtor during CIRP, a continued liability of directors and signatories and an exception for demonstrable lack of control.

This legal architecture serves as a guiding framework for adjudicating authorities, resolution professionals, and creditors navigating the overlap between insolvency and cheque dishonour proceedings. It reflects a nuanced understanding of commercial realities while preserving legal accountability.

² 2023 SCC OnLine SC 266

³ 2025 SCC OnLine SC 558