framework be enacted to meet the transformative changes in online betting and gaming. In the light of critical issue raised herein, this Court, exercising its writ jurisdiction and the authority vested in the High Court, takes a *suo motu* cognizance and hereby directs the State Government to constitute a High-Powered Committee, comprising Prof. K.V. Raju, Economic Advisor to the Government of Uttar Pradesh, as its chairperson, to examine all relevant factors, particularly those outlined above comprehensively to meet out the legislative necessity arising from the transformed socio-technological concerning online betting and gaming. The Committee may include the Principal Secretary, State Tax as Member Secretary, besides other experts as Members. Their collective input should be used to develop a comprehensive and well-structured legislative framework for regulating and monitoring online gaming and public betting.

25. So far as merits of the present case is concerned, I find force in the argument of learned counsel for the applicants that the investigation has been barred by section 155 (2) Cr.P.C., therefore, the entire exercise undertaken by the police stands vitiated in law, thus, the impugned charge sheet dated 27.12.2022 arising out of Case Crime No. 69 of 2022, under Section 3/4 Public Gambling Act, 1867, registered at P.S. Mantola, District Agra, as well as impugned summoning order dated 23.05.2023, passed by the Judicial Magistrate-I, Agra are hereby quashed with the liberty to police to initiate fresh investigation after complying with existing provisions of law.

26. Accordingly, the present application stands ***allowed.***

27. The Registrar (Compliance) is directed to transmit a copy of this order forthwith to the Chief Secretary, Government of Uttar Pradesh for compliance.

(2025) 5 ILRA 321
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.05.2025

BEFORE

THE HON'BLE VIKAS BUDHWAR, J.

Application U/S 528 BNSS No. 30850 of 2024
With
Application U/S 528 BNSS No. 30822 of 2024

Mohnish Jain & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Balbeer Singh, Sr. Advocate

Counsel for the Opposite Parties:
Abhinav Jaiwal, G.A., Ravi Anand Agarwal, Shreya Gupta

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528 - Criminal Procedure Code, 1973 - Section 482 - Negotiable Instruments Act, 1881 – Sections 7, 8, 9, 138, 141 & 142 - Indian Partnership Act, 1932 – Sections 2, 2(a), 4, 11, 18, 19 & 22 - The Insolvency And Bankruptcy Code, 2016 – Section 14 - Application – challenging summoning the summoning orders and dismissal of criminal revision –- under Section 138 of the NI Act, 1881 - dishonour of four cheques, due to insufficient funds – Complaint Case – summon orders - Criminal Revision – dismissed – plea taken that the complaint was filed by a partner without authorization from the firm, which was the actual payee, - and the absence of firm authorization violates Sections 19 and 22 of the Indian Partnership Act - Additionally, they argue that proceedings are barred under Section 14 of

the Insolvency and Bankruptcy Code - due to an NCLT order placing firm under moratorium - They also claim non-compliance with Section 141 of the NI Act – court finds that, the revisional court failed to adequately consider substantive legal objections, rendering its order legally unsustainable – however, the judgment ultimately affirms the maintainability of the complaint under Section 138 of the NI Act – court held that, (i) a partner, acting as an agent of the firm, possesses implied authority to initiate proceedings when the cheque is issued in the firm's name – (ii) applicants being Directors of the body corporate are not entitled to any protection u/s 14 of the IBC and they have no right to forestall the proceedings u/s 138 NI Act, - relies on authoritative rulings including *P. Mohanraj*, *Ajay Kumar Goenka*, and *Rakesh Bhanot,* court reiterates that disputed facts and presumptions under Section 139 must be adjudicated at trial – cautions against premature quashing under Section 482 CrPC – accordingly, no jurisdictional error was committed by the trial court – consequently, both applications are dismissed. (Para – 9, 10, 11)

Application Dismissed. (E-11)

List of Cases cited:

1. Criminal Revision Case No. 628 of 2023 (Pawan Kumar Jain & ors.Vs St. of U.P,

2. Porbandar Commercial and Cooperative Bank Ltd. Vs Bhanji Lavji AIR 1984 (Guj) 106,

3. Govind Ram Chanani Vs Latha & ors.2009 SCC OnLine Kar 39,

4. Suresh Sharma Vs New Kolvell Industries & ors.: Crl. Appeal No. 745 of 2007 dated 23.01.2009 High Court of Delhi at New Delhi,

5. P.K. Selvaraj Vs Umadevi Sundaram Manu - (TN)/5198/2021 Mad High Court,

6. Sushil Kumar Vs IBM Pvt. Ltd. - Crl. M.C. 122/2010 Delhi High Court,

7. Raghu Lakshminarayan Vs Fine Tubes, (2007) 5 SCC 103 (Supreme Court)

8. Ravindra Nathabajpe Vs Mangalore Special Economic Zone Pvt. Ltd. & others, 2021 SCC OnLine SC 806 (Supreme Court),

9. Ashok Shewakramani & ors.Vs St. of Andhra Pradesh & anr.- 2023 SCC OnLine SC 958,

10. Bhupesh Rathod Vs Daya Shankar Prasad Chaurasiya & anr.(2022) 2 SCC 355,

11. Vishnu Mittal Vs M/s. Shakti Traders Company, SLP Crl. No. 1104 of 2022 decided on 17.03.2025

12. A.K. Ravi Nedungadi & ors.Vs St. of U.P. & others, 6 Application u/s 482 No. 72 of 2020 decided on 13.10.2020 (Allahabad High Court),

13. Madras High Court Rangabashyam Vs VS Rajeshwari - Crl. O.P. No. 13147 of 2015

14. Prem Raj Vs Poonamma Menon & anr.- (2024) 6 SCC 143, ,

15. Alchemist Asset Reconstruction Company Ltd. Vs M/s. Hotel Gaudavan Pvt. Ltd.: (2018) 16 SCC 94.

16. P. Mohanraj & ors.Vs M/s Shah Brothers Ispat Pvt. Ltd. 2021 (0) Supreme (SC) 115,

17. Ajay Kumar Radheshyam Goenka (2023) 10 SCC 545,

18. Rakesh Bhanot Vs M/s. Gurdas Agro: Criminal Appeal No. 1607 of 2025 decided on 01.04.2025,

19. Rathish Babu Unnikrishnan Vs The St. (Govt. of NCT of Delhi) & Anr. : 2022 (0) Supreme (SC) 366,

20. ICDS Ltd. Vs Beena Shabeer (2002)Supp 1 SCR 488,

21. M/s M.M.T.C. Ltd. Vs Medchl Chemicals and Pharma (P) Ltd. (2002) 1 SCC 234,

22. Abhishek Jain Vs St. of U.P. 2023 (0) Supreme (All) 1581,

23. M/s Samrat Shipping Company Pvt. Ltd. Vs Dolly George J.T. 1999 (10) SC 381,

24. National Small Industries Corporation Ltd. Vs St. (NCT of Delhi) & etc. (2008) 16 S.C.R. 83,

25. Ashutosh Ashok Parasrampuriya & anr.Vs Gharrkul Industries Pvt. Ltd. & ors.AIR 2021 SC 4898.

26. C.I.T. Vs R.M. Chidambaram Pillai & ors.1977 (1) SCC 431

27. Munshi Ram Vs Municipal Committee 1979 (3) SCC 83,

28. N Khadervali Saheb & anr.Vs N. Gudu Sahib & ors.(2003) 3 Supreme Court Cases 229,

29. VS Subramaniam Vs Rajesh Raghuvandra Rao (2009) 5 SCC 608,

30. Tanna and Modi Vs C.I.T. Mumbai (2007) 7 SCC 434.

31. Sanganer Dal and Flour Mill Vs F.C.I. & ors.(1992) 1 SCC 145,

32. M/s Samrat Shipping Company Pvt. Ltd. Vs Dolly George J.T. 1999 (10) SC 381,

33. Har. St. Cooperative Supply and Marketing Federation Ltd. Vs Jayam Textiles & anr.(2014) 4 SCC 704,

34. Padmawati Finanace Vs Md. Yosuf Ali: Criminal Appeal No. 3608 of 2009 decided on 05.07.2023.

35. M/s. Naresh Potteries Vs M/s Aarti Industries & anr.SLP (Criminal) No. 8659 of 2023 decided on 02.01.2025.

(Delivered by Hon'ble Vikas Budhwar, J.)

1. Impugned in the present proceedings by way of leading application preferred by Mohnish Jain, Pawan Kumar Jain and connected application by Siddharth Jain is an order dated 21.07.2023 passed by the Court of Additional Civil Judge (J.D.), Court No. 4, Agra in Complaint Case No 18168 of 2023, whereby the applicants in both the applications have been summoned under Section 138 of the Negotiable Instrument Act, 1881 and the order dated 24.07.2024 passed by the Court of Additional Sessions Judge, Court No. 17, Agra in **Criminal Revision Case No. 628 of 2023 (Pawan Kumar Jain and others Vs. State of U.P.)** whereby the revision preferred by the applicants herein in leading application against the summoning order dated 21.07.2023 has been dismissed.

2. A joint statement has been made by the learned counsel for the parties that they do not propose to file any additional affidavit and the application be decided on the basis of the documents available on record. With the consent of the parties, the applications are being decided at the fresh stage.

3. Broadly, the facts are that the opposite party no. 2, Rohit Agarwal, claims himself to be a partner of a firm by the name of M/s. Metal Products which is engaged in manufacturing and supplying of Bare/Insulated Copper and Aluminium Wire. According to the opposite party no. 2, it had supplied bare/insulated copper and Aluminium wire to M/s. Kotsons Pvt. Ltd. which is a company registered under the Companies Act. Allegation is that for the discharge of liability which had accrued on account of purchase of the bare/aluminium wire, four cheques bearing no. 598081, 598082, 598083 and 598084 dated 01.12.2022 of Rs. 50,00,000/- each was drawn on behalf of the company Kotsons Pvt. Ltd. by one of the Director, Siddharth Jain who is the applicant in the connected application. The said cheques are stated to have been presented in the bank of the drawee/holder on 22.02.2023 which came to be dishonored on 23.02.2023 on account of insufficient funds. Statutory notices were

issued to the company, Kotsons Pvt. Ltd. as well as the Director namely Mohnish Jain, Pawan Kumar Jain (applicants in the leading application) and Siddharth Jain (the applicant in the connected application) on 20.03.2023 which is stated to have been served upon the company as well as the applicants in both the applications who are Directors on 22.03.2023. Despite service of the statutory notice, when the said payments were not made so on 21.04.2023, a complaint under Section 138 of the NI Act came to be filed. The same led to issuance of the order dated 21.07.2023 passed by Additional Civil Judge (J.D.), Court No. 4, Agra in Complaint Case No. 18163 of 2023.

4. Assailing the summoning order dated 21.07.2023 passed by the Court of Additional Civil Judge (J.D.), Court No. 4, Agra, revision came to be filed by the applicants in the leading application (Pawan Kumar Jain and Mohnish Jain) being Criminal Revision No. 628 of 2023 which, on contest, came to be rejected on 24.07.2024 by the Court of Additional Civil Judge Court No. 17, Agra.

5. As per the records, applicant in the connected application has not preferred revision and has filed the present Application under Section 528 of BNSS No. 30822 of 2023.

6. The leading and connected applications came to be entertained by this Court wherein interim order was accorded on 05.02.2025, since the interim orders in leading and the connected applications are verbatim the same, thus, for the sake of brevity, the order dated 05.02.2025 passed in **Application u/s 528 of BNSS No. 30850 of 2024** is being quoted hereinunder.-

"1. Heard Sri Gopal Swaroop Charturvedi, learned Senior Advocate assisted by Sri Balbeer Singh, learned counsel for the applicants and Sri Sunil Kr. Kushwaha, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the impugned order dated 24.7.2024 passed in Criminal Revision No. 628 of 2023 (Pawan Kumar Jain and another vs. State of U.P. and others) along with entire proceeding of compliant case No. 18168 of 2023 (Rohit Agrawal v. Kotsons Pvt. Ltd. and others), under Section 138 N.I. Act, P.S. Hariparvat Agra, District Agra, including cognizance order dated 21.7.2023.

3. Contention of learned counsel for the applicants is that the cheque in question was issued in favour of the partnership firm M/s Metal Products, but the impugned complaint has been filed by one of its partners without any authorization on behalf of the firm. It is further submitted by the Senior Counsel that the position of partnership firm is different from the proprietorship concerned as on bouncing of the cheque, issued in favour of the proprietorship concerned, its proprietor can file a complaint, but in the case of partnership firm, a complaint can be filed under Section 138 N.I. Act by the partnership firm through its partner and the partner can also file a complaint under Section 138 N.I. Act on bouncing of the cheque issued in favour of the partnership firm but there should be authorization on behalf of the firm. It is also submitted that the cheque in question was issued in favour of the firm, therefore, the firm is payee and the partner cannot be treated as the payee and he can be treated as the holder in due course only after authorization on behalf of the firm. In support of his contention, learned Senior Counsel has relied upon the judgement of the Apex Court in the case of

Bhupesh Rathod vs. Dayashankar Prasad Chaurasia and another; (2022) 2 SCC 355.

4. Matter requires consideration.

5. Issue notice to opposite party No.2.

6. Learned counsel for the applicants is also permitted to make personal service upon opposite party No. 2.

7. List in the week commencing 3.3.2025 as fresh.

8. Till the next date of listing, no coercive action shall be taken against the applicants in the aforesaid case."

7. Post issuance of notice upon the opposite party no. 2-complainant, the opposite party no. 2-complainant appeared through its counsel and on 04.04.2025 made a statement at bar that she does not propose to file any response to the applications. As per the records, a supplementary affidavit came to be filed by the applicants in the leading application dated 28.04.2025 and and thereafter on 01.05.2025, the following orders were passed in the leading application.-

"Heard Shri Gopal Swarup Chaturvedi, Senior Advocate assisted by Ms. Suruchi Kasliwal Multani and Shri Balbeer Singh, learned counsel for the applicant in leading and connected applications and Sri S.K. Singh, learned AGA for the State as well as Ms. Shreya Gupta, counsel for opposite party no. 2.

The Court has been apprised that a supplementary affidavit dated 29.04.2025 has been filed which is available on record on behalf of the applicants but Ms. Shreya Gupta submits that she does not propose to file any response to the same.

Arguments concluded and judgment reserved."

Arguments of the applicants (leading and connected applications)

8. Shri Gopal Swarup Chaturvedi Senior Advocate assisted by Suruchi Kasliwal Multani and Shri Balbeer Singh has submitted that the order dated 21.07.2023 summoning the applicants cannot be sustained for even a single moment as the same suffers from infirmity and illegality. Elaborating the said submission, firstly, it is submitted that the complaint itself was not maintainable particularly when the same was filed by one of the partners of Metal Products and not by the firm and since the cheque was drawn in favour of Metal Products being a partnership firm, thus, the opposite party no. 2-complainant was neither the drawee nor payee or holder in due course. It is also submitted that under Section 138 of the NI Act, it is only the payee or the holder in due course of the cheque who is competent to issue a statutory demand notice and to file complaint.

9. In a nutshell, it is submitted that the opposite party no. 2-complainant only being a partner of a partnership firm had no authority under law to have either issued demand notice or to have lodged complaint under Section 138 of the NI Act. Secondly, it has been submitted that even assuming without admitting the opposite party no. 2 as a partner of a partnership firm could have filed a complaint but there was no authorization of the partnership firm so as to authorize him to lodge proceedings under Section 138 of the NI Act. Thirdly, the bar contained under Sections 19 and 22 of the Indian Partnership Act, 1932 would come in the way of lodging criminal proceedings by a partner particularly when there was no implied authority so enjoined with the complainant as a partner to lodge

proceedings. Fourthly, the bar of Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply particularly when the company of which the applicants were the Directors was under monetarium regime vide order dated 09.06.2023 of National Company Law Tribunal, New Delhi (III) in the proceedings in IB-761(ND/2022) State Bank of India Vs. M/s. Kotsons Pvt. Ltd. Fifthly, though the cheque has been issued on behalf of the company Kotsons Pvt. Ltd. by the applicant in the connected application in the capacity of Director, Siddhartha Jain but there have been virtually no compliance of the provisions of Section 141 of the NI Act with respect to the recital in the complaint that every person who at the time of offences committed was incharge of and was responsible to the company. Insofar as the other applicants in the leading application being Mohnish Jain and Pawan Kumar Jain are concerned, since the said averments are lacking in the complaint, thus, the proceedings ought to have been rejected and there was no question of summoning the applicants.

10. Seventhly, it has been argued that though in the revision preferred by the applicants in the leading application against the summoning order, several legal grounds were taken which goes to the root of the matter but the revisional court has not considered any of the grounds except one relating to the fact that the opposite party no. 2-complainant had the authority to lodge criminal proceedings. Thus, it is submitted that the revisional order is illegal as it skips to consider the legal grounds taken by the applicants.

11. In order to buttress the aforesaid submissions, reliance has been placed upon the following judgments (1) **Porbandar Commercial and Cooperative Bank Ltd. Vs. Bhanji Lavji AIR 1984 (Guj) 106, (2) Govind Ram Chanani Vs. Latha and others 2009 SCC OnLine Kar 39, (3) Suresh Sharma Vs. New Kolvell Industries and others: Crl. Appeal No. 745 of 2007 dated 23**.01.2009 High Court of Delhi at New Delhi**, (4) P.K. Selvaraj Vs. Umadevi Sundaram Manu (TN)/5198/2021 Mad High Court, (5) Sushil Kumar Vs. IBM Pvt. Ltd. Crl. M.C. 122/2010 Delhi High Court, (6) (2007) 5 SCC 103 (Supreme Court) Raghu Lakshminarayan Vs. Fine Tubes, (7) Ravindra Nathabajpe Vs. Mangalore Special Economic Zone Pvt. Ltd. & others, 2021 SCC OnLine SC 806 (Supreme Court), (8) 2023 SCC OnLine SC 958 Ashok Shewakramani & others Vs. State of Andhra Pradesh & another, (9) Bhupesh Rathod Vs. Daya Shankar Prasad Chaurasiya and another (2022) 2 SCC 355, (10) Vishnu Mittal Vs. M/s. Shakti Traders Company, SLP Crl. No. 1104 of 2022 decided on 17.03.2025 (11) A.K. Ravi Nedungadi and others Vs. State of U.P. & others, Application u/s 482 No. 72 of 2020 decided on 13.10.2020 (Allahabad High Court), (12) Crl. O.P. No. 13147 of 2015 Madras High Court Rangabashyam Vs. V. Rajeshwari, (13) (2024) 6 SCC 143, Prem Raj Vs. Poonamma Menon and another, (14) Alchemist Asset Reconstruction Company Ltd. Vs. M/s. Hotel Gaudavan Pvt. Ltd.: (2018) 16 SCC 94.**

Argument of the counsel for the opposite party no. 2-complainant

12. Countering the submissions so made on behalf of the learned counsel for the applicants Ms. Shreya Gupta, learned counsel who appears for the opposite party no. 2-complainant has submitted that the

order dated 21.07.2023 summoning the applicants under Section 138 of the NI Act as well as the order rejecting the revision does not suffer from any illegality and no interference is called for. Submission is that the complainant/opposite party had the competence and the authority to lodge criminal proceedings as he was one of the partners of the partnership firm and he being the agent of the firm had the right to lodge complaint. It is also submitted that even if it is assumed though not admitted that the complainant/opposite party no. 2 being a partner had no authorization in his favour then the complaint cannot be rejected outrightly as opportunity to produce authorization can be given at a later stage as the same is a curable defect. It is next contended that none of the other partners of the partnership firm, Metal Products have come forward to state that they have not authorised the complainant/opposite party no. 2 to lodge the complaint, thus, the contention so raised by the counsel for the applicants is superfluous. It is also contended that the opposite party no. 2-complainant who acted as an agent of the partnership firm had an implied authority to lodge complaint/proceedings. It is also contended that the partnership is an association of partners and the rights and liabilities of the partners are equal and one and for the benefit of firm in order to augment revenue and resources, the actual amount due and payable can also be realised by any of the partners while lodging criminal proceedings under Section 138 of the NI Act. Submission is also that there are specific recitals contained in the complaint itself as per the requirement of Section 141 of the NI Act and the applicants being the Directors were, in fact, incharge of and were responsible to the company for the conduct, affairs and the business. So far as the question of bar of Section 14 of the IBC is concerned, it is submitted that the protection under the said provision only stands attracted in case of Corporate Debtor i.e., company Kotsons Pvt. Ltd. and not against the Directors. Lastly, it is submitted that this Court may not interfere at this stage particularly when only summons have been issued that too in the present proceedings as law is well crystallized that the investigation cannot be throttled in the present proceedings at the summoning stage. Reliance has been placed on the following judgments.-

(1) **P. Mohanraj and others Vs. M/s Shah Brothers Ispat Pvt. Ltd. 2021 (0) Supreme (SC) 115, (2) Ajay Kumar Radheshyam Goenka (2023) 10 SCC 545, (3) Rakesh Bhanot Vs. M/s. Gurdas Agro: Criminal Appeal No. 1607 of 2025 decided on 01.04.2025, (4) Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) & Anr. : 2022 (0) Supreme(SC) 366, (5) ICDS Ltd. Vs. Beena Shabeer (2002)Supp 1 SCR 488, (6) M/s M.M.T.C. Ltd. Vs. Medchl Chemicals and Pharma (P) Ltd. (2002) 1 SCC 234, (7) Abhishek Jain Vs. State of U.P. 2023 (0) Supreme (All) 1581, (8) Bhupesh Rathod vs. Dayashankar Prasad Chaurasia and another; (2022) 2 SCC 355, (9) M/s Samrat Shipping Company Pvt. Ltd. Vs. Dolly George J.T. 1999 (10) SC 381, (10) National Small Industries Corporation Ltd. Vs. State (NCT of Delhi) & etc. (2008) 16 S.C.R. 83, (11) Ashutosh Ashok Parasrampuriya and another Vs. Gharrkul Industries Pvt. Ltd. & others AIR 2021 SC 4898.**

Statutory provisions:

Partnership Act, 1932

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) an"act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

4**. Definition of "partnership", "partner", "firm" and "firm name"—** "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

11. Determination of rights and duties of partners by contract between the partners Agreements in restraint of trade.—(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

12. The conduct of the business.—Subject to contract between the partner—

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

18. Partner to be agent of the firm.— Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

19. Implied authority of partner as agent of the firm.—

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e)admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(h) transfer immovable property belonging to the firm, or

(g) enter into partnership on behalf of the firm.

22. Mode of doing act to bind firm.—In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm."

Negotiable Instrument Act, 1881

"7. "Drawer" "Drawee".—The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

"Drawee in case of need".—When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need."

"Acceptor".—After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour".— When a bill of exchange has been noted or protested for non-acceptance acceptance or for better security,] and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour''.

"Payee".—The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "Payee".

8. "Holder".—The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course".—"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if 1[payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

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 provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], 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 in due 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 cheque 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 purposes of this section, "debt of 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 punished accordingly:

Provided that nothing contained in this sub-section 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 sub-section (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 attributable to, any neglect on the part of, any director, manager, secretary or other officer 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 relation 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:

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."

Analysis:

13. I have heard learned counsel for the parties and perused the record carefully.

14. Before embarking an inquiry upon the tenability of the arguments so made across the bar it would be apposite to discuss the import and impact of the various provisions of the Indian Partnership Act, 1932 and the law on the said subject.

15. To begin with Section 18 provides that the partner is the agent of the firm for the purposes of business of the firm.

16. Section 2(a) defines an act of the firm which means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. Section 19 further provides for implied authority of a partner as the agent of a firm according to which subject to the provisions under Section 22 of the Act, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by the said section is called an implied authority. Various acts have been mentioned in sub-section (2) of Section 19, that in absence of any usage or custom of trade to the contrary the implied authority of partner does not empower him to- (a) submit a dispute relating to the business of the firm to arbitrator, b) open a bank account on behalf of the firm in his own name; c) compromise or relinquish any claim or portion of a claim by the firm; (d) withdraw a suit or proceedings filed on behalf of the firm; e) admit any liability in a suit or proceedings against the firm; (f) acquire immovable property on behalf of the firm, g) transfer of immovable property belonging to the firm, (h) enter into the partnership on behalf of the firm. Further Section 22 provides that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm's name or in any manner expressing or implying an intention to bind the firm.

17. As a matter of fact, Section 4 deals with the definition of "partnership" "partner" "partnership firm" and firm's name according to which partnership is a relationship between persons who have agreed to share the profits of business carried on by all or any of them acting for all.

18. Section 11 deals with the determination of the rights and the duties of

the partners by contract between the partners, wherein subject to the provisions of the Act, the mutual rights and the duties of the partners of the firm are to be determined by the conduct between the partners and such contract may be expressed or may be implied by course of dealing and the such contract may be varied by consent of all partners and such consent may be expressed or may be implied by a course of dealing.

19. The question as to whether the partnership is a legal person or not has been a matter of consideration for umpteen number of times before the courts of law. In **C.I.T. Vs. R.M. Chidambaram Pillai and others 1977 (1) SCC 431** the following was observed as under:-

"17. The necessary inference from the premise that a partnership is only a collective of separate persons and not a legal person in itself leads to the further conclusion that the salary stipulated to be paid to a partner from the firm is in reality a mode of division of the firm's profits, no person being his own servant in law since a contract of service postulates two different persons."

20. In **Munshi Ram Vs. Municipal Committee 1979 (3) SCC 83**, it was observed as under.-

17. "Partnership" as defined in Section 4 of the Indian Partnership Act, 1932, is the relation between persons who have agreed to share the profits of a business carried on by all or any of them for the benefit of all. The section further makes it clear that a firm or partnership is not a legal entity separate and distinct from the partners. Firm is only a compendious description of the individuals who compose the firm. The crucial words in the definition of "partnership" are those that have been underlined. They hold the key to the question posed above. They show that the business is carried on by all or any of the partners.

21. In N **Khadervali Saheb and another Vs. N. Gudu Sahib and others (2003) 3 Supreme Court Cases 229**, it was observed as under.-

"A partnership firm is not an independent legal entity, the partners are the real owners of the assets of the partnership firm. Actually the firm name is only a compendious name given to the partnership for sake of convenience. The assets of the partnership belong to and are owned by the partners of the firm. So long as partnership continues each partner is interested in all the assets of the partnership firm as each partner is owner of the assets to the extent of his share in the partnership."

Further in **V. Subramaniam Vs. Rajesh Raghuvandra Rao (2009) 5 SCC 608**, the Hon'ble Apex Court held as under.-

"11. It may be mentioned that a partnership firm, unlike a company registered under the Indian Companies Act, is not a distinct legal entity, and is only a compendium of its partners. Even the registration of a firm does not mean that it becomes a distinct legal entity like a company. Hence the partners of a firm are co-owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company."

22. In **Tanna and Modi Vs. C.I.T. Mumbai (2007) 7 SCC 434**.-

"19. Under the Partnership Act, a partner represents a firm. He has an implied

authority in terms of Section 19 thereof and, thus, any action taken by a partner of a firm vis-à-vis the firm, unless otherwise specified, binds the firm itself."

23. A Coordinate Bench of this Court in **Abhishek Jain Vs. State of U.P. 2023 (0) Supreme (all) 1581** has followed the said law.

23. Once the law on the said subject is crystallized that a partnership firm is not a legal entity separate and distinguished from his partner and only compendious description of individuals who compose the firm then the question which arises would be of implied authority of a partner on the face of the fact that he is the agent of the firm.

24. A perusal of Section 19 of the Indian Partnership Act would reveal with relation to an implied authority for doing certain works, there are certain exceptions according to which in absence of any usage or custom of trade to the contrary, the partner is not empowered to act, illustrations thereof being (a) to (h) of sub-section (2) of Section 19.

25. A conjoint reading of Section 22 with Section 19 of the Indian Partnership Act, would show that the firm would be bind by the act of the partner on the basis of implied authority. A close reading of the provisions do not in any manner indicate that there has to be an express authority at every stage and point of time with the partner to bind the firm, having been so the word "implied authority" would not have been employed in Section 19 and 22 of the Indian Partnership Act. It is a matter of common knowledge that there are two types of authorities express or implied. There is no difficulty in express authority and so far as the implied authority is concerned, it is to be proved. In some cases also, option is available with the partnership firm through other partners to ratify the action or conduct of the partner who had done an act in order to bind the firm. What is more important is the employing the word "in the firm's name or in any other manner expressing or implying an intention to bind the firm", which means that a partner can do an act in the name of firm or in any manner expressing or implying an intention to bind the firm. What is, thus, understandable is that a partner may do an act in his own name as a partner but thereafter, if there is an implied authority or even when the said act is ratified then it becomes a legal act and not an act which is prohibited under the partnership act.

26. In **Sanganer Dal and Flour Mill Vs. F.C.I. and others (1992) 1 SCC 145**, a question fell for consideration whether a contract entered into by one of the partner would be valid and binding on the partners where there was a clause for referring the dispute for arbitration, Hon'ble Apex Court observed as under.-

"3. The High Court found that Satya Narain has implied power to conduct business on behalf of the partnership firm and the implied authority binds all the partners. Section 18 of the Partnership Act postulates that "subject to the provisions of the Act a partner is the agent of the firm for the purposes of the business of the firm". Section 19(1) adumbrates that "subject to the provisions of Section 22 the act of the partners which is done to carry on in the usual way the business of the kind carried on by the firm, binds the firm. Thus, Satya Narain has implied authority to enter into the contract with the corporation to supply

the dal of 1000 quintals at the contracted rate which is the usual course of the business of the appellant. But it is settled law that the operation of Sections 18 and 19(1) is subject to the exceptions engrafted in sub-section (2) of Section 19. Section 19(2)(a) provides that in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to submit a dispute relating to the business of the firm to arbitration. Satya Narain has power to do business on behalf of the firm and in exercise thereof he entered into the contract with the corporation during the usual course of business to supply the dal. The crucial question is whether a valid contract which was not repudiated as per law, binds the other partners? Our answer is yes. It is not in dispute that the contract engrafts an arbitration clause and in terms thereof the dispute is to be referred to the arbitration. Therefore, the reference made by the Additional District Judge under Section 20 of the Arbitration Act is perfectly within the jurisdiction and in terms of the contract. It is not the case of the partners that the firm is not carrying on the business of the supply of dal and that Satya Narain, as found by the trial court, was authorised to do business on behalf of the firm."

27. Thus, it can be very well said that a partner can do an act by himself in the capacity of a partner of a firm in the name of the firm or in any manner expressing or implying and it is always subject to ratification or implied authority by the other partners.

28. The objection of the learned Senior Counsel for the applicants is that complainant as a partner of a firm has no right to either issue statutory demand notice or to lodge criminal proceedings under Section 138 of the NI Act. Though, learned counsel for the opposite party no. 2 submits that the opposite party no. 2 being a partner has the full authority to lodge criminal proceedings. It is not in dispute that the opposite party no. 2-complainant is a partner of the partnership firm, Metal Products. Section 7 defines drawer and drawee according to which the maker of bill of exchange or a cheque is called the drawer and the person thereby directed to pay is called the drawee. So much so payee means the person named in the instrument to whom or whose order, the money is by the instrument directed to be paid. Section 8 defines holder, as the holder of a promissory note, bill of exchange or cheque which means any person entitled in his own name to the possession thereof and to receive or recover the amount due therefrom from the parties thereto. According to Section 9 of the NI Act, the holder in due course, possessor means a person who for consideration becomes the purchaser of promissory note, bill of exchange of cheque if payable to bearer.

29. Sub-clause (b) and (c) of the proviso to Section 138 of the NI Act only empowers to payee or the holder in due course of the cheque to make a demand for the payment of the amount of money by giving a notice. Similarly, Section 142 of the NI Act further sub-clause (a) of Section 142 of the NI Act start with non-obstante clause that no Court shall take cognizance of the offence under Section 138 of the NI Act except on a complaint made in writing by the payee or the case may be or holder in due course of the cheque.

30. Much emphasis has been laid upon the fact that the opposite party no. 2 is neither the drawee nor the payee or the holder in due course since he is one of the partners of the firm.

31. The words payee, holder and the holder in due course so defined in Sections 7, 8 & 9 read with Section 138 and 142 of the NI Act are to be given their literal interpretations and they cannot be read in such a manner so as to make the other provisions redundant.

32. The basic object of employing the word "payee and holder in due course" in Section 138 and Section 142 of the NI Act was to avoid criminal proceedings to be initiated by a stranger who was not concerned with the dishonoring of the cheque so as to invoke the provisions of Section 138 of NI Act. The word "payee" itself is significant which qualifies that a person to whom or to whose order the money by the instrument is directed to be paid.

33. Here, in the present case, the cheque was drawn in the name of Metal Products which is a partnership firm and once the partner acts as an agent of the firm then obviously he is competent and authorised to lodge criminal proceedings. The question would have been different, in case, it was a company where different yardsticks were to be adopted. The issue as to whether a partner of a firm can initiate proceedings under Section 138 of the NI Act came up for consideration in **Abhishek Jain (supra),** wherein it was observed as under.-

"16. From the aforesaid observations made by the Apex Court, it is crystal clear that if the cheque is issued in the name of a firm, whether proprietorship or partnership firm, the proprietor or the partner as the case may be, becomes the holder in due course and he can suein his own name and it is not necessary for him to sue in a trading name, though others can sue such firm in the trading name. Therefore, the instant complaint filed by the opposite party no.2, claiming himself to be a proprietor of the said firm in whose name the said cheque is issued by the applicant herein, in the considered opinion of this Court, complaint is maintainable. Even if the contention of applicant be accepted that the said Raj Rajeshwari Enterprises is a partnership and not a proprietorship firm, it will not help the applicant herein as even the partnership firm does not have a different legal identity and is not a juristic person. Therefore, a partner of the firm also becomes the holder in due course of the cheque within the meaning of Section 142 (1) of the N.I. Act. Thus, the complaint even on behalf of the partner of a firm in his own name is maintainable. Otherwise, also in the instant case, the applicant does not dispute that the cheque was issued in the name of the said Raj Rajeshwari Enterprises and the said cheque was dishonoured and demand notice was issued by the opposite party no.2, he has failed to comply with the said notice. Therefore, in view of the presumption under Section 139 of the N.I. Act and as per the law laid down by the Apex Court, this Court does not find any good ground to interfere in the instant case in exercise of jurisdiction under Section 482 Cr.P.C."

34. So far as the reliance placed upon by learned Senior Counsel for the applicants upon the decision of the Gujarat High Court in **Porbandar Commercial Cooperative Bank Ltd. (supra)** is concerned, the same is clearly distinguishable particularly when in the said case, the one of the partners in the two firms had become the signatory on behalf of the firm to the guarantee agreement, when the execution stood proceeded with

then the other partners of the said firm had taken an objection that they are not bound by the sureties so executed by one of the partners. The Gujarat High Curt while interpreting the provisions contained under Section 19 of the Partnership Act came to the conclusion that the firm in question was not dealing with sureties, thus, there was no implied consent and the same was barred under sub-section (2) of Section 19 read with Section 22 of the Partnership Act.

35. Here, in the present case, there is a material distinction that no liability or any act which is prohibited under sub-section (2) of Section 19 is being committed by one of the partners but rather to the contrary, in order to realise the money which was subject matter of dishonor of the cheque, the complaint is being lodged. Less to say that there is nothing on record to even remotely suggest that there is no implied authority or any objection has been raised by the other partners of the firm that they are not interested either in lodging or in continuance of the complaint.

36. As regards the judgment in the case of **Govind Ram Chanani (supra),** that was the case, wherein the complainant was not the partner and there was a cloud even with respect to the fact that the firm in question was a partnership firm or a sole proprietorship firm, the Court in the said case came to the conclusion that the complainant was by a rank outsider and a stranger who had no authorization whatsoever.

37. With regard to judgment cited by learned Senior Counsel for the applicants, Sri **Suresh Sharma (supra)** is concerned, the said judgment would not also apply, particularly when it was the case wherein the complaint had been rejected post taking of cognizance. In the said case, the import and the impact of the provisions of Partnership Act have not been considered. However, in the present case, the stage at which challenge has been raised is of summoning.

38. Likewise, there is no quarrel to the proposition laid down in the case of **P.K. Selvaraj (supra) & Sushil Kumar (supra)** which mandates that a complaint is to be lodged by the payee or payee/holder or holder in due course.

39. So far as the other aspect of the matter that there was no authorization available with the complainant and the complaint ought to have been rejected at the stage of summoning, the said question dependents upon the nature of the defect whether it is curable or not that is curable or not. **In M/s Samrat Shipping Company Pvt. Ltd. Vs. Dolly George J.T. 1999 (10) SC 381,** the Hon'ble Apex Court wherein it was held as held as under.-

"2. The appellant-company has filed a complaint before a Magistrate Court for offence under Section 138 of the Negotiable Instruments Act. The Magistrate dismissed the complaint on the ground that there was no resolution of the Board of Directors of the petitioner-Company authorising the person who represented the Company before the Magistrate Court. Though appellant preferred a revision before the Sessions Court that became futile and he moved the High Court invoking Section 482 of the CrPC. Learned Single Judge dismissed the petition of the appellant in spite of the fact that appellant produced a copy of the resolution for showing that the Company had authorised the particular individual to

present the complaint before the Court. The High Court while dismissing the petition observed thus:

Having heard the parties' counsel and after going through the record it appears that the resolution which has been filed on record of this Court is not certified by any person at page 13. If it is uncertified copy, how far it could be taken to be a correct and true copy. But nobody is inclined to take responsibility about its correctness. It is a matter of grave doubt that such a resolution should allure to the benefit of the petitioner for, it is not a Civil Suit. It is a criminal prosecution. Authorisation to prosecute, being of the nature of sanction, the Board of Directors is supposed to apply their mind to the facts and circumstances of each case before authorising any person to prosecute any person for any offence in the submission of the LD. Counsel. It appears plausible at least for the present purpose for no application has ever were filed before any Court seeking permission to take additional evidence accepting what is filed in this Court for the first time.

3. Having heard both sides we find it difficult to support the orders challenged before us. A Company can file a complaint only through human agency. The person who presented the complaint on behalf of the Company claimed that he is the authorised representative of the company. Prima facie, the trial court should have accepted it at the time when a complaint was presented. If it is a matter of evidence when the accused disputed the authority of the said individual to present the complaint, opportunity should have been given to the complainant to prove the same, but that opportunity need be given only when the trial commences. The dismissal of the complaint at the threshold on the premise that the individual has not produced certified copy of the resolution appears to be too hasty an action. We, therefore, set aside the impugned orders and direct the trial court to proceed with the trial and dispose it off in accordance with law. Parties are directed to appear before the trial court on 31.01.2000."

40. Further, the said issue came up for consideration in M/**s M.M.T.C. Ltd. Vs. Medchl Chemicals and Pharma (P) Ltd. (2002) 1 SCC 234,** wherein it was held as under.-

11. This Court has, as far back as, in the case of *Vishwa Mitter v. O.P. Poddar* [(1983) 4 SCC 701 : 1984 SCC (Cri) 29] held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company.

12. In the case of *Associated Cement Co. Ltd. v. Keshvanand* [(1998) 1 SCC 687 : 1998 SCC (Cri) 475] it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court.

It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

41. In **Bhupesh Rathod (supra),** it was observed that the complaint cannot be rejected at the threshold on account of the fact that it did not disclose the factum of authorization in para 19 to 22, it was observed as under.-

"19. In the conspectus of the aforesaid principles we have to deal with the plea of the respondent that the complaint was not filed by the competent complainant as it is the case that the loan was advanced by the Company. As to what would be the governing principles in respect of a corporate entity which seeks to file the complaint, an elucidation can be found in the judgment of this Court in Associated Cement Co. Ltd. v. Keshavanand2. If a complaint was made in the name of the Company, it is necessary that a natural person represents such juristic person in the court and the court looks upon the natural person for all practical purposes. It is in this context that observations were made that the body corporate is a de jure complainant while the human being is a de facto complainant to represent the former in the court proceedings. Thus, no Magistrate could insist that the particular person whose statement was taken on oath alone can continue to represent the Company till the end of the proceedings. Not only that, even if there was initially no authority the Company can at any stage rectify that defect by sending a competent person. The aforesaid judgment was also taken note of in a subsequent judgment of this Court in M.M.T.C. Ltd. & Anr. v. Medchl Chemicals and Pharma (P) Ltd. & Anr.

20. We find that the judicial precedents cited aforesaid have been breached by the Courts below. The High Court also embarked on a discussion as to the vagueness of the identity of the complainant and its relation with the legality of a loan which may be granted by the Company, something that was not required to be gone into.

21. If we look at the format of the complaint which we have extracted aforesaid, it is quite apparent that the Managing Director has filed the complaint on behalf of the Company. There could be a format where the Company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the

Managing Director is stated first followed by the post held in the Company.

22. It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the trial court by the Company, affirming to the factum of authorisation in favour of the Managing Director. A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion.4 It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified."

42. Yet the Hon'ble Apex Court in **Haryana State Cooperative Supply and Marketing Federation Ltd. Vs. Jayam Textiles and another (2014) 4 SCC 704**, it was observed as under.-

"6. Having heard the learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant Federation was not placed before the courts below. But, we may notice that a specific averment was made by the appellant Federation before the learned Judicial Magistrate that the said general power of attorney had been filed in connected case being CC No. 1409 of 1995, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the courts below were not satisfied, an opportunity ought to have been granted to the appellant Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. (See *Uday Shankar Triyar v. Ram Kalewar Prasad Singh* [(2006) 1 SCC 75] .)"

43. The issue of non-authorization by a firm to a person who had filed the complaint and its effect came up for consideration before the High Court of Karnataka Circuit Bench at Gulbarga in **Padmawati Finanace Vs. Md. Yosuf Ali: Criminal Appeal No. 3608 of 2009** decided on 05.07.2023, wherein it was observed as under.-

"7. Learned counsel for the complainant submitted that the complainant is partnership firm. The complainant is one of the partners of the firm has permitted to file complaint against the accused under Sections 138 and 142 of the Act. The Trial Court is therefore not justified in acquitting the accused on the sole ground that the complainant was not authorised by the firm, who filed complaint under Section 138 of the Act.

24. Even during trial, the accused had not produced any kind of evidence to prove that the firm is not intending to prosecute him for the offence under Section 138 of the Act and that the firm has no intention to prosecute him. In that view of the matter, the complainant representing the firm is competent to lodge the

complaint on behalf of the firm for recovery of the amount due to the firm from the accused by invoking the provisions of Section 138 of the Act."

44. Applying the principles of law as laid down in the above noted decisions in the facts of the case, an irresistible conclusion stands drawn that even if there was no authorization with the complainant then to the complaint cannot be rejected at the threshold as opportunity is to be accorded to produce the authorization if it is required. Once the position being so the argument of the learned Senior Counsel for the applicants cannot be accepted.

45. The next issue is whether the complaint lodged by the opposite party no. 2 against the applicant confirms to the mandatory requirement under Section 141 of the NI Act. In order to address the said issue, it would be apposite to quote the relevant assertions made in para 1 of the complaint

"(1) यह कि प्रार्थी / परिवादी मैसर्स मैटल प्रोडक्टस, सी-33, फाउण्ड्री नगर, थाना एत्माउद्दौला, आगरा का पार्टनर है जो कि बेयर / इनसुलेटेड कॉपर एवं एल्युमिनियम वायर के उत्पादनकर्ता एवं आपूर्तिकर्ता है। विपक्षीगण /अभियुक्तगण नं० 2, 3, व 4 कोटसन्स प्राइवेट लि० (विपक्षी नं01) के मेनेजिंग डायरेक्टर एवं डायरेक्टर्स हैं तथा कम्पनी के लेन-देन व व्यापार तथा दिन-प्रतिदिन के कार्यों के लिए उत्तरदायी व जिम्मेदार हैं।"

46. A birds eye view to para 1 of the complaint, would reveal that averments have been made that the applicants herein are the Directors of the company and they are accountable and responsible for the day to day affairs of the company including financial and business dealings.

47. Learned counsel for the applicants submits that the aforesaid recitals are not sufficient so as to make the applicants responsible for the commission of offence particularly when the averments are not in conformity with the requirements of Section 141. Reliance has been placed upon the judgment in **Ashok Shewakramani (supra),** wherein following was observed.-

"5. We have carefully perused the complaint and the affidavit in support of the complaint. In paragraph 4 of the complaint, it is stated that the accused No.1 is the Company on whose account the two cheques were issued and accused No.2 is the Managing Director of the accused No.1. The present appellants have been described as the Directors of the accused No.1 - Company. The cheques were signed by accused No.2 who is the Managing Director of the accused No.1 company. The only material averments even according to the case of learned counsel for Respondent No.2 are found in paragraph 7 of the complaint which read thus:

"7. The Accused 2 to 7 are fully aware of the business transactions of the Accused No.1 company. They are all jointly and severally liable for the transactions of the Accused No. 1 company. All the accused are fully aware of the issuance of the above cheques without balance in the account. They are also fully aware that the cheques will be dishonoured. It clearly establishes that all the Accused with an intention to deceive and defraud the complainant have issued the cheques and directed the complainant to present the cheques. So, the accused have issued the above cheques knowing fully well, that there are no funds in their account. The accused have not the cheques amount within 15 days after receipt of the notice. The cheques are issued towards legally enforceable debt and liability of the

complainant. So, they have committed an offence, punishable under Section 138 of N.I. Act."

8. Now we come to the averments made in Paragraph 7. Firstly, it is stated that all the Directors were liable for the transactions of the accused No.1 company. Secondly, it is stated that all the accused were fully aware of the issuance of the cheques subject matter of the complaint, and they were also aware that the cheques will be dishonoured. Further, it is alleged that all the accused knew that there were no funds in the account of accused No.1 – company.

9. Sub-section 1 of Section 141 of the NI Act required the complainant to aver that the present appellants at the time of the commission of the offence were in charge of, and were responsible to the company for the conduct of the business of the company. In the present case, all that the second respondent has alleged is that the appellants were liable for transactions of the company and that they were fully aware of the issuance of the cheques and dishonour of the cheques.

10. Therefore, even if we decide to take a broad and liberal view of the pleadings in the complaint, we are unable to draw a conclusion that compliance with the requirements of sub-section 1 of Section 141 N.I. Act was made by the second respondent. The most important averment which is required by sub-Section (1) of Section 141 of the NI Act is that the directors were in charge of, and were responsible for the conduct of the company. The appellants are neither the signatories to the cheques nor are whole- time directors. The decision in the case of "S.P. Mani and Mohan Diary Versus Dr. Snehalatha Elangovan"1 will have no application as in the present case, the statutory notice was admittedly not served to the accused. Obviously, the High Court has not adverted to aforesaid two glaring deficiencies in the complaint.

17. The averments made in the complaints which are the subject matter of these three appeals are identical. We are referring to the averments made in one of the three complaints (in Complaint Case No.74 of 2011) in paragraph 1:

"1) It is submitted that the complainant is the proprietor of Sri Chakra Cotton Traders, doing business in Cotton, resident of bearing Door Number 3/917-I, Sri Chackra Nilayam, Y.M.R. Colony, Proddatur Town-516360, Kadapa Distrcit, A.P.

The accused No.1 is the Private Limited concerned Company and registered under Companies Act. The Accused No.2 is Chairman of Accused No.1. Accused No.3 is the Managing Director of Accused No.2 Accused No.4 to 7 are the directors of the accused No.1 Company and Accused No. 2 to 7 are Managing the Company and busy with day to day affairs of the Company and all are managing the company and also in charge of the company and all are jointly and severally liable for the acts of accused No.1 Company."

21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

22. In the light of sub-section 1 of Section 141, we have perused the

averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act."

48. In the said case the only assertion was that the accused were all jointly and severely liable for the transaction of the company and all accused are fully aware of the issuance of the above cheque without balance in the account and they are also fully aware about the cheque will be dishonored. Indeed, the said recitals are thoroughly insufficient and does not conform to Section 141 and further the appellant in the said case was neither the signatory to the cheque nor the wholetime Director.

49. Hon'ble Apex Court in para 17 of the said judgment had also taken note of the fact that against the accused this much was asserted in the complaint that the accused Nos. 2 to 7 were Managing the company and busy with the day to day affairs of the company and all are managing the company and also the charge of the company and are jointly and severely liable for the acts. This requirement is also insufficient.

50. In the present case, there are specific recitals against the applicants which is as per requirement under Section 141 of the NI Act.

51. The issue regarding the mandatory requirement under Section 141 of the NI Act came up for consideration in **Ashutosh Ashok Parasrampuriya (supra),** wherein the following was observed as under.-

"25. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not the signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the aforestated judgment that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company.

26. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in S.M.S. Pharmaceuticals Ltd. (supra) observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Section

138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Section 200 to 204 CrPC which recognise the Magistrate's discretion to take action in accordance with law. Thus, it is imperative that if this basic averment is missing, the Magistrate is legally justified in not issuing process.

27. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the cheques were issued by the Company and dishonoured by the Bank, the appellants were the Directors of the Company and were responsible for its business and all the appellants were involved in the business of the Company and were responsible for all the affairs of the Company. It may not be proper to split while reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to fulfil the requirement of Section 141 of the NI Act. The complaint specifically refers to the point of time when the cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. In the given circumstances, we have no hesitation in overruling the argument made by the learned counsel for the appellants.

28. Indisputedly, on the presentation of the cheque of Rs.10,00,000/- (Rupees Ten Lakhs only) dated 2 nd June 2012, the cheque was dishonoured due to "funds insufficient" in the account and after making due compliance, complaint was filed and after recording the statement of the complainant, proceedings were initiated by the learned Magistrate and no error has been committed by the High Court in dismissing the petition filed under Section 482 Cr.P.C. under the impugned judgment."

29. The submission of learned counsel for the appellants that they are the non-executive Directors in the light of the documentary evidence placed on record by Form No. 32 issued by the Registrar of Companies, both the appellants are shown to be the Directors of the Company, still open for the appellants to justify during course of the trial."

52. Importantly, what is required at this stage is a fact that before arraigning the accused there has to be a specific recital of the fact that the accused were incharge and were responsible for the conduct of the business of the company as well as the company at the time when the offence is said to have been committed. Here, in the present case, the said requirement stands fulfilled.

53. Reliance so placed upon the decision in **A.K. Ravi Nedungadi (supra)** is concerned, the same is of no aid and assistance to the applicants particularly when the applicants therein are/were part time non-executive Directors of the company. However, in the present case, there is a specific averment in conformity with Section 141 of the NI Act and the applicants are not part time non-executive Directors. So far as the reliance placed upon the decision in **Ravindra Nathabajpe (supra)** is concerned, the same would not be of any aid to the applicants particularly when here, in the present case, there are specific recitals in the complaint as per Section 141 of the NI Act. Reliance has also been placed upon the decision in **Prem Raj (supra),** however, the said case is not applicable as the question involved therein was with respect to continuance of the criminal proceedings once the civil proceedings stood decided in favour of the accused. With respect to the judgment in the case of **Raghu Lakshminarayan (supra),** there is

no quarrel to the proposition of law that partnership or sole proprietorship are different and distinct their status and instinct is also different.

54. The next issue which also falls for consideration is the effect of imposition of moratorium under Section 14 of the IBC Code by NCLT, Delhi on 09.06.2024 upon the proceedings initiated and pending under Section 138 of the NI Act. According to the learned Senior Counsel for the applicants once a moratorium stands imposed then all the criminal proceedings which are stated to be pending against the corporate debtor and its Directors are to be stayed meaning thereby that no criminal proceedings under Section 138 of the NI Act can continue.

55. The issue as to whether the protection of Section 14 of the IBC Code stands attracted to the Directors of the company is no more res integra as the Hon'ble Apex Court in **P. Mohanraj (supra),** wherein the following was observed.-

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."

56. In **Ajay Kumar Radheshyam Goenka (supra),** the following was observed:-

70. Thus, I am of the view that by operation of the provisions of IBC, the criminal prosecution initiated against the natural persons under Section 138 read with Section 141 of the NI Act read with Section 200 Cr.P.C. would not stand terminated.

71. In JIK Industries Ltd. v. Amarlal Vs. Jumani, this Court held that the sanction of a scheme under Section 391 of the Companies Act, 1956 will not lead to any automatic compounding of offence under Section 138 of the NI Act without the consent of the complainant. Neither Section 14 nor Section 31 IBC can produce

such a result. The binding effect contemplated by Section 31 IBC is in respect of the assets and management of the corporate debtor. No clause in the resolution plan even if accepted by the adjudicating authority Appellate Tribunal can take away the power and jurisdiction of the criminal court to conduct and dispose of the proceedings before it in accordance with law provisions of CrPC.

72. It is true that by virtue of Section 238 IBC, the provisions of CrPC shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But, no provision of IBC bars the continuation of the criminal prosecution initiated against the Directors and officials.

73. It is equally true that once the corporate debtor comes under the resolution process, its erstwhile Managing Director(s) cannot continue to represent the company. Section 305(2) CrPC states that where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. Therefore, it is only the resolution professional who can represent the accused Company during the pendency of the proceedings under IBC. After the proceedings are over, either the corporate entity may be dissolved or it can be taken over by a new management in which event the company will continue to exist. When a new managements takes over, it will have to make arrangements for representing the company. If the company is dissolved as a result of the resolution process, obviously proceedings against it will have to be terminated. But even then, its erstwhile Directors may not be able to take advantage of the situation. This is because, this Court in Aneeta Hada, even while overruling its decision in Anil Hada v. Indian Acrylic Ltd., as not laying down the correct law insofar as Anil Hada states that the Director or any other officer can be prosecuted without impleadment of the company, proceeded to hold that the matter would stand on a different footing where there is some legal impediment as the doctrine of *lex non cogit ad impossibilia* gets attracted. It was specifically observed that the decision in Anil Hada is overruled with the qualifier as stated in para 51.

Considering the same, the ratio of the decision of this Court in *Ajit Balse* upon which strong reliance is placed on behalf of the appellate is of no avail.

74. What follows from the aforesaid is that for difficulty in prosecuting the corporate debtor under Section 138 of the NI Act after the approval of the resolution plan under IBC, we need not let the natural persons i.e. the signatories to the cheques/Directors of the corporate debtor escape prosecution. How can one allow the natural persons to escape liability on such specious plea? In such a situation the *Latin maxim lex non cogit ad impossibilia* is attracted which means law does not compel a man to do which he cannot possible person. Broom's Legal Maxims contains several illustrative cases in support of the maxim. This maxim has been referred to with approval by this Court in State of Rajasthan v. Shamsher Singh.

75. Thus, where the proceedings under Section 138 of the NI Act had already commenced and during the pendency the plan is approved or the company gets dissolved, the Directors and the other accused cannot escape from their liability 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.

They will have to continue to face the prosecution in view of the law laid down in *Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] . Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile Directors can no longer represent it.

80. The argument that as the debt stood extinguished by virtue of Section 31 IBC, the proceedings under Section 138 of the NI Act cannot continue as regards the Director/signatory, would run contrary to the line of reasoning assigned by this Court that the "Involuntary Act" of the principal debtor would not absolve the guarantors.

81. This Court in *Lalit Kumar Jain v. Union of India [Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321 : (2021) 4 SCC (Civ) 527] has held that the approval of the resolution plan per se does not operate as a discharge of guarantors' liability. That is because:

(a) an *voluntary act* of the principal debtor leading to loss of security, would not absolve a guarantor of its liability.

(b) a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability.

82. The same principle is applicable to the signatory/Director in the case of Sections 138/141 proceedings. The signatory/Director cannot take benefit of discharge obtained by the corporate debtor by operation of law under IBC.

98. As per Section 138 of the NI Act, when the cheque was dishonoured and a statutory notice demanding the cheque amount was issued, the accused shall pay the cheque amount within 15 days from the date of receipt of the said notice. The moment the said 15 days expired, the cause of action arises. In other words, the offence under Section 138 of the NI Act is complete. Once the cause of action arose for the offence committed, the complainant has to approach the criminal court within one month to take penal action under Section 138 of the NI Act. To put it clearly, the complainant approaches the criminal court not for recovery of the legally enforceable debt, but for taking penal action under Section 138 of the NI Act for the offence already committed by the accused by not making the payment of the cheque amount despite the receipt of the statutory notice. The only question before the criminal court is whether the cheque issued by the accused towards the discharge of his liability was dishonoured and despite the service of demand notice, whether he had not paid the amount. There is no bar contained in any of the provisions of IBC, and the NI Act from approaching the criminal court to seek penal action under Section 138 of the NI Act."

57. Yet in **Rakesh Bhanot (supra),** the issue with regard to inter-play between Section 14 & 96 of the IBC and Section 138 of the NI Act came to be considered and it was held as under.-

"10.1. From the above provisions, it is clear that the term "Corporate Person" includes a company as defined under Section 2(20) of the Companies Act, 2013, and a Limited Liability Partnership. However, there is a subtle difference in the protection available to the Directors and the Partners. In case of a partnership firm, the interim moratorium protects not only the firm, but also the partners. But in case of a company, such protection is available only to the company and not to its directors.

That apart, the object of interim moratorium can be no different from that of the moratorium specified under Section 14. It is also clear from Section 14 that the protection from legal action during the period of moratorium is not available to the surety or in other words, to a personal guarantor. The use of the words "all the debts" and "in respect of any debt" in Sub-section (1) of Section 96 is not without a purpose, as the moratorium is intended to offer protection only against civil claim to recover the debt. Hence, such period of moratorium prescribed under Section 14 or 96 is restricted in its applicability only to protection against civil claims which are directed towards recovery and not from criminal action.

(B) Negotiable Instruments Act 1881.

"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 provision of this Act, be punished with imprisonment for [a term which may be extended to two years], 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 in due 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 cheque 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 purposes of this section, "debt of 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 punished accordingly:

Provided that nothing contained in this sub-section 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 sub-section (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 attributable to, any neglect on the part of, any director, manager, secretary or other officer 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 relation to a firm, means a partner in the firm."

10.2. The above provisions specifically relate to cheque dishonour cases, and the persons responsible for such dishonour, may be criminally prosecuted and subjected to penal action, as per the conditions specified under the N.I. Act, 1881.

11. Admittedly, the appellants / petitioners are facing trial for the offence under Section 138/141 of the N.I. Act, 1881, at the instance of the respondents / complainants. While so, they initiated the personal insolvency proceedings under the IBC and sought exemption from the Section 138 proceedings before the trial Court, referring to interim moratorium provided under Section 96 IBC. It is to be noted that upon the application being admitted, the moratorium provisions under the IBC offer protection only to the corporate debtor, i.e., the company, and do not extend protection against civil liability to personal guarantors by specific exclusion or to any individual who is prosecuted for committing a criminal act.

12. The legislative intent behind the Insolvency and Bankruptcy Code (IBC) is to provide a structured framework for the resolution of corporate debtors' financial distress, facilitating their rehabilitation and ensuring the maximization of asset value. The application under Section 94 or 95 would fall under Chapter III of the IBC. An application under Section 94, when taken out by a debtor in the capacity of a personal guarantor of a company, to declare him/her as insolvent, is to be disposed by following the procedures in Sections 97 to 119. The application filed under Section 94 is scrutinized by the Resolution Professional and a report is submitted as contemplated under Section 99 recommending either the approval or rejection of the application. The interim moratorium which commences on the presentation of the application will expire on the admission of the application by an order of the adjudicating authority under Section 100. Upon admission, the moratorium under Section 101 comes into operation. The interim moratorium under Section 96 and the moratorium under Section 101 IBC are designed to offer a breathing space to the corporate debtor, allowing them to reorganize their financial affairs without the immediate threat of creditor actions. However, this moratorium is not intended to shield individuals from personal criminal liabilities arising from their actions outside the scope of corporate debt restructuring. The respective appellants / petitioners, having filed insolvency applications as personal guarantors under Section 94 IBC, cannot extend this protection to avoid prosecution under Section 138 of the N.I. Act, 1881. Upon filing of the application under section

94 IPC, a moratorium comes into effect, designed to protect the debtors from any legal actions concerning their debts. Specifically, Section 96 IBC provides that any legal proceedings pending against the debtor concerning any debt shall be deemed to have been stayed. The term "any legal action or proceedings" does not mean "every legal action or proceedings". In sub-clauses 96 (b) (i) and (ii), the term "legal action or proceedings" are followed by the term "in respect of any debt". The term "legal action or proceedings" would have to be understood to include such legal action or proceedings relating to recovery of debt by invoking the principles of noscitur a sociius.The purpose of interim moratorium contemplated under Section 96 is to be derived from the object of the act, which is not to stall the proceedings unrelated to the recovery of the debt. The protection is not available against penal actions, the object of which is to not recover any debt. This moratorium serves as a critical mechanism, allowing the debtor to reorganize their financial affairs without the immediate threat of creditor actions. The clear and unequivocal language of this provision reflects the legislative intent to provide a protective shield for debtors during the insolvency process.

13. On the other hand, the proceedings under Section 138 of the N.I. Act, 1881, pertain to the dishonor of cheques issued by the respective appellants / petitioners in their personal capacity. These proceedings are distinct from the corporate insolvency proceedings and are aimed at upholding the integrity of commercial transactions by holding individuals accountable for their personal actions. The scope and nature of the proceedings under the IBC may result in extinguishment of the actual debt by restructuring or through the process of liquidation. But such extinguishment will not absolve its directors from the criminal liability. Section 141 of the N.I. Act, 1881 enables the prosecution of the persons in charge of the affairs and responsible for the conduct of the business of the company along with the company. The statutory liability against the directors under Section 138 of the N.I. Act, 1881, is personal and hence, continues to bind natural persons, irrespective of any moratorium applicable to the corporate debtor. The acceptance of the resolution plan under Section 31 IBC or its implementation thereof will have no effect on the prosecution under Section 138 of the N.I. Act, 1881. Similarly, the acceptance of the report by the resolution professional under Section 100 and the moratorium under Section 101, which reprises Section 96, will not bar the continual of any criminal action. The cause of action for prosecution under Section 138 of NI Act commences on the dishonor of the cheque and the failure to pay the amount unpaid because of dishonour, within 15 days from the date of receipt of notice demanding payment. It is pertinent to mention here that the prosecution can be only with respect to the amount unpaid by dishonour of the cheque irrespective of the actual debt. The distinction between the right to sue based on a dishonoured cheque by initiating a civil suit and launching a prosecution under Section 138 of the Negotiable Instruments Act is significant. In case of former, the interim moratorium can operate, but not in case of later.

17. For the foregoing discussion, we are of the opinion that the object of moratorium or for that purpose, the provision enabling the debtor to approach the Tribunal under Section 94 is not to stall the criminal prosecution, but to only postpone any civil actions to recover any

debt. The deterrent effect of Section 138 is critical to maintain the trust in the use of negotiable instruments like cheques in business dealings. Criminal liability for dishonoring cheques ensures that individuals who engage in commercial transactions are held accountable for their actions, however subject to satisfaction of other conditions in the N.I. Act, 1881. Therefore, allowing the respective appellants / petitioners to evade prosecution under Section 138 by invoking the moratorium would undermine the very purpose of the N.I. Act, 1881, which is to preserve the integrity and credibility of commercial transactions and the personal responsibility persists, regardless of the insolvency proceedings and its outcome.

19. For the foregoing discussion, the prayer of the appellants / petitioners to stay the prosecution under Section 138 of the N.I. Act, 1881, relying on the interim moratorium under Section 96 IBC, cannot be entertained. Therefore, the judgments / orders passed by the different High Courts affirming the orders of the trial court, which had rightly refused to stay the section 138 proceedings, need not be interfered with by us."

58. As regards the judgment in **Vishnu Mittal (supra)** is concerned, the same is of no aid or assistance to the applicants particularly when in the said case the cheque was drawn on 25.07.2018 dishonored on 07.07.2018, notice was issued on 06.08.2018, complaint was filed in September, 2018, moratorium under Section 14 of the IBC was imposed on 25.07.2018. The Court opined that since before issuance of the statutory notice dated 06.08.2018, moratorium has been imposed on 25.07.2018, thus, the proceedings cannot go on. However, in the present case, the cheques were drawn on 01.12.2022, it was presented on 22.02.2023, dishonored on 23.02.2023, notices were issued on 20.03.2023, served upon the applicants on 22.03.2023 and the complaint was filed on 21.04.2023 but moratorium was imposed under Section 14 of the IBC on 09.06.2023. Even otherwise in view of the authoritative judgments of the Hon'ble Apex Court in **P. Mohanraj (supra), Ajay Kumar Radheshyam Goenka (supra) & Rakesh Bhanot (supra),** the applicants being the Director of the body corporate are not entitled to any protection under Section 14 of the IBC and they have no right to forestall the proceedings under Section 138 of the NI Act.

59. The extent and the scope of invocation of the jurisdiction u/s 482 Cr.P.C./u/s 528 BNSS in the proceedings emanating from Section 138 of NI Act wherein challenge has been raised to the summoning order came up for consideration before the Hon'ble Supreme Court in **Rathish Babu Unnikrishnan (supra),** wherein the following was observed as under.-

12. At any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence. On this aspect, we may benefit by referring to the ratio in Rajeshbhai Muljibhai Patel vs. State of Gujarat, (2020) 3 SCC 794, where the following pertinent opinion was given by Justice R. Banumathi: -

"22. …….. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal

complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act."

13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence."

60. Yet in a recent decision the Hon'ble Apex Court in **M/s. Naresh Potteries Vs. M/s Aarti Industries and another SLP (Criminal) No. 8659 of 2023** decided on 02.01.2025 observed as under.-

" Apart from that, this Court has repeatedly cautioned that the inherent powers under Section 482 of the Cr.P.C. should be exercised sparingly and with great caution and further that inherent powers should not be used to interfere with the jurisdiction of the lower courts or to scuttle a fair investigation or prosecution."

61. Even otherwise cumulatively analysing the case from four corners of law, this Court is of the firm opinion that the court below has not committed any jurisdictional infirmity so as to warrant interference in the present proceedings.

62. Resultantly, both the applications are **dismissed**. Interim order, if any, stands vacated.

(2025) 5 ILRA 352
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.05.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Special Appeal No. 69 of 2025

State of U.P. & Anr. ...Appellant
Versus
Dinesh Kumar ...Respondent

Counsel for the Appellant:
J.N. Maurya, Sudhanashu Srivastava

Counsel for the Respondent:
Siddharth Khare

A. Service Law – Selection – Post of Samiksha Adhikari – Suppression of material information – Non-disclosure of criminal case, when can be ignored – Petitioner belongs to village background – Effect – Held, while considering such cases, the atmosphere prevailing in rural villages should also be taken in account. In our villages minor civil cases are given