

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd.

### **Brief Facts**

The present matter arose due to bouncing of cheques issued by the appellant, i.e. Shah Brothers Ispat Pvt. Ltd in favour of Corporate Debtor. A statutory notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 ["IBC"] had been issued on 21.03.2017 by the respondent to the company, and as an order dated 06.06.2017 was passed by the Adjudicating Authority admitting the application under Section 9 of the IBC and directing commencement of the CIRP with respect to the company, a moratorium in terms of Section 14 of the IBC was ordered. Pursuant to it, the Adjudicating Authority stayed further proceedings in the two criminal complaints pending before the ACMM under Section 138/141.

In an appeal filed to the NCLAT, the NCLAT set aside the said order, holding that Section 138, being a criminal law provision, cannot be held to be a "proceeding" within the meaning of Section 14 of the IBC. Aggrieved by the same, the appellant approached the Supreme Court with the of question of whether the institution or continuation of a proceedings under Section 138/141 of the NI Act. be said to be covered by the moratorium under Section 14 of the IBC.

### **Decision**

1. Section 14(1) makes it clear that subject to the exceptions contained in sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall mandatorily, by order, declare a moratorium to prohibit what follows in clauses (a) to (d). Importantly, under sub-section (4), this order of moratorium does not continue indefinitely, but has effect only from the date of the order declaring moratorium till the completion of the CIRP which is time bound, either culminating in the order of the Adjudicating Authority approving a resolution plan or in liquidation. **(Para 10)**

2. It was further noted that the expression "or" occurs twice in the first part of Section 14(1)(a) – *first*, between the expressions "*institution of suits*" and "*continuation of pending suits*" and *second*, between the expressions "*continuation of pending suits*" and "*proceedings against the corporate debtor...*". The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is therefore important to note that an award of an arbitration panel or an order of an authority is also included.  
This being the case, it would be incongruous to hold that the expression "*the institution of suits or continuation of pending suits*" must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of "*suits*" which are proceedings in civil courts instituted by a plaintiff. Since criminal proceedings under the Code of Criminal Procedure, 1973 ["CrPC"] are conducted before the courts mentioned in Section 6, CrPC, it is clear that a Section 138 proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor. **(Para 14)**
3. The object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. Therefore, any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur. **(Para 25)**
4. Lastly, while discussing the nature of proceedings under NI Act and its interplay with section 14 of IBC, the Court held that "***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.***" **(Para77)**

**[Link of the Order](#)**

<https://ibbi.gov.in/uploads/order/4fd82b27266f68ac4065537fc1474029.pdf>



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