



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Number 278

(June 01, 2026)



Dineshchand Surana vs. UCO Bank

SLP (Crl.) No. 12135 with SLP (Crl.) 12136 of 2024

Date of Supreme Court's Judgement: 27th May 2026

Facts of the Case: -

The appeal arose from proceedings under Section 138 of the Negotiable Instruments Act, 1881 (“NI Act”) against the Appellant, former Managing Director of Surana Power Limited (“SPL”), who contended that the proceedings were stayed during the interim moratorium under the Insolvency and Bankruptcy Code, 2016 (“IBC”). SPL had availed financial facilities from the respondent bank, including a letter of credit facility to purchase Indonesian Coal from M/s Natural Coal Pvt. Ltd. Upon devolvement of the facility, the respondent became liable to pay ₹5.03 crore, following which the Appellant issued a cheque for repayment. However, the cheque was dishonoured due to “Insufficient Funds” leading to issuance of statutory notice and filing of a complaint under Section 138 of NI Act before the Metropolitan Magistrate, Chennai.

During pendency of the complaint, insolvency proceedings under Section 95 of the IBC were admitted against the Appellant by the NCLT. The appellant thereafter sought quashing and stay of the proceedings under Section 138 before the Madras High Court, arguing that the interim moratorium under Section 96 of the IBC barred continuation of such proceedings. The High Court rejected the contention, holding that Section 138 proceedings are criminal in nature and not recovery proceedings. Aggrieved thereby, the appellant approached the Supreme Court through the present appeal.

Supreme Court's Observations:

The Supreme Court examined whether proceedings under Section 138 of the NI Act are essentially recovery proceedings and whether they are protected by the moratorium provisions under the IBC. Upon examining the nature and dual objectives of Section 138 of the NI Act, the Supreme Court observed that proceedings under Section 138 are best understood as tiered proceedings, warranting a structured and phased approach to legal action. The Court therefore characterized Section 138 proceedings as comprising two tiers: the first being the criminal aspect involving punishment such as imprisonment or fine, and the second being the compensatory aspect relating to recovery of compensation to the complainant.

Balancing the objectives of the NI Act and the IBC, the Court held that moratorium provisions under Part III of the IBC cannot extend to the criminal aspect of Section 138 proceedings, particularly since liability to pay fines stands excluded from the definition of “debt” under the IBC. However, the Court held that the compensatory aspect of Section 138 proceedings, which may result in depletion of the debtor's assets, would be protected during moratorium. It further held that directors and other persons vicariously liable under Section 141 of the NI Act would also be entitled to such protection while undergoing personal insolvency or bankruptcy proceedings.

Order/Judgment: Considering the importance of the issues involved, the matter was directed to be placed before the Hon'ble Chief Justice of India for constitution of an appropriate three-Judge Bench.