



## INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

# Case-Snippets

Volume 04 | Number 09

(March 05, 2021)

**P. MOHANRAJ & ORS. Vs M/S. SHAH BROTHERS ISPAT PVT. LTD**  
**CIVIL APPEAL NO.10355 OF 2018 with CRIMINAL APPEAL NO. 239 of 2021 & ORS**  
**DATE OF ORDER: MARCH 01, 2021**

**“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, 1881.”**

### Facts of the Case: -

Steel products were supplied by the respondent to the Company, from 21.09.2015 to 11.11.2016. Various Cheques were issued by the company in favour of the respondent towards amounts payable for supplies, all of which were returned dishonored. Before filing a CIRP application against the Corporate Debtor, the Operational Creditor (Respondent) had initiated criminal proceedings under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 against the Company and its Directors since no payment was received even after two statutory demand notices. The Adjudicating Authority (AA) while admitting the application under Section 9 of the IBC also ordered a moratorium in terms of Section 14 of the IBC. Pursuant thereto, the AA stayed further proceedings in the two criminal complaints pending against the applicants. In an appeal filed to the NCLAT, the NCLAT set aside this order, holding that Section 138, being a criminal law provision, cannot be held to be a “proceeding” within the meaning of Section 14 of IBC. Besides, several criminal petitions and civil petitions related to this case were also heard with the main petition.

### Supreme Court's Observations: -

In this case, the Supreme Court relied on judgement in *Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661. The court observed that as far as the Directors/persons in management or control of the corporate debtor are concerned, Section 138/141 proceeding against them cannot be initiated or continued without the corporate debtor. 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.



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The court further observed that 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, *Aneeta Hada* judgement would become applicable in this case.

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.

In conclusion, the Court held that a Section 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) of the IBC.

## Order: -

Resultantly, the civil appeal is allowed and the judgment under appeal is set aside. However, the Section 138/141 proceedings in this case will continue both against the company as well as the appellants for the reason given above with the fact that the insolvency resolution process does not involve a new management taking over and the moratorium period has come to an end in this case.

Cheque bounce cases filed against the Corporate Debtor by the Operational Creditor under Section 482 of the CrPC after AA admitted CIRP application under Section 9 of IBC and moratorium ordered under section 14 of IBC, were quashed. However, the criminal cases filed against the erstwhile Directors of the company before initiation of CIRP would proceed. All the petitions filed by erstwhile directors/persons in charge of the company under Article 32 seeking relief from criminal proceedings on the premise that Section 138 proceedings are covered by Section 14 of the IBC, were dismissed, in view of the fact that such proceedings can continue against erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor.