



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

No. 216

(March 24, 2025)



**Vishnoo Mittal Vs. M/s Shakti Trading Company**  
**Criminal Appeal No. of 2025 @ Special Leave Petition (Crl) No.1104 Of 2022**  
**Date of Supreme Court's Judgement: March 17, 2025**

### Facts of the Case

The present appeal is filed by Vishnoo Mittal (hereinafter referred as 'Appellant'), in the capacity of Director of M/s Xalta Food and Beverages Private Limited/CD against M/s Shakti Trading Company (hereinafter referred as 'Respondent') challenged the order dated 21.12.21 passed by the Punjab and Haryana High Court. The High Court had dismissed the Appellant's petition filed under Section 482 of the Criminal Procedure Code, 1973 (CrPC), which sought quashing of proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), initiated by the Respondent.

The CD had engaged the Respondent as its super stockist and issued eleven cheques amounting to approximately ₹11,17,326/- to the Respondent. These cheques were dishonoured on 07.07.18. Consequently, a demand notice under Section 138 of the NI Act was issued on 06.08.18, and upon non-payment, a complaint was filed in September 2018. Meanwhile, on 25.07.18, insolvency proceedings were initiated against the CD under the Insolvency and Bankruptcy Code, 2016 (IBC), a moratorium under Section 14 of the IBC was imposed and an Interim Resolution Professional (IRP) was appointed. Despite the moratorium, the Magistrate Court issued summons to the Appellant on 07.09.18. Challenging this, the Appellant moved the High Court, which dismissed the petition, holding that the moratorium under Section 14 of the IBC protected only the CD and not the natural person (i.e., the director). Aggrieved by this, the Appellant approached the Supreme Court.

### Supreme Court's observations:

The Supreme Court critically examined the applicability of the moratorium under Section 14 of the IBC and its impact on proceedings under Section 138 of the NI Act. While acknowledging the High Court's reliance on the precedent laid down in *P. Mohan Raj v. Shah Brothers Ispat Pvt. Ltd. (2021)*, the Supreme Court clarified that the facts of the present case were materially different and distinguishable.



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In *P. Mohan Raj*, the cause of action for the offence under Section 138 NI Act arose before the moratorium commenced. However, in the present case, although the cheques were dishonoured on 07.07.18, the legal notice was issued on 06.08.18 after the moratorium was imposed on 25.07.18. The Court emphasized that under the NI Act, the offence under Section 138 is not complete upon dishonour of the cheque alone. As per the statute and reiterated in *Jugesh Sehgal v. Shamsheer Singh Gogi (2009)*, the offence is constituted only after the drawer fails to make payment within fifteen days of receiving the statutory demand notice.

Given that the appellant had ceased to be in control of the CD from 25.07.18 onwards (the date of appointment of the IRP under Section 17 of the IBC), he lacked the legal and factual capacity to repay the amount post-notice. The IRP was in charge of the debtor's affairs and all bank operations. Furthermore, the Respondent had also filed a claim before the IRP under the IBC mechanism.

Accordingly, the Apex Court held that the High Court erred in not exercising its inherent jurisdiction under Section 482 CrPC to quash the criminal proceedings, especially considering that the essential ingredients of Section 138 NI Act could not be satisfied under the peculiar facts of this case.

**Order/Judgement:** The Supreme Court set aside the impugned order of the High Court dated 21.12.21, and quashed the summoning order dated 07.09.18. Consequently, the complaint case no. 15580/2018 pending before the Chief Judicial Magistrate, Chandigarh, was also quashed.

**Case Review:** Appeal Allowed, all pending applications, if any were disposed of.