2021 INSC 133

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL APPELLATE JURISDICTION
CIVIL/CRIMINAL ORIGINAL JURISDICTION
CIVIL APPEAL NO.10355 OF 2018

P. MOHANRAJ & ORS. … APPELLANTS

VERSUS

M/S. SHAH BROTHERS ISPAT PVT. LTD. …RESPONDENT

WITH

CRIMINAL APPEAL NO. 239 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO. 1955 OF 2021)
(Diary No.32585/2019)

CRIMINAL APPEAL NO. 240 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10587 OF 2019)

CRIMINAL APPEAL NO. 241 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10857 OF 2019)

CRIMINAL APPEAL NO. 242 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10550 OF 2019)

CRIMINAL APPEAL NO. 243 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10858 OF 2019)

CRIMINAL APPEAL NO. 244 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10860 OF 2019)

CRIMINAL APPEAL NO. 245 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10861 OF 2019)

CRIMINAL APPEAL NO. 246 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.10446 OF 2019)

CRIMINAL APPEAL Nos. 247-248 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NOs.2246-2247 OF 2020)

CRIMINAL APPEAL NO. 200 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.2496 OF 2020)

CRIMINAL APPEAL NO. 199 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO.3500 OF 2020)

WRIT PETITION (CRIMINAL) NO.330 OF 2020

WRIT PETITION (CRIMINAL) NO.339 OF 2020

WRIT PETITION (CIVIL) NO.982 OF 2020

WRIT PETITION (CRIMINAL) NO.297 OF 2020

WRIT PETITION (CRIMINAL) NO.342 OF 2020

CRIMINAL APPEAL Nos. 201-204 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NOs.5638-5651 OF 2020)

CRIMINAL APPEAL Nos. 215-230 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NOs.5653-5668 OF 2020)

WRIT PETITION (CIVIL) NO.1417 OF 2020

WRIT PETITION (CIVIL) NO.1439 OF 2020

WRIT PETITION (CIVIL) NO.18 OF 2021

WRIT PETITION (CRIMINAL) NO.9 OF 2021

WRIT PETITION (CRIMINAL) NO.26 OF 2021

J U D G M E N T

R.F. Nariman, J.

1. Steel products were supplied by the respondent to one M/s. Diamond Engineering Pvt. Ltd. [“**the company**”] from 21.09.2015 to 11.11.2016, as a result of which INR 24,20,91,054/- was due and payable by the company. As many as 51 cheques were issued by the company in favour of the respondent towards amounts payable for supplies, all of which were returned dishonoured for the reason “funds insufficient” on 03.03.2017. As a result, on 31.03.2017, the respondent issued a statutory demand notice under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, calling upon the company and its three Directors, the appellants no.1-3 herein, to pay this amount within 15 days of the receipt of the notice.

2. On 28.04.2017, two cheques for a total amount of INR 80,70,133/- presented by the respondent for encashment were returned dishonoured for the reason “funds insufficient”. A second demand notice dated 05.05.2017 was therefore issued under the selfsame Sections by the respondent, calling upon the company and the appellants to pay this amount within 15 days of the receipt of the notice.

3. Since no payment was forthcoming pursuant to the two statutory demand notices, two criminal complaints, being Criminal Complaint No.SS/552/2017 and Criminal Complaint No. SS/690/2017 dated 17.05.2017 and 21.06.2017, respectively, were filed by the respondent against the company and the appellants under Section 138 read with Section 141 of the Negotiable Instruments Act before the Additional Chief Metropolitan Magistrate ["**ACMM**"], Kurla, Mumbai. On 12.02.2018, summons were issued by the ACMM to the company and the appellants in both the criminal complaints.

4. Meanwhile, as 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 corporate insolvency resolution process with respect to the company, a moratorium in terms of Section 14 of the IBC was ordered. Pursuant thereto, on 24.05.2018, the Adjudicating Authority stayed further proceedings in the two criminal complaints pending before the ACMM. In an appeal filed to the National Company Law Appellate Tribunal ["**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

the IBC. In an appeal filed before this Court, on 26.10.2018, this Court ordered a stay of further proceedings in the two complaints pending before the learned ACMM. On 30.09.2019, since a resolution plan submitted by the promoters of the company had been approved by the committee of creditors, the Adjudicating Authority approved such plan as a result of which, the moratorium order dated 06.06.2017 ceased to have effect. It may only be added that at present, an application for withdrawal of approval of this resolution plan has been filed by the financial creditors of the company before the Adjudicating Authority. Equally, an application to extend time for implementation of this plan has been filed by the resolution applicant sometime in October 2020 before the Adjudicating Authority. Both these applications have yet to be decided by the Adjudicating Authority, the next date of hearing before such Authority being 08.02.2021.

5. The important question that arises in this appeal is whether the institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision, namely, Section 14 of the IBC.

6. Shri Jayanth Muth Raj, learned Senior Advocate appearing on behalf of the appellants, has painstakingly taken us through various provisions of the IBC and has argued that the object of Section 14 being

that the assets of the corporate debtor be preserved during the corporate insolvency resolution process, it would be most incongruous to hold that a Section 138 proceeding, which, although a criminal proceeding, is in essence to recover the amount of the bounced cheque, be kept out of the word “proceedings” contained in Section 14(1)(a) of the IBC. According to the learned Senior Advocate, given the object of Section 14, there is no reason to curtail the meaning of the expression “proceedings”, which would therefore include all proceedings against the corporate debtor, civil or criminal, which would result in “execution” of any judgment for payment of compensation. He emphasised the fact that Section 14(1)(a) was extremely wide and ought not to be cut down by judicial interpretation given the expression “any” occurring twice in Section 14(1)(a), thus emphasising that so long as there is a judgment by any court of law (which even extends to an order by an authority) which results in coercive steps being taken against the assets of the corporate debtor, all such proceedings are necessarily subsumed within the meaning of Section 14(1)(a). He also referred to the width of Section 14(1)(b) and the language of Section 14(1)(b) and therefore argued that given the object of Section 14, no rule of construction, be it *ejusdem generis* or *noscitur a sociis* can be used to cut down the plain meaning of the words used in Section 14(1)(a). He cited a number of judgments in support of this proposition. He also argued that in any event, even if criminal

proceedings properly so-called are to be excluded from Section 14(1)(a), a Section 138 proceeding being quasi-criminal in nature, whose dominant object is compensation being payable to the person in whose favour a cheque is made, which has bounced, the punitive aspect of Section 138 being only to act as an *in terrorem* proceeding to achieve this result, it is clear that in any event, a hybrid proceeding partaking of this nature would certainly be covered. He cited a number of judgments in order to buttress this proposition as well.

7. Shri Jayant Mehta, learned Advocate appearing on behalf of the respondent, rebutted each of these submissions with erudition and grace. He referred to the Report of the Insolvency Law Committee of February 2020 to drive home his point that the object of Section 14 being a limited one, a criminal proceeding could not possibly be included within it. He further went on to juxtapose the moratorium provisions which would apply in the case of individuals and firms in Sections 85, 96, and 101 of the IBC, emphasising that the language of these provisions being wider would, by way of contrast, include a Section 138 proceeding so far as individuals and firms are concerned, which has been expressly eschewed so far as Section 14's applicability to corporate debtors is concerned. He relied upon the *ejusdem generis/noscitur a sociis* rules of construction that had, in fact, been applied to Section 14(1)(a) by the Bombay High Court and

the Calcutta High Court to press home his point that since the expression "proceedings" takes its colour from the previous expression "suits", such proceedings must necessarily be civil in nature. He cited judgments which distinguish between civil and criminal proceedings and went on to argue that Section 138 of the Negotiable Instruments Act is a criminal proceeding whose object may be two fold, the primary object being to make what was once a civil wrong punishable by a jail sentence and/or fine. He relied heavily upon judgments which construed like expressions contained in Section 22(1) of the Sick Industrial Companies Act, 1985 ["**SICA**"], and Section 446(2) of the Companies Act, 1956. He also was at pains to point out from several judgments that the Delhi High Court had not applied Section 14 of the IBC to stay proceedings under Section 34 of the Arbitration and Conciliation Act, 1996; the Bombay High Court had not applied Section 14 of the IBC to stay prosecution under the Employees' Provident Funds Act, 1952; and that the Delhi High Court had not stayed proceedings covered by the Prevention of Money-Laundering Act, 2002, stating that criminal proceedings were not the subject matter of Section 14 of the IBC. He thus supported the judgment under appeal, stating that the consistent view of the High Courts has been that Section 138, being a criminal law provision, could not possibly be said to be covered by Section 14 of the IBC. He also relied upon the provision contained in Section 33(5) of the IBC to argue that when a liquidation order is passed,

no suit or other legal proceeding can be instituted by or against a corporate debtor, similar to what is contained in Section 446 of the Companies Act, 1956, and if those decisions are seen, then the expression “or other legal proceeding” obviously cannot include criminal proceedings. On the other hand, in any case, the expression “or other legal proceeding” should be contrasted with the word “proceedings” in Section 14(1)(a) of the IBC, which cannot possibly include a criminal proceeding, given its object. Lastly, he also relied upon Section 32A of the IBC, which was introduced by the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. 28.12.2019, and emphasised the fact that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease in certain circumstances. This provision would have been wholly unnecessary if Section 14(1)(a) were to cover criminal offences as well, as they would cease for the period of moratorium. Thus, he argued that this Section throws considerable light on the fact that criminal prosecutions are outside the ken of the expression “proceedings” contained in Section 14(1)(a) of the IBC.

8. Shri Aman Lekhi, learned Additional Solicitor General, appearing on behalf of the Union of India in W.P. (Crl.) No. 297/2020, has comprehensively taken us through Chapter XVII of the Negotiable

Instruments Act to argue that a plain reading of the said Chapter would reveal that the offence under Section 138 is a purely criminal offence which results in imposition of a jail sentence or fine or both, being punishments exclusively awardable under Section 53 of the Indian Penal Code, 1860 only in a criminal proceeding, and hence, does not fall within "proceedings" contemplated by Section 14 of the IBC. He further states that since compounding under criminal law can only take place at the instance of the complainant/injured party, a subordinate criminal court has no inherent power to terminate proceedings under Section 138/141 upon "payment of compensation to the satisfaction of the court". He then relied upon the rule of *noscitur a sociis* to state that since the expression "proceedings" contained in Section 14(1)(a) of the IBC is preceded by the expression "suits" and followed by the expression "execution", it has to be read in a sense analogous to civil proceedings dealing with private rights of action as contrasted with criminal proceedings which deal with public wrongs. According to the learned Additional Solicitor General, the intent manifest in Section 14 of the IBC is reinforced by the introduction of Section 32A to the IBC in that if the intent of Section 14 were to prohibit initiation or continuation of criminal proceedings, the legislature would not have contemplated the introduction of Section 32A by way of amendment. He further states that if the expression "proceedings" contained in Section 14 were to be construed so as to include criminal proceedings, it would

render the first proviso to Section 32, which deals with institution of prosecution against a corporate debtor during the corporate insolvency resolution process, and the second proviso, which indicates pendency of criminal prosecution against those in charge of and responsible for the conduct of the corporate debtor, otiose. He relied on the judgment in **Aneeta Hada v. Godfather Travels & Tours (P) Ltd.**, (2012) 5 SCC 661 ["**Aneeta Hada**"] to buttress his submission that criminal liability can fall on Directors/persons in charge of and responsible for the conduct of the corporate debtor even where the corporate debtor may not be proceeded against by virtue of Section 14 or Section 32A. He lastly submits that Sections 81 and 101 of the IBC, in speaking of a moratorium in context of "any debt" also lend support to his contention that moratorium under the IBC only applies to civil proceedings within the realm of private law, and that since Section 138 proceedings are not proceedings for the recovery of a debt, they cannot fall within the moratorium provisions set out by Sections 14 or 81 or 101.

INTERPRETATION OF SECTION 14 OF THE IBC

9. Having heard learned counsel, it is important at this stage to set out Section 14 of the IBC, which reads as follows:

> "**14. Moratorium**.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the

Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely—

(*a*) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(*b*) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(*c*) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(*d*) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where

such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to—

(*a*) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(*b*) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

10. A cursory look at 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 corporate insolvency resolution process which is time bound, either culminating in the order of the Adjudicating Authority approving a resolution plan or in liquidation.

11. The two exceptions to Section 14(1) are contained in sub-sections (2) and (3) of Section 14. Under sub-section (2), the supply of essential goods or services to the corporate debtor during this period cannot be terminated or suspended or even interrupted, as otherwise the corporate debtor would be brought to its knees and would not able to function as a going concern during this period. The exception created in sub-section (3) (a) is important as it refers to “transactions” as may be notified by the Central Government in consultation with experts in finance. The expression “financial sector regulator” is defined by Section 3(18) as follows:

> “**3. Definitions**.—In this Code, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (18) “financial sector regulator” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;
>
> xxx xxx xxx”

12. Thus, the Central Government, in consultation with experts, may state that the moratorium provision will not apply to such transactions as may be notified. This is of some importance as Section 14(1)(a) does not indicate as to what the proceedings contained therein apply to. Sub-

section 3(a) provides the answer – that such "proceedings" relate to "transactions" entered into by the corporate debtor pre imposition of the moratorium. Section 3(33) defines "transaction" as follows:

> "**3. Definitions**.—In this Code, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (33) "transaction" includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;
>
> xxx xxx xxx"

13. This definition being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability. This is made clear by Section 96(3) and Section 101(3) which contain the same language as Section 14(3)(a), these Sections speaking of 'debts' of the individual or firm. Equally important is Section 14(3)(b), by which a surety in a contract of guarantee of a debt owed by a corporate debtor cannot avail of the benefit of a moratorium as a result of which a creditor can enforce a guarantee, though not being able to enforce the principal debt during the period of moratorium – *see* **State Bank of India v. V. Ramakrishnan**, (2018) 17 SCC 394 (at paragraph 20) ["**V. Ramakrishnan**"].

14. We now come to the language of Section 14(1)(a). It will be noticed 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 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 plaint (*see* Section 26 of the Code of Civil Procedure, 1908). Therefore, it is clear that the expression "institution of suits or continuation of pending suits" is to be read as one category, and the disjunctive "or" before the word "proceedings" would make it clear that proceedings against the corporate debtor would be a separate category. What throws light on the width of the expression "proceedings" is the expression "<u>any</u> judgment, decree or order" and "<u>any</u> court of law, tribunal, arbitration panel or other authority". 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. Let us now see as to whether the expression “proceedings” can be cut down to mean civil proceedings *stricto sensu* by the use of rules of interpretation such as *ejusdem generis* and *noscitur a sociis*.

APPLICATION OF THE *NOSCITUR A SOCIIS* RULE OF INTERPRETATION

15. Shri Aman Lekhi, learned Additional Solicitor General, relied upon the judgment in **State of Assam v. Ranga Mahammad**, (1967) 1 SCR 454. The Court was concerned with the meaning of the expression “posting” which occurs in Article 233 of the Constitution, qua District Judges in a State. Applying the doctrine of *noscitur a sociis,* this Court held that given the fact that the expression “posting” comes in between “appointment” and “promotion” of District Judges, it is clear that a narrower meaning has to be assigned to it, namely, that of assigning someone to a post which would not include “transfer”. Quite apart from the positioning of the word “posting” in between “appointment” and “promotion”, from which it took its colour, even otherwise, Articles 234 and 235 of the Constitution would make it clear that since “transfer” of District Judges is with the High Court and not with the State Government, quite obviously, the expression “posting” could not be used in its wider sense – *see* pages 460 and 461. This judgment is an early application of the rule of *noscitur a sociis*, given the position of a wider word between two

narrow words, and more importantly, the reading of other allied provisions in the Constitution.

16. In **Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.**, (1964) 8 SCR 50, a five-Judge Bench of this Court had to decide as to whether the expression "or other proceeding" occurring in Section 69(3) of the Indian Partnership Act, 1932 would include a proceeding to appoint an arbitrator under Section 8(2) of the Arbitration Act, 1940. This Court held:

> "It remains, however, to consider whether by reason of the fact that the words "other proceeding" stand opposed to the words "a claim of set-off" any limitation in their meaning was contemplated. It is on this aspect of the case that the learned Judges have seriously differed. When in a statute particular classes are mentioned by name and then are followed by general words, the general words are sometimes construed ejusdem generis i.e. limited to the same category or genus comprehended by the particular words but it is not necessary that this rule must always apply. The nature of the special words and the general words must be considered before the rule is applied. In *Allen* v. *Emersons* [(1944) IKB 362] Asquith, J., gave interesting examples of particular words followed by general words where the principle of ejusdem generis might or might not apply. We think that the following illustration will clear any difficulty. In the expression "books, pamphlets, newspapers and other documents" private letters may not be held included if "other documents" be interpreted ejusdem generis with what goes before. But in a provision which reads "newspapers or other document likely to convey secrets to the enemy", the words "other document" would include document of any kind and would not take their colour from "newspapers". It follows, therefore, that interpretation ejusdem generis or noscitur a sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

> Here the expression "claim of set-off" does not disclose a category or a genus. Set-offs are of two kinds — legal and equitable — and both are already comprehended and it is difficult to think of any right "arising from a contract" which is of the same nature as a claim of set-off and can be raised by a defendant in a suit. Mr B.C. Misra, whom we invited to give us examples, admitted frankly that it was impossible for him to think of any proceeding of the nature of a claim of set-off other than a claim of set-off which could be raised in a suit such as is described in the second sub-section. In respect of the first sub-section he could give only two examples. They are (*i*) a claim by a pledger of goods-with an unregistered firm whose good are attached and who has to make an objection under Order 21 Rule 58 of the Code of Civil Procedure and (*ii*) proving a debt before a liquidator. The latter is not raised as a defence and cannot belong to the same genus as a "claim of set-off". The former can be made to fit but by a stretch of some considerable imagination. It is difficult for us to accept that the legislature was thinking of such far-fetched things when it spoke of "other proceeding" ejusdem generis with a claim of set-off."
>
> (at pages 56-57)

> "In our judgment, the words "other proceeding" in sub-section (3) must receive their full meaning untrammelled by the words "a claim of set-off". The latter words neither intend nor can be construed to cut down the generality of the words "other proceeding". The sub-section provides for the application of the provisions of sub-sections (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in sub-section (3) and sub-section (4)."
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> (at page 60)

17. Likewise, in **Rajasthan State Electricity Board v. Mohan Lal**, (1967) 3 SCR 377, this Court had to decide whether the expression "other authorities" in Article 12 of the Constitution of India took its colour from the

preceding expressions used in the said Article, making such authorities only those authorities who exercised governmental power. This was emphatically turned down by a Constitution Bench of this Court, stating:

> "In our opinion, the High Courts fell into an error in applying the principle of ejusdem generis when interpreting the expression "other authorities" in Article 12 of the Constitution, as they overlooked the basic principle of interpretation that, to invoke the application of ejusdem generis rule, there must be a distinct genus or category running through the bodies already named. Craies on, Statute Law summarises the principle as follows:
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> > "The ejusdem generis rule is one to be applied with caution and not pushed too far…. To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus [*Craies on Statute Law*, 6th Edn, p 181]."
>
> Maxwell in his book on '*Interpretation of Statutes*' explained the principle by saying: "But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words …. Unless there is a genus or category, there is no room for the application of the ejusdem generis doctrine [*Maxwell on Interpretation of Statutes*, 11th Edn pp. 326, 327]". In *United Towns Electric Co., Ltd.* v. *Attorney-General for Newfoundland* [(1939) I AER 423] , the Privy Council held that, in their opinion, there is no room for the application of the principle of ejusdem generis in the absence of any mention of a genus, since the mention of a single species — for example, water rates — does not constitute a genus. In Article 12 of the Constitution, the bodies specifically named are the Executive Governments of the Union and the States, the Legislatures of the Union and the States, and local authorities. We are unable to find any common genus running through these named bodies, nor can

these bodies be placed in one single category on any rational basis. The doctrine of ejusdem generis could not, therefore, be, applied to the interpretation of the expression "other authorities" in this article.

The meaning of the word "authority" given in *Webster's Third New International Dictionary*, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution."

(at pages 384-385)

18. In **CBI v. Braj Bhushan Prasad**, (2001) 9 SCC 432, this Court was asked to construe Section 89 of the Bihar Reorganisation Act with reference to *noscitur a sociis*. In turning this down, this Court held:

"**26.** We pointed out the above different shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of *noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory provision. The said doctrine has been resorted to with advantage by this Court in a number of cases vide *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa* [(1978) 2 SCC 213 : 1978 SCC (L&S) 215], *Rohit Pulp and Paper Mills Ltd.* v. *CCE* [(1990) 3 SCC 447], *Oswal Agro Mills Ltd.* v. *CCE* [1993 Supp (3) SCC 716], *K. Bhagirathi G. Shenoy* v. *K.P. Ballakuraya* [(1999) 4 SCC 135] and *Lokmat Newspapers (P) Ltd.* v. *Shankarprasad* [(1999) 6 SCC 275 : 1999 SCC (L&S) 1090].

27. If so, we have to gauge the implication of the words "proceeding relating exclusively to the territory" from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before "a court (other than the High Court), tribunal, authority or officer" shall stand transferred to the "corresponding court, tribunal, authority or officer" of Jharkhand State. A very useful index is provided in the Section by defining the words "corresponding court, tribunal, authority or officer in the State of Jharkhand" as this: [Section 89(3)(*b*)(*i*)]

> "The court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day;"

28. Look at the words "would have laid if it had been instituted after the appointed day". In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word "exclusively" should be understood as "substantially all or for the greater part or principally".

29. We cannot overlook the main object of Section 89 of the Act. It must not be forgotten that transfer of criminal cases is not the only subject covered by the Section. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner. For the purpose of criminal cases, we should bear in mind the subject-matter of the case to be transferred. When so considering, we have to take into account further that all the 36 cases are primarily for the offences under the PC Act and hence they are all triable before the Courts of Special Judges. Hence, the present question can be determined by reference to the provisions of the PC Act."

19. In **Godfrey Phillips India Ltd. v. State of U.P.**, (2005) 2 SCC 515, a Constitution Bench of this Court had to construe the meaning of the

expression “luxury” in Entry 62 of List 2 of the Seventh Schedule to the Constitution of India. In this context, the rule of *noscitur a sociis* was applied by the Court, the Court also pointing out how a court must be careful before blindly applying the principle, as follows:

> “**77.** In the present context the general meaning of “luxury” has been explained or clarified and must be understood in a sense analogous to that of the less general words such as entertainments, amusements, gambling and betting, which are clubbed with it. This principle of interpretation known as “*noscitur a sociis*” has received approval in *Rainbow Steels Ltd.* v. *CST* [(1981) 2 SCC 141 : 1981 SCC (Tax) 90] , SCC at p. 145 although doubted in its indiscriminate application in *State of Bombay* v. *Hospital Mazdoor Sabha* [(1960) 2 SCR 866 : AIR 1960 SC 610] . In the latter case this Court was required to construe Section 2(*j*) of the Industrial Disputes Act which read:
>
> > “2(*j*) ‘industry’ means any business, trade, undertaking, manufacture or calling of employers and *includes* any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.”
>
> **78.** It was found that the words in the definition were of very wide and definite import. It was suggested that these words should be read in a restricted sense having regard to the included items on the principle of “*noscitur a sociis*”. The suggestion was rejected in the following language: (*Hospital Mazdoor Sabha case* [(1960) 2 SCR 866 : AIR 1960 SC 610] , SCR p. 874)
>
> > “It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. *It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also*

> *be applied where the meaning of the words of wider import is doubtful*; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service." (AIR p. 614, para 9)
>
> (emphasis in original)

79. We do not read this passage as excluding the application of the principle of *noscitur a sociis* to the present case since it has been amply demonstrated with reference to authority that the meaning of the word "luxury" in Entry 62 is doubtful and has been defined and construed in different senses.

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81. We are aware that the maxim of *noscitur a sociis* may be a treacherous one unless the "*societas*" to which the "*socii*" belong, are known. The risk may be present when there is no other factor except contiguity to suggest the "*societas*". But where there is, as here, a term of wide denotation which is not free from ambiguity, the addition of the words such as "including" is sufficiently indicative of the *societas*. As we have said, the word "includes" in the present context indicates a commonality or shared features or attributes of the including word with the included.

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83. Hence on an application of general principles of interpretation, we would hold that the word "luxuries" in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognised as being beyond the necessary requirements of an average member of society and not articles of luxury."

20. In **Vikram Singh v. Union of India**, (2015) 9 SCC 502, this Court was asked to construe the expression "government or any other person" contained in Section 364-A of the Indian Penal Code, 1860 with reference to *ejusdem generis*. This Court, in repelling the contention, went on to hold:

"**26.** We may before parting with this aspect of the matter also deal with the argument that the expression "*any other person*" appearing in Section 364-A IPC ought to be read ejusdem generis with the expression preceding the said words. The argument needs notice only to be rejected. The rule of ejusdem generis is a rule of construction and not a rule of law. Courts have to be very careful in applying the rule while interpreting statutory provisions. Having said that the rule applies in situations where specific words forming a distinct genus class or category are followed by general words. The first stage of any forensic application of the rule, therefore, has to be to find out whether the preceding words constitute a genus class or category so that the general words that follow them can be given the same colour as the words preceding. In cases where it is not possible to find the genus in the use of the words preceding the general words, the rule of ejusdem generis will have no application.

27. In *Siddeshwari Cotton Mills (P) Ltd.* v. *Union of India* [(1989) 2 SCC 458 : 1989 SCC (Tax) 297] M.N. Venkatachaliah, J., as His Lordship then was, examined the rationale underlying ejusdem generis as a rule of construction and observed: (SCC p. 463, para 14)

> "*14*. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:
>
> '… if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would

> make the specific words unnecessary.' [See: *Construction of Statutes* by E.A. Driedger p. 95 quoted by Francis Bennion in his *Statutory Construction*, pp. 829 and 830.]"

28. Relying upon the observations made by Francis Bennion in his *Statutory Construction* and English decision in *Magnhild* v. *McIntyre Bros. & Co.* [(1920) 3 KB 321] and those rendered by this Court in *Tribhuban Parkash Nayyar* v. *Union of India* [(1969) 3 SCC 99], *U.P. SEB* v. *Hari Shankar Jain* [(1978) 4 SCC 16 : 1978 SCC (L&S) 481], His Lordship summed up the legal principle in the following words: (*Siddeshwari Cotton Mills case* [(1989) 2 SCC 458 : 1989 SCC (Tax) 297], SCC p. 464, para 19)

> "*19*. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus."

29. Applying the above to the case at hand, we find that Section 364-A added to IPC made use of only two expressions viz. "*Government*" or "*any other person*". Parliament did not use multiple expressions in the provision constituting a distinct genus class or category. It used only one single expression viz. "*Government*" which does not constitute a genus, even when it may be a specie. The situation, at hand, is somewhat similar to what has been enunciated in *Craies on Statute Law* (7th Edn.) at pp. 181-82 in the following passage:

> "… The modern tendency of the law, it was said [by Asquith, J. in *Allen* v. *Emerson* (1944 KB 362 : (1944) 1 All ER 344)], is 'to attenuate the application of the rule of ejusdem generis'. To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply (*Hood-Barrs* v. *IRC* [(1946) 2 All ER 768 (CA)]), *but the mention of a single species does not constitute a genus*. (Per

Lord Thankerton in *United Towns Electric Co. Ltd.* v. *Attorney General for Newfoundland* [(1939) 1 All ER 423 (PC)].) 'Unless you can find a category', said Farwell L.J. (*Tillmanns and Co.* v. *S.S. Knutsford Ltd.* [(1908) 2 KB 385 (CA)]), 'there is no room for the application of the ejusdem generis doctrine', and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that 'theatres and other places of public entertainment' should be licensed, the question arose whether a 'fun-fair' for which no fee was charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words 'other places' to places of the same kind as theatres. So the insertion of such words as 'or things of whatever description' would exclude the rule. (*Attorney General* v. *Leicester Corpn.* [(1910) 2 Ch 359 : (1908-10) All ER Rep Ext 1002]) In *National Assn. of Local Govt. Officers* v. *Bolton Corpn.* [1943 AC 166 : (1942) 2 All ER 425 (HL)] Lord Simon L.C. referred to a definition of 'workman' as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour, clerical work 'or otherwise' and said: 'The use of the words "or otherwise" does not bring into play the ejusdem generis principle: for "manual labour" and "clerical work" do not belong to a single limited genus' and Lord Wright in the same case said: '*The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a "genus" but here the only "genus" is a contract with an employer*'.

(emphasis supplied)

30. The above passage was quoted with approval by this Court in *Grasim Industries Ltd.* v. *Collector of Customs* [(2002) 4 SCC 297] holding that Note 1(*a*) of Chapter 84 relevant to that case was clear and unambiguous. It did not speak of a class, category or genus followed by general words making the rule of ejusdem generis inapplicable."

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"**32.** This would mean that the term "*person*" appearing in Section 364-A IPC would include a company or association or body of persons whether incorporated or not, apart from natural persons. The tenor of the provision, the context and the statutory definition of the expression "*person*" all militate against any attempt to restrict the meaning of the term "*person*" to the "*Government*" or "*foreign State*" or "*international inter-governmental organisations*" only."

21. In **Pioneer Urban Land and Infrastructure Ltd. v. Union of India**, (2019) 8 SCC 416, this Court laid down the limits of the application of the rule of construction that is contained in the expression "*noscitur a sociis*" as follows:

"**84.** It was then argued, relying on a large number of judgments that Section 5(8)(*f*) must be construed noscitur a sociis with clauses (*a*) to (*e*) and (*g*) to (*i*), and so construed would only refer to loans or other financial transactions which would involve money at both ends. This, again, is not correct in view of the fact that Section 5(8)(*f*) is clearly a residuary "catch all" provision, taking within it matters which are not subsumed within the other sub-clauses. Even otherwise, in *CED* v. *Kantilal Trikamlal* [*CED* v. *Kantilal Trikamlal*, (1976) 4 SCC 643 : 1977 SCC (Tax) 90] , this Court has held that when an expression is a residuary one, ejusdem generis will not apply. It was thus held: (SCC p. 655, para 21)

> "*21*. … We have also to stress the expression "other right" in the explanation which is of the widest import and cannot be constricted by reading it *ejusdem generis* with "debt". "Other right", in the context, is expressly meant considerably to widen the concept and therefore suggests a somewhat contrary intention to the application of the *ejusdem generis* rule. We may derive instruction from Green's construction of the identical expression in the English Act. [Section 45(2)]. The learned author writes:

‘A disclaimer is an extinguishment of a right for this purpose. Although in the event the person disclaiming never has any right in the property, he has the right to obtain it, this inchoate right is a “right” for the purposes of Section 45(2). The *ejusdem generis* rule does not apply to the words “a debt or other right” and the word “right” is a word of the widest import. Moreover, the expression “at the expense of the deceased” is used in an ordinary and natural manner; and is apt to cover not only cases where the extinguishment involves a loss to the deceased of a benefit he already enjoyed, but also those where it prevents him from acquiring the benefit.’”

85. Also, in *Subramanian Swamy* v. *Union of India* [*Subramanian Swamy* v. *Union of India*, (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1], this Court held: (SCC pp. 291-93, paras 70-74)

“*70*. The other aspect that is being highlighted in the context of Article 19(2) is that defamation even if conceived of to include a criminal offence, it must have the potentiality to “incite to cause an offence”. To elaborate, the submission is the words “incite to cause an offence” should be read to give attributes and characteristics of criminality to the word “defamation”. It must have the potentiality to lead to breach of peace and public order. It has been urged that the intention of clause (2) of Article 19 is to include a public law remedy in respect of a grievance that has a collective impact but not as an actionable claim under the common law by an individual and, therefore, the word “defamation” has to be understood in that context, as the associate words are “incitement to an offence” would so warrant. Mr Rao, learned Senior Counsel, astutely canvassed that unless the word “defamation” is understood in this manner applying the principle of *noscitur a sociis*, the cherished and natural right of freedom of speech and expression which has been recognised under Article 19(1)(*a*) would be absolutely at peril. Mr Narasimha, learned ASG would contend that the said rule of construction would not be applicable to

understand the meaning of the term “defamation”. Be it noted, while construing the provision of Article 19(2), it is the duty of the Court to keep in view the exalted spirit, essential aspects, the value and philosophy of the Constitution. There is no doubt that the principle of *noscitur a sociis* can be taken recourse to in order to understand and interpret the Constitution but while applying the principle, one has to keep in mind the contours and scope of applicability of the said principle.

71. In *State of Bombay* v. *Hospital Mazdoor Sabha* [*State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610 : (1960) 2 SCR 866] , it has been held that it must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the said rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.

72. In *Bank of India* v. *Vijay Transport* [*Bank of India* v. *Vijay Transport*, 1988 Supp SCC 47] , the Court was dealing with the contention that a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. For the said purpose, reliance was placed on *R.L. Arora* v. *State of U.P.* [*R.L. Arora* v. *State of U.P.*, (1964) 6 SCR 784 : AIR 1964 SC 1230] Dealing with the said aspect, the Court has observed thus: (*Vijay Transport case* [*Bank*

of India v. *Vijay Transport*, 1988 Supp SCC 47], SCC p. 51, para 11)

> '*11*. … It may be that in interpreting the words of the provision of a statute, the setting in which such words are placed may be taken into consideration, but that does not mean that even though the words which are to be interpreted convey a clear meaning, still a different interpretation or meaning should be given to them because of the setting. In other words, while the setting of the words may sometimes be necessary for the interpretation of the words of the statute, but that has not been ruled by this Court to be the only and the surest method of interpretation.'

73. The Constitution Bench, in *Godfrey Phillips (India) Ltd.* v. *State of U.P.* [*Godfrey Phillips (India) Ltd.* v. *State of U.P.*, (2005) 2 SCC 515], while expressing its opinion on the aforesaid rule of construction, opined: (SCC pp. 550 & 551, paras 81 & 83)

> '*81*. We are aware that the maxim of *noscitur a sociis* may be a treacherous one unless the "*societas*" to which the "*socii*" belong, are known. The risk may be present when there is no other factor except contiguity to suggest the "*societas*". But where there is, as here, a term of wide denotation which is not free from ambiguity, the addition of the words such as "including" is sufficiently indicative of the *societas*. As we have said, the word "includes" in the present context indicates a commonality or shared features or attributes of the including word with the included.
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> *83*. Hence on an application of general principles of interpretation, we would hold that the word "luxuries" in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognised as being beyond the necessary requirements of

an average member of society and not articles of luxury.'

74. At this juncture, we may note that in *Ahmedabad Private Primary Teachers' Assn.* v. *Administrative Officer* [*Ahmedabad Private Primary Teachers' Assn.* v. *Administrative Officer*, (2004) 1 SCC 755 : 2004 SCC (L&S) 306], it has been stated that *noscitur a sociis* is a legitimate rule of construction to construe the words in an Act of Parliament with reference to the words found in immediate connection with them. In this regard, we may refer to a passage from Justice G.P. Singh, *Principles of Statutory Interpretation* [(13th Edn., 2012) 509.] where the learned author has referred to the lucid explanation given by Gajendragadkar, J. We think it appropriate to reproduce the passage:

'It is a rule wider than the rule of *ejusdem generis*; rather the latter rule is only an application of the former. The rule has been lucidly explained by Gajendragadkar, J. in the following words:

"This rule, according to Maxwell [Maxwell, *Interpretation of Statutes* (11th Edn., 1962) 321.] , means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general."'

The learned author on further discussion has expressed the view that meaning of a word is to be judged from the company it keeps i.e. reference to words found in immediate connection with them. It applies when two or more words are susceptible of analogous meanings are coupled together, to be read and understood in their cognate sense. [G.P. Singh, *Principles of Statutory Interpretation* (8th Edn.) 379.] *Noscitur a sociis* is merely a rule of construction and cannot prevail where it is clear

> that wider and diverse etymology is intentionally and deliberately used in the provision. It is only when and where the intention of the legislature in associating wider words with words of narrowest significance is doubtful or otherwise not clear, that the rule of *noscitur a sociis* is useful."
>
> **86.** It is clear from a reading of these judgments that noscitur a sociis being a mere rule of construction cannot be applied in the present case as it is clear that wider words have been deliberately used in a residuary provision, to make the scope of the definition of "financial debt" subsume matters which are not found in the other sub-clauses of Section 5(8). This contention must also, therefore, be rejected."

22. A reading of these judgments would show that *ejusdem generis* and *noscitur a sociis*, being rules as to the construction of statutes, cannot be exalted to nullify the plain meaning of words used in a statute if they are designedly used in a wide sense. Importantly, where a residuary phrase is used as a catch-all expression to take within its scope what may reasonably be comprehended by a provision, regard being had to its object and setting, *noscitur a sociis* cannot be used to colour an otherwise wide expression so as to whittle it down and stultify the object of a statutory provision.

OBJECT OF SECTION 14 OF THE IBC

23. This then brings us to the object sought to be achieved by Section 14 of the IBC. The Report of the Insolvency Law Committee of February,

2020 throws some light on Section 14. Paragraphs 8.2 and 8.11 thereof read as follows:

> "**8.2.** The moratorium under Section 14 is intended to keep the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default. Keeping the corporate debtor running as a going concern during the CIRP helps in achieving resolution as a going concern as well, which is likely to maximize value for all stakeholders. In other jurisdictions too, a moratorium may be put in place on the advent of formal insolvency proceedings, including liquidation and reorganization proceedings. The UNCITRAL Guide notes that a moratorium is critical during reorganization proceedings since it facilitates the continued operation of the business and allows the debtor a breathing space to organize its affairs, time for preparation and approval of a reorganization plan and for other steps such as shedding unprofitable activities and onerous contracts, where appropriate."
>
> xxx xxx xxx
>
> "**8.11.** Further, the purpose of the moratorium is to keep the assets of the debtor together for successful insolvency resolution, and it does not bar all actions, especially where countervailing public policy concerns are involved. For instance, criminal proceedings are not considered to be barred by the moratorium, since they do not constitute "money claims or recovery" proceedings. In this regard, the Committee also noted that in some jurisdictions, laws allow regulatory claims, such as those which are not designed to collect money for the estate but to protect vital and urgent public interests, restraining activities causing environmental damage or activities that are detrimental to public health and safety to be continued during the moratorium period."

It can be seen that paragraph 8.11 refers to the very judgment under appeal before us, and cannot therefore be said to throw any light on the

correct position in law which has only to be finally settled by this Court. However, paragraph 8.2 is important in that 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. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. Also, the judgment of this Court in **Swiss Ribbons (P) Ltd. v. Union of India**, (2019) 4 SCC 17 states the *raison d'être* for Section 14 in paragraph 28 as follows:

> "**28.** It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes

through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

24. It can thus be seen that regard being had to the object sought to be achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process. Given this fact, it is difficult to accept that *noscitur a sociis* or *ejusdem generis* should be used to cut down the width of the expression "proceedings" so as to make such proceedings analogous to civil suits.

25. Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein being also

interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor's assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. 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.

SECTION 14 IN RELATION TO OTHER MORATORIUM SECTIONS IN THE IBC

26. Even otherwise, when some of the other provisions as to moratorium are seen in the context of individuals and firms, the provisions of Section 14 become even clearer. Thus, in Part III of the IBC, which deals with insolvency resolution and bankruptcy for individuals and partnership firms, Section 81, which occurs in Chapter II thereof, entitled "Fresh Start Process", an interim moratorium is imposed thus:

> "**81. Application for fresh start order**.—(1) When an application is filed under Section 80 by a debtor, an interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application, as the case may be.

(2) During the interim-moratorium period,—

(*i*) any legal action or legal proceeding pending in respect of any of his debts shall be deemed to have been stayed; and

(*ii*) no creditor shall initiate any legal action or proceedings in respect of such debt.

(3) The application under Section 80 shall be in such form and manner and accompanied by such fee, as may be prescribed.

(4) The application under sub-section (3) shall contain the following information supported by an affidavit, namely—

(*a*) a list of all debts owed by the debtor as on the date of the said application along with details relating to the amount of each debt, interest payable thereon and the names of the creditors to whom each debt is owed;

(*b*) the interest payable on the debts and the rate thereof stipulated in the contract;

(*c*) a list of security held in respect of any of the debts;

(*d*) the financial information of the debtor and his immediate family up to two years prior to the date of the application;

(*e*) the particulars of the debtor's personal details, as may be prescribed;

(*f*) the reasons for making the application;

(*g*) the particulars of any legal proceedings which, to the debtor's knowledge has been commenced against him;

(*h*) the confirmation that no previous fresh start order under this Chapter has been made in respect of the qualifying debts of the debtor in the preceding twelve months of the date of the application."

Similarly, in Section 85, which also occurs in Chapter II in Part III of the IBC, a moratorium is imposed thus:

"**85. Effect of admission of application**.—(1) On the date of admission of the application, the moratorium period shall commence in respect of all the debts.

(2) During the moratorium period—

(*a*) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and

(*b*) subject to the provisions of Section 86, the creditors shall not initiate any legal action or proceedings in respect of any debt.

(3) During the moratorium period, the debtor shall—

(*a*) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;

(*b*) not dispose of or alienate any of his assets;

(*c*) inform his business partners that he is undergoing a fresh start process;

(*d*) be required to inform prior to entering into any financial or commercial transaction of such value as may be notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process;

(*e*) disclose the name under which he enters into business transactions, if it is different from the name in the application admitted under Section 84;

(*f*) not travel outside India except with the permission of the Adjudicating Authority.

(4) The moratorium ceases to have effect at the end of the period of one hundred and eighty days beginning with the date of admission unless the order admitting the application is revoked under sub-section (2) of Section 91."

27. When the language of Section 14 and Section 85 are contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision

contained in Section 14(3)(a) which is that “transactions” are the subject matter of Section 14(1). “Transaction” is, as we have seen, a much wider expression than “debt”, and subsumes it. Also, the expression “proceedings” used by the legislature in Section 14(1)(a) is not trammelled by the word “legal” as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, “debts” is used as is used in Section 85. Sections 96 and 101 read as follows:

> “**96. Interim-moratorium**.—(1) When an application is filed under Section 94 or Section 95—
>
> (*a*) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
>
> (*b*) during the interim-moratorium period—
>
> (*i*) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
>
> (*ii*) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
>
> (2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.
>
> (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

> "**101. Moratorium**.—(1) When the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier.
>
> (2) During the moratorium period—
>
> (*a*) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
>
> (*b*) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
>
> (*c*) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;
>
> (3) Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.
>
> (4) The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding. This is for the reason that a Section 138 proceeding would be a legal proceeding "in respect of" a debt. "In respect of" is a phrase which is wide and includes anything done directly or indirectly – *see* **Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.**, (2018) 2 SCC 674 (at page 709) and **Giriraj Garg v. Coal India Ltd.**, (2019) 5 SCC 192 (at pages 202-203). This, coupled with the fact that the Section is not limited to 'recovery' of any debt, would

indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.

28. When the language of these Sections is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96, and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these Sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor. For all these reasons, therefore, given the object and context of Section 14, the expression “proceedings” cannot be cut down by any rule of construction and must be given a fair meaning consonant with the object and context. It is conceded before us that criminal proceedings which are not directly related to transactions evidencing debt or liability of the corporate debtor would be outside the scope of this expression.

29. **V. Ramakrishnan** (supra) looked at and contrasted Section 14 with Sections 96 and 101 from the point of view of a guarantor to a debt, and in this context, held:

> "**26.** We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.
>
> **26.1.** Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."

These observations, when viewed in context, are correct. However, this case is distinguishable in that the difference between these provisions and Section 14 was not examined qua moratorium provisions as a whole in relation to corporate debtors vis-à-vis individuals/firms.

THE INTERPLAY BETWEEN SECTION 14 AND SECTION 32A OF THE IBC

30. Shri Mehta, however, strongly relied upon Section 32A(1) of the IBC, which was introduced by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, to argue that the first proviso to Section 32A(1) would make it clear that "prosecutions" that had been instituted during the corporate insolvency resolution process against a corporate debtor will result in a discharge of the corporate debtor from the prosecution, subject to the other requirements of sub-section (1) having been fulfilled. According to him, therefore, a prosecution of the corporate debtor under Section 138/141 of the Negotiable Instruments Act can be instituted during the corporate insolvency resolution process, making it clear that such prosecutions are, therefore, outside the ken of the moratorium provisions contained in Section 14 of the IBC. Section 32A(1) of the IBC reads as follows:

> "**32A. Liability for prior offences, etc.**—(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under Section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—
>
> (*a*) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
>
> (*b*) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession,

reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (*j*) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of Section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

xxx xxx xxx"

31. The *raison d'être* for the enactment of Section 32A has been stated by the Report of the Insolvency Law Committee of February, 2020, which is as follows:

"**17. LIABILITY OF CORPORATE DEBTOR FOR OFFENCES COMMITTED PRIOR TO INITIATION OF CIRP**

17.1. Section 17 of the Code provides that on commencement of the CIRP, the powers of management of the corporate debtor vest with the interim resolution professional. Further, the powers of the Board of Directors or partners of the corporate debtor stand suspended, and are to be exercised by the interim resolution professional. Thereafter, Section 29A, read with Section 35(1)(f), places restrictions on related parties of the corporate debtor from proposing a resolution

plan and purchasing the property of the corporate debtor in the CIRP and liquidation process, respectively. Thus, in most cases, the provisions of the Code effectuate a change in control of the corporate debtor that results in a clean break of the corporate debtor from its erstwhile management. However, the legal form of the corporate debtor continues in the CIRP, and may be preserved in the resolution plan. Additionally, while the property of the corporate debtor may also change hands upon resolution or liquidation, such property also continues to exist, either as property of the corporate debtor, or in the hands of the purchaser.

17.2. However, even after commencement of CIRP or after its successful resolution or liquidation, the corporate debtor, along with its property, would be susceptible to investigations or proceedings related to criminal offences committed by it prior to the commencement of a CIRP, leading to the imposition of certain liabilities and restrictions on the corporate debtor and its properties even after they were lawfully acquired by a resolution applicant or a successful bidder, respectively.

Liability where a Resolution Plan has been Approved

17.3. It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it had submitted for approval of the Adjudicating Authority. Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower on an average, even where the corporate debtor did not commit any offence and was not subject to investigation, due to adverse selection by resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

17.4. <u>This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors,</u>

including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty bound to penalise the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced.

xxx xxx xxx

17.6. Given this, the Committee felt that a distinction must be drawn between the corporate debtor which may have committed offences under the control of its previous management, prior to the CIRP, and the corporate debtor that is resolved, and taken over by an unconnected resolution applicant. While the corporate debtor's actions prior to the commencement of the CIRP must be investigated and penalised, the liability must be affixed only upon those who were responsible for the corporate debtor's actions in this period. However, the new management of the corporate debtor, which has nothing to do with such past offences, should not be penalised for the actions of the erstwhile management of the corporate debtor, unless they themselves were involved in the commission of the offence, or were related parties, promoters or other persons in management and control of the corporate debtor at the time of or any time following the commission of the offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29A.

17.7. Thus, the Committee agreed that a new Section should be inserted to provide that where the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence.

17.8. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise, regardless of the fact that the corporate debtor's liability has ceased."

(emphasis supplied)

32. This Court, in **Manish Kumar v. Union of India**, 2021 SCC OnLine SC 30, upheld the constitutional validity of this provision. This Court observed:

> "**280.** We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision."

33. Section 32A cannot possibly be said to throw any light on the true interpretation of Section 14(1)(a) as the reason for introducing Section 32A had nothing whatsoever to do with any moratorium provision. At the

heart of the Section is the extinguishment of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the Adjudicating Authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32A(1) operates only after the moratorium comes to an end. At the heart of Section 32A is the IBC's goal of value maximisation and the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability. Unfortunately, the Section is inelegantly drafted. The second proviso to Section 32A(1) speaks of persons who are in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor and who are, directly or indirectly, involved in the commission of "such offence", i.e., the offence referred to in sub-section (1), "as per the report submitted or complaint filed by the investigating authority …". The report submitted here refers to a police report under Section 173 of the CrPC, and complaints filed by investigating authorities under special Acts, as opposed to private complaints. If the language of the second proviso is taken to interpret the language of Section 32A(1) in that the "offence

committed” under Section 32A(1) would not include offences based upon complaints under Section 2(d) of the CrPC, the width of the language would be cut down and the object of Section 32A(1) would not be achieved as all prosecutions emanating from private complaints would be excluded. Obviously, Section 32A(1) cannot be read in this fashion and clearly incudes the liability of the corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process. Doubtless, a Section 138 proceeding would be included, and would, after the moratorium period comes to an end with a resolution plan by a new management being approved by the Adjudicating Authority, cease to be an offence qua the corporate debtor.

34. A section which has been introduced by an amendment into an Act with its focus on cesser of liability for offences committed by the corporate debtor prior to the commencement of the corporate insolvency resolution process cannot be so construed so as to limit, by a sidewind as it were, the moratorium provision contained in Section 14, with which it is not at all concerned. If the first proviso to Section 32A(1) is read in the manner suggested by Shri Mehta, it will impact Section 14 by taking out of its ken Section 138/141 proceedings, which is not the object of Section 32A(1) at all. Assuming, therefore, that there is a clash between Section 14 of the IBC and the first proviso of Section 32A(1), this clash is best resolved by

applying the doctrine of harmonious construction so that the objects of both the provisions get subserved in the process, without damaging or limiting one provision at the expense of the other. If, therefore, the expression “prosecution” in the first proviso of Section 32A(1) refers to criminal proceedings properly so-called either through the medium of a First Information Report or complaint filed by an investigating authority or complaint and not to quasi-criminal proceedings that are instituted under Sections 138/141 of the Negotiable Instruments Act against the corporate debtor, the object of Section 14(1) of the IBC gets subserved, as does the object of Section 32A, which does away with criminal prosecutions in all cases against the corporate debtor, thus absolving the corporate debtor from the same after a new management comes in.

THE NATURE OF PROCEEDINGS UNDER CHAPTER XVII OF THE NEGOTIABLE INSTRUMENTS ACT

35. This brings us to the nature of proceedings under Chapter XVII of the Negotiable Instruments Act. Sections 138 to 142 of the Negotiable Instruments Act were added by Chapter XVII by an Amendment Act of 1988. Section 138 reads as follows:

> “**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 extend 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 or other liability" means a legally enforceable debt or other liability."

36. Section 138 contains within it the ingredients of the offence made out. The deeming provision is important in that the legislature is cognizant of the fact that what is otherwise a civil liability is now also deemed to be an offence, since this liability is made punishable by law. It is important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The

explanation to Section 138 makes it clear that such debt or other liability means a legally enforceable debt or other liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138. This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, would show that it is really a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law. Further, though the ingredients of the offence are contained in the first part of Section 138 when the cheque is returned by the bank unpaid for the reasons given in the Section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

37. Likewise, under Section 139, a presumption is raised that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. To rebut this presumption, facts must be adduced which, on a preponderance of probability (not beyond reasonable doubt as in the case of criminal offences), must then be

proved. Section 140 is also important, in that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section, thus making it clear that strict liability will attach, *mens rea* being no ingredient of the offence. Section 141 then makes Directors and other persons statutorily liable, provided the ingredients of the section are met. Interestingly, for the purposes of this Section, explanation (a) defines "company" as meaning any body corporate and includes a firm or other association of individuals.

38. We have already seen how the language of Sections 96 and 101 would include a Section 138/141 proceeding against a firm so that the moratorium stated therein would apply to such proceedings. If Shri Mehta's arguments were to be accepted, under the same Section, namely, Section 141, two different results would ensue – so far as bodies corporate, which include limited liability partnerships, are concerned, the moratorium provision contained in Section 14 of the IBC would not apply, but so far as a partnership firm is concerned, being covered by Sections 96 and 101 of the IBC, a Section 138/141 proceeding would be stopped in its tracks by virtue of the moratorium imposed by these Sections. Thus, under Section 141(1), whereas a Section 138 proceeding against a

corporate body would continue after initiation of the corporate insolvency resolution process, yet, the same proceeding against a firm, being interdicted by Sections 96 and 101, would not so continue. This startling result is one of the consequences of accepting the argument of Shri Mehta, which again leads to the position that inelegant drafting alone cannot lead to such startling results, the object of Sections 14 and 96 and 101 being the same, namely, to see that during the insolvency resolution process for corporate persons/individuals and firms, the corporate body/firm/individual should be given breathing space to recuperate for a successful resolution of its debts – in the case of a corporate debtor, through a new management coming in; and in the case of individuals and firms, through resolution plans which are accepted by a committee of creditors, by which the debtor is given breathing space in which to pay back his/its debts, which would result in creditors getting more than they would in a bankruptcy proceeding against an individual or a firm.

39. Section 142 is important and is set out hereunder:

> "**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."

40. A cursory reading of Section 142 will again make it clear that the procedure under the CrPC has been departed from. First and foremost, no court is to take cognizance of an offence punishable under Section 138 except on a complaint made in writing by the payee or the holder in due course of the cheque – the victim. Further, the language of Section 142(1)(b) would again show the hybrid nature of these provisions inasmuch as a complaint must be made within one month of the date on which the

“cause of action” under clause (c) of the proviso to Section 138 arises. The expression “cause of action” is a foreigner to criminal jurisprudence, and would apply only in civil cases to recover money. Chapter XIII of the CrPC, consisting of Sections 177 to 189, is a chapter dealing with the jurisdiction of the criminal courts in inquiries and trials. When the jurisdiction of a criminal court is spoken of by these Sections, the expression “cause of action” is conspicuous by its absence.

41. By an Amendment Act of 2002, various other sections were added to this Chapter. Thus, under Section 143, it is lawful for a Magistrate to pass a sentence of imprisonment for a term not exceeding one year and a fine exceeding INR 5,000/- summarily. This provision is again an important pointer to the fact that the payment of compensation is at the heart of the provision in that a fine exceeding INR 5000/-, the sky being the limit, can be imposed by way of a summary trial which, after application of Section 357 of the CrPC, results in compensating the victim up to twice the amount of the bounced cheque. Under Section 144, the mode of service of summons is done as in civil cases, eschewing the mode contained in Sections 62 to 64 of the CrPC. Likewise, under Section 145, evidence is to be given by the complainant on affidavit, as it is given in civil proceedings, notwithstanding anything contained in the CrPC. Most importantly, by Section 147, offences under this Act are

compoundable without any intervention of the court, as is required by Section 320(2) of the CrPC.

42. By another amendment made in 2018, the hybrid nature of these provisions gets a further tilt towards a civil proceeding, by the power to direct interim compensation under Sections 143A and 148 which are set out hereinbelow:

> "**143-A. Power to direct interim compensation**.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
>
> (*a*) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
>
> (*b*) in any other case, upon framing of charge.
>
> (2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.
>
> (3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
>
> (4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
>
> (5) The interim compensation payable under this Section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this Section."

"**148. Power of Appellate Court to order payment pending appeal against conviction**.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143-A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

43. With this analysis of Chapter XVII, let us look at some of the decided cases. In **CIT v. Ishwarlal Bhagwandas**, (1966) 1 SCR 190, this Court distinguished between civil proceedings and criminal proceedings in the context of Article 132 of the Constitution thus:

"… The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation laws of the State. The primary object of a taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the tax-payer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of the tax-payer are infringed in a manner not warranted by the statute, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil proceeding. The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as

payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc."

(at pages 196-197)

"A large number of cases have arisen before the High Courts in India in which conflicting views about the meaning of the expression "civil proceeding" were pressed. In some cases it was held that the expression "civil proceeding" excludes a proceeding instituted in the High Court for the issue of a writ whatever may be the nature of the right infringed and the relief claimed in other cases it has been held that a proceeding resulting from an application for a writ under Article 226 of the Constitution may in certain cases be deemed to be a "civil proceeding", if the claim made, the right infringed and the relief sought warrant that inference: in still another set of cases it has been held that even if a proceeding commenced by a petition for a writ be generally categorised as a civil proceeding, where the jurisdiction which the High Court exercises relates to revenue, the proceeding is not civil. A perusal of the reasons given in the cases prompt the following observations. There are two preliminary conditions to the exercise of the power to grant certificate: (*a*) there must be a judgment, decree or final order, and that judgment, decree or final order must be made in a civil proceeding. An advisory opinion in a tax reference may not be appealed from with certificate under Article 133 because the opinion is not a judgment, decree or final order, and (*b*) a proceeding does not cease to be civil, when relief is claimed for enforcement of civil rights merely because the proceeding is not tried as a civil suit. In a large majority of the cases in which the jurisdiction of the High Court to certify a case under Article 133(1) was negatived it appears to have been assumed that the expression "other proceeding" used in Article 132 of the Constitution is or includes a proceeding of the nature of a revenue proceeding, and therefore the expression "civil proceeding" in Article 133(1) does not include a revenue proceeding. This assumption for reasons already set out is erroneous."

(at page 199)

A perusal of this judgment would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.

44. In **Goaplast (P) Ltd. v. Chico Ursula D'Souza**, (2003) 3 SCC 232, the object sought to be achieved by Section 138 is succinctly set out in paragraph 3 thereof:

> "**3.** The learned counsel for the appellant has submitted that mere writing of letter to the bank stopping payment of the post-dated cheques does not take the case out of the purview of the Act. He has invited our attention to the object behind the provision contained in Chapter XVII of the Act. For appreciating the issue involved in the present case, it is necessary to refer to the object behind introduction of Chapter XVII containing Sections 138 to 142. This chapter was introduced in the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment)

Act, 1988 (Act 66 of 1988) with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions and in order to promote efficacy of banking operations. With the policy of liberalisation adopted by the country which brought about increase in international trade and commerce, it became necessary to inculcate faith in banking. World trade is carried through banking operations rather than cash transactions. The amendment was intended to create an atmosphere of faith and reliance on banking system. Therefore, while considering the question of applicability of Section 138 of the Act to a situation presented by the facts of the present case, it is necessary to keep the objects of the legislation in mind. If a party is allowed to use a cheque as a mode of deferred payment and the payee of the cheque on the faith that he will get his payment on the due date accepts such deferred payment by way of cheque, he should not normally suffer on account of non-payment. The faith, which the legislature has desired that such instruments should inspire in commercial transactions would be completely lost if parties are as a matter of routine allowed to interdict payment by issuing instruction to banks to stop payment of cheques. In today's world where use of cash in day-to-day life is almost getting extinct and people are using negotiable instruments in commercial transactions and plastic money for their daily needs as consumers, it is all the more necessary that people's faith in such instruments should be strengthened rather than weakened. Provisions contained in Sections 138 to 142 of the Act are intended to discourage people from not honouring their commitments by way of payment through cheques. It is desirable that the court should lean in favour of an interpretation which serves the object of the statute. The penal provisions contained in Sections 138 to 142 of the Act are intended to ensure that obligations undertaken by issuing cheques as a mode of payment are honoured. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. A cheque is a well-recognized mode of payment and post-dated cheques are often used in various transactions in daily life. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated

cheque. If stoppage of payment of a post-dated cheque is permitted to take the case out of the purview of Section 138 of the Act, it will amount to allowing the party to take advantage of his own wrong."

45. In **Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.**, (2008) 2 SCC 305, a Division Bench of this Court referred to the object of Section 138 thus:

> "**16.** Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (Act 66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters. The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors.
>
> **17.** As observed by this Court in *Electronics Trade & Technology Development Corpn. Ltd.* v. *Indian Technologists & Engineers (Electronics) (P) Ltd.* [(1996) 2 SCC 739 : 1996 SCC (Cri) 454] the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002). The said Section reads thus:
>
> "147. *Offences to be compoundable*.— Notwithstanding anything contained in the Code of

> Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

46. **Damodar S. Prabhu v. Sayed Babalal H.**, (2010) 5 SCC 663 is an important judgment of three Hon'ble Judges of this Court. This judgment dealt, in particular, with the compounding provision contained in Section 147 of the Negotiable Instruments Act. Setting out the provision, the Court held:

> "**10.** At present, we are of course concerned with Section 147 of the Act, which reads as follows:
>
> > "147. *Offences to be compoundable*.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."
>
> At this point, it would be apt to clarify that in view of the non obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure (hereinafter "CrPC") will not be applicable in the strict sense since the latter is meant for the specified offences under the Penal Code, 1860.
>
> **11.** So far as CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the court, while sub-section (2) of the said Section specifies the offences which are compoundable with the leave of the court.
>
> **12.** Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule

incorporated in sub-section (9) of Section 320 CrPC which states that “No offence shall be compounded except as provided by this Section”. A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause.”

xxx xxx xxx

“**15.** The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as *K.M. Ibrahim* v. *K.P. Mohammed* [(2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921 : (2009) 14 Scale 262] wherein Kabir, J. has noted (at SCC p. 802, paras 13-14):

> “*13*. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. …
>
> *14.* It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.”

16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from: K.N.C. Pillai, *R.V. Kelkar's Criminal Procedure*, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p. 444]:

> "17.2. *Compounding of offences*.—A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the court."

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from: Arun Mohan, *Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act—Tackling an avalanche of cases* (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5]:

> "… Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. …"

(emphasis supplied)

This judgment was followed by a Division Bench of this Court in **JIK Industries Ltd. v. Amarlal V. Jumani**, (2012) 3 SCC 255, stating:

> "**68.** It is clear from a perusal of the aforesaid Statement of Objects and Reasons that offence under the NI Act, which was previously non-compoundable in view of Section 320 sub-section (9) of the Code has now become compoundable. That does not mean that the effect of Section 147 is to obliterate all statutory provisions of Section 320 of the Code relating to the mode and manner of compounding of an offence. Section 147 will only override Section 320(9) of the Code insofar as offence under Section 147 of the NI Act is concerned. This is also the ratio in *Damodar* [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] (see para 12). Therefore, the submission of the learned counsel for the appellant to the contrary cannot be accepted."

The Court then went into the history of compounding in criminal law as follows:

> "**78.** Compounding as codified in Section 320 of the Code has a historical background. In common law compounding was considered a misdemeanour. In *Kenny's Outlines of Criminal Law* (19th Edn., 1966) the concept of compounding has been traced as follows: (p. 407, para 422)
>
> > "422. *Mercy should be shown, not sold*.—It is a misdemeanour at common law to 'compound' a felony (and perhaps also to compound a misdemeanour); i.e. to bargain, *for value*, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law

> permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime."
>
> (emphasis in original)

79. *Russell on Crime* (12th Edn.) also describes:

> "Agreements not to prosecute or to stifle a prosecution for a criminal offence are in certain cases criminal."
>
> (Ch. 22 — Compounding Offences, p. 339.)

80. Later on compounding was permitted in certain categories of cases where the rights of the public in general are not affected but in all cases such compounding is permissible with the consent of the injured party.

81. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to Section 214 of the Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said section was only made applicable to compounding of offences defined and permissible under the Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding.

82. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the NI Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the NI Act, in that case the compounding of offence under the NI Act will be left totally unguided or uncontrolled. Such an interpretation apart from

being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under the NI Act. Therefore, Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act."

47. In **Kaushalya Devi Massand v. Roopkishore Khore**, (2011) 4 SCC 593, a Division Bench of this Court succinctly stated:

> "**11.** Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Penal Code, 1860 or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones."
>
> (emphasis supplied)

(This is the clearest enunciation of a Section 138 proceeding being a "civil sheep" in a "criminal wolf's" clothing.)

48. In **R. Vijayan v. Baby**, (2012) 1 SCC 260, this Court referred to the provisions of Chapter XVII of the Negotiable Instruments Act, observing that Chapter XVII is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. The Court held:

> "**16.** We propose to address an aspect of the cases under Section 138 of the Act, which is not dealt with in *Damodar S. Prabhu* [(2010) 5 SCC 663 : (2010) 2 SCC (Cri) 1328 : (2010)

2 SCC (Civ) 520] . It is sometimes said that cases arising under Section 138 of the Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument". In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realisation of the cheque amount) thereby obviating the need for the creditor to move two different fora for relief. This is evident from the following provisions of Chapter XVII of the Act:

(*i*) The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (Section 138) thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned.

(*ii*) The provision enabling a First Class Magistrate to levy fine exceeding Rs 5000 (Section 143) notwithstanding the ceiling to the fine, as Rs 5000 imposed by Section 29(2) of the Code.

(*iii*) The provision relating to mode of service of summons (Section 144) as contrasted from the mode prescribed for criminal cases in Section 62 of the Code.

(*iv*) The provision for taking evidence of the complainant by affidavit (Section 145) which is more prevalent in civil proceedings, as contrasted from the procedure for recording evidence in the Code.

(*v*) The provision making all offences punishable under Section 138 of the Act compoundable.

17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(*b*) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for

> the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(*b*) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary."
>
> (emphasis supplied)

49. In **Dashrath Rupsingh Rathod v. State of Maharashtra**, (2014) 9 SCC 129, a three-Judge Bench of this Court answered the question as to whether the territorial jurisdiction for filing of cheque dishonour complaints is restricted to the court within whose territorial jurisdiction the offence is committed, which is the location where the cheque is dishonoured, i.e., returned unpaid by the bank on which it is drawn. This judgment has been legislatively overruled by Section 142(2) of the Negotiable Instruments Act

set out hereinabove. However, Shri Mehta relied upon paragraphs 15.2 and 17 of the judgment of Vikramjit Sen, J., which states as follows:

> "**15.2.** We have undertaken this succinct study mindful of the fact that Parliamentary debates have a limited part to play in interpretation of statutes, the presumption being that legislators have the experience, expertise and language skills to draft laws which unambiguously convey their intentions and expectations for the enactments. What is palpably clear is that Parliament was aware that they were converting civil liability into criminal content inter alia by the deeming fiction of culpability in terms of the pandect comprising Section 138 and the succeeding sections, which severely curtail defences to prosecution. Parliament was also aware that the offence of cheating, etc. already envisaged in IPC, continued to be available."
>
> xxx xxx xxx
>
> "**17.** The marginal note of Section 138 of the NI Act explicitly defines the offence as being the dishonour of cheques for insufficiency, etc. of funds in the account. Of course, the headings, captions or opening words of a piece of legislation are normally not strictly or comprehensively determinative of the sweep of the actual Section itself, but it does presage its intendment. See *Frick India Ltd.* v. *Union of India* [(1990) 1 SCC 400 : 1990 SCC (Tax) 185] and *Forage & Co.* v. *Municipal Corpn. of Greater Bombay* [(1999) 8 SCC 577]. Accordingly, unless the provisions of the section clearly point to the contrary, the offence is concerned with the dishonour of a cheque; and in the conundrum before us the body of this provision speaks in the same timbre since it refers to a cheque being "returned by the bank unpaid". None of the provisions of IPC have been rendered nugatory by Section 138 of the NI Act and both operate on their own. It is trite that mens rea is the quintessential of every crime. The objective of Parliament was to strengthen the use of cheques, distinct from other negotiable instruments, as mercantile tender and therefore it became essential for Section 138 of the NI Act offence to be freed from the requirement of proving mens rea. This has been achieved by deeming the commission of an offence dehors mens rea not only under Section 138 but also by virtue of the succeeding two sections. Section 139 carves

> out the presumption that the holder of a cheque has received it for the discharge of any liability. Section 140 clarifies that it will not be available as a defence to the drawer that he had no reason to believe, when he issued the cheque, that it would be dishonoured. Section 138 unequivocally states that the offence is committed no sooner the drawee bank returns the cheque unpaid."

The focus in this case was on the court within whose jurisdiction the offence under Section 138 can be said to have taken place. This case, therefore, has no direct relevance to the point that has been urged before us.

50. In **Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad**, (2014) 13 SCC 779, this Court, continuing the trend of the earlier judgments in describing the hybrid nature of these provisions, held:

> "**6.** The respondents have agreed to pay the said amount but the appellant has refused to accept the payment and insisted that the appeal against rejection of the recall application should be allowed by this Court. The counsel for the appellant submitted that merely because the accused has offered to make the payment at a later stage, the same cannot compel the complainant appellant to accept it and the complainant appellant would be justified in pursuing the complaint which was lodged under the Negotiable Instruments Act, 1881. In support of his submission, the counsel for the appellant also relied on *Rajneesh Aggarwal* v. *Amit J. Bhalla* [(2001) 1 SCC 631 : 2001 SCC (Cri) 229].[1]
>
> **7.** However, we do not feel persuaded to accept this submission as the appellant has to apprise himself that the primary object and reason of the Negotiable Instruments Act,

1 The judgment in **Rajneesh Aggarwal v. Amit J. Bhalla**, (2001) 1 SCC 631 was delivered prior to the 2002 and 2018 Amendment Acts to the Negotiable Instruments Act. The perceptible shift in the provisions by introducing Sections 143 to 148 has been noticed by this Court hereinabove, as a result of which the observations contained in this judgment would no longer be valid.

1881, is not merely penal in nature but is to maintain the efficiency and value of a negotiable instrument by making the accused honour the negotiable instrument and paying the amount for which the instrument had been executed.

8. The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedies, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like (*i*) refer to drawer, (*ii*) exceeds arrangements, and (*iii*) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability."

xxx xxx xxx

"**10.** However, in the interest of equity, justice and fair play, we deem it appropriate to direct the respondents to make the payment to the appellant by issuing a demand draft in their favour for a sum of Rs 5 lakhs, which would be treated as an overall amount including interest and compensation towards the cheque for which stop-payment instructions had been issued. If the same is not acceptable to the appellant, it is their choice but that would not allow them to prosecute the respondents herein in pursuance to the complaint which they have lodged implicating these two respondents."

51. In **Meters and Instruments (P) Ltd. v. Kanchan Mehta**, (2018) 1 SCC 560, this Court noticed the object of Section 138 and the amendments made to Chapter XVII, and summarised the case law as follows:

"**6.** The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988 [Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988] was to enhance the acceptability of cheques in the settlement of liabilities. The drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment of honest drawers. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to amend the Act was brought in, inter alia, to simplify the procedure to deal with such matters. The amendment includes provision for service of summons by speed post/courier, summary trial and making the offence compoundable.

7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback. [*Goaplast (P) Ltd.* v. *Chico Ursula D'Souza*, (2004) 2 SCC 235, p. 248, para 26 : 2004 SCC (Cri) 499] At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 Amendment specifically made it compoundable. [*Vinay Devanna Nayak* v. *Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351] The offence was also described as "regulatory offence". The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of "preponderance of probabilities". [*Rangappa* v. *Sri Mohan*, (2010) 11 SCC 441, p. 454, para 28 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] The object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensation. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment with imprisonment or with fine which could extend to twice the amount of the cheque or to both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357(1)(*b*) CrPC provides for payment of compensation for the loss caused by

the offence out of the fine. [*R. Vijayan* v. *Baby*, (2012) 1 SCC 260, p. 264, para 9 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520] Where fine is not imposed, compensation can be awarded under Section 357(3) CrPC to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments. [*Lafarge Aggregates & Concrete India (P) Ltd.* v. *Sukarsh Azad*, (2014) 13 SCC 779, p. 781, para 7 : (2014) 5 SCC (Cri) 818]"

The Court then concluded:

"**18.** From the above discussion the following aspects emerge:

18.1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

18.4. Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence

of imprisonment, the court has jurisdiction under Section 357(3) CrPC to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

18.5. Since evidence of the complaint can be given on affidavit, subject to the court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 CrPC. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances."[2]

(emphasis supplied)

52. In a recent judgment in **M. Abbas Haji v. T.N. Channakeshava**, (2019) 9 SCC 606, this Court held:

"**6.** It is urged before us that the High Court overstepped the limits which the appellate court is bound by criminal cases setting aside an order of acquittal. Proceedings under Section 138 of the Act are quasi-criminal proceedings. The principles, which apply to acquittal in other criminal cases, cannot apply to these cases. …"

(emphasis supplied)

Likewise, in **H.N. Jagadeesh v. R. Rajeshwari**, (2019) 16 SCC 730, this Court again alluded to the quasi-criminal nature of the offence as follows:

"**7.** The learned counsel for the respondent has submitted that in order to advance the cause of justice, such an approach is

2 This judgment was subsequently referred to with approval in **Makwana Mangaldas Tulsidas v. State of Gujarat**, (2020) 4 SCC 695 (at paragraphs 17 and 18).

> permissible and for this purpose he has relied upon the judgment of this Court in *Zahira Habibulla H. Sheikh* v. *State of Gujarat* [*Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] . We are afraid that the ratio of the aforesaid judgment cannot be extended to the facts of this case, particularly when we find that the present case is a complaint case filed by the respondent under Section 138 of the Act and where the proceedings are also of quasi-criminal nature."
>
> (emphasis supplied)

53. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, though couched in language making the act complained of an offence, is really in order to get back through a summary proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given our analysis of Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited hereinabove, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 of the IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding.

QUASI-CRIMINAL PROCEEDINGS

54. Shri Lekhi, learned Additional Solicitor General, took strong objection to the use of the expression “quasi-criminal” to describe proceedings under Section 138 of the Negotiable Instruments Act, which, according to him, can only be described as criminal proceedings. This is for the reason that these proceedings result in imprisonment or fine or both, which are punishments that can be imposed only in criminal proceedings as stated by Section 53 of the Indian Penal Code. It is difficult to agree with Shri Lekhi. There are many instances of acts which are punishable by imprisonment or fine or both which have been described as quasi-criminal. One instance is the infraction of Section 630 of the Companies Act, 1956. This section reads as follows:

> “**630. Penalty for wrongful withholding of property**.—(1) If any officer or employee of a company—
>
> (*a*) wrongfully obtains possession of any property of a company; or
>
> (*b*) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act;
>
> he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.
>
> (2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied or in default, to suffer imprisonment for a term which may extend to two years.”

In **Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.**, (1995) 3 SCC 732, this Court examined whether a petition under Section 630 of the Companies Act, 1956 is maintainable against the legal heirs of a deceased officer or employee for retrieval of the company's property. In holding that it was so retrievable, this Court held:

> "**15.** Even though Section 630 of the Act falls in Part XIII of the Companies Act and provides for penal consequences for wrongful withholding of the property of the company, the provisions strictly speaking are not penal in the sense as understood under the penal law. The provisions are quasi-criminal. They have been enacted with the main object of providing speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or officer or an ex-employee or ex-officer or anyone claiming under them. In our opinion, a proper construction of the section would be that the term "officer or employee" of a company in Section 630 of the Act would by a *deeming fiction* include the legal heirs and representatives of the employee or the officer concerned continuing in occupation of the property of the company after the death of the employee or the officer.
>
> **16.** Under sub-section (1) of Section 630 for the wrongful obtaining of the possession of the property of the company or wrongfully withholding it or knowingly applying it to a purpose other than that authorised by the company, the employee or the officer concerned is "punishable with fine which may extend to one thousand rupees". The 'fine' under this sub-section is to be understood in the nature of 'compensation' for wrongful withholding of the property of the company. Under sub-section (2) what is made punishable is the disobedience of the order of the Court, directing the person, continuing in occupation, after the right of the employee or the officer to occupation has extinguished, to deliver up or refund within a time to be fixed by the court, the property of the company obtained or wrongfully withheld or knowingly misapplied. Thus, it is in the event of the disobedience of the order of the court, that imprisonment for a term which may extend to two years has been prescribed. The provision makes the defaulter,

whether an employee or a past employee or the legal heir of the employee, who disobeys the order of the court to hand back the property to the company within the prescribed time liable for punishment."

(emphasis supplied)

Having so held, the Court did not construe the provision strictly, which it would have been bound to do had it been a purely criminal one, but instead gave it a broad, liberal, and purposeful construction as follows:

"**18.** Section 630 of the Act provides speedy relief to the company where its property is wrongfully obtained or wrongfully withheld by an "employee or an officer" or a "past employee or an officer" or "legal heirs and representatives" deriving their colour and content from such an employee or officer insofar as the occupation and possession of the property belonging to the company is concerned. The failure to deliver property back to the employer on the termination, resignation, superannuation or death of an employee would render the 'holding' of that property wrongful and actionable under Section 630 of the Act. To hold that the "legal heirs" would not be covered by the provisions of Section 630 of the Act would be unrealistic and illogical. It would defeat the 'beneficent' provision and ignore the factual realities that the legal heirs or family members who are continuing in possession of the allotted property had obtained the right of *occupancy* with the employee concerned in the property of the employer only by virtue of their relationship with the employee/officer and had not obtained or acquired the right to *possession* of the property in any other capacity, status or right. The legislature, which is supposed to know and appreciate the needs of the people, by enacting Section 630 of the Act manifested that it was conscious of the position that today in the corporate sector — private or public enterprise — the employees/officers are often provided residential accommodation by the employer for the "use and occupation" of the employee concerned during the course of his employment. More often than not, it is a part of the service conditions of the employee that the employer shall provide him residential accommodation during the course of his

employment. If an employee or a past employee or anyone claiming the right of occupancy under them, were to continue to ‘hold’ the property belonging to the company after the right to be in occupation has ceased for one reason or the other, it would not only create difficulties for the company, which shall not be able to allot that property to its other employees, but would also cause hardship for the employee awaiting allotment and defeat the intention of the legislature. The courts are therefore obliged to place a broader, liberal and purposeful construction on the provisions of Section 630 of the Act in furtherance of the object and purpose of the legislation and construe it in a wider sense to effectuate the intendment of the provision. The “heirs and legal representatives” of the deceased employee have no independent capacity or status to continue in occupation and possession of the property, which stood allotted to the employee or the officer concerned or resist the return of the property to the employer in the absence of any express agreement to the contrary entered with them by the employer. The court, when approached by the employer for taking action under Section 630 of the Act, can examine the basis on which the petition/complaint is filed and if it is found that the company's right to retrieve its property is quite explicit and the stand of the employee, or anyone claiming through him, to continue in possession is baseless, it shall proceed to act under Section 630 of the Act and pass appropriate orders. Only an independent valid right, not only to occupation but also to possession of the property belonging to the company, unconnected with the employment of the deceased employee can defeat an action under Section 630 of the Act if it can be established that the deceased employee concerned had not wrongfully nor knowingly applied it for purposes other than those authorised by the employer. In interpreting a beneficent provision, the court must be forever alive to the principle that it is the duty of the court to defend the law from clever evasion and defeat and prevent perpetration of a legal fraud.”

55. Likewise, contempt of court proceedings have been described as "quasi-criminal" in a long series of judgments. We may point out that the predecessor to the Contempt of Courts Act, 1971, namely, the Contempt of Courts Act, 1952 did not contain any definition of the expression "contempt of court". A Committee was appointed by the Government of India, referred to as the Sanyal Committee, which then went into whether this expression needs to be defined. The Sanyal Committee Report, 1963 then broadly divided contempts into two kinds – civil and criminal contempt – as follows:

> "**2.1.** … Broadly speaking, the classification follows the method of dividing contempt into criminal and civil contempts. The Shawcross Committee adopted the same classification on the grounds of convenience. Broadly speaking, civil contempts are contempts which involve a private injury occasioned by disobedience to the judgment, order or other process of the court. On the other hand, criminal contempts are right from their inception in the nature of offences. In *Legal Remembrancer v. Matilal Ghose, I.L.R. 41 Cal. 173 at 252,* Mukerji J. observed thus: "A criminal contempt is conduct that is directed against the dignity and authority of the court. A civil contempt is failure to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein. Consequently, in the case of a civil contempt, the proceeding for its punishment is at the instance of the party interested and is civil in its character; in the case of a criminal contempt, the proceeding is for punishment of an act committed against the majesty of the law, and, as the primary purpose of the punishment is the vindication of the public authority, the proceedings conform as nearly as possible to proceedings in criminal cases. It is conceivable that the dividing line between the acts constituting criminal and those constituting civil contempts may become indistinct in those cases where the two gradually merge into each other."

2.2. Notwithstanding the existence of a broad distinction between civil and criminal contempts, a large number of cases have shown that the dividing line between the two is almost imperceptible. For instance, in *Dulal Chandra v. Sukumar, A.I.R. 1958 Cal. 474 at 476, 477*, the following observations occur:

> "The line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in mere failure to comply with or carry out an order of a court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the court for action to be taken in contempt against the contemner with a view to an enforcement of his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience, and the contempt, such as it is, is not criminal. If, however, the contemner adds defiance of the court to disobedience of the order and conducts himself in a manner which amounts to obstruction or interference with the course of justice, the contempt committed by him is of a mixed character, partaking as between him and his opponent of the nature of a civil contempt and as between him and the court or the State, of the nature of a criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt … To put the matter in other words, a contempt is merely a civil wrong where there has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the courts at nought and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature."

> **2.3.** In other words, the question whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted. …"
>
> (at pages 21-22)
> (emphasis supplied)

56. The Statement of Objects and Reasons for the Contempt of Courts Act, 1971 expressly states that the said Act was in pursuance of the Sanyal Committee Report as follows:

> "**Statement of Objects and Reasons**.—It is generally felt that the existing law relating to contempt of courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinised by a special committee. In pursuance of this, a Committee was set up in 1961 under the Chairmanship of the late Shri H. N. Sanyal the then Additional Solicitor General. The Committee made a comprehensive examination of the law and problems relating to contempt of Court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the Committee made took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of Courts and interests of administration of justice.
>
> The recommendations of the Committee have been generally accepted by Government after considering the views expressed on those recommendations by the State Governments, Union Territory Administrations the Supreme Court, the High Courts and the Judicial Commissioners. The Bill seeks to give effect to the accepted recommendations of the Sanyal Committee."

57. The Contempt of Courts Act, 1971 defines "civil contempt" and "criminal contempt" as follows:

> "**2. Definitions**.—In this Act, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (*b*) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
>
> (*c*) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—
>
> > (*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
> >
> > (*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
> >
> > (*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;
>
> xxx xxx xxx"

58. Whether the contempt committed is civil or criminal, the High Court is empowered to try such "offences" whether the person allegedly guilty is within or outside its territorial jurisdiction. Thus, Section 11 of the Contempt of Courts Act, states:

> "**11. Power of High Court to try offences committed or offenders found outside jurisdiction**.—A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits."

Punishments awarded for contempt of court, whether civil or criminal, are then dealt with by Section 12 of the Act, which states:

"**12. Punishment for contempt of court**.—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section(1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt 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 contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt 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 the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (4) and (5),—

(*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."

59. In criminal contempt cases, "cognizance" in contempts other than those referred to in Section 14 of the Act is taken by the Supreme Court or the High Court in the manner provided by Section 15. Section 17 then lays down the procedure that is to be followed after cognizance is taken. Finally, by Section 23, the Supreme Court and the High Courts are given the power to make rules, not inconsistent with the provisions of the Act, providing for any matter relating to its procedure.

60. This Court, in **Niaz Mohd. v. State of Haryana**, (1994) 6 SCC 332, spoke of the hybrid nature of a civil contempt as follows:

"**9.** Section 2(*b*) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court …". Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. …

10. … In *Halsbury's Laws of England*, 4th Edn., Vol. 9, para 53, p. 34, it has been said:

> "Although contempt may be committed in the absence of wilful disobedience on the part of the contemner, committal or sequestration will not be order unless the contempt involves a degree of fault or misconduct."

It has been further stated:

> "In circumstances involving misconduct, civil contempt bears a twofold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the court in the public interest."

(emphasis supplied)

In **T.N. Godavarman Thirumulpad (102) v. Ashok Khot**, (2006) 5 SCC 1, this Court held:

> "**33.** Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the court, as a matter of law to make a finding of contempt against any official of the Government say, Home Secretary or a Minister.
>
> **34.** While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a Minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or Minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition, an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to ensure that the orders of the court are obeyed. This jurisdiction is required to be coextensive with the court's jurisdiction to make orders which need the protection which

> the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorised government departments or the Attorney General. On applications for judicial review orders can be made against Ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (See *M.* v. *Home Office* [(1993) 3 All ER 537 : (1994) 1 AC 377 : (1993) 3 WLR 433 (HL)]).”
>
> (emphasis supplied)

61. The description of contempt proceedings being “quasi-criminal” in nature has its origin in the celebrated Privy Council judgment of **Andre Paul Terence Ambard v. Attorney-General of Trinidad and Tobago**, AIR 1936 PC 141 in which Lord Atkin referred to contempt of court proceedings as quasi-criminal (*see* page 143).

62. In **Sahdeo v. State of U.P.**, (2010) 3 SCC 705, this Court again referred to the “quasi-criminal” nature of contempt proceedings as follows:

> “**15.** The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home. There may possibly be a case where *disobedience is accidental*. If that is so, there would be no contempt. [Vide *B.K. Kar* v. *Chief Justice and Justices of the Orissa High Court* [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] (AIR p. 1370, para 7).]
>
> xxx xxx xxx
>
> **18.** In *Sukhdev Singh* v. *Teja Singh* [AIR 1954 SC 186 : 1954 Cri LJ 460] this Court placing reliance upon the judgment of

the Privy Council in *Andre Paul Terence Ambard* v. *Attorney General of Trinidad and Tabago* [AIR 1936 PC 141] , held that the proceedings under the Contempt of Courts Act are quasi-criminal in nature and orders passed in those proceedings are to be treated as orders passed in criminal cases.

19. In *S. Abdul Karim* v. *M.K. Prakash* [(1976) 1 SCC 975 : 1976 SCC (Cri) 217 : AIR 1976 SC 859] , *Chhotu Ram* v. *Urvashi Gulati* [(2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , *Anil Ratan Sarkar* v. *Hirak Ghosh* [(2002) 4 SCC 21 : AIR 2002 SC 1405] , *Daroga Singh* v. *B.K. Pandey* [(2004) 5 SCC 26 : 2004 SCC (Cri) 1521] and *All India Anna Dravida Munnetra Kazhagam* v. *L.K. Tripathi* [(2009) 5 SCC 417 : (2009) 2 SCC (Cri) 673 : AIR 2009 SC 1314] , this Court held that burden and standard of proof in contempt proceedings, being quasi-criminal in nature, is the standard of proof required in criminal proceedings, for the reason that contempt proceedings are quasi-criminal in nature.

20. Similarly, in *Mrityunjoy Das* v. *Sayed Hasibur Rahaman* [(2001) 3 SCC 739 : (2006) 1 SCC (Cri) 296 : AIR 2001 SC 1293] this Court placing reliance upon a large number of its earlier judgments, including *V.G. Nigam* v. *Kedar Nath Gupta* [(1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400 : AIR 1992 SC 2153] and *Murray & Co.* v. *Ashok Kumar Newatia* [(2000) 2 SCC 367 : 2000 SCC (Cri) 473 : AIR 2000 SC 833], held that jurisdiction of contempt has been conferred on the Court to punish an offender for his contemptuous conduct or obstruction to the majesty of law, but in the case of quasi-criminal in nature, charges have to be proved beyond reasonable doubt and the alleged contemnor becomes entitled to the benefit of doubt. It would be very hazardous to impose sentence in contempt proceedings on some probabilities.

xxx xxx xxx

27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction

of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose."

In **Maninderjit Singh Bitta v. Union of India**, (2012) 1 SCC 273, this Court again referred to "civil" and "criminal" contempt as follows:

"**17.** Section 12 of the 1971 Act deals with the contempt of court and its punishment while Section 15 deals with cognizance of criminal contempt. Civil contempt would be wilful breach of an undertaking given to the court or wilful disobedience of any judgment or order of the court, while criminal contempt would deal with the cases where by words, spoken or written, signs or any matter or doing of any act which scandalises, prejudices or interferes, obstructs or even tends to obstruct the due course of any judicial proceedings, any court and the administration of justice in any other manner. Under the English law, the distinction between criminal and civil contempt is stated to be very little and that too of academic significance. However, under both the English and Indian law these are proceedings sui generis.

xxx xxx xxx

19. Under the Indian law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or criminal contempt. For example, disobedience of an order of a court simpliciter would be civil contempt but when it is coupled

> with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English law, the courts have the power to enforce its judgment and orders against the recalcitrant parties."

That contempt proceedings are "quasi-criminal" is also stated in **Kanwar Singh Saini v. High Court of Delhi**, (2012) 4 SCC 307 (at paragraph 38) and in **T.C. Gupta v. Bimal Kumar Dutta**, (2014) 14 SCC 446 (at paragraph 10).

63. What is clear from the aforesaid is that though there may not be any watertight distinction between civil and criminal contempt, yet, an analysis of the aforesaid authorities would make it clear that civil contempt is essentially an action which is moved by the party in whose interest an order was made with a view to enforce its personal right, where contumacious disregard for such order results in punishment of the offender in public interest, whereas a criminal contempt is, in essence, a proceeding which relates to the public interest in seeing that the administration of justice remains unpolluted. What is of importance is to note that even in cases of civil contempt, fine or imprisonment or both may be imposed. The mere fact that punishments that are awardable relate to Section 53 of the Indian Penal Code would not, therefore, render a civil contempt proceeding a criminal proceeding. There is a great deal of wisdom in the finding of the Sanyal Committee Report that the question

whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted.

64. Clearly, therefore, given the hybrid nature of a civil contempt proceeding, described as “quasi-criminal” by several judgments of this Court, there is nothing wrong with the same appellation “quasi-criminal” being applied to a Section 138 proceeding for the reasons given by us on an analysis of Chapter XVII of the Negotiable Instruments Act. We, therefore, reject the learned Additional Solicitor General’s strenuous argument that the appellation “quasi-criminal” is a misnomer when it comes to Section 138 proceedings and that therefore some of the cases cited in this judgment should be given a fresh look.

OTHER SECTIONS OF THE IBC IN RELATION TO SECTION 14 OF THE IBC

65. Shri Mehta then argued that Section 33(5) of the IBC may also be seen, as it is a provision analogous to Section 14(1)(a). Section 33(5) states as follows:

> “**33. Initiation of liquidation**.—
> xxx xxx xxx
> (5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

> Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.
>
> xxx xxx xxx"

It will be noted that under this Section, the expression "no suit or other legal proceeding" occurs both in the enacting part as well as the proviso. Going by the proviso first, given the object that the liquidator now has to act on behalf of the company after a winding-up order is passed, which includes filing of suits and other legal proceedings on behalf of the company, there is no earthly reason as to why a Section 138/141 proceeding would be outside the ken of the proviso. On the contrary, as the liquidator alone now represents the company, it is obvious that whatever the company could do pre-liquidation is now vested in the liquidator, and in order to realise monies that are due to the company, there is no reason why the liquidator cannot institute a Section 138/141 proceeding against a defaulting debtor of the company. Obviously, this language needs to be construed in the widest possible form as there cannot be any residuary category of "other legal proceedings" which can be instituted against some person other than the liquidator or by the liquidator who now alone represents the company. Given the object of this provision also, what has been said earlier with regard to the non-application of the doctrines of *ejusdem generis* and *noscitur a sociis* would apply with all force to this provision as well.

66. In fact, several other provisions of the IBC may also be looked at in this context. Thus, when it comes to the duties of a resolution professional who takes over the management of the company during the corporate insolvency resolution process, Section 25(2)(b) states as follows:

> "**25. Duties of resolution professional**.—
> xxx xxx xxx
> (2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely—
> xxx xxx xxx
> (*b*) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
> xxx xxx xxx"

Here again, given the fact that it is the resolution professional alone who is now to preserve and protect the assets of the corporate debtor in this interregnum, the resolution professional therefore is to represent and act on behalf of the corporate debtor in all judicial, quasi-judicial, or arbitration proceedings, which would include criminal proceedings. Here again, the word "judicial" cannot be construed *noscitur a sociis* so as to cut down its plain meaning, as otherwise, quasi-judicial or arbitration proceedings, not being criminal proceedings, the word "judicial" would then take colour from them. This would stultify the object sought to be achieved by Section 25 and result in an absurdity, namely, that during this interregnum, nobody

can represent or act on behalf of the corporate debtor in criminal proceedings. Likewise, if a corporate debtor cannot be taken over by a new management and has to be condemned to liquidation, the powers and duties of the liquidator, while representing the corporate debtor, are enumerated in Section 35. Section 35(1)(k), in particular, states as follows:

> "**35. Powers and duties of liquidator**.—(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—
>
> xxx xxx xxx
>
> (*k*) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;
>
> xxx xxx xxx"

This provision specifically speaks of "prosecution" and "criminal proceedings". Contrasted with Section 25(2)(b) and Section 33(5), an argument could be made that the absence of the expressions "prosecution" and "criminal proceedings" in Section 25(2)(b) and Section 33(5) would show that they were designedly eschewed by the legislature. We have seen how inelegant drafting cannot lead to absurd results or results which stultify the object of a provision, given its otherwise wide language. Thus, nothing can be gained by juxtaposing various provisions against each other and arriving at conclusions that are plainly untenable in law.

CASE LAW UNDER PROVISIONS OF OTHER STATUTES

67. Shri Mehta then relied strongly upon judgments under Section 22(1) of the SICA and under Section 446(2) of the Companies Act, 1956. He relied upon **BSI Ltd. v. Gift Holdings (P) Ltd.**, (2000) 2 SCC 737, which judgment held that the expression "suit" in Section 22(1) of the SICA would not include a Section 138 proceeding. The Court was directly concerned with only this expression and, therefore, held:

> "**19.** The said contention is also devoid of merits. The word "suit" envisaged in Section 22(1) cannot be stretched to criminal prosecutions. The suit mentioned therein is restricted to "recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company". As the suit is clearly delineated in the provision itself, the context would not admit of any other stretching process.
>
> **20.** A criminal prosecution is neither for recovery of money nor for enforcement of any security etc. Section 138 of the NI Act is a penal provision the commission of which offence entails a conviction and sentence on proof of the guilt in duly conducted criminal proceedings. Once the offence under Section 138 is completed the prosecution proceedings can be initiated not for recovery of the amount covered by the cheque but for bringing the offender to penal liability. What was considered in *Maharashtra Tubes Ltd.* [(1993) 2 SCC 144] is whether the remedy provided in Section 29 or Section 31 of the State Finance Corporation Act, 1951 could be pursued notwithstanding the ban contained in Section 22 of SICA. Hence the legal principle adumbrated in the said decision is of no avail to the appellants.
>
> **21.** In the above context it is pertinent to point out that Section 138 of the NI Act was introduced in 1988 when SICA was already in vogue. Even when the amplitude of the word "company" mentioned in Section 141 of the NI Act was widened through the explanation added to the Section, Parliament did not think it necessary to exclude companies

> falling under Section 22 of SICA from the operation thereof. If Parliament intended to exempt sick companies from prosecution proceedings, necessary provision would have been included in Section 141 of the NI Act. More significantly, when Section 22(1) of SICA was amended in 1994 by inserting the words
>
> > "and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company"
>
> Parliament did not specifically include prosecution proceedings within the ambit of the said ban."

This case is wholly distinguishable as the word "proceedings" did not come up for consideration at all. Further, given the object of Section 22(1) of the SICA, which was amended in 1994 by inserting the words that were interpreted by this Court, parliament restricted proceedings only to suits for recovery of money etc., thereby expressly not including prosecution proceedings, as was held by this Court. The observations contained in paragraph 20, that Section 138 of the Negotiable Instruments Act is a penal provision in a criminal proceeding cannot now be said to be good law given the march of events, in particular, the amendments of 2002 and 2018 to the Negotiable Instruments Act, as pointed out hereinabove, and the later judgments of this Court interpreting Chapter XVII of the Negotiable Instruments Act.

68. The next decision relied upon by Shri Mehta is the judgment in **Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.**,

(2000) 2 SCC 745, which merely followed this judgment (*see* paragraphs 15-18).

69. Likewise, all the judgments cited under Section 446(2) of the Companies Act, 1956 are distinguishable. Section 446(2) states as follows:

> "**446. Suits stayed on winding up order**.—
> xxx xxx xxx
> (2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—
> (*a*) any suit or proceeding by or against the company;
> (*b*) any claim made by or against the company (including claims by or against any of its branches in India);
> (*c*) any application made under Section 391 by or in respect of the company;
> (*d*) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;
> whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.
> xxx xxx xxx"

70. In **S.V. Kandeakar v. V.M. Deshpande**, (1972) 1 SCC 438 ["**S.V. Kandeakar**"], this Court explained why income tax proceedings would be outside the purview of Section 446(2) as follows:

> "**17.** Turning now to the Income Tax Act it is noteworthy that Section 148 occurs in Chapter XIV which beginning with

Section 139 prescribes the procedure for assessment and Section 147 provides for assessment or reassessment of income escaping assessment. This Section empowers the Income Tax Officer concerned subject to the provisions of Sections 148 to 153 to assess or re-assess escaped income. While holding these assessment proceedings the Income Tax Officer does not, in our view, perform the functions of a Court as contemplated by Section 446(2) of the Act. Looking at the legislative history and the scheme of the Indian Companies Act, particularly the language of Section 446, read as a whole, it appears to us that the expression “other legal proceeding” in sub-section (1) and the expression “legal proceeding” in sub-section (2) convey the same sense and the proceedings in both the sub-sections must be such as can appropriately be dealt with by the winding up court. The Income Tax Act is, in our opinion, a complete code and it is particularly so with respect to the assessment and re-assessment of income tax with which alone we are concerned in the present case. The fact that after the amount of tax payable by an assessee has been determined or quantified its realisation from a company in liquidation is governed by the Act because the income tax payable also being a debt has to rank pari passu with other debts due from the company does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceedings as can only be started or continued with the leave of the liquidation court under Section 446 of the Act. The liquidation court, in our opinion, cannot perform the functions of Income Tax Officers while assessing the amount of tax payable by the assessees even if the assessee be the company which is being wound up by the Court. The orders made by the Income Tax Officer in the course of assessment or re-assessment proceedings are subject to appeal to the higher hierarchy under the Income Tax Act. There are also provisions for reference to the High Court and for appeals from the decisions of the High Court to the Supreme Court and then there are provisions for revision by the Commissioner of Income Tax. It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess the company to income tax. The argument on behalf of the appellant by Shri Desai is that the winding up court is empowered in its discretion to decline to transfer the assessment proceedings in a given case but the power on the

plain language of Section 446 of the Act must be held to vest in that court to be exercised only if considered expedient. We are not impressed by this argument. The language of Section 446 must be so construed as to eliminate such startling consequences as investing the winding up court with the powers of an Income Tax Officer conferred on him by the Income Tax Act, because in our view the legislature could not have intended such a result.

18. The argument that the proceedings for assessment or re-assessment of a company which is being wound up can only be started or continued with the leave of the liquidation court is also, on the scheme both of the Act and of the Income Tax Act, unacceptable. We have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law the amount of income tax determined by the Department should be accepted as a lawful liability on the funds of the company in liquidation. At that stage the winding up court can fully safeguard the interests of the company and its creditors under the Act. Incidentally, it may be pointed out that at the Bar no English decision was brought to our notice under which the assessment proceedings were held to be controlled by the winding up court. On the view that we have taken, the decisions in the case of *Seth Spinning Mills Ltd.,* (*In Liquidation*) and the *Mysore Spun Silk Mills Ltd.,* (*In Liquidation*) do not seem to lay down the correct rule of law that the Income Tax Officers must obtain leave of the winding up court for commencing or continuing assessment or re-assessment proceedings."

From this judgment, what becomes clear is the fact that the winding-up court under Section 446(2) is to take up all matters which the company court itself can conveniently dispose of rather than exposing a company which is under winding up to expensive litigation in other courts. This

being the object of Section 446(2), the expression “proceeding” was given a limited meaning as it is obvious that a company court cannot dispose of an assessment proceeding in income tax or a criminal proceeding. This is further made clear in **Sudarshan Chits (I) Ltd. v. O. Sukumaran Pillai**, (1984) 4 SCC 657 (at paragraph 8) and in **Central Bank of India v. Elmot Engineering Co.**, (1994) 4 SCC 159 (at paragraph 14).

71. Shri Mehta also relied upon **D.K. Kapur v. Reserve Bank of India**, 2001 SCC OnLine Del 67 : (2001) 58 DRJ 424 (DB). This judgment referred to Section 446(1) and (2) of the Companies Act, 1956 and contrasted the language contained therein with the language contained in Section 457 of the same Act, which made it clear that the liquidator in a winding up by the court shall have power, with the sanction of the court, to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company. Thus, the Delhi High Court held:

> “**12.** Mere look at the aforesaid provisions would show that on the one hand, in Section 457 of the Act, the legislature has empowered the liquidator to institute or defend any ‘suit’ or ‘prosecution’ or ‘other legal proceedings’ civil or criminal in the name and on behalf of company after permission from the court; and by Section 454 (5A) of the Act the legislature has empowered the Company Court itself to take cognizance of the offence under sub-section (5) of Section 454 of the Act and to try such offenders as per the procedure provided for trial of summons cases under the Code of Criminal Procedure, 1974; but on the other hand in Sections 442 and 446 of the Act the legislature has used only the expression “suit or other

> legal proceedings". The words "prosecution" or "criminal case" are conspicuously missing in these Sections. It appears quite logical as purpose and object of Sections 442 and 446 of the Act is to enable the Company Court to oversee the affairs of the company and to avoid wasteful expenditure. Therefore the intention of the legislature under these Sections does not appear to provide jurisdiction to the Company Court over criminal proceedings either against the company or against its directors. Wherever legislature thought it necessary to provide such jurisdiction it has used the appropriate expressions."

It then set out the judgment in **S.V. Kandeakar** (supra) in paragraph 14, and concluded:

> "**15.** The reasoning adopted by the Supreme Court in the above case would be fully applicable to the facts at hand. Complaints under the penal provisions of other statutes against the company or its directors, (except those provided under the Companies Act) cannot be appropriately dealt with by the Company Court. Orders passed by the criminal court are subject to the appeal and revision etc. under the Code of Criminal Procedure. If the winding up court is held to be empowered to transfer these criminal proceedings to itself it would lead to anomalous consequences."

It was in this context that the Court therefore ultimately held:

> "**20.** … The expression "other legal proceedings" must be read in *ejusdem generis* with the expression "suit" in Section 446 of the Act. If so read it can only refer to any civil proceedings and criminal proceedings have to be excluded. Therefore, no permission was required to be taken from Company Court for filing criminal complaint either against the company or against its directors."

72. Shri Mehta's reliance on **Indorama Synthetics (I) Ltd. v. State of Maharashtra**, 2016 SCC OnLine Bom 2611 : (2016) 4 Mah LJ 249, is also misplaced, for the reason that the finding of the Bombay High Court

that Section 138 proceedings were not included in Section 446 of the Companies Act only follows the reasoning of the earlier judgments on the scope of Section 446 of the Companies Act. Significantly, given the object of Section 446 of the Companies Act, it was held that a Section 138 proceeding is not a proceeding which has a direct bearing on the collection or distribution of assets in the winding up of a company. The ultimate conclusion of the court is contained in paragraph 30, which reads as follows:

> "**30.** Thus, there is a long line of decisions making the position clear that the expression 'suit or legal proceedings', used in Section 446(1) of the Companies Act, can mean only those proceedings which can have a bearing on the assets of the companies in winding-up or have some relation with the issue in winding-up. It does not mean each and every civil proceedings, which has no bearing on the winding-up proceedings, or criminal offences where the Director of the Company is presently liable for penal action."

73. As the language, object, and context of Section 22(1) of the SICA and Section 446(2) of the Companies Act are far removed from Section 14(1) of the IBC, none of the aforesaid judgments have any application to Section 14 of the IBC and are therefore distinguishable.

74. Shri Mehta then relied upon **Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.**, 2017 SCC OnLine Del 12189 : (2018) 246 DLT 485, in which the Delhi High Court held that a Section 34 application to set aside an award under the Arbitration and Conciliation Act, 1996 would

not be covered by Section 14 of the IBC. This judgment does not state the law correctly as it is clear that a Section 34 proceeding is certainly a proceeding against the corporate debtor which may result in an arbitral award against the corporate debtor being upheld, as a result of which, monies would then be payable by the corporate debtor. A Section 34 proceeding is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. This judgment does not, therefore, state the law correctly.

75. Shri Mehta then relied upon **Inderjit C. Parekh v. V.K. Bhatt**, (1974) 4 SCC 313. This judgment dealt with a moratorium provision contained in the Bombay Relief Undertakings (Special Provisions) Act, 1958. In the context of a prosecution under paragraph 76(a) of the Employees' Provident Fund Scheme, 1952 this Court held:

> "**6.** The object of Section 4(1)(*a*)(*iv*) is to declare, so to say, a moratorium on actions against the undertaking during the currency of the notification declaring it to be a relief undertaking. By sub-clause (*iv*), any remedy for the enforcement of an obligation or liability against the relief undertaking is suspended and proceedings which are already commenced are to be stayed during the operation of the notification. Under Section 4(*b*), on the notification ceasing to have force, such obligations and liabilities revive and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating industrial undertakings brought by inefficiency or

mismanagement to the brink of dissolution, posing thereby the grave threat of unemployment of industrial workers. “Relief undertaking” means under Section 2(2) an industrial undertaking in respect of which a declaration under Section 3 is in force. By Section 3, power is conferred on the State Government to declare an industrial undertaking as a relief undertaking, “as a measure of preventing unemployment or of unemployment relief”. Relief undertakings, so long as they continue as such, are given immunity from legal actions so as to render their working smooth and effective. Such undertakings can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is unhampered by legal proceedings or the threat of such proceedings. That is the genesis and justification of Section 4(1)(*a*)(*iv*) of the Act.

7. Thus, neither the language of the statute nor its object would justify the extension of the immunity so as to cover the individual obligations and liabilities of the directors and other officers of the undertaking. If they have incurred such obligations or liabilities, as distinct from the obligations or liabilities of the undertaking, they are liable to be proceeded against for their personal acts of commission and omission. The remedy in that behalf cannot be suspended nor can a proceeding already commenced against them in their individual capacity be stayed. Indeed, it would be strange if any such thing was within the contemplation of law. Normally, the occasion for declaring an industry as a relief undertaking would arise out of causes connected with defaults on the part of its directors and other officers. To declare a moratorium on legal actions against persons whose activities have necessitated the issuance of a notification in the interest of unemployment relief is to give to such persons the benefit of their own wrong. Section 4(1)(*a*)(*iv*) therefore advisedly limits the power of the State Government to direct suspension of remedies and stay of proceedings involving the obligations and liabilities in relation to a relief undertaking and which were incurred before the undertaking was declared a relief undertaking.

8. Para 38(1) of the Employees’ Provident Funds Scheme, 1952 imposes an obligation on “The employer” to pay the provident fund contribution to the Fund within 15 days of the close of every month. The Scheme does not define

> "Employee" but para 2(*m*) says that words and expressions which are not defined by the Scheme shall have the meaning assigned to them in the Employees' Provident Funds Act. Section 2(*e*)(*ii*) of that Act defines an "Employer", to the extent material, as the person who, or the authority which, has the ultimate control over the affairs of an establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. Thus the responsibility to pay the contributions to the Fund was of the appellants and if they have defaulted in paying the amount, they are liable to be prosecuted under para 76(*a*) of the Scheme which says that if any person fails to pay any contribution which he is liable to pay under the Scheme, he shall be punishable with six months' imprisonment or with fine which may extend to one thousand rupees or with both. Such a personal liability does not fall within the scope of Section 4(1)(*a*)(*iv*) of the Act."

Significantly, this Court did not hold that the moratorium provision would not extend to criminal liability. On the contrary, on the assumption that it would so extend, a distinction was made between personal liability of the Directors of the undertaking and the undertaking itself, stating that as the "employer" under the Employees' Provident Fund Scheme would only refer to those individuals managing the relief undertaking and not the relief undertaking itself, the personal liability of such persons would not fall within the scope of the moratorium provision. This judgment also, therefore, does not, in any manner, support Shri Mehta.

76. Lastly, Shri Mehta relied upon **Deputy Director, Directorate of Enforcement Delhi v. Axis Bank**, 2019 SCC OnLine Del 7854 : (2019) 259 DLT 500, and in particular, on paragraphs 127, 128, and 146 to 148

for the proposition that an offence under the Prevention of Money-Laundering Act could not be covered under Section 14(1)(a). The Delhi High Court's reasoning is contained in paragraphs 139 and 141, which are set out hereinbelow:

> "**139.** From the above discussion, it is clear that the objects and reasons of enactment of the four legislations are distinct, each operating in different field. There is no overlap. While RDBA has been enacted to provide for speedier remedy for banks and financial institutions to recover their dues, SARFAESI Act (with added chapter on registration of secured creditor) aims at facilitating the secured creditors to expeditiously and effectively enforce their security interest. In each case, the amount to be recovered is "*due*" to the claimant i.e. the banks or the financial institutions or the secured creditor, as the case may be, the claim being against the debtor (or his guarantor). The Insolvency Code, in contrast, seeks to primarily protect the interest of creditors by entrusting them with the responsibility to seek resolution through a professional (RP), failure on his part leading eventually to the liquidation process."
>
> xxx xxx xxx
>
> "**141.** This court finds it difficult to accept the proposition that the jurisdiction conferred on the State by PMLA to confiscate the "*proceeds of crime*" concerns a property the value whereof is "*debt*" due or payable to the Government (Central or State) or local authority. The Government, when it exercises its power under PMLA to seek attachment leading to confiscation of proceeds of crime, does not stand as a creditor, the person alleged to be complicit in the offence of money-laundering similarly not acquiring the status of a debtor. The State is not claiming the prerogative to deprive such offender of ill-gotten assets so as to be perceived to be sharing the loot, not the least so as to levy tax thereupon such as to give it a colour of legitimacy or lawful earning, the idea being to take away what has been illegitimately secured by proscribed criminal activity."

This *raison d'être* is completely different from what has been advocated by Shri Mehta. The confiscation of the proceeds of crime is by the government acting statutorily and not as a creditor. This judgment, again, does not further his case.

WHETHER NATURAL PERSONS ARE COVERED BY SECTION 14 OF THE IBC

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."
>
> xxx xxx xxx
>
> "**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."

xxx xxx xxx

"**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.

CONCLUSION

78. In conclusion, disagreeing with the Bombay High Court and the Calcutta High Court judgments in **Tayal Cotton Pvt. Ltd. v. State of Maharashtra**, 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312 and **M/s MBL Infrastructure Ltd. v. Manik Chand Somani**, CRR 3456/2018 (Calcutta High Court; decided on 16.04.2019), respectively, we hold that a Section 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) of the IBC.

79. 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 by us in paragraph 77 above as well as the fact that the insolvency resolution process does not involve a new management taking over. We may also note that the moratorium period has come to an end in this case.

Criminal Appeal arising out of SLP (Criminal) Diary No.32585 of 2019

1. Delay condoned. Leave granted.

2. Shri S. Nagamuthu, learned Senior Advocate appearing on behalf of the appellant, has made various submissions before us. Suffice it to state that his first submission is that as a moratorium is imposed against the

corporate debtor w.e.f. 10.07.2017, the Section 138 complaint that was preferred on 19.09.2017 must be quashed.

3. On the facts of this case, three cheques – for INR 25,00,000/- dated 31.05.2017, for INR 25,00,000/- dated 30.06.2017, and for INR 23,51,408/- dated 31.07.2017 were issued by the appellant in favour of the respondent. Before the cheques could be presented for payment, on 10.07.2017, the Adjudicating Authority admitted a petition by an operational creditor under Section 9 of the IBC and imposed a moratorium under Section 14. The three cheques were presented for payment, but were returned citing “insufficient funds” as the reason on 04.08.2017. The legal notice to initiate proceedings under Section 138 of the Negotiable Instruments Act was issued by the respondent on 12.08.2017. As no payment was forthcoming within the time specified, the respondent preferred a complaint against the corporate debtor alone on 19.09.2017.

4. The respondent did not dispute the aforesaid dates, only reiterating that the High Court was right in dismissing a quash petition filed by the appellant under Section 482 of the CrPC.

5. Since the complaint that has been filed in the present case is against the corporate debtor alone, without joining any of the persons in

charge of and responsible for the conduct of the business of the corporate debtor, the complaint needs to be quashed, given our judgment in Civil Appeal No.10355 of 2018. The judgment under appeal, dated 02.04.2019, is therefore set aside and the appeal is allowed.

Criminal Appeals arising out of SLP (Criminal) Nos.10587/2019, 10857/2019, 10550/2019, 10858/2019, 10860/2019, 10861/2019, 10446/2019.

1. Leave granted.

2. On the facts of these cases, all the complaints filed by different creditors of the same appellant under Section 138 read with Section 141 of the Negotiable Instruments Act were admittedly filed long before the Adjudicating Authority admitted a petition under Section 7 of the IBC and imposed moratorium on 19.03.2019.

3. Given our judgment in Civil Appeal No.10355 of 2018, the said moratorium order would not cover the appellant in these cases, who is not a corporate debtor, but a Director thereof. Thus, the impugned order issuing a proclamation under Section 82 CrPC cannot be faulted with on this ground. The appeals are therefore dismissed.

Criminal Appeal arising out of SLP (Criminal) Nos.2246-2247 of 2020

1. Leave granted.

2. In this case, the two complaints dated 12.03. 2018 and 14.03.2018 under Section 138 read with Section 141 of the Negotiable Instruments Act were filed by the respondent against the corporate debtor along with persons in charge of and responsible for the conduct of business of the corporate debtor. On 14.02.2020, the Adjudicating Authority admitted a petition under Section 9 of the IBC against the corporate debtor and imposed a moratorium. The impugned interim order dated 20.02.2020 is for the issuance of non-bailable warrants against two of the accused individuals.

3. Given our judgment in Civil Appeal No.10355 of 2018, the moratorium provision not extending to persons other than the corporate debtor, this appeal also stands dismissed.

Criminal Appeal arising out of SLP (Criminal) No.2496 of 2020

1. Leave granted.

2. In the present case, a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act was filed by Respondent No.1 against the corporate debtor together with its Managing Director and Director on 15.05.2018. It is only thereafter that a petition under Section 9 of the IBC, filed by Respondent No.1, was admitted by the Adjudicating Authority and a moratorium was imposed on 30.10.2018. The impugned judgment dated 16.10.2019 held that a petition under Section 482, CrPC

to quash the said proceeding would be rejected as Section 14 of the IBC did not apply to Section 138 proceedings.

3. The impugned judgment is set aside in view of our judgment in Civil Appeal No.10355 of 2018, and the complaint is directed to be continued against the Managing Director and Director, respectively.

Criminal Appeal arising out of SLP (Criminal) No.3500 of 2020

1. Leave granted.

2. The complaint in the present case was filed by the respondent on 28.07.2016. An application under Section 7, IBC was admitted by the Adjudicating Authority only on 20.02.2018 and moratorium imposed on the same date. The impugned judgment rejected a petition under Section 482 of the CrPC on the ground that Section 138 proceedings are not covered by Section 14 of the IBC.

3. The impugned judgment is set aside in view of our judgment in Civil Appeal No.10355 of 2018, and the complaint is directed to be continued against the appellant.

Criminal Appeal arising out of SLP (Criminal) No.5638-5651/2020, 5653-5668/2020

Leave granted.

In these appeals, the appellants have approached us directly from the learned Magistrate's impugned orders. The learned Magistrate has held that Section 14 of the IBC would not cover proceedings under Section 138 of the Negotiable Instruments Act. As a result, warrants of attachment have been issued under Section 431 read with Section 421 CrPC against various accused persons, including the corporate debtor and persons who are since deceased. While setting aside the impugned judgments, given our judgment in Civil Appeal No.10355 of 2018, we remand these cases to the Magistrate to apply the law laid down by us in Civil Appeal No.10355 of 2018, and thereafter decide all other points that may arise in these cases in accordance with law.

Writ Petition (Criminal) Nos.330/2020, 339/2020, Writ Petition (Civil) No.982/2020, Writ Petition (Criminal) Nos.297/2020, 342/2020, Writ Petition (Civil) No.1417/2020, 1439/2020, 18/2021, Writ Petition (Criminal) No.9/2021, 26/2021.

1. All these writ petitions have been filed under Article 32 of the Constitution of India by erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor. They are all premised upon the fact that Section 138 proceedings are covered by Section 14 of the IBC and hence, cannot continue against the corporate debtor and consequently, against the petitioners.

2. Given our judgment in Civil Appeal No.10355 of 2018, all these writ petitions have to be 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.

…….....J.
(ROHINTON FALI NARIMAN)

…….....J.
(NAVIN SINHA)

…….....J.
(K.M. JOSEPH)

New Delhi;
March 01, 2021.