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LEARNING CURVE

Case No. 15/ 2026 • 20th August, 2026

"Personal Insolvency Moratorium Does Not Stay Cheque-Bounce Proceedings Against Directors."

CASE TITLE	**Jagmohan Garg vs. National Spot Exchange Ltd and Anr**
CASE NO.	WP 1749 of 2024 & connected matters
DATE OF ORDER	18th August 2026
COURT / TRIBUNAL	Bombay High Court
STATUTES / RULES INVOLVED	Insolvency and Bankruptcy Code, 2016: • Section 94: Application by debtor. • Section 95: Application by creditor. • Section 96: Interim Moratorium. • Section 101: Moratorium. • Section 238: Overriding effect of IBC. Negotiable Instruments Act, 1881 • Section 138: Dishonour of cheque. • Section 141: Vicarious liability of directors and persons in charge of company affairs.
BENCH	Justice N.J. Jamadar

BRIEF FACTS OF THE CASE

National Spot Exchange Limited (NSEL) initiated complaints under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (NI Act) against Mohan India Pvt. Ltd. and its directors. Mohan India Pvt. Ltd. had issued cheques towards discharge of liabilities arising from a settlement award.

The cheque of ₹30 crore was dishonoured due to:

- Insufficient funds, and
- Frozen account.

Consequently, NSEL filed criminal complaints for cheque dishonour. During pendency of these complaints, the directors filed applications before the National Company Law Tribunal (NCLT) under Sections 94/95 of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking initiation of insolvency resolution process as personal guarantors/debtors.

Based on the filing of insolvency applications, they claimed that interim moratorium under Section 96 IBC had commenced and therefore the criminal proceedings under Section 138 NI Act should be stayed. The Magistrates rejected those applications, holding that the moratorium did not apply to Section 138 prosecutions against directors. The directors challenged those orders before the Bombay High Court.

ISSUES FOR CONSIDERATION

- **Whether the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 (IBC) applies to criminal complaints under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) against company directors and officers?**
- **Whether the prosecution of directors for cheque dishonour can continue notwithstanding insolvency proceedings initiated under Part III of the IBC?**

CONTENTIONS OF PARTIES

PETITIONERS — DIRECTORS	RESPONDENT — NSEL
Once an application under Sections 94 or 95 IBC is filed, Section 96 automatically triggers an interim moratorium. Section 96 uses the broad expression: "any legal action or proceeding in respect of any debt" which includes proceedings under Section 138 NI Act. A Section 138 proceeding essentially relates to recovery of a legally enforceable debt. Reliance was placed on: • **P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.** • **Dilip B. Jiwrajka v. Union of India** • **Indian Overseas Bank v. RCM Infrastructure Ltd.** Since the cheque represented a debt, prosecution should be stayed during the moratorium period. Continuation of prosecution would frustrate the objective of insolvency resolution and rehabilitation.	The debt belonged to the company and not to the directors personally. Directors were prosecuted only because of vicarious liability under Section 141 NI Act. Section 96 protects a debtor in respect of his debt and not directors against criminal prosecution. Supreme Court decisions in: • **Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd.** • **Rakesh Bhanot v. Gurdas Agro Pvt. Ltd.** conclusively hold that Section 138 prosecutions against natural persons continue despite insolvency proceedings. Moratorium cannot be used as a shield against criminal liability.

DECISION OF THE BOMBAY HIGH COURT

The Bombay High Court held that the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 does not bar or stay criminal proceedings under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 against directors and other persons responsible for the affairs of a company. The Court reasoned that the dishonoured cheques had been issued towards the company’s debt, not the personal debt of the directors, and that the directors are prosecuted only on the basis of their vicarious liability under Section 141 NI Act. Relying principally on the Supreme Court decisions in Ajay Kumar Radheyshyam Goenka v. TFCI and Rakesh Bhanot v. Gurdas Agro Pvt. Ltd., the Court held that the moratorium under Part III of the IBC is intended to suspend debt recovery actions and not to shield individuals from criminal prosecution. Consequently, the cheque dishonour complaints could continue against the directors notwithstanding the insolvency proceedings initiated under Sections 94 or 95 of the IBC, and all the petitions seeking stay of the trials were dismissed.

SIGNIFICANCE OF THE CASE

This judgment reaffirms that:

- Section 96 IBC cannot be used by directors as a shield against criminal prosecution under Sections 138/141 NI Act.
- Insolvency proceedings and cheque dishonour prosecutions operate in different fields.
- Filing personal insolvency applications under Part III of IBC does not halt long-pending cheque dishonour trials.
- The ruling follows the Supreme Court decisions in Ajay Kumar Radheyshyam Goenka and Rakesh Bhanot, and clarifies that even after Dineshchand Surana, criminal trials under Section 138 continue unaffected by the moratorium.

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