Reserved on : 16.04.2026
Pronounced on : 01.07.2026

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3024 OF 2024

BETWEEN:

RAKESH RAMAKANTH,
AGED ABOUT 53 YEARS,
S/O RAMAKANTH N.S.,
RESIDING AT:NO.6, 1ST CROSS, SRIPURAM
SHESHADRIPURAM
BENGALURU – 560 020.

... PETITIONER

(BY SRI NISHIT KUMAR SHETTY, ADVOCATE)

AND:

SOMASHEKARA GOWDA R.G.,
S/O RAMEGOWDA,
AGED ABOUT 45 YEARS,
OCC.: BUSINESS,
NO.124, 1ST B MAIN ROAD,
6TH BLOCK, RAJAJINAGAR,
BENGALURU – 560 010.

... RESPONDENT

(BY SRI M.R.BALAKRISHNA, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONER IN C.C.NO.263/2018, FOR THE OFFENCES P/U/S 138 OF N.I. ACT, PENDING ON THE FILE OF IV A.S.C.J. AND A.C.M.M., BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.1 is before this Court calling in question proceedings in C.C.No.263 of 2018 registered for offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act' for short).

2. Heard Sri Nishit Kumar Shetty, learned counsel appearing for the petitioner and Sri M.R. Balakrishna, learned counsel appearing for the respondent.

3. Facts in brief, germane, are as follows:

3.1. Accused No.2/Giga Networks Private Limited ('the Company') was incorporated under the provisions of the Companies Act, 1956. The Company was in the business of providing turnkey services to large companies viz., Reliance, Vodafone, Airtel etc. Petitioner/accused No.1 is said to be its Director. On 31-10-2010, an application comes to be submitted to the Registrar of Companies to close accused No.2/Company. Based on the said application, the Company is struck off from the array of companies under the Companies Act, 1956 and is declared as dissolved. On 16-03-2011, an endorsement is also issued by the Registrar of Companies striking off accused No.2 Company from the register and bringing it under the list of dissolved companies.

3.2. In the month of November 2014, accused No.1 is alleged to have taken a hand loan from the respondent/complainant to an extent of ₹60/- lakhs on the assurance that it would be paid back within 30 months. In furtherance of the said transaction, three years later on 30-07-2017, accused No.2/Company issues a cheque amounting to ₹60/- lakhs. On 08-08-2017 when the cheque comes

to be presented for realization, it is returned with an endorsement 'account closed'. The respondent complainant initiates statutory proceedings by issuance of a demand notice seeking payment from the hands of the Company along with interest. The demand notice was sent to accused No.2/Company and is said to have demanded accused No.1 to answer. It is then, the complainant registers a complaint before the concerned Court invoking Section 200 of the Cr.P.C., in PCR No.13006 of 2017. Cognizance is taken for the offence punishable under Section 138 of the Act and is registered as C.C.No.263 of 2018. Now the petitioner calls in question the entire proceedings.

4.1. The learned counsel appearing for the petitioner would vehemently contend that he had approached the respondent/ complainant during the financial crisis in the Company and had borrowed an amount of Rs.20/- lakhs from him by way of cash. Accused No.1 had given several bank cheques and promissory notes to the respondent/complainant over a period of time and has paid back over ₹80/- lakhs in cash. Notwithstanding the same, the cheque which was in the custody of the complainant was not

presented for a long time, but was done only in the year 2017. The cheque is returned with an endorsement 'account closed'. Since the Company was dissolved in the year 2011, the impugned proceedings would not be maintainable. He would submit that there is no legally recoverable debt from the petitioner.

4.2. The learned counsel would submit that the petitioner/accused No.1 was in Dubai during the time when the cheque was allegedly issued to the complainant i.e., in July 2017. Therefore, it could not have been issued by him. He would seek to place reliance upon the judgment of the Apex Court in the case of **VISHNOO MITTAL v. SHAKTI TRADING COMPANY** reported in **(2025) 9 SCC 417** to buttress his submission that proceedings under the Act, if would commence after dissolution of the Company, the Directors cannot be made liable for issuance of the said cheque. If the Company is not liable to pay under the cheque, the Director cannot be held liable thereto. On these grounds, the petitioner seeks quashment of entire proceedings.

5. *Per contra*, the learned counsel appearing for the respondent/complainant submits that the submissions of the learned counsel for the petitioner revolve round seriously disputed questions of fact. The complainant was not aware of the closure of the Company. The petitioner/accused No.1 cannot escape liability under the Act even if the Company has been dissolved. The signature on the cheque is not disputed by the petitioner. Therefore, accused No.1 can still be held liable in his personal capacity under Section 141 of the Act. He would place reliance upon the judgment of the Apex Court in the case of **AJAY KUMAR RADHEYSHYAM GOENKA v. TOURISM FINANCE CORPORATION OF INDIA LIMITED** reported in **(2023) 10 SCC 545** to buttress his submission *qua* the liability of the Director even in the teeth of closure of the Company.

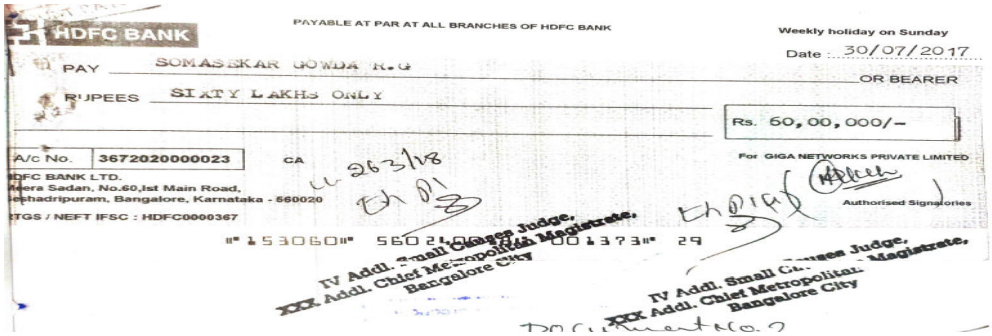
6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The link in the chain of events, as narrated hereinabove, is a matter of record. They would not require reiteration. The Company that stood established in the year 2003 files an application for its closure. The closure is accepted and the Company is declared to be dissolved. The website of the Ministry of Corporate Affairs depicts the following, showing the Company as dissolved:

> "GOVERNMENT OF INDIA
> MINISTRY OF CORPORATE AFFAIRS
> Office of the Registrar of Companies
> 'E' Wing, 2nd Floor, Kendriya Sadana, Koramangala,
> Bangalore-560 034, Karnataka, INDIA
>
> Date: 16-03-2011
>
> In the matter of the Companies Act, 1956 and of M/s GIGA NETWORKS PRIVATE LIMITED, U64202KA2001PTC029716
>
> This is with respect to your application (Form EES, 2010) dated 31-08-2010 vide SRN A92949148. Notice is hereby given pursuant to sub-section (5) of Section 560 of the Companies Act, 1956, that the name of GIGA NETWORKS PRIVTE LIMITED has this day been struck off the Register and the said Company is dissolved.
>
> T.S.D.PRASADA RAO,
> Deputy Registrar of Companies,
> Registrar of Companies, Karnataka"

The Company thus gets declared to be dissolved on 16-03-2011. The cheque is said to have been issued by the Company in the year 2017 for an amount of ₹60/- lakhs drawn on the account of the

Company. The cheque and the endorsement of the Bank read as follows:


HDFC BANK

PAYABLE AT PAR AT ALL BRANCHES OF HDFC BANK

Weekly holiday on Sunday

Date 30/07/2017

PAY SOMASEKAR GOWDA K.G OR BEARER

RUPEES SIXTY LAKHS ONLY

Rs. 60,00,000/-

A/c No. 3672020000023 CA

For GIGA NETWORKS PRIVATE LIMITED

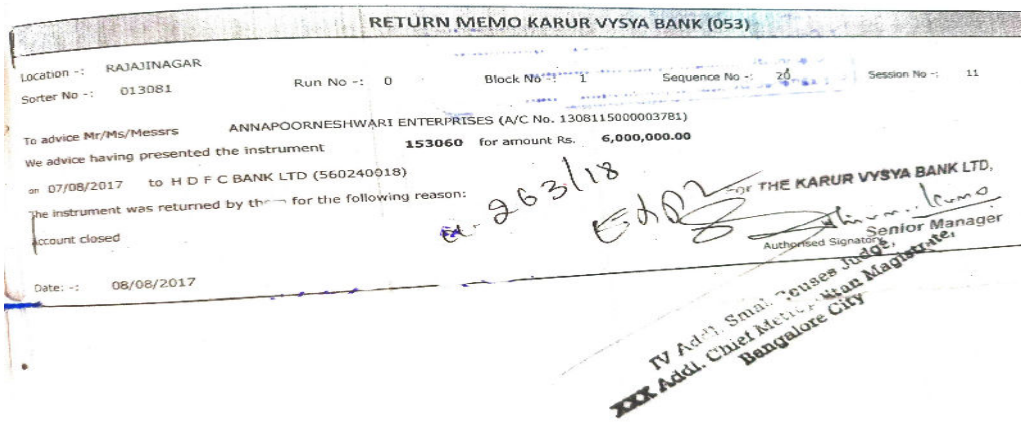
HDFC BANK LTD.
Veera Sadan, No.60,Ist Main Road,
Seshadripuram, Bangalore, Karnataka - 560020
RTGS / NEFT IFSC : HDFC0000367

Authorised Signatories

"153060" 560 21 001373" 29

CC 263/18

IV Addl. Small Causes Judge,
XXX Addl. Chief Metropolitan Magistrate,
Bangalore City


RETURN MEMO KARUR VYSYA BANK (053)

Location -: RAJAJINAGAR
Sorter No -: 013081
Run No -: 0
Block No -: 1
Sequence No -: 20
Session No -: 11

To advice Mr/Ms/Messrs ANNAPOORNESHWARI ENTERPRISES (A/C No. 130811500000378l)
We advice having presented the instrument 153060 for amount Rs. 6,000,000.00
on 07/08/2017 to H D F C BANK LTD (560240018)
The instrument was returned by them for the following reason:
Account closed

Date: -: 08/08/2017

CC 263/18

for THE KARUR VYSYA BANK LTD,
Senior Manager
Authorised Signatory

IV Addl. Small Causes Judge,
XXX Addl. Chief Metropolitan Magistrate,
Bangalore City

The complainant presents the cheque which gets dishonoured, ostensibly so, by an endorsement 'Account Closed'. The issue now would be, even if the cheque has been issued by the Company after the Company gets closed or dissolved, whether the proceedings for

offence punishable under Section 138 of the Negotiable Instruments Act can spring or otherwise?

8.1. The Apex Court in **VISHNOO MITTAL** *supra* considers a circumstance where proceedings under Section 138 of the Act had commenced after declaration of moratorium against a company. The Apex Court has held as follows:

> "…. …. ….
>
> **12.** There is another aspect to this matter. In the present case, on 25-7-2018, the moratorium was imposed and management of the corporate debtor was taken over by the interim resolution professional as per Section 17 IBC. Here, we would also like to reproduce extracts from Section 17 IBC which are as follows:
>
> > "**17.** ***Management of affairs of corporate debtor by interim resolution professional***.—(1) From the date of appointment of the interim resolution professional—
> >
> > (*a*) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;
> >
> > (*b*) the powers of the Board of Directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
> >
> > (*c*) ***
> >
> > (*d*) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information

relating to the corporate debtor available with them to the interim resolution professional."

13. The bare reading of the above provision shows that the appellant did not have the capacity to fulfil the demand raised by the respondent by way of the notice issued under clause (*c*) of the proviso to Section 138 NI Act. When the notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from his position as the Director of the corporate debtor as soon as IRP was appointed on 25-7-2018. Therefore, the powers vested with the Board of Directors were to be exercised by the IRP in accordance with the provisions of IBC. All the bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the appellant to repay the amount in light of Section 17 IBC."

The Apex Court holds that proceedings under Section 138 of the Act against a Director of a company who has allegedly issued a cheque after the moratorium period had commenced under Section 14 of the Insolvency and Bankruptcy Code, 2016 would not be maintainable, since such a Director would not have the capacity to fulfil the demand raised by the complainant.

8.2. The High Court of Delhi in **KRISHAN LAL GULATI v. STATE OF NCT OF DELHI**[1] has held as follows:

"…. …. ….

[1] **2025 SCC OnLine Del 9658**

6. First and foremost, before adverting to merits, the order-sheet of the case file reflects that respondent no. 2 was being represented through a counsel. However, none appears today. It so seems that in view of the detailed order dated 13.10.2023 passed by Coordinate Bench of this Court, the Complainant/Respondent No. 2 has accepted the futility of the *lis* as *fait accompli*. Since the accused company *M/s. Raghav Aditya Chits Pvt. Ltd.* has been dissolved in accordance with law. After perusal of the case file *vis-à-vis* the preliminary observations in the aforesaid order, with which I am in agreement, that alone suffices for both the present petition to be allowed.

7. However, adumbrating further, reference may be had to Sections 248(5), 250 of the Companies Act, 2013 which read as under:—

> *"248.(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved."*
>
> *"250. Effect of company notified as dissolved.—*
>
> *Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company."*

8. To fortify above position in law, a notification dated 05.09.2017 was also issued by the Department of Financial Services, Ministry of Finance, Union of India reads as under:—

> *"Government has stepped up decisive action against companies falling within the ambit of Section 248 of the Companies Act.* ***The names of 2,09,032***

companies have been struck off from the Register of Companies under Section 248(5) of the Act. The existing Directors and Authorized Signatories of such struck off companies will now become ex Directors or ex Authorized Signatories. These individuals will therefore not be able to operate bank accounts of such companies till such companies are legally restored under Section 252 of the Companies Act by an order of the National Company Law Tribunal. The restoration, as and when it happens shall be reflected by change in the status of the company from Struck of to Active.

Since such "Struck off" companies have ceased to exist, action has been initiated to restrict the operation of Bank accounts of such companies. The Department of Financial Services has, through the Indian Banks Association, advised all Banks that they should take immediate steps to put restrictions on bank accounts of such struck off companies. A list of such companies, Registrar of Companies wise, has been published on the website of the Ministry of Corporate Affairs.

In addition to such struck off companies, Banks have also been advised to go in for enhanced diligence while dealing with F companies in general. A company even having an active status on the website of the Ministry of Corporate Affairs but 0 defaulting in filing of its due Financial Statement (s) or Annual Return (s) of Particular of Charges on its assets on the 11 secured loan should be seen with suspicion as, prima facie, the company is not complying with its mandatory statutory obligations to file this vital information for availability to its stakeholders."

9. Thus, the provisions contained in Sections 248(5) and 250 of the Companies Act, 2013, deal with the strike-off and dissolution of companies by the Registrar of Companies. Under Section 248(5), the Registrar may strike off a company's name from the register if no cause is shown, and upon publication of such notice in the Official Gazette, the company stands dissolved. Section 250 further clarifies that once dissolved under Section 248, the company ceases to operate as a legal entity and its certificate of incorporation is deemed cancelled,

except for limited purposes such as realizing dues or settling liabilities.

10. As already noted, supra, Government Notification dated 05.09.2017 issued by the Department of Financial Services, states that companies struck off under Section 248(5) cease to exist in law, their directors become exdirectors, and their bank accounts remain frozen until such companies are restored under Section 252 of the Act. This notification, issued in the context of a large-scale corporate clean-up, reinforces that any transactions or operations by a struck-off company would be legally impermissible until its restoration.

11. The cheques in question, dated 10.11.2019 in CC No. 2619/2020 and 10.10.2019 in CC No. 4753/2020, the subsequent legal notices, both dated 23.12.2019, and the complaints filed under Section 138 of the Negotiable Instruments Act, 1881, are all actions that occurred after the company's dissolution. This sequence clearly indicates that the company was nonexistent in law at the time of these transactions and, therefore, could not have validly participated in commercial dealings or maintained bank accounts.

12. Once a company is struck off and stands dissolved, it loses its juristic personality, rendering any act done on its behalf void ab initio unless the company is restored under Section 252 of the Companies Act. Consequently, a cheque issued in the name of or by such a dissolved company cannot be treated as a legally enforceable instrument, since no valid drawer or account-holder exists in law. Proceedings under Section 138 of the Negotiable Instruments Act, which presuppose a validly issued cheque, therefore, cannot be sustained in such circumstances.

13. Continuation of the trial would thus serve no legal purpose when the complainant company itself has ceased to exist. Criminal prosecution cannot be maintained by or against a dissolved entity."

The High Court of Delhi holds that a complaint under Section 138 of the Act would not be maintainable if the cheque is issued after the company is struck off. Once the company is struck off and stands dissolved, it loses its juristic personality, rendering any act done on behalf of the company void *ab initio*, unless the company is restored under Section 252 of the Companies Act, 2013. The High Court of Delhi would further hold that the cheque issued in the name of or by such a dissolved company cannot be treated as a legally enforceable instrument.

8.3. The High Court of Delhi, again in **RAJ KUMAR JAIN v. SHREE BALAJI ENTERPRISES**[2], holds as follows:

"…. …. ….

> **20.** In the present case, as noted above, the liquidation proceeding was triggered on 23-5-2012, when notice was issued in the Company Petition filed for the winding up of Respondent 2/company, and the same was admitted and a Provisional Liquidator was appointed. Crucially, this event occurred prior to the dishonour of the cheques in question, which took place on 15-6-2012. Furthermore, the statutory demand notice was issued by complainant/Respondent 1 only subsequently, on 2-7-2012.
>
> **21.** To appreciate the controversy involved in the present case, it would be apposite to refer to relevant provisions of the Companies Act, 1956:

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[2] 2026 SCC OnLine Del.2599

*"**450. APPOINTMENT AND POWERS OF PROVISIONAL LIQUIDATOR**.—*

*(1) **At any time after the presentation of a winding up petition and before the making of a winding up order, the Tribunal may appoint the Official Liquidator to be liquidator provisionally.***

(2) Before appointing a Provisional Liquidator, the Tribunal shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.

*(3) **Where a Provisional Liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.***

*(4) **The Official Liquidator shall cease to hold office as Provisional Liquidator and shall become the liquidator, of the company, on a winding up order being made**."*

*"**456. CUSTODY OF COMPANY'S PROPERTY**.—*

(1) Where a winding up order has been made or where a Provisional Liquidator has been appointed, the liquidator or the Provisional Liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(1A) For the purpose of enabling the liquidator or the Provisional Liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the Provisional Liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof,

and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the Provisional Liquidator.

(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

(2) ***All the property and effects of the company shall be deemed to be in the custody of the Tribunal as from the date of the order for the winding up of the company****."*

*"**457. POWERS OF LIQUIDATOR.—***

(1) The liquidator in a winding up by the Tribunal shall have power, with the sanction of the Tribunal—

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels; (ca) to sell whole of the undertaking of the company as a going concern;

(d) to raise on the security of the assets of the company any money requisite;

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) ***The liquidator in a winding up by the Tribunal shall have power****—*

(i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

…

(iii) ***to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business****;*

(iv) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

(2-A) ……

(2-B) … ……

(2-G)The liquidator appointed shall—

(a)maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company;

(b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half

> *yearly return of receipts and payments to the Tribunal.*
>
> *(3) The exercise by the liquidator in a winding up by the Tribunal of the powers conferred by this section shall be subject to the control of the Tribunal; and any creditor or contributory may apply to the Tribunal with respect to the exercise or proposed exercise of any of the powers conferred by this section."*

22. A perusal of the above reproduced provisions makes it clear that the appointment of a Provisional Liquidator does not result in the legal dissolution of the company, but rather leads to suspension of the Directors' authority, rendering them *functus officio*. While the company maintains its corporate existence, its internal management is effectively displaced, transitioning its executive power to the Provisional Liquidator. Under this judicial arrangement, the company's business operations, the administration of its assets, and the validity of its contractual engagements are contingent upon the oversight and formal authorization of the liquidator, who serves as the custodian of the corporate estate.

23. Reference in this regard may be had to a recent decision of the coordinate bench of this court in CRL.M.C. 4123/2017 titled as *Pec Ltd.* v. *Sabari Exim Pvt Ltd.*, dated 22-8-2025, wherein an identical issue with regard to maintainability of complaint under Section 138 of NI Act against the Directors and the company *qua* which the Provisional Liquidator had been appointed prior to dishonouring of a cheque, was involved. Para 33 of the said decision encapsulates the primary contention raised by the petitioner/complainant therein which reads as under:

> *"33. Firstly, the Petitioner has argued that the **liability of the Company and its Directors does not extinguish merely as the appointment of Official Liquidator under Section 450 of the Companies Act is only provisional and the erstwhile Directors continue to perform their functions in the Company except dealing with the assets of the Company which come under the***

> ***exclusive domain of the Official Liquidator appointed for the said function."***
>
> (emphasis supplied)

24. The court while dealing with above contention, examined the relevant provisions of the companies Act, 1956, and held as under:

> *"35.* ***Thus, it is evident that when a Court appoints an Official Liquidator as Provisional Liquidator under Section 450, the Company does not cease to exist; rather the said Company's Board of Directors become functus officio. All the business operations, asset management, and contractual dealings are conducted under the supervision and with the authorization of the Provisional Liquidator***.
>
> *36. The contention of Petitioner that the erstwhile Directors continue to perform their functions in the Company, even after the Official Liquidator has been appointed, is misfounded and is not tenable in law. It is only the Provisional Liquidator, as per Section 457, who is empowered under Section 457(2)(iii)* ***"to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business."***
>
> (emphasis supplied)

25. In *PEC Ltd.* (Supra), reliance was placed upon the decisions rendered by other coordinate Benches of this Court in *M.L. Gupta* (Supra) and *Ratan Lal Garera* v. *State (NCT of Delhi)*, 2006 SCC OnLine Del 1442. The said decisions also discusses the legal position regarding the maintainability of a complaint under Section 138 of the Negotiable Instruments Act, 1881, particularly when filed after the initiation of liquidation proceedings against a corporate entity and the appointment of a liquidator, specifically in circumstances where such appointment preceded both, the dishonour of the cheques as well as the issuance of the statutory

demand notice. The relevant paragraphs from *PEC Ltd.*. (supra) where said decisions have been referred read as follows:

> *37. In the case of* M.L. Gupta *v.* Ceat Financial Services Ltd., *(2008) 145 Comp Cas 837 : 2006 SCC OnLine Del 1448* ***while holding that a Complaint would not be maintainable when the cheque is presented after the Company has already been ordered to be wound up, observed that when the company goes into liquidation and the cheque is presented thereafter, it cannot be said that the company has committed the offence as it is because of legal bar that it is precluded from making the payment. Once dishonour of the cheque by the Bank and failure to make payment of amount by the company is beyond its control, the Directors (who are in fact ex-Directors) can also not be held liable.***
>
> *38. Similarly, in the case of* Ratan Lal Garera *v.* State (NCT of Delhi), *2006 SCC OnLine Del 1442 the Supreme Court relied on the case of* M.L. Gupta, *(supra) and* ***held that as the winding-up orders have been passed and the Official Liquidator was appointed as on the date when the cheque was presented and dishonoured, the case would not fall within the parameters of Section 138 N.I. Act.***
>
> (emphasis supplied)

26. Likewise, in *Manju Bajad* (Supra) and *Vinay Kumar Tyagi* (Supra) both rendered on 1-9-2023, one of the partyi.e the present petitioner was same. Even the facts involved were identical. In the said two cases, the court allowed the petition of the petitioner, thereby quashing the complaint filed under Sections 138/141/142 of the N.I Act against the Director i.e. the present petitioner. The relevant paragraphs from *Manju Bajad* (supra) are reproduced herein:

> *"8. In the present case, admittedly, Respondent 2 was in liquidation vide order dated 23-5-2012 passed in Co. Pet. 262/2012 titled* Rani Leasing and Finance Pvt. Ltd *v.* P.R.J. Enterprises Ltd. *seeking winding up of Respondent 2, wherein a Provisional Liquidator was*

appointed and Respondent 2, its Directors, officers, employers, authorised representatives including the petitioner herein were restrained from selling, transferring, alienating, encumbering and parting with the possession of any movable and immovable assets and funds of Respondent 2 and were also restrained from withdrawing any money from the accounts of Respondent 2. As on date, vide a subsequent order dated 21-1-2020 Respondent 2 i.e. P.R.J. Enterprises Ltd. has already been dissolved.

9. ***It is also the admitted position that the cheques in question in the present case were dishonoured on 21-5-2012 and the Legal Notice dated 4-6-2012 was subsequently sent by speed post dated 6-6-2012, meaning thereby that the 15 days for making payment after receipt of the Legal Notice expired on 21-6-2012. Thus as evident from the aforesaid, the cause of action for filing the complaint under Section 138 of NI Act arose after Respondent 2 company went into liquidation.***

10. ***It is trite law that a complaint under Section 138 of the NI Act is not maintainable if filed after the Company has already been directed to be wound up. The said position of law has been explained in*** **M.L. Gupta** ***(supra) wherein it has been observed as under:—***

> ***8. We are, however, concerned with the position where cheque presented is dishonoured and complaint is filed under Section 138 of the Negotiable Instruments Act against the company and the Directors after the company has already been ordered to be wound up. Whether such a complaint would be maintainable is the question and the legal position on this aspect is what needs to be determined.***
>
> ***9. To answer this question, we may have first to take note of the necessary legal consequences of the winding up of a company and orders of appointment of Official Liquidator/Liquidator. By operation of law i.e. by virtue of the Companies Act, it would result in discharge of all the employees and the Officers from the service of the company including Board of Directors. Affairs of such a***

company are taken over by the Official Liquidator and the Official Liquidator has to disburse the payment in accordance with the Companies Act. Section 536 of the Companies Act now comes into play fully and disbursement of any amount would be void. If the cheque is presented at this stage, payment thereof is legally barred. Bank, on which cheque is issued is precluded from honouring the cheque. *In the instant case itself, account was closed by the Official Liquidator and that was the reason for dishonour of cheque.* ***It is also to be borne in kind that after the winding up orders and the taking of over the affairs of the company by the Official Liquidator since erstwhile Directors seize to be the Directors as on the date of presentation of the cheque, they are not incharge of day to day affairs of the company. Offence is committed under Section 138 of the Act only on the dishonour of the cheque and issuance of notice for demand to pay the amount. As on that date, no such notice could be issued to the company which was in liquidation and the creditors are now to be paid as per the scheme of the Companies Act. Therefore, liability on them also cannot be fastened under Section 141 of the Negotiable Instruments Act.***

Xxx xxx xxx

16. ***Thus, what is emphasized is that actual offence has to be committed by the company and then alone the Directors can become liable for the offence. When the company goes into liquidation and the cheque is presented thereafter, it cannot be said that the company has committed the offence as it is because of legal bar that it is precluded from making the payment. Once dishonour of the cheque by the Bank and failure to make payment of amount by the company is beyond its control, the Directors (who are in fact ex-Directors) can also not be held liable.*** *Sustenance for this proposition can be drawn from another judgment of the Supreme Court in the case of Kusum Ingots & Alloys Ltd., v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755 (SC). That was a case where reference in respect of the company was pending before the Board of*

> *Industrial and Financial Reconstruction (for short 'BIFR') under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The Court held that mere registering the reference would not be sufficient to bar the proceedings under Section 138 of the N.I. Act even by virtue of Section 22 of SICA as Section 22 which provided that no proceedings would be instituted against the company related to only to civil proceedings and does not include criminal proceedings. However, the Court further held that position would be different if order is passed by the BIFR under Section 22A of SICA restraining the company or its Directors from disposing of the assets of the company….."*

The said position of law has also been reiterated and followed by this Court in Vijay Steel Tubes & Fittings Pvt. Ltd. *(supra).*

11. The facts of the present case clearly reveal that pursuant to order dated 23-5-2012 directing Respondent 2 to be wound up, the Directors and all other persons attached to the company including the petitioner herein were restrained from utlilizing the assets of Respondent 2 and hence no payment could be made by the petitioner herein as he ceased to be in control of the day to day affairs of Respondent 2 which stood transferred to the Provisional Liquidator.

12. In light of the settled legal position and the factual matrix involved, as discussed hereinabove, ***the complaint as well as summoning orders passed by the learned MM are bad in law and are liable to be set aside.***

13. In view of the aforesaid, the petition is allowed and the Complaint Case Misc. Crl. 1419/2016 titled Manju Bajad *v.* P.R.J. Enterprises Ltd. *filed under Sections 138/141/142 of the Negotiable Instruments Act, 1881 and all proceedings emanating therefrom, including the order dated 9-1-2020 passed by the learned Metropolitan Magistrate-2, Shahdara, Karkardooma Court, New Delhi, qua the petitioner, are quashed.*

14. The petition, along with the pending application, stands disposed of."

(emphasis supplied)

27. In view of the aforesaid statutory mandate, factual chronology and decisions referred above, it is clear that **once the powers vested in the petitioner (in his capacity as a Director) stood transferred to the Provisional Liquidator by operation of law, the petitioner was legally and practically rendered incapable of controlling the bank accounts of Respondent 2/company. Ergo, it cannot be said that the petitioner was in a position to ensure the encashment of the cheque or to honour the demand notice, as the authority to operate the said accounts rested solely with the liquidator.**

28. The use of expression "an account maintained by him" in Section 138 NI Act also suggests one of the prerequisite ingredient for constituting an offence thereunder is that accused must have control over the account. At this juncture, it would be apposite to refer to Section 138 of the NI Act, which is reproduced below in extenso:

"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 provisions of this Act, be punished with imprisonment for a term which may be extended 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.]"

(emphasis supplied)

29. It thus, appears that **to legally maintain a bank account, the holder must exercise continuous authority, keeping the account in an active, operational, and functional state while actively preserving it from lapse or cessation. This continuous preservation serves as the bedrock of the drawer-banker relationship, placing the legal emphasis not merely on the opening of an account, but on the ongoing affirmative act of keeping it in proper condition. This expression cannot be construed so narrowly as to mean that the mere ownership of an account by the accused satisfies the necessary legal ingredients. Rather, the requirement that an account be "maintained" necessarily implies that it is alive and operative, ensuring the account holder remains capable of executing commands to govern financial transactions, such as the clearance of cheques. Ultimately, the authority and control of the account holder must exist on the effective date when the cheque becomes valid for presentation at the bank.**

30. This position is supported by the observations of a coordinate bench of this court in *Best BuildwellPvt. Ltd.* v. *R.D. Sales* (2025 SCC OnLine Del 4267), wherein it was noted that:

> ***"14.*** *Under Section 138 of the NI Act, an offence is committed when a cheque is drawn from an account maintained by the drawer and it is returned unpaid due to insufficient funds. Even though the cheque return memo may mention its reason for dishonor as "insufficient funds", the fact remains that, the petitioners' account was frozen by the CGST Department, and thus, it could not be said to be "maintained" by them at the relevant time.* ***Since the petitioners were unable to operate the account or issue valid instructions to the bank due to the attachment, the essential ingredients of Section 138 are not fulfilled. Even if the funds in the account were insufficient at the time of presentation of the cheques, the account having been frozen by the CGST, it would not have been possible for the petitioner to maintain sufficiency of funds in his account for the cheques to be honoured. This position finds support in*** Vijay Chaudhary *v.* Gyan Chand Jain, *2008 SCC OnLine Del 554,* ***where it was inter alia held as under****;*
>
> *"xxx*
>
> *23. …* ***For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issued any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the court orders continued****."***
>
> (emphasis supplied)

> **31. In view of the settled legal position as rendered in *PEC Ltd.* (Supra) and *M.L Gupta* (Supra) the appointment of a Provisional Liquidator, occurring prior to the dishonour of the cheques and the issuance of the demand notice, effectively divested the petitioner of his managerial authority and control over the company's bank accounts. Since the statutory mandate of Section 138 of the N.I. Act requires the account to be "maintained" by the accused at the time of the offence, the transition of executive power to the Provisional Liquidator created a legal and practical impossibility for the petitioner to satisfy the demand or operate the accounts. Concomitantly, as the petitioner was neither in charge of the company's affairs nor capable of ensuring the encashment of the cheques on the date the cause of action crystallized, therefore, the essential ingredients of the offence are not met, and the complaint against the petitioner is held to be legally non-maintainable."**

The High Court of Delhi holds that proceedings for the offence punishable under Section 138 of the Act would not be maintainable if the cheque is issued after proceedings for liquidation of the company is initiated.

9. On a blend of the judgments rendered by the Apex Court and that of the High Court of Delhi, what would unmistakably emerge is that, a cheque allegedly issued in the name of the company, after dissolution of the company, would not become a legally enforceable instrument, it would be void *ab initio*. It would be an altogether different circumstance if the cheque is issued and

during the proceedings, the company would cease to exist. Then the Directors are to be held liable for fulfilling the legally enforceable instrument. This is what is declared by the Apex Court in **BHARAT MITTAL v. STATE OF RAJASTHAN**[3] in the following paragraphs:

"…. …. ….

II. <u>PROSECUTION CANNOT BE MAINTAINED AGAINST A DIRECTOR OR CHEQUE SIGNATORY ALONE WITHOUT MAKING THE COMPANY AN ACCUSED, EXCEPT IN ONE SITUATION - A LEGAL IMPEDIMENT (LEGAL SNAG).</u>"

15. This Court, in *AneetaHada* v. *Godfather Travels & Tours Pvt. Ltd*., laid down the law that criminal prosecution against 'every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business,' as contemplated under Section 141 of the Act, cannot be maintained unless the company itself is arraigned as an accused in a complaint filed under Section 138 read with Section 141 of the Act.

16. In *Aneeta Hada*, this Court undertook an examination of the correctness of certain earlier pronouncements which had taken the view that prosecution could be maintained against a director or the signatory of the cheque even in the absence of the company being arraigned as an accused. One such decision was *Anil Hada* v. *Indian Acrylic Ltd*. In *Anil Hada*, the Court was dealing with a situation wherein the complaint had been instituted only against the directors of M/s Indo Flogate Industries Ltd., the company not having been impleaded on account of it being under liquidation. In those circumstances, this Court proceeded to hold as follows:

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[3] 2025 SCC OnLine SC 2856

> "10. Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. They are : (1) The company which committed the offence, (2) Everyone who was in charge of and was responsible for the business of the company, (3) any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.
>
> ……
>
> 13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. **The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. *But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act.***
>
> (Emphasis supplied)

17. *Aneeta Hada* partially overruled the ratio of *Anil Hada* to the extent that it had permitted prosecution of category of persons without arraigning the company as an accused. ***Aneeta Hada* clarified that a complaint under Section 138 read with Section 141 of the Act cannot be maintained against the 'category of persons' alone unless the company is also made an accused. However, it upheld the only exception recognized in *Anil Hada* namely, that where the company cannot be prosecuted due to a legal**

impediment, proceedings may validly continue against the 'category of persons' alone.

18. From the above analysis, the following conclusions emerge:

i. **The 'category of persons' referred to in Section 141 of the Act cannot be prosecuted in a complaint under Section 138 read with Section 141 unless the company is also arrayed as an accused.**

ii. **The only exception arises where, due to a legal impediment, the company cannot be prosecuted, in such circumstances, the prosecution may proceed solely against the 'category of persons'.**

iii. **Where a complaint has been properly filed against both the company and the 'category of persons', but during the pendency of the proceedings the company goes into liquidation, winding-up, or faces any other legal snag, the prosecution will continue only against the 'category of persons' and not against the company.**

19. This position of law is important for us to reiterate for the simple reason that when a prosecution proceeded just against the managerial persons or the category of persons and not against the company because of some legal snag, as is in the present case, such managerial persons can be convicted of the offences under Section 138 r/w Section 141. A person who has been convicted can maintain an appeal against his conviction."

(Emphasis supplied at each instance)

The Apex Court holds that Directors can face conviction for offence under Section 138 of the Act if there is a legal snag, by virtue of which the company cannot be drawn in as an accused. Where a

complaint has been properly filed both against the company and the category of persons – Directors or otherwise, but during the pendency of the proceedings, the company goes into liquidation or winding up or faces any other legal snag, the prosecution will continue only against the category of persons referred to under Section 141 of the Act and not against the company.

10. In the case at hand, the proceedings are initiated by the complainant by issuing a legal notice on 06-09-2017 and registering a complaint on 13-10-2017, while it is an admitted fact that the Company stood dissolved with effect from 16-03-2011. Therefore, the cheque itself is allegedly issued in the name of the Company after dissolution of the Company. Therefore, the petitioner, a former Director of the said Company cannot be held liable for a cheque that is issued after dissolution of the Company.

11. The learned counsel for the respondent/complainant would vehemently contend that these are disputed questions of fact and as such further proceedings must be permitted to be continued.

Therefore, it becomes necessary to notice what is the averment in the complaint. The complaint reads as follows:

> "**COMPLAINT UNDER SECTION 200 Cr.P.C. R/W SECTIONS 138 AND 142 OF THE NEGOTIABLE INSTRUMENTS ACT.**
>
> The complainant respectfully submits as follows:-
>
> 1. The address of the complainant for the purpose of the service of notice, summons etc., from this Hon'ble Court is as shown in the cause title and the complainant may also be served through his Advocates Sri Ganapathi S.Shastri & Veena C.G., No.281, 20th Main, Vijayanagar, Bengaluru-560 040.
>
> 2. The address of the accused for the above said purpose is as shown in the cause title.
>
> 3. The complainant is businessman and he knows the accused No.1 since many years. The accused No.2 is represented by accused No.1. In the month of November, 2014, the accused No.1 requested the complainant to given a hand loan of ₹60,00,000 (Rupees Sixty lakhs only) for business purpose and the accused No.1 assured the complainant that the said amount will be repaid within thirty months.
>
> 4. Out of friendship, the complainant gave a hand loan of ₹60,00,000 (Rupees Sixty lakhs only) to the accused No.1 in the third week of November, 2014 by way of cash. At the time of receiving the said amount the accused No.1 had promised the complainant that the said amount will be repaid within thirty months. As the accused No.1 failed to repay the said amount as promised, in the second seek of July, 2017 the complainant asked the accused No.1 to repay the said amount. Then the accused No.1 issued a cheque bearing No.153060 dated 30-07-2017 for ₹60,00,000 (Rupees Sixty lakhs only) drawn on HDFC Bank Limited, Seshadripuram, Bengaluru to the complainant for discharging his liability and requested the complainant to present the said cheque to the Bank after a week. The accused No.1 had assured the complainant that the said cheque will be honoured on it's presentation to the Bank.

5. The complainant presented the said cheque to Karur Vysya Bank Ltd., Rajajinagar, Bengaluru. But, to shock of the complainant, the said cheque was returned on 8-8-2017 by the Bank for the reason that "Account closed". While issuing the cheque, the accused No.1 was fully aware that he had no sufficient funds in his bank account and that the said cheque will be bounced. The accused No.1 has issued the said cheque to deceive/cheat the complainant. Hence, the accused No.1 has committed an offence punishable under provisions of the Negotiable Instruments Act.

6. From the endorsement of the Bank, it is evident that the accused No.1 has not made any arrangement for honouring the said cheque issued by him to the complainant. The complainant after receiving the Bank endorsement, got issued a legal notice dated 6-9-2017 through registered post calling upon the accused to pay the said cheque amount of ₹60,00,000 (Rupees Sixty lakhs only) together with Interest at the rate of 18% per annum along with cost within fifteen days from the receipt of the said notice. The accused No.1 was aware that the complainant will issue demand notice, hence he managed that the said notices are retuned to sender on 8-9-2017. The copies of cheque, Bank endorsement, registered notice, postal receipt, returned cover are herewith produced. The accused No.1 has not paid any amount to the complainant.

7. The accused has failed to repay the said amount demanded by the complainant. Hence, the accused is liable to be prosecuted under the provisions of the Negotiable Instruments Act.

8. The cause of action for this complaint arose on 22.09.2017 and subsequently thereafter at Rajajinagar Police Station, which comes under the Jurisdiction of this Hon'ble Court.

9. The complainant begs to rely on the documents produced along with the complaint.

10. This complaint is preferred being aggrieved by the dishonest and illegal intention of the accused to cheat and defraud the complainant.

WHEREFORE, the complainant respectfully prays that this Hon'ble Court be pleased to-

Secure the presence of the accused by issuing notice and punish him in accordance with the law and act.
Pass any other order in the circumstances of the case in the interest of justice and equity.

Sd/-
Advocate for Complainant

Sd/-
Complainant

Bengaluru
Date: 13-10-2017."

The cheque is drawn on the account of the Company – accused No.2. There is no averment in the complaint that the petitioner was the Director at the relevant point in time and was in-charge of day-to-day affairs of the Company. The only averment is that accused No.2 is the Company and that the petitioner is the representative of the Company and is liable to honour the instrument. Even on this score, the matter need not be directed to be tried. Therefore, on both counts viz., factual aspect as well as the jurisdictional issue of the proceedings having sprung after the Company gets dissolved, further proceedings cannot be permitted to be continued. However, if the complainant has any other remedy in law, he would be at liberty to avail of it.

12. The judgment relied on by the learned counsel for the respondent/complainant would not become applicable to the facts obtaining in the case at hand, as the Apex Court was considering a circumstance where after issuance of the cheque one of the proceedings began - either for winding up under the Insolvency and Bankruptcy Code, 2016 or its closure. In the case at hand, the Company stood closed 6 years prior to issuance of the cheque.

13. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is **allowed.**

(ii) Proceedings in C.C.No.263 of 2018 pending before the IV Additional Senior Civil Judge & Additional Chief Metropolitan Magistrate, Bengaluru stand quashed.

Consequently, pending I.A.No.2 of 2024 also stands disposed.

Sd-/
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ