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RESEARCH PAPER

Two Moratoria, One Director: Personal Insolvency and Section 138 Liability after Ajay Gupta v Can Bank Factors Ltd

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Abstract

Indian insolvency law has two moratoria. Section 14 of the Insolvency and Bankruptcy Code 2016 protects a corporate debtor. Sections 96 and 101 protect individual debtors, personal guarantors included. Each one touches prosecutions for cheque dishonour under Section 138 of the Negotiable Instruments Act 1881, and the Supreme Court has sent mixed signals on both.

This paper looks at Ajay Gupta v Can Bank Factors Ltd, decided by the Punjab and Haryana High Court on 20 July 2026. Two directors of a company in liquidation asked the court to quash a Section 138 complaint while personal insolvency proceedings against them were pending. The paper reads the judgment against the statutory text and four Supreme Court decisions: P Mohanraj, Ajay Kumar Radheyshyam Goenka, Rakesh Bhanot and Dineshchand Surana.

It argues that the High Court got to a defensible result by an incomplete route. It answered the corporate moratorium question the directors put to it. On the personal moratorium, which was the real issue on the recorded facts, it said one sentence and cited nothing. That sentence repeats the reasoning in Rakesh Bhanot without attribution and ignores Dineshchand Surana, decided eight weeks earlier, which held that directors liable under Section 141 are protected by the Part III moratorium as far as compensation goes.

The paper also rejects the argument that prior completion of the offence settles the matter. It ends with two proposals: a Part III provision modelled on Section 32A, and an interim judicial protocol that keeps prosecution separate from enforcement of compensation.

1. Introduction and Thesis

The Legal Conflict

When a corporate borrower fails, its lenders usually hold two things: a claim in the insolvency and a set of dishonoured cheques. Section 138 of the Negotiable Instruments Act makes dishonour of a cheque for an enforceable debt an offence,[1] and Section 141 extends that liability

[1] Negotiable Instruments Act 1881 (NI Act), s 138.

to every person who was in charge of, and responsible to, the company for the conduct of its business when the offence was committed.[2] The Insolvency and Bankruptcy Code suspends enforcement through moratoria, but not uniformly. The corporate moratorium under Section 14 attaches to proceedings "against the corporate debtor".[3] The moratoria under Sections 96 and 101 attach instead to proceedings "in respect of any debt" of an individual.[4] A director who has also guaranteed the company's borrowing can therefore stand under both regimes at once.

Ajay Gupta v Can Bank Factors Ltd presents exactly that position. Eight cheques aggregating roughly Rs 4.07 crore, issued by a textile company to its factoring financier, were dishonoured in 2015.[5] The company was admitted into insolvency on 29 September 2017 and ordered into liquidation on 8 August 2018.[6] The complainant then filed personal insolvency petitions against both directors in respect of the same liability.[7] The High Court dismissed the directors' petition to quash the complaint.[8]

Thesis

This paper argues that the High Court decided the wrong moratorium question. On the facts it recorded, the operative provisions were Sections 96 and 101, not Section 14. The court's single sentence on Part III is drawn from *Rakesh Bhanot* without citation, departs from the position taken in *Dineshchand Surana*, and leaves the trial court without guidance on the one consequence that the personal moratorium arguably reaches, namely compensation. The result may stand; the reasoning does not.

2. Research Methodology

The study is doctrinal and qualitative. Primary sources comprise the IBC (Sections 14, 32A, 79(15), 94 to 96, 101 and 124), the NI Act (Sections 138 and 141) and Section 395 of the Bharatiya Nagarik Suraksha Sanhita 2023, read in their current text on India Code. The judgment under study was taken from the digitally signed copy bearing neutral citation 2026:PHHC:098300. Supreme Court and High Court decisions were retrieved from official court portals and the judicial orders repository of the Insolvency and Bankruptcy Board of India, using search strings combining "Section 96", "Section 101", "Section 138", "personal guarantor" and "interim moratorium", for the period March 2021 to October 2026. Secondary literature, consisting of practitioner commentary and student-edited journal posts, was used to locate authority and to identify existing critique. Paragraph pin-cites follow the judgments as delivered. Citation follows OSCOLA (4th edn).

[2] NI Act, s 141(1).
[3] Insolvency and Bankruptcy Code 2016 (IBC), s 14(1)(a).
[4] IBC, ss 96(1)(b)(i), 101(2)(a).
[5] *Ajay Gupta v Can Bank Factors Ltd* CRM-M-45498-2019 (P&H HC, 20 July 2026) [2]–[3].
[6] ibid [5]–[6].
[7] ibid [6].
[8] ibid [12].

3. Doctrinal Analysis

The Statutory Framework

Section 14 prohibits the institution or continuation of suits and proceedings against the corporate debtor once insolvency is admitted.[9] Part III operates differently. An interim moratorium begins on the date an application is filed under Section 94 (by the debtor) or Section 95 (by a creditor),[10] and during it "any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed".[11] Section 101 continues that protection after admission.[12] Two further provisions frame the analysis. Section 79(15)(a) excludes from protection any "liability to pay fine imposed by a court or tribunal".[13] Section 32A extinguishes a corporate debtor's liability for prior offences on approval of a resolution plan, while expressly preserving the liability of persons in charge of its business.[14] Part III contains no equivalent of Section 32A.

The textual difference matters. Section 14 is debtor-centred; Sections 96 and 101 are debt-centred. The Supreme Court has drawn this distinction in so many words, holding that the Part III moratorium operates in relation to the debt rather than the person of the debtor.[15]

The Corporate Line

In *P Mohanraj v Shah Brothers Ispat*, a three-judge bench held that a Section 138 proceeding against a company is a "proceeding" within Section 14(1)(a), characterising it as quasi-criminal[16] and, memorably, as a "civil sheep in a criminal wolf's clothing".[17] The moratorium, however, "would apply only to the corporate debtor"; natural persons covered by Section 141 remain liable.[18] The bench also reasoned that because the object of the Part III moratorium mirrors that of Section 14, Sections 96 and 101 would equally take in a Section 138 proceeding.[19] That observation was not necessary to the decision, but it pointed in one direction. In *Goenka*, the Court described Section 138 proceedings as penal in character rather than recovery proceedings,[20] and held that directors cannot escape liability by relying on the resolution or dissolution of the company.[21]

The Personal Line

The personal moratorium produced a different answer. In *Rakesh Bhanot*, a two-judge bench held that the Section 96 moratorium was not designed to shield individuals from personal criminal liability[22] and that its object is "not to stall the criminal prosecution" but "to only postpone

[9] IBC, s 14(1)(a).
[10] IBC, s 96(1)(a).
[11] IBC, s 96(1)(b)(i).
[12] IBC, s 101(1)–(2).
[13] IBC, s 79(15)(a).
[14] IBC, s 32A(1) and provisos.
[15] *Dineshchand Surana v UCO Bank* 2026 INSC 579 [186], applying *Dilip B Jiwrajka v Union of India* (2024) 5 SCC 435.
[16] *P Mohanraj v Shah Brothers Ispat (P) Ltd* (2021) 6 SCC 258 [24].
[17] ibid [43].
[18] ibid [77].
[19] ibid [47].
[20] *Ajay Kumar Radheyshyam Goenka v Tourism Finance Corporation of India Ltd* (2023) 10 SCC 545 [16].
[21] ibid [52] (Pardiwala J).
[22] *Rakesh Bhanot v Gurdas Agro (P) Ltd* (2025) 6 SCC 781 [22]–[23].

any civil actions to recover any debt".[23] One year later, in *Dineshchand Surana*, another two-judge bench held that the Part III moratorium cannot stay the prosecution because the offence is predominantly criminal,[24] but that compensation awarded under Section 395 of the BNSS is civil in character and its enforcement is stayed.[25] It extended that protection to directors whose liability arises under Section 141.[26] Observing that the criminal character of Section 138 had not been placed before the *Mohanraj* bench,[27] it referred both the characterisation question and the scope of the Part III moratorium to a larger bench.[28] The personal moratorium question is therefore open at the highest level.

The Decision in Ajay Gupta

The High Court reasoned in three steps. First, the offence was complete in 2015, long before insolvency began, so later proceedings could not "efface or obliterate" the criminal liability already incurred.[29] Second, relying on *Mohanraj* and *Goenka*, it held that Section 141 liability is assessed at the date of the offence and survives the appointment of a resolution professional and liquidator, describing the point as "no longer res integra".[30] Third, it rejected the parallel proceedings argument on the ground that Section 138 proceedings are "predominantly criminal in nature" and that the object of the moratorium is "merely to postpone civil debt enforcement".[31] Whether the petitioners were in charge of the company was left to trial.[32]

4. Critical Evaluation

The Wrong Moratorium

The petitioners framed their case around Section 14,[33] but their own submissions recorded that the complainant had filed personal insolvency petitions against them.[34] That fact moved the case into Part III. Because the interim moratorium begins on filing rather than admission,[35] a stay may already have been in force when the petition was heard. The court did not ascertain the filing dates, whether the petitions had been admitted, or which provision governed. Its detailed engagement with Section 14 at paragraph 10 answered a question that was no longer decisive. The description of the issue as "no longer res integra"[36] was accurate for the corporate moratorium; for the personal moratorium, the Supreme Court had expressly unsettled the law eight weeks earlier.

[23] ibid [31].
[24] *Surana* (n 15) [132].
[25] ibid [158]; Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 395.
[26] *Surana* (n 15) [186].
[27] ibid [194].
[28] ibid [196], [211].
[29] *Ajay Gupta* (n 5) [9].
[30] ibid [10].
[31] ibid [11].
[32] ibid [12].
[33] *Ajay Gupta* (n 5) [5].
[34] ibid [6].
[35] IBC, s 96(1)(a).
[36] *Ajay Gupta* (n 5) [10].

Unattributed Reasoning

The only treatment of Part III appears in paragraph 11, which cites no authority.[37] Its language tracks *Rakesh Bhanot* closely: the moratorium postpones civil enforcement and does not stall a prosecution.[38] *Bhanot* is binding, and on the narrow point that the trial may proceed it remains consistent with *Surana*. The difficulty is that *Surana* qualified *Bhanot* in a respect the High Court never addressed. Enforcement of compensation is stayed during a Part III moratorium, and that protection extends to Section 141 directors.[39] The High Court's unqualified statement that Part III does not "stall or terminate" the prosecution[40] is silent on compensation. If the directors are convicted while a moratorium subsists, the trial court may award compensation under Section 395 of the BNSS and will have to decide whether it can be recovered. The High Court's wording, binding on subordinate courts in two states, invites the answer that it can.

A Divided Foundation

The judgment also rests on authorities that pull against each other. It cites *Mohanraj* for the survival of directors' liability,[41] yet adopts the "predominantly criminal" characterisation that *Surana* advanced precisely because it doubted *Mohanraj*.[42] *Mohanraj* itself treated Section 138 as a civil sheep and indicated that Sections 96 and 101 would cover it.[43] Relying on *Mohanraj* for one proposition while silently rejecting its reasoning on the very issue in dispute is selective use of precedent.

The Counter-Argument

The strongest defence of the judgment is temporal. The offence was complete in 2015, the complaint was filed and the petitioners were summoned before any insolvency began, and a later moratorium, on this view, cannot reach back to a completed offence.[44] The argument has intuitive force but does not survive the statutory text. Section 96(1)(b)(i) stays proceedings "pending" on the date the moratorium begins.[45] Its trigger is pendency, not the date of the offence. A proceeding instituted before insolvency is the paradigm case the provision is meant to reach; if prior completion defeated the moratorium, almost no proceeding would ever be stayed, since nearly every claim predates the debtor's insolvency. The reliance on timing in *Goenka* is also misplaced. That decision concerned whether liability is extinguished on resolution under Section 32A,[46] not whether proceedings are suspended. Extinguishment and stay are different legal effects. Prior completion establishes that liability exists; it says nothing about whether enforcement must pause.

A second objection holds that the omission is harmless, since even under *Surana* the prosecution continues. That understates the cost. The unresolved question of compensation is precisely where *Surana* departs from *Bhanot*, and a High Court judgment that speaks in absolute terms

[37] ibid [11].
[38] *Bhanot* (n 22) [31].
[39] *Surana* (n 15) [158], [186].
[40] *Ajay Gupta* (n 5) [11].
[41] ibid [10].
[42] *Surana* (n 15) [194].
[43] *Mohanraj* (n 16) [43], [47].
[44] *Ajay Gupta* (n 5) [7], [9].
[45] IBC, s 96(1)(b)(i).
[46] *Goenka* (n 20) [52] (Pardiwala J).

will be applied by trial courts to that question. An error of reasoning that is harmless to the petitioners in one case can be decisive for the next litigant.

The Creditor's Election

The judgment also passes over the creditor's position. The complainant sat on the committee of creditors in the corporate insolvency[47] and then invoked Part III against both directors for the same liability, while continuing the prosecution. The High Court treated this as a matter of no consequence because the proceedings differ in nature.[48] The concern, however, is practical rather than conceptual. A creditor that can admit its claim in the directors' insolvency and also obtain compensation in the criminal court stands to recover twice on one debt, or at least to use the threat of imprisonment to secure priority over other creditors of the same individual. The tiered approach in *Surana* answers that risk by leaving punishment untouched and routing compensation through the collective process.[49] The High Court's reasoning offers no comparable safeguard.

Record Irregularities

Two features of the record were not examined. The judgment states that the complainant filed under Section 94,[50] which is the debtor's own route; a creditor applies under Section 95.[51] It also dates the demand notice to 21 July 2015, before the dishonour memos of 8 August 2015,[52] although the statute requires notice within thirty days of information of dishonour.[53] Either may be a clerical error. In a petition to quash, however, defects of this kind go to the threshold, and they warranted at least a finding.

5. Conclusion and Recommendations

Findings

Ajay Gupta correctly holds that a company's insolvency does not shield its directors from prosecution. The facts, however, raised a different question: the effect of the directors' own insolvency. On that question, the court relied on unattributed reasoning, overlooked the most recent Supreme Court authority and rested on a characterisation of Section 138 that its principal authority rejects. The temporal argument offered in support does not withstand the text of Section 96.

Two Proposals

First, Parliament should insert into Part III a provision modelled on Section 32A. It should state that Part III moratoria do not bar the institution or continuation of a prosecution under Section 138, but suspend the enforcement of compensation, which should instead be admitted as a claim

[47] *Ajay Gupta* (n 5) [6].
[48] ibid [11].
[49] *Surana* (n 15) [158].
[50] *Ajay Gupta* (n 5) [6].
[51] IBC, ss 94(1), 95(1).
[52] *Ajay Gupta* (n 5) [3].
[53] NI Act, s 138, proviso (b).

in the insolvency process. This would codify the distinction drawn in *Surana*[54] and remove the dependence of debtors and creditors on the outcome of a pending reference.

Second, pending the larger bench's decision, High Courts should issue a practice direction for Section 138 complaints against individuals. Courts should record whether a Part III application has been filed or admitted, the provision invoked and the relevant dates; allow the trial to proceed; and defer enforcement of any compensation under Section 395 of the BNSS until the moratorium ends. This protocol is consistent with both *Bhanot* and *Surana*,[55] and would prevent cases such as *Ajay Gupta* from being decided on a moratorium that does not apply. Whatever the larger bench decides, it should answer the question through the text of Part III rather than through labels: whether a proceeding is "in respect of any debt" is a statutory question, not a matter of whether the sheep or the wolf predominates.

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[54] *Surana* (n 15) [158].
[55] *Bhanot* (n 22) [31]; *Surana* (n 15) [158], [186].