

If directors are vicariously liable under Section 141 of the NI Act and are themselves undergoing insolvency or bankruptcy under Part III of the IBC, they are entitled to the benefit of moratorium in respect of the compensatory liability, but not in respect of their personal criminal liability under Section 138 of the NI Act

The **Supreme Court** in the case of **Dineshchand Surana vs UCO Bank [Special Leave Petition (Crl.) No. 12135 of 2024]** dated **May 27, 2026**, has held that proceedings under Section 138 of the Negotiable Instruments Act are not in the nature of legal action for recovery of money simpliciter; they are quasi-criminal proceedings with a tilt towards the criminal side, and their predominant object is to maintain the credibility and integrity of cheques in commercial transactions by attaching penal consequences to cheque dishonour. Accordingly, the moratorium provisions under Part III of the IBC do not apply to the criminal aspect of Section 138 proceedings, namely the prosecution and punishment for the offence, but do apply to the compensatory aspect, namely the recovery of compensation ordered in such proceedings.

The Court further held that where directors are vicariously liable under Section 141 of the NI Act and are themselves undergoing insolvency or bankruptcy under Part III of the IBC, they are entitled to the benefit of moratorium in respect of the compensatory liability, but not in respect of their personal criminal liability under Section 138 of the NI Act.

The Court undertook an extensive examination of the nature of proceedings under Section 138 of the NI Act and held that though such proceedings arise from a civil transaction and have a compensatory element, the provision is predominantly criminal in nature because the dishonour of cheque is deemed to be an offence and is punishable with imprisonment or fine or both.

The Court observed that the offence is the act of cheque dishonour, while the non-payment of the debt is the injury caused by that offence. It further held that Section 138 proceedings cannot be treated merely as recovery proceedings, although the provision also contains a compensatory aspect through orders of compensation under Section 395 of the BNSS.

Therefore, the Court bifurcated Section 138 proceedings into two tiers: the criminal aspect, which culminates in punishment, and the compensatory aspect, which is civil in nature and concerns recovery of compensation. On the moratorium provisions under Part III of the IBC, the Court observed that they cannot apply to the criminal aspect of Section 138 proceedings, particularly because liability to pay fine is an “excluded debt” under Section 79(15) of the IBC; however, the moratorium would apply to the compensatory aspect of Section 138 proceedings, including recovery of compensation ordered by the criminal court.

The Court also observed that directors made vicariously liable under Section 141 of the NI Act may obtain the benefit of moratorium in respect of the compensatory liability, even where such liability originally arose from the company’s debt, because Sections 96 and 101 of the IBC use the expression “any debt.”

Accordingly, the Court directed that the matters be placed before the Chief Justice of India for constitution of an appropriate three-Judge Bench. The Court indicated that the larger Bench

may consider, first, whether Section 138 of the NI Act and its underlying objective indicate that it is quasi-criminal in nature with a tilt towards the criminal side, and second, whether the moratorium provisions under Part III of the IBC apply to the entire proceedings under Section 138 or only to the compensatory aspect thereof.