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NCLT /138

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Anshul Maheshwari

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Company director issued post dated cheques against full and final settlement after filing insolvency.

The cheques got bounced as the account was freezed pending insolvency.

Can we file a case against the director under 138 And also under 420/120B

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N.K.Assumi

Advocate

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Not the Director, but the Company itself should be sued in its name.

Lord Denning in Tamlin v. Hansaford in which the learned Judge observed:

"In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other



Points:

25641

subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government".

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Since the company itself filed the Company petition before NCLT, for appointing the IPR and for recovery of the dues, I do not think that there will be no use. The bouncing of Cheque will also be another good ground for the Corporate Creditor to get admission of the Company petition file before NCLT.

K PHANI KUMAR ▾

ADVOCATE

👍 Likes: 1

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Originally posted by : K PHANI KUMAR

“Since a company itself filed the Company petition”



K PHANI
KUMAR ▾

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before NCLT, for appointing the IPR and for recovery of the dues, I do not think that there will be no use of filing of Cheque bounces cases under S.138 or any.. The bouncing of Cheque or any other cause of action will also be another good ground for the Corporate Creditor to get admission of the Company petition file before NCLT.

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