

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3396 OF 2019
WITH
CIVIL APPLICATION NO.29 OF 2020**

The State of Maharashtra
Through the Deputy Collector &
Competent Authority (NSEL)
2nd Floor, D.D.Building, Old
Custom House, Fort,
Mumbai 400 001

... Petitioner

V/s.

Anil Kohil,
Resolution Professional for
Dunar Foods Ltd.
1011, Kirti Shikhar District Centre,
New Delhi 110 058

... Respondent

Mr.A.P. Vanarase AGP and Mr.Y.D.Patil AGP for the Petitioner.

Mr.Abhishek Anand with Ms.Nikita Abhyankar i/b Gravitas Legal for
the Respondent in WP No.3396/2019 and for the Applicant in CAW
No.29/2020.

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**CORAM : S. C. GUPTE AND
MADHAV J. JAMDAR, JJ.**

DATE OF RESERVE : 29TH OCTOBER, 2020.

DATE OF PRONOUNCEMENT : 9TH NOVEMBER, 2020.

(THROUGH VIDEO CONFERENCING)

JUDGMENT : (PER MADHAV J. JAMDAR, J)

1. In the present case a very interesting question arises as to whether action taken under the provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as "MPID Act") against a "Financial Establishment", as contemplated under the MPID Act, can be challenged not before the Designated Court under the MPID Act but before the National Company Law Tribunal (hereinafter referred to as "NCLT") by resorting to the remedy provided under the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I.B. Code"). On the application of a "Financial Creditor" as contemplated under I.B. Code, an Interim Resolution Professional (hereinafter referred as "IRP") is appointed by NCLT by exercising power under section 7 of the I.B. Code against the Corporate Debtor as contemplated under I.B. Code, which is also the Financial Establishment under the MPID Act and de-freezing of the corporate Debtor's account attached in MPID proceedings is ordered. This order is the subject matter of challenge in this petition.

2. Heard Mr.Y.G.Patil, learned AGP for the Petitioner and Mr.Abhishek Anand, learned Counsel for the Respondents.

3. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing at the stage of admission. Learned Counsel waives service for the Respondent.

4. The State of Maharashtra through the Deputy Collector and Competent Authority (NSEL), by the present Writ Petition filed under Article 226 and 227 of the Constitution of India , has approached this Court challenging the legality and validity of the order dated 28/01/2019 passed by the Member (Judicial), National Company Law Tribunal, Mumbai Bench in M.A.No.1372/2018 in CP(IB)-

1138(MB)/2017. By the said order, National Company Law Tribunal (NCLT) directed de-freezing of bank account No.1952320006245 in HDFC Bank, Karnal, Haryana, (hereinafter referred to as "said account") in the name of Dunar Foods Ltd.

5. Some of the factual aspects set out in the petition are as follows :

(i) An FIR being C.R.No.216/2013 was registered against Financial Technologies (India) Ltd. (hereinafter referred to as "FTIL") now known as "63 Moons Technologies Ltd.", the National Spot Exchange Ltd. (hereinafter referred as "NSEL"), the Directors and key management persons of FTIL and NSEL, 25 borrowers/trading members of NSEL, some brokers of NSEL, and others, under sections 120B, 409, 465, 467, 468, 471, 474, 477(A) of the Indian Penal Code, by the M.R.A. Marg police station on 30/09/2013. In the said FIR, the first informant had alleged that NSEL had caused wrongful loss of about Rs.2.2 crores to himself, and wrongful loss of approximately Rs.5600 crores to more than 13000 investors. On the same day, i.e. on 30/09/2013, the investigation into the said case was transferred to Economic Offence Wing, Mumbai (hereinafter referred to as "EOW"), who registered EOW C.R. No.89 of 2013. The EOW applied the provisions of the MPID Act to the said C.R. in October 2013.

(ii) NSEL is a company registered under the Companies Act, 1956 having its registered office at Chennai, Tamil Nadu. The NSEL provided an electronic platform for spot trading in commodities, and used to operate from 16 States across the country. The NSEL was promoted by FTIL, now known as "63 Moons Technologies Pvt. Ltd.", which holds 99.99% of the share capital of NSEL. The

balance 0.01% of the share capital of the NSEL is held by the National Agricultural Co-operative Marketing Federation of India Ltd. (hereinafter referred as "NAFED").

(iii) In the petition, a reference has been made to notification dated 05/06/2007 and further notification dated 06/02/2012 issued by the Department of Consumer Affairs, Ministry of Consumer Affairs, Government of India (hereinafter referred as "DCA") by which exemption was granted to NSEL from the operation of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred as "FCRA") for all forward contracts of one day duration for sale and purchase of commodities traded on its platform subject to certain conditions.

(iv) In the Writ Petition, the manner in which NSEL was working has been set out in detail.

(v) As per the FIR, during the initial contracts, member companies squared off the contracts on the dates of maturity. However, later on, these companies did not honour their commitments and caused wrongful loss of about Rs.5600 crores to about 13000 investors. The members of the NSEL fraudulently obtained huge funds from the NSEL against non-existent stocks of commodities. There was a semblance of trading, which was actually being done in non-existent goods, by issuing forged warehouse receipts. Further, the warehouses, which were an integral part of the NSEL as the commodities were required to be deposited in the exchange designated and certified warehouses as part of the pay-in obligations, lacked capacity and some of them had no stocks.

(vi) The NSEL vide their circular dated 14/8/2013 announced a settlement schedule. According to this schedule, NSEL had to make

payouts of Rs.5,574.31 crores to its members. The settlement calendar announced by NSEL was spread over 30 weeks for pay-out on pro-rata basis to 148 members. The NSEL subsequently defaulted in all the payouts since the announcement of the settlement plan.

(vii) The investigation revealed that the mode of transaction that the NSEL was allowed by the Government of India was not followed by the NSEL, and that the NSEL had promised attractive returns to persons who had traded on the NSEL platform. The NSEL had assured them that if they entered into a contract on T+2, they would get an attractive return of 14% to 16% on the completion of the contract on T+25.

6. As set out hereinabove, the FIR was registered on 30/09/2013, and after investigation, the EOW filed charge-sheet on 06/01/2014 in EOW. C.R. No.89/2013 in MPID Court, Mumbai. EOW thereafter filed supplementary charge-sheets from time to time including on 04/06/2014, 04/08/2014 and 27/12/2018. It is set out in the petition that as provisions of MPID Act were made applicable, the Government of Maharashtra vide notification dated 28/08/2014 issued under section 4 of the MPID Act attached several properties of several companies including Lotus Refineries Pvt. Ltd., White Walter Foods Pvt. Ltd., Shree Radhey Trading Co., Vimladevi Agrotech Ltd., Mohan India Pvt. Ltd., Tavishi Enterprises Ltd., Brinda Commodity Pvt. Ltd., Ark Import Pvt. Ltd., P.D.Agroprocessors Pvt. Ltd., Aastha Minmet India Pvt and Juggernaut Projects Ltd., White Water Foods Pvt. Ltd., Swastik Overseas, MSR Foods, Loil Continental, Loil Health Foods Ltd., Loil Overseas Foods Ltd., Spin Cot Textiles Pvt. Ltd., NCS Sugars Ltd., Metkore Alloys and Industries Ltd., Yathuri Associates, Namdhari Food Internation Pvt. Ltd., Amdhari Rice and

General Mills and of Dunar Foods Ltd. It appears that during investigation, as and when the Investigating Agency got knowledge about properties of various companies/persons to which the provisions of MPID Act in relation to said FIR could be applied, necessary notifications under section 4 were issued by Government of Maharashtra attaching immovable and movable properties. By the notification dated 19/10/2018 various properties belonging to various parties were attached including of M/s.E.D. Agro Procedures Pvt. Ltd. and Dunar Foods Pvt. Ltd. including the said account. In this petition, we are concerned with defreezing of the said account which is subject matter of the impugned order dated 28/01/2019.

7. When the said investigation by EOW was going on and when the authorities were taking action under MPID Act, simultaneously on 27/06/2017, the State Bank of India, a Financial Creditor of M/s. Dunar Foods Ltd., invoked the jurisdiction under section 7 of the I.B. Code for the defaulted financial debt of Rs.758,73,62,546/- outstanding against the Corporate Debtor M/s.Dunar Foods Ltd. In the said proceedings, by the order dated 22/12/2017, the said petition was admitted by the NCLT and Mr. Anil Kohli was appointed as IRP and directed to comply with provisions of sections 13 and 15 onwards of the I.B. Code. It was further directed that as the petition was held fit for "admission", hence as a consequence Moratorium as prescribed under section 14 of the I.B.Code would commence. It was further directed that on enforcement of Moratorium, certain prohibitions were applicable, such as institution of any Suit before a Court of Law, transferring of any Asset of the Debtor, encumbering any rights over the assets of the Debtor. However, it was also clarified that the supply of essential goods of services to the Corporate Debtor shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution

Process or until the approval of the Resolution Plan as prescribed under section 31 of the I.B. Code. Accordingly, the said petition stood admitted. The Corporate Insolvency Resolution Process commenced from the date of the order.

8. It is significant to note that on 20/02/2018, M.A.No.237/2018 was filed by Dunar Foods Ltd. through IRP under section 9 of MPID Act before the Designated Court under MPID Act, seeking direction to defreeze the bank accounts of Dunar Foods Ltd. attached pursuant to the notifications issued by the Home Department of Government of Maharashtra under the MPID Act from time to time and seeking further direction to the Competent Authority designated under MPID Act to forthwith handover all assets of Dunar Foods Ltd. to the Applicant. By the order dated 28th December, 2018, passed by the learned Special Judge (MPID Act) City Civil and Sessions Court for Greater Bombay passed below Exhibit-1 in Miscellaneous Application No.237 of 2018, the said application was rejected, however, it was clarified that IRP was at liberty to raise objections before the Court under section 7 of the MPID Act.

9. In the meanwhile, on 12/11/2018, M.A.No.1372 of 2018 in C.P.No.1138/I & BC/NCLT/MB/MAH/2017 was filed by IRP for Dunar Foods Ltd. under section 60(5), 14(1a) and 74(2) of I.B. Code before the NCLT, seeking direction to de-freeze the said account of the corporate debtor attached pursuant to the notifications issued by the Home Department, Government of Maharashtra under MPID Act from time to time and consequential directions to the Respondent, being the Competent Authority designated under MPID Act, to forthwith handover all assets of Dunar Foods Ltd. to the Applicant. It is further prayed that action be directed to be initiated under section 74(2) of the Code against the concerned officers of the corporate

debtor for deliberate and willful violation of section 14 of the Code. A detailed reply dated 15/01/2019 was filed by the Deputy Collector and Competent Authority (NSEL) to M.A.No.1372/2018. By the impugned order dated 28/01/2019, passed by the learned Member (Judicial) NCLT, Mumbai Bench, M.A.No.1372/2018 was partly allowed by directing defreezing of the said account. The said order is challenged by the State of Maharashtra through Deputy Collector and Competent Authority, (NSEL) in the present writ petition.

10. Mr.Patil, learned AGP, submitted that the NCLT has no jurisdiction and no authority under law to pass the impugned order. He submitted that MPID Act is a special statute, which has as its object the protection of interest of depositors of Financial Establishments and matters relating thereto. He submitted that there is an elaborate procedure for attachment and for hearing and making the order of attachment absolute and for hearing objections to the same by the Designated Court. He further submitted that the Designated Court, after hearing the objections, can either make the attachment order absolute, or it can be varied by releasing a portion of the property from attachment or canceling the attachment order. Any order passed by the Designated Court is appealable before the High Court within 60 days from the date of the order. He submitted that provisions of the MPID Act are very clear and, therefore, it is obvious that NCLT has no jurisdiction to interfere with the attachment order issued by the Government of Maharashtra by exercising power under section 4 of the MPID Act. He submitted that in fact the Respondent had submitted to the jurisdiction of the MPID Court by filing M.A.No.237 of 2018 in MPID Case No.1 of 2014. He submitted that the issue of jurisdiction was specifically raised before the NCLT, however, the NCLT completely ignored the same while passing the impugned order. The learned AGP, while dealing with the contention

raised regarding maintainability of the Writ Petition in view of availability of the alternate remedy of an appeal under section 61 of the I.B. Code, submitted that as the impugned order is passed without jurisdiction the Writ Petition is maintainable.

11. Learned AGP relied on the following judgments of the Supreme Court in support of his submissions :

(i) (1998) 8 SCC 1 Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.;

(ii) (2003) 2 SCC 107 Harbanslal Sahnia & Anr. vs. Indian Oil Corporation & Ors.;

(iii) (2009) 2 SCC 630 Committee of Management & Anr. vs. Vice Chancellor & Ors.

(iv) (2009) 14 SCC 338 Godrej Sara Lee Ltd. vs. Assistant Commissioner (AA) & Ors.;

(v) 2019 SCC Online SC 1542 Embassy Property Developments Pvt. Ltd. vs. State of Karnataka

12. Mr. Abhishek Anand, learned Counsel for the Respondent, on the other hand, pointed out various provisions of I. B. Code including section 5(12) , section 7, section 14(a), section 14(c), section 15, section 17(i)(d), section 20, section 32A and section 60(5)(a)(b) thereof. He submitted that I.B Code was enacted to consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of the assets of such

persons, to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India. He submitted that section 17 of the I.B. Code provides that from the date of appointment of the IRP, the management of affairs of the corporate debtor vests with the IRP. He submitted that as per section 20 of the Code, the IRP shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. He submitted that section 60 of the Code specifically provides that the adjudicating authority in relation to insolvency resolution and liquidation for corporate persons, including the corporate debtor, and personal guarantors thereof, shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. He pointed out section 60(5) which provides that notwithstanding anything contrary contained in any other law for the time being in force, the NCLT shall have jurisdiction to entertain or dispose of any application or proceedings by or against the corporate debtor or corporate person, any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India and any question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the I.B. Code. He submitted that section 61 provides for appeals to the Appellate Authority, namely, National Company Law Appellate Tribunal and section 62 provides for appeals to the Supreme Court. He submitted that it is the exclusive jurisdiction of National Company Law Tribunal to entertain and dispose of proceedings which are contemplated under the I.B. Code. He submitted that by section 63, jurisdiction of the Civil Court

or any authority is specifically barred in respect of any matter on which National Company Law Tribunal or National Company Law Appellate Tribunal have jurisdiction under this Code. Therefore, it is his submission that the impugned order passed by NCLT is within the jurisdiction of NCLT and only NCLT will have exclusive jurisdiction. He submitted that the impugned order can be challenged by filing an appeal under section 61 of the I.B. Code, and therefore, the present Writ Petition is not maintainable.

13. Alternatively, he submitted that in any case, the IRP was appointed by NCLT on 22/12/2017 and, thereafter the said account was attached by notification dated 19/10/2018 issued under section 4 of the MPID Act which is totally impermissible. Therefore, he submitted that at least as far as the said account is concerned, it is impermissible for the Deputy Collector and Competent Authority (NCLT) to act under the provisions of MPID Act and for State of Maharashtra, to take steps to issue notification under section 4, after appointment of IRP. In support of his submission he has relied on the following judgments :

(i) Judgment of NCLAT in JSW Steel Ltd. vs. Mahendra Kumar Khandelwal & Ors. in Company Appeal (AT) (INS) No.957 of 2019;

(ii) Judgment of Hon'ble Supreme Court in Anand Rao Korada vs. Varsha Fabrics (P) Ltd. and Ors., Civil Appeal No.8800-8801 of 2019;

(iii) Judgment of Hon'ble Supreme Court in West U.P. Sugar Mills Association and Ors. vs. The State of Uttar Pradesh & Ors. Civil Appeal No.7508of 2005;

(iv) Judgment of Hon'ble Supreme Court in M.Karunanidhi vs. Union of India (UOI) & Ors. Criminal Appeal Nos.270-271 of 1979.

(v) Judgment of Hon'ble Supreme Court in Innoventive Industries Ltd. vs. ICICI Bank & Ors. Civil Appeal Nos.8337-8338 of 2017.

(vi) Judgment of Designated Court under the MPID Act at Bombay City Civil and Sessions Court, Mumbai in Roofit Industries Limited Vs. The State of Maharashtra in MPID Special Case No. 34 of 2004.

14. In the light of above submissions, the following two questions arise for our determination:-

1. Whether the present Writ Petition, filed challenging order dated 28.01.2019 of NCLT, is maintainable in view of availability of alternate remedy of appeal provided under Section 61 of the I.B. Code to the National Company Law Appellate Tribunal (for short "NCLAT") ?

2. Whether notification issued under Section 4 of the MPID Act and consequent attachment of the property including the bank account of the corporate debtor can be challenged by approaching NCLT under Section 60(5) of the I.B. Code ?

Before considering the above questions, we are making it very clear that we will not be dealing with the merits of the case, namely, whether in view of order dated 22.12.2017 of NCLT admitting the petition and appointing IRP and inter alia directing that moratorium as

prescribed under Section 14 shall commence, no steps under MPID Act can be taken or continued and also whether the attachment of the properties of Dunar Foods Ltd. are required to be set aside. We make it very clear that we are only dealing with the forum which should be approached concerning the action taken under the MPID Act.

15. Before determining the above issues, it is necessary to see the relevant provisions of the MPID Act as well as of the I.B. Code. Certain important aspects of the MPID Act are set out herein below:-

(i) The MPID Act was enacted to protect the interest of depositors in financial establishments and matters relating thereto.

(ii) "Financial establishment", as defined in Section 2(d), means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949.

(iii) As per Section 2(c), "deposit" inter alia includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form.

(iv) Section 3 provides that any Financial Establishment, which

fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

(v) Section 2(a) defines Competent Authority as appointed under Section 5 and Section 5 provides that the Government may, while issuing an order under sub-section (1) of section 4, appoint any of its officers not below the rank of the Deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4 of a Financial Establishment.

(vi) Section 4 provides that the Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or the property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or

manager or member of the said Financial Establishment as the Government may think fit.

(vii) Sub-Section (2) of Section 4 provides that on publication of an order under sub-section (1), all properties and assets of the Financial Establishment and persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further order from the Designated Court.

(viii) Sub-Section (2) of Section 5 provides that the Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(ix) Section 6 is regarding constitution of one or more Designated Courts in the cadre of a District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification.

(x) Sub-Section (3) of Section 5 provides that the Competent Authority shall, within thirty days from the date of the publication of the said order, apply to the Designated Court, accompanied by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as may be found necessary.

(xi) Sub-Section (1) of Section 7 requires the Designated Court, upon receipt of an application under Section 5, to issue a Show

Cause Notice to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under Section 4, calling upon them to show cause why the order of attachment should not be made absolute. Sub-Section (2) of Section 7 contemplates issuance of Show Cause Notice by the Designated Court to all other persons represented to it as having, or being likely to claim, any interest or title in the property of the Financial Establishment. Sub-Section (3) of Section 7 provides that any person claiming an interest in the property attached or any portion thereof make an objection to the Designated Court.

(xii) Sub-Section (4) of Section 7 provides that the Designated Court shall, if no cause is shown and no objections are made under sub-section (3), forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.

(xiii) Sub-Section (5) of Section 7 provides that if cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of the MPID Act, follow the summary procedure as contemplated under Order 37 of the Civil procedure Code, 1908 (5 of 1908) and exercise all powers of a Civil Court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of the

attachment he had some interest in the property attached.

(xiv) After investigation as aforesaid, the Designated Court shall pass an order either making the Attachment Order absolute, or varying it by releasing a portion of the property from attachment, or cancelling the Attachment Order. [Section 7(6)]

(xv) Any Order of the Designated Court is appealable to the High Court within 60 days from the date of the order. [Section 11]

(xvi) Section 13 is concerning the procedure and power of the Designated Court concerning cognizance of offences and provides that the Designated Court may take cognizance of the offence and shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 for the trial of warrant cases by Magistrates.

16. After setting out the important provisions of the MPID Act, it is also required to be noted that a Full Bench of this Court in the case between ***Vijay C. Pulijal vs. State of Maharashtra***, reported in **(2005) 4 CTC 705 (Bom.)** held that the provisions of MPID Act are ultravires for want of legislative competence of the State legislature. The Full Bench of this Court took a view that the MPID Act transgressed into the field reserved for Parliament. The Full Bench held that the subject matter covered by the MPID Act squarely falls within the ambit of section 58-A and 58-AA of the Companies Act. However, the Supreme Court in the case between ***K.K. Baskaran Vs. State represented by its Secretary, Tamil Nadu & Ors.*** reported in **2011 (3) SCC 793** upheld the constitutional validity of a similar enactment enacted in Tamilnadu and observed that the said

view is also applicable to the MPID Act. The Hon'ble Supreme Court specifically held that they are not in agreement with the Full Bench decision of the Bombay High Court. The Hon'ble Supreme Court held as follows :

“17. We are of the opinion that the impugned Tamil Nadu Act enacted by the State Legislature is not in pith and substance referable to the legislative heads contained in List I of the Seventh Schedule to the Constitution, though there may be some overlapping. In our opinion, in pith and substance the said Act comes under the entries in List II (the State List) of the Seventh Schedule.

18. It often happens that a legislation overlaps both List I as well as List II of the Seventh Schedule. In such circumstances, the doctrine of pith and substance is applied. We are of the opinion that in pith and substance, the impugned State Act is referable to Entries 1, 30 and 31 of List II of the Seventh Schedule and not Entries 43, 44 and 45 of List I of the Seventh Schedule.”

Thereafter, in the case between ***Sonal Hemant Joshi & Ors. Vs. State of Maharashtra & Ors.*** reported in ***2012 (10) SCC 601*** the Supreme Court upheld the constitutional validity of the MPID Act in view of the judgment of the Supreme Court in the case of ***K.K. Baskaran (supra)***.

17. Thus, it is clear that MPID Act is a complete Code and enacted to protect the interest of depositors in Financial Establishments. The

Respondent, i.e. IRP, was mainly aggrieved by the issuance of notification dated 19/10/2018 under Section 4 of the MPID Act. As set out hereinabove Section 7 of MPID Act provides a remedy to the aggrieved person including the present Respondent, i.e. IRP, to approach the Designated Court pointing out the objection to the attachment of any property of the Financial Establishment or any portion thereof. The Designated Court is empowered to either make the order of attachment passed under sub-Section 1 of Section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment entirely. Thus, it is clear that the Respondent-IRP is having a remedy to approach the Designated Court under Section 7 of the MPID Act. A bare reading of the provisions of the MPID Act clearly demonstrates that action taken under the MPID Act is to be challenged before the Designated Court under the MPID Act and the order passed by the Designated Court can be challenged in appeal before the High Court under section 11 of the MPID Act. It is also important to note that under section 13 of the MPID Act, the Designated Court is even empowered to take cognizance of the offence and while trying the accused person, the Designated Court shall follow the procedure prescribed in the Code of Criminal Procedure, 1972, and for the purposes of the provisions of the Code of Criminal Procedure, 1972, the Designated Court shall be deemed to be a Magistrate.

18. We will hereafter examine the impact of the provisions of the I.B. Code, particularly when application for initiating corporate insolvency resolution process is admitted by the NCLT and moratorium is declared by the NCLT as contemplated under section 14 of the I.B. Code, on the jurisdiction of the Designated Court under the MPID Act.

19. Therefore, we will first examine the provisions of I.B. Code on which learned Counsel of the Respondent has relied and certain other relevant provisions. The same are referred to hereinbelow :

(i) At the outset, it is to be noted that I.B. Code was enacted to consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of the assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.

(ii) Section 2 is regarding applicability and provides that the I.B. Code shall apply to companies, limited liability partnerships, personal guarantors to corporate debtors, partnership firms, proprietorship firms and individuals, as more particularly set out in section 2, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

(iii) The Part II of the I.B. Code, containing sections 4 to 77, shall apply to matters relating to insolvency and liquidation of corporate debtors where the minimum amount of default is one lakh rupees.

(iv) As per section 6, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under Chapter II.

(v) As per section 5(12), "insolvency commencement date" means the date of admission of the application for initiating corporate

insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;

Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority.

(vii) Section 5(1) defines “Adjudicating Authority”, for the purposes of part II of the I.B. Code, to mean National Company Law Tribunal constituted under section 408 of the Companies Act.

(viii) Section 7 provides that a financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

(ix) Section 9 provides for filing application for initiation of corporate insolvency resolution process by operational creditor.

(x) Section 10 provides for filing application for initiation of corporate insolvency resolution process by corporate applicant.

(xi) Section 13 provides that Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall by an order (a) declare moratorium for the purposes referred to in section 14; (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims under section 15; and (c) appoint an interim resolution

professional in the manner as laid down in section 16.

(xii) Section 5(27) defines a “resolution professional”, to mean an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional;

(xiii) Section 14 provides for Moratorium and inter alia provides that on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(xiv) Sub-section (4) of section 14 provides that the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: provided that where, at any time during the corporate insolvency resolution

process period, if the Adjudicating Authority, i.e. NCLT, approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(xv) Section 15 is regarding public announcement of corporate insolvency resolution process.

(xvi) Section 17 is regarding management of affairs of the corporate debtor by interim resolution professional and inter alia provides that from the date of appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vest in the interim resolution professional. The sub-section (1) (d) of section 17 provides that 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.

(xvii) Section 18 specifies duties of Interim Resolution Professional and section 18(f), read with section 18(f)(vi), provides that the IRP shall take control and custody of any asset over which the corporate debtor has ownership rights, **subject to the determination of ownership by a court, or authority.**

(xviii) Section 20 provides that the interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(xix) Section 25 provides that it shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including continued business operations of the corporate debtor.

(xx) Section 29A specifies persons who are not eligible to be resolution applicant, such persons are not eligible to submit a resolution plan.

(xxi) Section 30 is concerning submission of resolution plan and section 31 provides for approval of resolution plan.

(xxii) Section 32A is concerning liability for prior offences, etc and specifies that notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, **if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--**

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided further that **every person** who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or **was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.**

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, **which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not**

(i) **a promoter or in the management or control of the corporate debtor or a related party of such a person; or**

(ii) **a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.**

Explanation.--For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

(xxiii) Section 60 provides that the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. Sub-section (5) of section 60

provides that notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of.

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(xxiv) Section 61 provides that the order of Adjudicating Authority can be challenged before the National Company Law Appellate Tribunal and section 62 provides appeal to Supreme Court from an order of the National Company Law Appellate Tribunal.

(xxv) Section 231 provides that no Civil Court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by or under this Code to pass any order.

(xxvi) Section 243 is regarding Repeal and provides that the Presidency Towns Insolvency Act, 1909 (3 of 1909) and the Provincial Insolvency Act, 1920 (5 of 1920) are repealed.

20. After noticing the relevant provisions of the I.B. Code it will be

very useful to note the judgments of the Hon'ble Supreme Court on the aspect regarding jurisdiction of NCLT under the provisions of I.B. Code.

21. Shri Y.D.Patil, learned AGP relied on the judgment of Hon'ble Supreme Court in the case of **Embassy Property Developments Pvt. Ltd.** (supra). While dealing with the jurisdiction of NCLT particularly in the light of provisions of I.B. Code, it has been held in that case as follows :

“30. NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Insofar as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the Orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT.”

22. In paragraph 31 of the judgment of **Embassy Property Developments Pvt. Ltd.** (supra), Section 60 of the I.B. Code was quoted and sub-Sections (4) and (5) of Section 60 were stated to give an indication respectively about the powers and jurisdiction of the NCLT. Paragraph 32 of the said judgment is also relevant and the same is set out herein below:

“32. Subsection (4) of Section 60 of IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of Subsection (2). Subsection (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. The object of Sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single Forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different Fora, leading to conflict of interests, situations or decisions.”

23. In the said judgment of **Embassy Property Developments Pvt. Ltd.** (supra) where the question was whether NCLT will have jurisdiction over any decision taken by the Government of Karnataka

under the provisions of Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MMDR Act, 1957"), it has been held as follows :

"37. From a combined reading of Subsection (4) and Subsection (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be Subsection (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Subsection (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Subsection (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had

attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.”

“38. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty bound under Section 20(1) to preserve the value of the property of the Corporate Debtor and that the word “property” is interpreted in Section 3(27) to include even actionable claims as well as every description of interest, present or future or vested or contingent interest arising out of or incidental to property and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the Corporate Debtor.”

“39. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18 (f) (vi) reads as follows:

“18. Duties of interim resolution professional. The interim resolution professional shall perform the following duties, namely:

(a) ...

(b)...

(c) ...

(d)...

42(e)...

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i)...

(ii)...

(iii)...

(iv) ...

(v)...

(vi) assets subject to the determination of ownership by a court or authority;

(g) ...

Explanation. For the purposes of this section, the term ‘assets’ shall not include the following namely:

(a)

assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

“40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1) uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasijudicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to

preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of subsection (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

“41. This shows that wherever the corporate debtor has to exercise rights in judicial, quasijudicial proceedings, the resolution professional cannot short circuit the same and bring a claim before NCLT taking advantage of Section 60(5).”

“42. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

(emphasis supplied)

Thus it is clear that Section 18 of the I.B. Code specifying duties of interim resolution professional, although provides in sub-Section 18(f) that he shall take control and custody of any asset over which the corporate debtor has ownership rights, however the same is subject to the determination to the ownership by a Court or Authority. In this

particular case, such Court will be the Designated Court as per the provisions of the MPID Act.

24. The learned counsel for the Petitioner has heavily relied on Section 32(A) of the I.B. Code. The same is already reproduced above. A bare perusal of Section 32(A) of I.B. Code clearly shows that liability of corporate debtor is not wiped out entirely. There are several criteria which are enumerated in section 32(A) before ceasing the liability for the offences. Thus, it is clear that the Designated Court under the MPID Act after hearing all the parties concerned, would have to decide the issue as to criminal liability. Thus, in any case it is very clear that it is the Designated Court under the MPID Act that will alone have jurisdiction to decide the same. However, the Designated Court under MPID Act has to take into consideration the provisions of the I.B. Code and the orders passed by the Adjudicating Authority under section 7 of I.B. Code and other relevant orders and rule on their interplay.

25. The properties attached under various notifications issued from time to time by exercising power under section 4 of the MPID Act in the MPID proceedings include the properties of Dunar Foods Ltd. Any application for cancelling any such action of attachment is to be considered by the Designated Court under the MPID Act.

26. The learned counsel of the Respondent relied on judgments of Hon'ble Supreme Court in West U.P. Sugar Mills Association(supra), M.Karunanidhi (supra) and Innoventive Industries Ltd.(supra). All these judgments are on the issue of repugnancy. In paragraph 50 of Innoventive Industries Ltd. (supra), the following propositions are set out.

“50. The case law referred to above, therefore, yields the following propositions:

i) Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.

ii) In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.

iii) The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254 speaks of repugnancy not merely of a statute as a whole but also “any provision” thereof.

iv) Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy – care should be taken to see whether the two do not really operate in different fields qua different subject matters.

v) Repugnancy must exist in fact and not depend upon a mere possibility.

vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and

there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

vii) Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests,

namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."

The above position of law is well settled and there cannot be any dispute about the same. However, in this particular case it is not even argued before us by the learned counsel for the Respondent that the provisions of MPID Act are repugnant with the provisions of I.B. Code. He only raised three contentions: (i) in view of availability of alternate remedy under Section 61 of I.B. Code of Appeal to be preferred to the NCLAT, the Writ Petition is not maintainable, (ii) in view of Section 32-A of the I.B. Code the proceedings under the MPID Act shall cease

and cannot be proceeded with and (iii) Alternatively to submissions at Sr. Nos.(i) and (ii), he submitted that, as IRP was appointed by NCLT on 22.12.2017 and the attachment of the said account took place subsequently by issuance of notification dated 19.10.2018 issued under Section 4 of the MPID Act, although the attachment of other properties which are subject matter of section 4 notification issued earlier may be permissible, at least, the attachment of the said account is totally impermissible.

27. We have already made it clear that in the present Writ Petition we are only examining the aspect regarding the forum in which the action taken under the MPID Act can be challenged and not the merits of the case. In fact, the Respondent can file objections to the attachment under Section 7 of the MPID Act before the Designated Court under the MPID Act and can point out the provisions of the I.B. Code to the Designated Court. The statement of law which is applicable to the present case as found in paragraphs 40 and 41 in the judgment of Embassy Property Developments Pvt. Ltd. (supra) is, at the cost of repetition, again quoted hereinbelow:

“40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority.

“41. This shows that wherever the corporate debtor has to exercise rights in judicial, quasijudicial proceedings, the resolution professional cannot shortcircuit the same and

bring a claim before NCLT taking advantage of Section 60(5).”

Thus it is clear that the appropriate forum to challenge the attachment of the account of the Respondent is the Designated Court under MPID Act where the Respondent can raise all contentions on merits and also can point out the provisions of I.B. Code and the effect of the same on the steps taken under the MPID Act. It will be for the MPID Court to consider the interplay of the provisions of the MPID Act and the I.B. Code and rule on the matter. Such ruling would obviously include even the aspect of prior appointment of IRP by NCLT and subsequent attachment of the said account by notification dated 19.10.2018 issued under Section 4 of the MPID Act.

28. The Respondents have also relied on the judgment of the Designated Court under the MPID Act at Bombay City Civil and Sessions Court, Mumbai in Roofit Industries Limited Vs. The State of Maharashtra in MPID Special Case No. 34 of 2004. A perusal of said order dated 18.08.2017 passed by the Special Judge, MPID Act clearly shows that provisions of I.B. Code were pointed out to the Court and after giving hearing to Competent Authority, depositors, objectors and others, Competent Authority and EOW were directed to hand over certain properties to the Applicant in the said case who claims to be an Interim Resolution Professional appointed by the NCLT for Roofit Industries Ltd. The operative portion of said order dated 18.08.2017 is reproduced herein below:-

“ORDER

1. Application is allowed.
2. Competent Authority and EOW is directed to hand over to applicant/intervener the custody and charge of the immovable properties mentioned at Sr. No. 8,10, 12,16,17,18,19, 20 and

23 of the notification dtd. 06.05.2016 alongwith all documents, record etc., within two weeks from today. They are further directed to handover to applicant office equipment, computers, furnitures and fixture in premises at Sr.5 and 24 of the notification.

3. The Competent Authority and EOW are directed to hand over amount of Rs.40 Lakhs alongwith accrued interest, if any to the applicant, within two weeks from today.

4. The Competent Authority is directed to the represent all depositors/investors before the applicant/intervener and to file the claims on their behalf. CA shall do all acts necessary for safeguarding and protecting the interest of depositors in Roofit Industries.

Date: 18.08.2017

A. S. Kaloti
Special Judge, M.P.I.D. Act &
Addl. Sessions Judge,
City Civil & Sessions Judge At Bombay. “

Thus, even the said order, on which reliance is placed by the Respondents, shows that the IRP in that case approached the Designated Court under the MPID Act and after hearing all the parties, an order was passed and certain directions in the interest of depositors as contemplated under the MPID Act were also issued.

29. The learned counsel for the Petitioner has also relied on the judgment of NCLAT in the case of JSW Steel Ltd.(supra) wherein it has been held that the action of Directorate of Enforcement did not meet the criteria under Section 32-A (1) (b) of I.B. Code. However, in the present case, the Designated Court under MPID Act will examine the said aspect and therefore, the said judgment is not applicable to the present case.

30. Thus, in view of the above discussion, we hold that the NCLT has no jurisdiction to examine legality or validity of action taken under MPID Act and it is only the Designated Court constituted under Section 6 of the MPID Act that will have exclusive jurisdiction to deal with the same. Therefore, the impugned order passed by the NCLT is without jurisdiction and therefore, amenable to a challenge in our writ jurisdiction.

31. Thus, it is clear that the only remedy for Respondent-IRP is to approach the Designated Court under Section 7 of the MPID Act. Therefore, the impugned order passed by NCLT by which the said account was directed to be de-frozen, is without jurisdiction. The learned AGP has rightly relied on the judgments in Whirlpool Corporation (supra), Harbanslal Sahnia (supra), Committee of Management(supra) and Godrej Sara Lee Ltd. (supra) wherein it is consistently held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any fundamental right or where there has been a violation of the principle of natural

justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

32. In view of above discussion, we quash and set aside the order dated 28/01/2019 passed by the NCLT in M.A.No.1372/2018 in C.P.No.1138/I & BC/NCLT/MB/MAH/2017 by which the said account was directed to be de-frozen. The Respondents can approach the Designated Court under section 7 of the M.P.I.D. Act seeking appropriate reliefs. We have not dealt with the merits of the case and the contentions in that behalf are expressly kept open. Rule is made absolute in above terms with no order as to costs.

33. In view of disposal of the Writ Petition, Civil Application No.29 of 2020 does not survive and is disposed of as such.

[MADHAV J. JAMDAR, J.]

[S. C. GUPTE, J.]