2025 INSC 694

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.995 OF 2019

NATIONAL SPOT EXCHANGE LIMITED …PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. …RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. While considering the validity of the orders dated 10.08.2023 and 08.01.2024 passed by the Supreme Court Committee appointed by this Court vide the order dated 04.05.2022, following two questions were framed by this Court to be heard in priority on the basis of the categorisation of the Applications filed in the captioned Writ Petition vide the Order dated 02.04.2024.

> "(i) whether the Secured creditors would have priority of interest over the assets attached under the Provisions of Prevention of Money Laundering Act, 2002, (PMLA) and Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act), by virtue of the Provisions of SARFAESI Act, 2002 and RDB Act, 1993; (In view of order dated 10.08.2023 passed by the Committee)
>
> (ii) whether the properties of the Judgment Debtors and Garnishees attached under the Provisions of MPID Act, 1999 would be available for the execution of the decrees against Judgment Debtors in view of the Provision of Moratorium under Section 14 of the IBC, 2016; (In view of the Order dated 08.01.2024 passed by the Committee)"

2. The genesis of the Writ proceedings, is the scam which took place at the Commodity Exchange Platform of the Petitioner Company – National Spot Exchange Limited (NSEL), a company registered under the Companies Act, 1956, on 18.05.2005. It is promoted by 63 Moons Technologies Limited (Formerly Financial Technologies India Limited), which holds 99.99% of total share capital of the company and the National Agricultural Cooperative Marketing Federation of India Limited (NAFED) holds 0.01% of total share capital of company. The Exchange Platform of the NSEL committed payment defaults and fraud aggregating to about Rs.5,600

Crores vis-à-vis their trading counterparts numbering about 13,000 traders who traded through its Members/ brokers.

PRELUDE

3. Brief facts germane for deciding the above stated two priority questions of law are as under: -

i. The Petitioner – National Spot Exchange Limited (hereinafter referred to as the "NSEL") provided an electronic platform for trading of commodities between willing buyers and willing sellers through NSEL's Members/ brokers representing them. On 05.06.2007, the Department of Consumer Affairs issued an Exemption Notification to the NSEL under Section 27 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "FCRA"), exempting forward contracts of one day duration for sale and purchase of commodities traded on the NSEL from operation of the provisions of the FCRA. The NSEL commenced its operations in October, 2008.

ii. The trading on the Exchange Platform of the Petitioner could be undertaken only by the registered Members of the exchange either on their own behalf or on behalf of their clients. At the request of their clients, the Members of NSEL would place orders for buying/ selling commodities. When the orders placed by willing buyers and willing sellers of a particular commodity would get matched automatically on NSEL's Exchange Platform, based on the price and time priority, it would result in a trade.

iii. The NSEL launched contracts for buying and selling of commodities with different settlement periods ranging from T+0, T+1, T+2 days to T+36 days. In the said Contracts, 'T' meant the Trade date, that is the date on which the trade is executed on the exchange and '+ 2' or '+ 25' referred to the number of business days, after which the delivery of the commodity and payment of price (that is settlement of transaction) was to be affected by the buying Member and the selling Member as the case may be. At the end of the day all trades would

get clubbed and the obligation of respective Members of NSEL would be generated.

iv. Thereafter, the funds "Pay – in" obligation would be intimated to the Members of NSEL whose clients purchased the commodities, and the funds "Pay – out" obligation would be intimated to the Members of NSEL whose clients sold the commodities. Similarly, the commodity "Pay-in" obligation would be intimated to the Members of NSEL whose client sold the commodities and the commodity "Pay-out" obligation would be intimated to the Members of NSEL whose clients purchased the commodities. Based on the intimation from the exchange, the clients would have to fulfil their respective obligations through the Members of the NSEL, through whom they had traded, on the Exchange Platform.

v. On 27.04.2012, the Department of Consumer Affairs, Government of India issued a Show Cause Notice to the NSEL as to why action should not be initiated against it for permitting transactions in alleged violation of exemption

granted to it under the FCRA, vide the notification dated 05.06.2007.

vi. On 12.07.2013, the Department of Consumer Affairs, directed the NSEL to give an undertaking that no further contracts shall be launched until further instructions, and that all existing contracts shall be settled on due dates. Accordingly, the NSEL gave an undertaking to the Department of Consumer Affairs on 22.07.2013.

vii. On 31.07.2013, the NSEL suspended its Exchange operations and called upon its Members to *inter alia* complete their respective delivery and payment obligations for the outstanding trades as on 31.07.2013. In July 2013, 13,000 persons who traded on the platform of the NSEL claimed to have been duped by about 24 trading Members, who defaulted in payment of their obligations amounting to approximately Rs.5,600/- Crores.

viii. An FIR in this regard was registered by the M.R.A. Marg, Police Station vide C.R. No.216 of 2013, which was transferred to and lodged in the EOW Police on 30.09.2013 as C.R. No.89

of 2013. Several suits also came to be filed by the traders who were allegedly duped on the trading platform. One Suit being No.173 of 2014 came to be filed in the Bombay High Court, as a representative suit under Order 1 Rule 8 of the Code of Civil Procedure, 1908. The NSEL filed third party notices in the said suit for recovery of Rs.5,600/- Crores against its 24 defaulter members.

ix. According to the NSEL, in the process of recovery proceedings filed by it, the decrees/ awards of about Rs.3,365 Crores out of Rs.5,600 Crores were passed against the defaulters. Additionally, the Enforcement Directorate also had attached assets worth approximately Rs.1740.59 Crores of the defaulters under the PMLA 2002. The provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the "MPID Act") were also added to the said F.I.R. in October 2013, as a result of which the State of Maharashtra also attached movable and immovable properties worth

about Rs.8,548 Crores belonging to the 24 defaulters, the Directors and Sister concerns of the NSEL and its Directors and Promoters, in order to ensure recovery of the monies allegedly lost by the genuine trading clients on the NSEL's platform.

x. Since the NSEL had also filed various Proceedings and the Suits, some of them having been decreed also, it was finding it difficult to file execution proceedings at various Courts. The NSEL, therefore filed the captioned Writ Petition seeking directions for the Consolidation of the Proceedings before the Committee appointed by the Bombay High Court vide the order dated 02.09.2014 in Notice of Motion No.240 of 2014 in Suit No.173 of 2014 and seeking other directions.

xi. This Court on 04.05.2022 for safeguarding of the interests of the Investors / Claimants passed the following Order: -

"O R D E R

Writ Petition(s)(Civil) No(s). 995/2019

The limited contours of the controversy before us emanating from the present

proceedings is the safeguarding of the interests of the investors/claimants.

In respect of the aforesaid, learned counsel for the petitioner had canvassed before us on 22.02.2022 that the way out would be that the properties attached by the respondent(s) are sold and monies brought into Court. This is in the context of decrees passed for the benefit of the petitioner where the same very properties which were attached were sought to be utilized to satisfy the claims. He thus, suggested that once the monies are brought in, even the claims of the petitioners/investors can be satisfied and one will know exactly what is the balance amount which remains as otherwise both the processes are going on at cross purposes even though the properties from which recoveries can be made are attached.

We thus, called upon the respondents to look into the aforesaid notwithstanding that the petitioner may also be an organization which as been charged, concerned as we were with the investors' money and properties remaining attached simplicitor could not be the solution for investors' money for which decrees had been passed. It is only on liquidation of those properties could the monies be distributed to satisfy the claims of the investors.

We requested the parties to work out a scenario to sub-serve the aforesaid objective and a synopsis was filed on behalf of the petitioner setting out the relevant dates and suggesting solution for speedy recovery of victims annexing thereto the details of decrees, arbitral awards obtained by the petitioner and execution proceedings thereof.

The ground work has been done by the parties and more or less they were in agreement on most issues. The other remaining issues have also been ironed out during the Court proceedings.

In view of the aforesaid, we are inclined to exercise our powers under Article 142 of the Constitution of India with the objective of attaining a holistic solution for speedy recovery of the outstanding amounts to be distributed to be investors.

The agreed terms have been placed before us which are being incorporated in this order as under: -

> "(i) A high powered committee of a Hon'ble Mr. Justice (Retd.) [ ], who has consented for the same, is hereby constituted (hereinafter referred to as the "Supreme Court Committee"). The Supreme Court Committee may in its discretion, hold meetings/hearings at Mumbai.
>
> (ii) The proceedings for execution of all the decrees/orders/arbitral awards listed in Annexure-1, particular of which are set out in Annexure-2, currently pending in various Courts across the country, are hereby transferred to the Supreme Court Committee, for speedy execution thereof.
>
> (iii) Against 5 additional Defaulters, the Committee appointed by Bombay High Court has crystallised the liability and the report of the said Committee is pending acceptance before Bombay High Court, details whereof are set out in Annexure-3. In the event the petitioner is granted decree/order by Bombay High Court in any or all of these matters, then the petitioner shall be at liberty to file the

proceedings for execution of such decrees/orders before the Supreme Court Committee, and the Supreme Court Committee shall have the power to execute such decrees/orders.

(iv) In proceedings where the petitioner has already obtained decrees/orders against the Defaulters, the petitioner is seeking further decrees/orders against other persons as well. In the event the petitioner is granted decree/order by the Bombay High Court in any or all of these matters, then the petitioner shall be at liberty to file the proceedings for execution of such decrees/orders before the Supreme Court Committee, and the Supreme Court Committee shall have the power to execute such decrees/orders.

(v) The petitioner shall be at liberty to apply to this Hon'ble Court in case there are further decrees/orders/arbitral awards obtained by it against the Defaulters or any other person in relation to the NSEL payment default for the purposes of filing execution thereof directly before the Supreme Court Committee.

(vi) The Supreme Court Committee shall have all the powers of a civil court executing a decree or an order or an arbitral award under the Code of Civil Procedure, 1908 for speedy execution of the above decrees/orders/abitral awards.

(vii) In execution of the above decrees/orders/arbitral awards, the Supreme Court Committee shall be

entitled to sell the properties of the judgment-debtors notwithstanding the attachment thereof by respondent No.2(ED) under the PMLA and/or by respondent No.3 (State of Maharashtra) under the MPID Act, to the extent of recovering the amount of the decree/order/arbitral award.

(viii) For the purposes of executing decrees/orders/awards to the extent they are not satisfied by recovery from the properties attached by the respondents or any of them as aforesaid, the Supreme Court Committee shall be at liberty to apply to this Hon'ble Court for suitable orders for attaching and/or liquidating properties of persons against whom decrees have been passed or of persons against whom the decrees can be executed as provided in the Code of Civil Procedure, 1908 or properties of persons to whom money trail from the judgment debtors has been traced by the respondents or any of them.

(ix) The Competent Authority appointed by respondent No.3(State of Maharashtra) has already opened an account with (a) Bank of India (for collection) and (b) AXIS Bank (for distribution). The sale proceeds so realized shall be deposited in either of these Bank Accounts at the discretion of the Supreme Court Committee.

(x) The Competent Authority appointed by respondent No.3 (State of Maharashtra) under MPID Act has invited claims from the victims and verified them to check genuineness and entitlement thereof.

(xi) The Competent Authority appointed by respondent No.3 (State of Maharashtra) under MPID Act shall file a report with the Supreme Court Committee setting out the names of the claimants and the amount that is due and payable to each of them, for passing necessary orders/directions/reverification, if required for equitable distribution of the sale proceeds to the victims from the accounts mentioned in Clause (ix) above.

(xii) The Supreme Court Committee shall be entitled to co-opt the services of such experts (such as Advocates, Chartered Accountants, Valuers etc.) and support staff as it may consider necessary for efficient and speedy execution of task assigned to it.

(xiii) Hon'ble Mr. Justice [ ] shall be entitled to fix such remuneration for himself and for other persons co-opted by him as he deems fit commensurate with the responsibilities assigned to them.

(xiv) In the first instance, the Competent Authority appointed by Respondent No.3(State of Maharashtra) under MPID Act shall bear all the expenses required to be incurred for the functioning of the Supreme Court Committee, including but not limited to remuneration, fees, physical infrastructure etc. and shall keep proper accounts of the same.

(xv) As and when any monies are realised by the Supreme Court Committee in accordance with the process set out above, the Competent Authority appointed by respondent No.3 (State of

Maharashtra) under MPID Act shall be reimbursed by this Hon'ble Court for the expenses incurred by it under paragraph (xiv) above on submission of proper accounts for the same.

(xvi) The Supreme Court Committee shall have liberty to apply to this Hon'ble Court for any further orders and/or directions as it may consider necessary for efficient and speedy execution of the task assigned to it.

(xvii) Any person aggrieved by an order and/or direction passed by the Supreme Court Committee shall be entitled to move this Hon'ble Court.

(xviii) All the parties and the authorities shall render all necessary assistance and cooperation to the Supreme Court Committee.

(xix) Needless to say that respondent No.2(ED) and/or respondent No.3 (State of Maharashtra) shall continue to attach further properties of the defaulters as per the money trail found by them during investigation and inform the Supreme Court Committee of such further attachment. Upon receipt of such intimation, the Supreme Court Committee shall be entitled to liquidate such further attached properties of the defaulters after hearing them, but only to the extent necessary for satisfaction of the decree/orders/arbitral awards obtained by the petitioner against such defaulters."

We may note that insofar as the list of decrees, orders, awards and attachment against defaulters are concerned, we are not setting them out as part of the order

though submitted as the annexure annexing along with the details of the execution proceedings as Annexure-2. The liability of the defaulters crystallized by the High Court Committee is pending before the Bombay High Court has been set out as Annexure-3. This material can always be placed before the high-powered committee of an Hon'ble Judge appointed by this Court.

We may note that both the State of Maharashtra and Enforcement Directorate would naturally like to assist the Committee in all manners and the Committee will have the power to seek information from any one and run its affairs as expeditiously as possible.

On further discussion in the Court, it is agreed that a single Member Committee may be appointed who would have the assistance of all concerned.

With the consent of parties, Hon'ble Justice Pradeep Nandrajog, retired Chief Justice of the Bombay High Court, whose consent has been taken, is appointed as the Single Member Committee for the said purpose to carry out the task. The learned Judge will fix his own fee. Insofar as the sitting of the Committee is concerned, it has already been mentioned aforesaid that it can be at the discretion of the Committee to hold proceedings in Delhi or Mumbai or for that matter anywhere else.

The arrangements for the sitting of the Committee shall be made by the Competent Authority as also the necessary arrangements for stay of the learned Judge and all other expenses including travel.

We would like to keep the matter pending and request the learned Judge to give a status report in about six months.

List after the status report is received."

xii. In view of the afore stated Order dated 04.05.2022 passed by this Court, the Supreme Court Committee comprising of Justice (Retd.) Mr. Pradeep Nandrajog (hereinafter referred to as the S.C. Committee) was constituted. The Proceedings for execution of all decrees/ orders/ arbitral awards listed in Annexure-1 of the said Order, the particulars of which were set out in Annexure-2 thereof, pending in various Courts across the country were transferred to the S.C. Committee. The decrees/ orders already obtained and in respect of which the decree holder had not yet commenced the execution proceedings were also directed to be executed by the S.C. Committee. In the proceedings where decree holder had obtained decrees/ orders and was seeking further decrees/ orders against other persons as well, and upon being granted the same by the Bombay High Court, were also to be executed by the S.C. Committee. The proceedings against the parties, i.e., the defaulters, against whom the liability had been crystallised by the

Committee appointed by the Bombay High Court, in the event, the decree holder was granted decrees/ orders by the Bombay High Court, such decrees for execution were also permitted to be transferred to the S.C. Committee for their execution. Qua future decrees/ awards or orders obtained by the decree holder, a liberty was granted to the decree holder to apply to the Supreme Court for execution of such decrees/ orders by the S.C. Committee.

xiii. As transpiring from the impugned Order dated 10.08.2023 passed by the S.C. Committee, one Modern India Limited, Shree Rani Sati Investment and Finance Private Limited, Modern Derivatives and Commodities Private Limited and F. Pudumjee Investments Company Private Limited had filed a Suit on the Original Side of Bombay High Court, impleading Financial Technologies India Limited (now known as 63 Moons Technologies Limited) as the Defendant No.1 and the NSEL as Defendant No.2, apart from 36 other Individuals and Companies who were

impleaded as the Defendant Nos. 3 to 38. The said Suit was registered as Suit no.173 of 2014. The NSEL - Defendant No.2 took out third party notices in the said Suit against its Trading Members who had defaulted in their funds “Pay – in” obligations, resulting in decrees being passed against such Trading Members and their lands by the Bombay High Court in favour of the NSEL. Additionally, in some cases the Arbitral awards were obtained by the NSEL against some of the defaulting Trading Members. Therefore, such defaulting Trading Members of the NSEL were the Judgment Debtors, on whom the liability was affixed in respect of the Third-party proceedings in the Suit No. 173 of 2014. In separate actions, the Enforcement Directorate under the provisions of the PMLA and the Competent Authority under the provisions of MPID Act had also attached the properties belonging to the Judgment Debtors who were the defaulting Trading Members of the NSEL.

xiv. During the course of Execution Proceedings before the S.C. Committee, a few Financial

Creditors of some of the Judgment Debtors (the Secured Creditors) had filed Applications seeking intervention on the ground that in the capacity as Secured Creditors they would have priority of interest of the charge over the attached properties of the Judgment Debtors.

4. In view of the afore stated factual matrix, the S.C. Committee raised an issue as to "Whether the Secured creditors would have priority of interest over assets attached under the Provisions of PMLA, 2002, and MPID Act, by virtue of the Provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002") and the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the "RDP Act")?"

5. The S.C. Committee addressing the said issue concluded vide the Order dated 10.08.2023 that given the overriding effect, the secured property being in the nature of proceeds of crime, as held by the Attachment orders, no priority of interest can be claimed by the Secured Creditors against such attached property. As regard the properties attached under the MPID Act, on which the Secured Creditors

laid their claims, the S.C. Committee further concluded that the provisions of the MPID Act, would override any claim for priority of interest by the Secured creditors in respect of the property which has been attached under the MPID Act.

6. It further appears that during the course of proceedings before the S.C. Committee another issue that was raised for determination, was "whether properties of the Judgment Debtor and Garnishees attached under the MPID Act would be available to the said Committee for execution of decrees against the Judgment Debtor in terms of the Order dated 04.05.2022 passed by the Supreme Court, in W.P. (C) No. 995 of 2019, in view of the commencement of Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC, for short) , on account of the initiation of Insolvency Proceedings against the Judgment Debtors." A similar issue also arose with regard to the commencement of the interim Moratorium under Section 96 of IBC in respect of the Garnishees in their capacity as personal Guarantors of a Corporate Debtor.

7. The S.C. Committee vide the Order dated 08.01.2024 concluded *inter alia* that as regards the

properties which were attached under Section 4 of the MPID Act prior to imposition of the respective dates of Moratorium of the Judgement Debtor or Garnishee under Section 14 or Section 96 of IBC, the property having been vested in the Competent Authority appointed by the State of Maharashtra, such properties were not liable to be made part of Insolvency Proceedings, and could be available to the said Committee for realisation in terms of the Order dated 04.05.2022 passed by the Supreme Court. It further concluded that as regards the properties which were sought to be attached after the date of commencement of Moratorium (if any) or assets of Judgment Debtor/ Garnishee/ Corporate Debtor which were not yet attached under the Provisions of the MPID Act, the decree holder would be entitled to pursue its claim as a Financial Creditor/ Secured Financial Creditor, as the case may be in such individual cases under the Provisions of the IBC.

8. Being aggrieved by the aforestated two Orders dated 10.08.2023 & 08.01.2024 passed by the Supreme Court Committee, some SLPs came to be filed before this Court. The said SLPs were permitted to be

converted into Interlocutory Applications (IAs) in the present Writ Petition filed by the NSEL.

SCOPE OF ARTICLE 142

9. At the outset learned Counsels appearing for the Applicants/Intervenors have raised the preliminary objections against the order passed by this Court on 04.05.2022, by submitting that this Court while exercising powers under Article 142 of the Constitution of India, had appointed the S.C. Committee and issued directions conferring upon the said committee wide powers with regard to the execution of the decrees/orders/awards, which had virtually superseded the statutory provisions contained in the Acts like SARFAESI Act, RDB Act, PMLA, IBC, etc. According to them, while exercising the powers under Article 142, the express statutory provisions cannot be circumvented or ignored, particularly when the exercise of such powers comes directly in conflict with what has been expressly provided in the statute.

10. Article 142(1) is reproduced hereunder for ready reference:

> **"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-**
> **(1)** The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
> **(2)** ……."

11. In our opinion, the law with regard to the scope of the exercise of powers of under Article 142 of the Constitution of India is quite well settled. In ***Supreme Court Bar Association Vs. Union of India & Another***[1]***,*** a Constitution Bench elaborately discussed the plenary powers of this Court under Article 142 and held as under:

> **"47.** The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the

[1] **(1998) 4 SCC 409**

foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of

contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see K. Veeraswami v. Union of India [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.

49. In Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] a Bench of this Court observed: (SCC p. 458, para 23)

> "23. The amplitude of powers available to this Court under Article 142 of the Constitution of India is normally speaking not conditioned by any statutory provision but it cannot

be lost sight of that this Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but not in disregard of the relevant statutory provisions."

50. Dealing with the powers of this Court under Article 142, in Prem Chand Garg v. Excise Commr., U.P. [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] it was said by the Constitution Bench: "In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

That takes us to the second argument urged by the Solicitor General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. In this connection, we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions. There can, therefore be no conflict between Article 142(1) and Article 32. In the case of K.M. Nanavati v. State of Bombay [AIR 1961 SC 112 : (1961) 1 SCR 497] on which the Solicitor

General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. The said rule can have no application to the present case, because on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32. The existence of the said power is itself in dispute, and so, the present is clearly distinguishable from the case of K.M. Nanavati [AIR 1961 SC 112 : (1961) 1 SCR 497] ."

51-54……

55. Thus, a careful reading of the judgments in Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] ; the Delhi Judicial Service Assn. case [(1991) 4 SCC 406 : (1991) 3 SCR 936] and Mohd. Anis case [1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251] relied upon in V.C. Mishra case [(1995) 2 SCC 584] show that the Court did not actually doubt the correctness of the observations in Prem Chand Garg case [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] . As a matter of fact, it was observed that in the established facts of those cases, the observations in Prem Chand Garg case [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] had "no relevance". This Court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be ignored by this Court while exercising powers under Article 142.

> **56.** As a matter of fact, the observations on which emphasis has been placed by us from the Union Carbide case [(1991) 4 SCC 584] , A.R. Antulay case [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] and Delhi Judicial Service Assn. case [(1991) 4 SCC 406 : (1991) 3 SCR 936] go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg case [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] . It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide case [(1991) 4 SCC 584] either expressly or by implication and on the contrary, it has been held that the Apex Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in V.C. Mishra case [(1995) 2 SCC 584] that the law laid down by the majority in Prem Chand Garg case [AIR 1963 SC 996: 1963 Supp (1) SCR 885] is "no longer a good law".

12. In ***Shilpa Sailesh Vs. Varun Sreenivasan[2],*** another Constitution Bench while considering the scope and ambit of power and jurisdiction of this Court under

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[2] **(2023) 14 SCC 231**

Article 142(1) of the Constitution of India, after due deliberations held as under: -

> **"19.** Given the aforesaid background and judgments of this Court, the plenary and conscientious power conferred on this Court under Article 142(1) of the Constitution of India, seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy. Fundamental general conditions of public policy refer to the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy should be understood as some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme. It should not contravene a fundamental and non-derogable principle at the core of the statute. Even in the strictest sense [Some jurists have opined that the judgments on the powers of this Court under Article 142(1) of the Constitution of India can be divided into three phases. The first phase till late 1980s is reflected in the judgments of Prem Chand Garg v. Excise Commr., 1962 SCC OnLine SC 10 : AIR 1963 SC 996 and A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372, which inter alia held that the directions should not be repugnant to and in violation of specific statutory provision and is limited to deviation from the rules of procedure. Further, the direction must not infringe the Fundamental Rights of the individual, which proposition has never been doubted and holds good in phase two and three. The second phase has its foundation in the ratio of the judgment of the eleven-Judge Constitution Bench of this Court in Golak Nath v. State of Punjab, 1967 SCC OnLine SC 14 : AIR 1967 SC 1643, dealing with the doctrine of prospective overruling, which held that

Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice, the only limitation thereon being reason, restraint and injustice. In Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406, this Court observes that any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court to issue any order or direction to do "complete justice" in any "cause" or "matter". Finally, the moderated approach has its origin in Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584, which holds that this Court, in exercising powers under Article 142 and in assessing the needs of "complete justice" of a "cause" or "matter", will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The judgment of Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, applies cautious and balanced approach, to hold that Article 142 being curative in nature and a constitutional power cannot be controlled by any statutory provision, but this power is not meant to be exercised ignoring the statutory provisions or directly in conflict with what isexpressly provided in the statute. At the same time, it observes that this Court will not ordinarily discard a statutory provision governing the subject, except perhaps to balance the equities between the conflicting claims of the parties to "iron out the creases" in a "cause or matter" before it. [See Rajat Pradhan, "Ironing out the Creases : Re-examining the Contours of Invoking Article 142(1) of the Constitution", (2011) 6 NSLR 1; Ninad Laud, "Rationalising 'Complete Justice' under Article 142", (2021) 1 SCC J-30; and Virendra Kumar, "Notes and Comments : Judicial Legislation Under Article

142 of the Constitution : A Pragmatic Prompt for Proper Legislation by Parliament", (2012) 54 JILI 364]. As observed by us, the ratio as expounded in Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584 holds good and applies.] , it was never doubted or debated that this Court is empowered under Article 142(1) of the Constitution of India to do "complete justice" without being bound by the relevant provisions of procedure, if it is satisfied that the departure from the said procedure is necessary to do "complete justice" between the parties. [See Prem Chand Garg (Prem Chand Garg v. Excise Commr., 1962 SCC OnLine SC 10 : AIR 1963 SC 996, para 13.]

20. Difference between procedural and substantive law in jurisprudential terms is contentious, albeit not necessary to be examined in depth in the present decision [However, this aspect has been, to some extent, examined in paras 24 to 37, 56 and 57 herein.] , as in terms of the dictum enunciated by this Court in Union Carbide Corpn. [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] and Supreme Court Bar Assn. [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , exercise of power under Article 142(1) of the Constitution of India to do "complete justice" in a "cause or matter" is prohibited only when the exercise is to pass an order which is plainly and expressly barred by statutory provisions of substantive law based on fundamental considerations of general or specific public policy.

21. As explained in Supreme Court Bar Assn. [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , the exercise of power under Article 142(1) of the Constitution of India being curative in nature, this Court would not ordinarily pass an order ignoring or disregarding

> a statutory provision governing the subject, except to balance the equities between conflicting claims of the litigating parties by ironing out creases in a "cause or matter" before it. In this sense, this Court is not a forum of restricted jurisdiction when it decides and settles the dispute in a "cause or matter". While this Court cannot supplant the substantive law by building a new edifice where none existed earlier, or by ignoring express substantive statutory law provisions, it is a problem-solver in the nebulous areas. As long as "complete justice" required by the "cause or matter" is achieved without violating fundamental principles of general or specific public policy, the exercise of the power and discretion under Article 142(1) is valid and as per the Constitution of India. This is the reason why the power under Article 142(1) of the Constitution of India is undefined and uncatalogued, so as to ensure elasticity to mould relief to suit a given situation. The fact that the power is conferred only on this Court is an assurance that it will be used with due restraint and circumspection. [See DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622.]"

13. In view of the above proposition of law laid down by the Constitution Benches of this Court, there remains no shadow of doubt that the exercise of power under Article 142(1) of the Constitution of India being curative in nature, the Supreme Court would not ordinarily pass an order ignoring or disregarding a statutory provisions governing the subject, except to balance the equities between conflicting claims of the

litigating parties by ironing out creases in a “cause or matter” before it. Therefore, even while exercising the powers under Article 142, the Supreme Court has to take note of the express provisions of any substantive statutory law and accordingly regulate the exercise of its power and discretion to do complete justice between the parties in the pending “cause or matter” arising out of such statutes. Though, the powers of this Court cannot be controlled by any statutory provisions, when the exercise of powers under Article 142 comes directly in conflict with what has been expressly provided in a statute, ordinarily, such power should not be exercised. Article 142 cannot be used to achieve something indirectly what cannot be achieved directly.

14. In the light of the aforestated legal position with regard to the scope and ambit of the powers under Article 142, if the facts of the present case are appreciated particularly with regard to the circumstances under which this Court had thought it proper to exercise the said powers, it appears that the Court had passed the order on 04.05.2022 keeping in mind the interest of the

investors/claimants and with the objective of attaining a holistic solution for speedy recovery of the outstanding amount to be distributed to the investors.

15. Since the money collected by NSEL from the investors fell under the definition of “deposit” as per Section 2(c) of the MPID Act, the State of Maharashtra invoking the provisions of Section 4(1)(ii) of MPID Act, had attached the properties and monies of the defaulting promoters, directors, managers and members of the NSEL by issuing various notifications. However, the total value of the attached properties was not sufficient for repayment to the depositors due to various reasons such as some of the properties were taken on rent by the members of NSEL from others, while some properties were mortgaged with the banks, against which proceedings under the SARFAESI Act were going on, and against some of the members of NSEL, insolvency proceedings were initiated.

16. The Government of Maharashtra therefore having been satisfied that the attached properties of the Financial Establishment–NSEL were not sufficient for repayment, attached the properties of the promoters of the NSEL i.e., M/s. 63 Moons Technologies

Limited, by issuing various Notifications under Section 4 of the MPID Act, which were subsequently ratified by the Government of Maharashtra in exercise of the powers conferred under Section 4(1) and Section 5 of the MPID Act, vide the Notification dated 19.09.2018, produced on record along with the captioned writ petition.

17. From the submissions, it further appears that several other civil and criminal proceedings were instituted by the claimants who lost their monies, against the NSEL, its parent company-63 Moons, 24 defaulters/ Members/brokers, etc. The traders who lost their monies had also filed civil suits in Bombay High Court against the NSEL and others. One of such suits was filed as a Representative suit, being no. 173 of 2014 under Order 1, Rule 8 of C.P.C. in which the Bombay High Court had appointed a three-member committee to crystalise the liabilities of the defaulting members and to act as the Receiver and Commissioner to deal with the assets of defaulting members. In the said Representative suit, the NSEL took out third party notices against its defaulters for recovery of monies lost by the traders. The NSEL had also filed separate suits and arbitration proceedings

against other defaulters, and had obtained Decrees and Arbitral awards of about Rs. 3,365 Crores against the defaulters. Since, it was becoming very difficult for the NSEL to get such decrees executed expeditiously because properties of the defaulters were situated at multiple jurisdictions, the NSEL filed the captioned writ petition before this Court seeking consolidation of the Decrees etc. as prayed for therein.

18. In the backdrop of these proceedings, this Court had passed the order on 04.05.2022 exercising the powers under Article 142(1) of the Constitution of India with the objective of attaining a holistic solution for the speedy recovery of the outstanding amounts to be distributed to the investors. As stated earlier, this Court vide the said Order had constituted the committee conferring upon it all the powers of civil court for the speedy execution of the decrees/orders/arbitral awards, and had further directed that the S.C. Committee shall be entitled to sell the properties of the Judgment Debtors notwithstanding the attachment thereof by the Enforcement Directorate under the PMLA and/or by the State of Maharashtra under the MPID Act to the

extent of recovery the amount of the decree/order/arbitral award. This Court vide the said order, thus had transferred the proceedings for execution of all the decrees/orders/arbitral awards, which were pending in various courts across the country, for speedy execution thereof. It was also clarified therein that against five additional defaulters, the committee appointed by the Bombay High Court had crystalised the liability and the report was pending for acceptance before the Bombay High Court. Therefore, if the NSEL was granted decree or order by the Bombay High Court in any of these matters, then the NSEL shall be at liberty to file proceedings for execution of such decrees/orders before the S.C. Committee. The petitioner NSEL was also granted liberty in the said order to apply to this Court, in case there were further decrees/orders/awards obtained by it against the defaulters for the purpose of filing execution thereof before the S.C. Committee.

19. It is true that while passing the said order on 04.05.2022 under Article 142(1) of the Constitution of India, this Court probably would not have contemplated the possibility of the legal issues, with

regard to the conflict of the provisions contained in the SARFAESI Act, RDB Act, PMLA and MPID Act, which were subsequently raised before the S.C. Committee. We do, therefore, find substance in the submissions made by the learned counsel appearing for the applicants-Secured Creditors that while exercising the powers under Article 142, the express provisions in the other relevant Statutes should not be ignored, particularly when the exercise of powers under Article 142, would directly be in conflict with what has been express provisions in such Statutes. It is also true that when this Court passed the Order dated 04.05.2022, it had the potentiality of being in conflict with other Statutes like SARFAESI Act, RDB Act, IBC etc. as also the potentiality of adversely affecting the rights of the Secured Creditors for enforcing the security interest created in the properties of the borrowers (in the instant cases the defaulters of NSEL) under the SARFAESI Act and RDB Act. However, the said contentions raised by the Secured Creditors have lost its significance at this stage, when the said Order dated 04.05.2022 has already been implemented by constituting the S.C. Committee and all the proceedings mentioned in the

order have already stood transferred to the said Committee for the execution of the decrees/orders/awards as directed therein. Also, we cannot be oblivious to the fact that such exercise of powers under Article 142 was for the speedy recovery of monies lost by the defaulters and investors, and for doing the complete justice to the aggrieved Traders. Nonetheless, the issues with regard to the interplay and the alleged conflict of the provisions of the said four statutes having been raised, and aptly decided by the S.C. Committee, and now again raised before this Court, we shall deal with those issues as elicited from the orders dated 10.08.2023 and 08.01.2024 passed by the S.C. Committee.

QUESTION: (i)

20. So far as the question, as to "whether the Secured Creditors would have priority of interest over the assets attached under the provisions of PMLA and MPID Act, by virtue of the provisions of SARFAESI Act and RDB Act," is concerned, it would be beneficial to first refer to the Objects and Reasons and the

relevant provisions of the said Statutes, as also of the Constitution of India.

21. The RDB Act was enacted to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions, and for the matters connected therewith and incidental thereto, as at the relevant time, the Banks and the Financial Institutions were experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. The said Act came into force on 24.06.1993. Relevant provisions thereof read as under:-

> **"31B. Priority to secured creditors**.— Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.
>
> *Explanation*. —For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

32-33……..

34. Act to have over-riding effect. - (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

22. As the long title of the SARFAESI Act suggests, it was enacted to regulate the securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a central database of security interests created on property rights, and for matters connected therewith or incidental thereto. SARFAESI Act came into force w.e.f. 21.06.2002. Section 26E having been relied upon by the learned counsels for the Secured Creditors, the same is reproduced as under:

26E. Priority to secured creditors. -- Notwithstanding anything contained in any other law for the time being in force, after the

> registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.
>
> *Explanation*. --For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

Section 35 thereof providing an overriding effect, reads as under:

> "**35. The provisions of this Act to override other laws. -** The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

23. So far as PMLA is concerned, as transpiring from its objects and reasons, since money laundering had posed a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty, some of the international communities had taken the initiatives to obviate such threats. The Parliament therefore considering the resolutions and declarations passed by the General Assembly of

United Nations, and to prevent money laundering and to provide for confiscation of property derived from, or involved in money laundering and for the matters connected therewith and incidental thereto, had passed the PMLA, which came into force w.e.f. 01.07.2005. Section 71 thereof pertaining to the overriding effect of the Act, reads as under: -

> **"71. Act to have overriding effect. -** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

24. The MPID Act was enacted by the State of Maharashtra to protect the interest of depositors of the Financial Establishments and matters relating thereto. Some of the provisions of the said Act being germane for deciding the issues involved in the present proceedings, the same are reproduced hereunder: -

Section 2(c) defines "'deposit"'. The relevant part thereof reads as under: -

> **"2. (c)** "deposit" 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, but does not include-

Section 2(d) defines “Financial Establishments”, which reads as under: -

> “**2(d) Financial Establishment** 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 defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);”

Section 3 of MPID Act pertains to the Fraudulent Default by a Financial Establishment, which reads as under: -

> “**3. Fraudulent default by Financial Establishment**.- 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.

Explanation - For the purpose of this section, a Financial Establishment, which commits defaults in repayment of such deposit with such benefits in the form of interest, bonus, profit or any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently."

Section 4 pertains to the attachment of properties on default of return of deposits, which reads as under: -

"4. Attachment of properties on default of return of deposits. - (1) Notwithstanding anything contained in any other law for the time being in force-

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed, -
(a) to return the deposit after maturity or on demand by the depositor; or
(b) to pay interest or other assured benefit; or
(c) to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any Financial Establishment is acting in the

calculated manner detrimental to the interests of the depositors with an intention to defraud them;

and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, 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 or the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

(2) On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation**."**

Section 7 thereof pertains to the powers of Designated Court regarding attachment. The same reads as under: -

> "**7. Powers of Designated Court regarding attachment**.- (1) Upon receipt of an application under Section 5, the Designated Court shall issue 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, a notice accompanied by the application and affidavits evidence, if any, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.
>
> (2) The Designated Court shall also issue such notice, 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 or the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.
>
> (3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, 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.

(5) 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 this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 5 of 1908 and exercise all the powers of a 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.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making 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:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (I) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less then the value that is required for repayment to the depositors of such Financial Establishment."

Section 14 of MPID Act provides for the overriding effect of the Act, which reads as under: -

> **"14. Act to override other laws**. - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.**"**

25. So far as the relevant provisions of Constitution of India are concerned, Article 246 which pertains to the subject matter of laws made by the Parliament and the Legislatures of the States reads as under:

> **"246. Subject-matter of laws made by Parliament and by the Legislatures of States**
>
> **(1)** Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> **(2)** Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> **(3)** Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated

in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Article 254 deals with the inconsistencies between laws made by Parliament and laws made by the Legislatures of States, which reads as under:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

ANALYSIS:

26. It is trite that the Court, while interpreting the statutes which have arguably the conflicting provisions, has to keep in mind the Federal structure embedded in our Constitution, as a Basic Structure. As per Article 246(1) of the Constitution, notwithstanding anything contained in Clauses (2) and (3), the Parliament has exclusive power to make laws with respect to any of the matters enumerated in the List-I in the Seventh Schedule, referred to as "the Union List". As per Article 246(2), notwithstanding anything in Clause (3), the Parliament and subject to Clause (1), the State Legislature have power to make laws on any of the matters enumerated in List-III in the Seventh Schedule referred to as the "Concurrent List". As per Article 246(3), subject to Clauses (1) and (2) of Article 246, the Legislature of any State has exclusive powers to make laws for such State, or any part thereof, with respect to any of the matters enumerated in List-II in the Seventh Schedule,

referred to as the "State List". Thus, a three-fold distribution of legislative power between the Union and the States made in the three Lists in the Seventh Schedule of the Constitution read with Article 246, exhibits the Principle of Federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List-I shall prevail over the State power as enumerated in Lists-II and III, and in case of overlapping between Lists II and III, the latter shall prevail. In view of such distribution of Legislative powers, situations have arisen where two legislative fields have apparently overlapped. In such situations, this Court has held that it would be the duty of the courts to ascertain as to what degree and to what extent, the authority to deal with the matters falling within these classes of subjects exists in each of such legislatures, and to define the limits of their respective powers.

27. A Constitution Bench in ***State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors.***[3]***,*** has aptly clinched the issue of distribution of legislative powers between the Union and the State Legislature, thus-

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[3] **(2010) 3 SCC 571**

"25. The non obstante clause in Article 246(1) contemplates the predominance or supremacy of the Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246(1). The State Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III (Concurrent List). The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II, which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State Legislature.

26. Both Parliament and the State Legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III. The words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between the Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III and in case of an overlapping between Lists II and III, the latter shall prevail.

27. Though, undoubtedly, the Constitution exhibits supremacy of Parliament over the State

> Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State Lists. Thus, there is no quarrel with the broad proposition that under the Constitution there is a clear demarcation of legislative powers between the Union and the States and they have to confine themselves within the field entrusted to them. It may also be borne in mind that the function of the lists is not to confer powers; they merely demarcate the legislative field. …."

28. A Three-Judge Bench of this Court in the case of ***M/s Hoechst Pharmaceuticals Ltd. and Ors. vs. State of Bihar and Ors***[4], has succinctly dealt with the issue of repugnancy as contemplated in Article 254 of the Constitution of India. Paragraph 67 thereof reads as under: -

> **"67.** Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To

[4] (1983) 4 SCC 45

the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See *Zaverbhai Amaidas* v. *State of Bombay* [(1954) 2 SCC 345 : AIR 1954 SC 752 : (1955) 1 SCR 799 : 1954 SCJ 851 : 1954 Cri LJ 1822] ; *M. Karunanidhi* v. *Union of India* [(1979) 3 SCC 431 : 1979 SCC (Cri) 691 : AIR 1979 SC 898 : (1979) 3 SCR 254 : 1979 Cri LJ 773] and *T. Barai* v. *Henry Ah Hoe* [(1983) 1 SCC 177 : 1983 SCC (Cri) 143]."

29. Again, a Constitution Bench of this Court while discussing the doctrine of pith and substance in the case of ***Kartar Singh vs. State of Punjab***[5], observed thus: -

> **"60.** This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden.**"**

30. Another Constitution Bench in ***Rajiv Sarin and Another vs. State of Uttarakhand and Ors.***[6]***,*** has aptly dealt with the issue as to when the repugnancy as contemplated in Article 254 would be attracted, and it held thus: -

> **"33.** It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254

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5 **(1994) 3 SCC 569**
6 **(2011) 8 SCC 708**

of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e. the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e. one made by the State Legislature and another made by Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different.

34-44. ……..

45. For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of both the legislations and whether such dominant

> intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject."

31. Since in the instant case, the issue with regard to the conflict between the provisions of the laws made by the Parliament and the law made by the State Legislature, has been raised, let us examine as to whether the said legislation i.e., MPID covers or relates to the same subject matter as covered under the Central Legislations i.e., SARFAESI Act and RDB Act as also PMLA.

32. It may be noted that the constitutional validity of the MPID Act is no longer *res integra* in view of the decisions in case of ***Sonal Hemant Joshi and Ors. vs. State of Maharashtra and Ors.***[7] and in case of ***State of Maharashtra vs. 63 Moons Technologies Ltd.***[8]***.*** This Court in ***63 Moons Technologies Ltd.***

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[7] **2012 (10) SCC 601**
[8] **2022 (9) SCC 457**

(supra) relying upon the earlier decision in case of ***Sonal Hemant Joshi and Ors. (supra)***, after discussing the various provisions of MPID Act particularly with regard to the definitions of "Deposit" and "Financial Establishment," held in paragraph 91 and 92 as under: -

> **"91.** The validity of the MPID Act was specifically dealt with in two decisions of this Court in *State of Maharashtra* v. *Vijay C. Puljal* [*State of Maharashtra* v. *Vijay C. Puljal*, (2012) 10 SCC 599 : (2013) 1 SCC (Civ) 541 : (2013) 1 SCC (Cri) 1082] and *Sonal Hemant Joshi* v. *State of Maharashtra* [*Sonal Hemant Joshi* v. *State of Maharashtra*, (2012) 10 SCC 601 : (2013) 1 SCC (Civ) 543 : (2013) 1 SCC (Cri) 1084] . In both the decisions, this Court upheld the constitutional validity of the MPID Act in view of the earlier decision in *Baskaran* [*K.K. Baskaran* v. *State*, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] . In *Soma Suresh Kumar* v. *State of A.P.* [*Soma Suresh Kumar* v. *State of A.P.*, (2013) 10 SCC 677 : (2014) 1 SCC (Civ) 90 : (2014) 1 SCC (Cri) 378] , a two-Judge Bench of this Court upheld the provisions of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 following the earlier decisions in *Baskaran* [*K.K. Baskaran* v. *State*, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] and *New Horizon Sugar Mills* [*New Horizon Sugar Mills Ltd.* v. *State of Pondicherry*, (2012) 10 SCC 575 : (2013) 1 SCC (Civ) 516 : (2013) 1 SCC (Cri) 1061] .
>
> **92.** Having discussed the judgments of this Court on the constitutional validity of the State legislations governing financial establishments offering deposit schemes, including the MPID

> Act, there is no reason for us to reopen the question. This Court has held that the MPID Act is constitutionally valid on the grounds of legislative competence and when tested against the provisions of Part III of the Constitution.**"**

33. This Court in ***Sonal Hemant Joshi and Ors. (supra)*** had upheld the constitutional validity of the MPID Act in view of the decision in case of ***K.K. Baskaran vs. State***[9], in which the Court was dealing with the identical legislation enacted by the State of Tamil Nadu, namely T.N. Protection of Interest of Depositors (in Financial Establishments) Act, 1997, enacted with the object to ameliorate the situation of the depositors from the clutches of fraudulent Financial Establishments, who had duped the investor/public by offering high rates of interest on deposits, and committed deliberate fraud in repayment of the principals and interests after maturity of such Deposits. In the said decision, the Court had opined that the impugned Tamil Nadu Act was in pith and substance relatable to the Entries 1, 30 and 32 of the State List (List-II) of Seventh Schedule. It further held that the Financial Institutions/Establishments as contemplated in the

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9 (2011) 3 SCC 793

Tamil Nadu Act did not come either under the Reserve Bank of India Act or Banking Regulation Act. It further held that the Tamil Nadu Act was not focussed on the transaction of banking or acceptance of deposit, but was focussed on remedying the situation of the depositors who were deceived by the fraudulent Financial Establishments. The said Act was intended to deal with neither the Banks which did the business of Banking and were governed by the Reserve Bank of India Act and the Banking Regulation Act, nor the Non- Banking Financial Companies enacted under the Companies Act. In the case of Tamil Nadu Act, the attachment of properties was intended to provide for an effective and speedy remedy to the aggrieved depositors for the realisation of their dues. Hence, the Reserve Bank of India Act, the Banking Regulation Act or the Companies Act did not occupy the field which the impugned Tamil Nadu Act occupied, though the latter might incidentally have trenched upon the former. The Court in the said judgment specifically disagreed with the full-Bench judgment of the Bombay High Court, whereby the MPID Act was held unconstitutional. Subsequently, the Court in ***Sonal Hemant Joshi and Ors.*** (supra),

specifically relied upon the said judgment in case of ***K.K. Baskaran*** and upheld the constitutional validity of the MPID Act. The said judgment was also relied upon by the three-Judge Bench in ***State of Maharashtra vs. 63 Moons Technologies*** (supra).

34. In view of the above, there remains no shadow of doubt that the State of Maharashtra was within its legislative competence to enact the MPID Act, the subject matter of which in pith and substance was relatable to Entries 1, 30 and 32 of the State List (List-II) of the Seventh Schedule of the Constitution of India.

35. The PMLA was enacted to implement the international resolutions and declarations made by the General Assembly of United Nations, and prevent money laundering as also to provide for confiscation of properties derived therefrom or involved in money laundering. The subject matter of PMLA therefore is traceable or relatable to the Entry-13 of Union List (List-I) of Seventh Schedule.

36. So far as the SARFAESI Act is concerned, the constitutional validity of the said Act was upheld by a Three-Judge Bench in the case of ***Mardia Chemicals Ltd and Ors. vs. Union of India and***

Ors.[10]***.*** The said Act was enacted by the Parliament to regulate securitization and re-construction of financial assets and enforcement of security interest and to provide for a central database of security interest created on property rights. The RDB Act was enacted to provide establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for the matters connected therewith or incidental thereto. Therefore, both SARFAESI and RDB Act have been enacted with regard to the matter pertaining to "Banking," which subject matter is relatable to the Entry 45 "Banking" falling in the Union List (List-I) of Seventh Schedule.

37. As held by the Constitution Bench in ***Union of India and Another vs. Delhi High Court Bar Association and Others***[11]***,*** under Entry 45 of List-I, it is Parliament alone which can enact a law with regard to the conduct of business by the Banks. Recovery of dues is an essential function of any Banking Institution. In exercise of its legislative power relating to Banking, the Parliament can provide the mechanism by which

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[10] (2004) 4 SCC 311
[11] (2002) 4 SCC 275

monies due to the Banks and Financial Institutions can be recovered.

38. However, merely because the SARFAESI Act and RDB Act which are enacted in respect of the subject matter falling in List-I and having been enacted by Parliament, they could not be permitted to override the MPID Act, which is validly enacted for the subject matter falling in List-II – State List. If such an interpretation is permitted to be made, it would amount to denuding the State of its legislative power to enact and enforce legislation, which is within the exclusive domain of the State, and it would offend the very principle of Federal Structure set out in Article 246 of the Constitution of India, held to be a part of the basic structure of Constitution of India.

39. In this regard, a very pertinent observation made by the majority in the Constitution Bench of five Judges in ***ITC Limited vs. Agricultural Produce Market Committee and Others***[12] deserve to be referred to. In the said case, the contention put forth by the Union of India was that 'tobacco' was covered solely by a later Special Central Legislation that is the Tobacco Boards Act, 1975 (List I- Entry 52 – Industries)

[12] **(2002) 9 SCC 232**

denuding the State legislation to levy market fee on such Tobacco under the earlier enacted Bihar Agricultural Produce Markets Act, 1960 (List II – Entry 24 – Markets). In the said case, the majority held the view that while maintaining Parliamentary Supremacy, one cannot give a go-by to the Federalism which has been held to be basic feature of the Constitution of India, and thereby whittling the powers of the State Legislature. The precise observations made by Sabharwal J., in this regard are reproduced: -

> "**58.** True, the parliamentary legislation has supremacy as provided under Articles 246(1) and (2). This is of relevance when the field of legislation is on the Concurrent List. While maintaining parliamentary supremacy, one cannot give a go-by to the federalism which has been held to be a basic feature of the Constitution (see *S.R. Bommai* v. *Union of India* [(1994) 3 SCC 1]).
>
> **59.** The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of the State Legislature and preserves the federalism while also upholding the Central supremacy as contemplated by some of its articles."

In the said Judgment Ruma Pal J., in her concurring opinion observed in Para 94 as under: -

> **"94.** Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. [*A.S. Krishna* v. *State of Madras*, AIR 1957 SC 297 : 1957 SCR 399, *Chaturbhai M. Patel* v. *Union of India*, (1960) 2 SCR 362, 373, *State of Rajasthan* v. *G. Chawla*, AIR 1959 SC 544, *Ishwari Khetan Sugar Mills (P) Ltd.* v. *State of U.P.*, (1980) 4 SCC 136, 146-47] This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail."

40. In view of the above position of law settled by the Constitution Bench, it is held that considering the pith and substance of the State and the Central Legislations in question, the Central Legislations i.e., SARFAESI Act or RDB Act cannot be permitted to prevail over the State Legislation i.e., MPID Act, merely because the Central Legislations are enacted by the Parliament. Since all these Acts have separate

field of operations, provisions of SARFAESI Act or RDB Act cannot be permitted to override the provisions of MPID Act, which is a validly enacted State Legislation, otherwise it would tantamount to violation of federal structure doctrine envisaged in the Constitution. The respective legislative powers of the Union and the States are traceable to Articles 245 to 254 of the Constitution. The State *qua* the Constitution is Federal in structure, and independent in its exercise of legislative and executive power. Therefore, if provisions of SARFAESI Act or RDB Act are permitted to override the provisions of MPID Act, then the legislative powers of the State Legislature would be denuded which would tantamount to subverting the law enacted by the State Legislature.

41. It is true that sometimes the overlapping of legislations enacted with regard to the matters relatable to different Entries in List-I and List-II in Seventh Schedule may occur, however in that case also as held by the Constitution Bench in ***State of West Bengal vs. Kesoram Industries Limited and Others***[13]***,*** though, the List-I has priority over List-III and List-II, and List-III has priority over List-II, the

[13] **2004 (10) SCC 201**

predominance of Union List would not prevent the State Legislature from dealing with any matter within List-II, even if it may incidentally affect any item in List-I. In the case at hand, the SARFAESI Act and RDB Act having been enacted by the Parliament for the subject matter falling in List-I and the MPID Act having been enacted by the State Legislature for the subject matter falling in List-II in the Seventh Schedule, the latter would prevail in the State of Maharashtra in respect of the specific subject matter for which the said Act was enacted, in view of Clause (3) of Article 246.

42. It was next sought to be submitted by learned counsels appearing for the Secured Creditors that in view of Section 26E of the SARFAESI Act, the debts due to the Secured Creditor have to be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority, and therefore, the security interest of the Secured Creditors in respect of the properties attached under MPID Act should be given priority. We do not find any merit in the said submission. Apart from the fact that Section 26E has come into force with effect from 1st

September, 2016, it gives right to the Secured Creditor, after the registration of security interest, to be paid in priority over all other debts and revenues, taxes etc. payable to the Central Government or State Government or local authority.

43. In the instant case, the attachment of the properties over which the Secured Creditors is said to have security interest, have been attached under Section 4 of the MPID Act. Such properties are believed to have been acquired by the Financial Establishment i.e. NSEL either in its own name or in the name of other persons from out of deposits collected by the Financial Establishment. All such properties and assets of the Financial Establishment and the persons mentioned in the said provision, vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court. Such monies or deposits of depositors/ investors, who have been allegedly defrauded by the Financial Establishment, and for the recovery of which the MPID Act has been enacted, could not be said to be a "debt" contemplated in Section 26E of the SARFAESI Act, and hence also the provisions of

Section 26E could not be said to have been attracted to the facts of the case.

44. In that view of the matter, it is held that no priority of interest can be claimed by the Secured Creditors against the properties attached under the MPID Act and that the provisions of MPID Act would override any claim for priority of interest by the Secured Creditors in respect of the properties which have been attached under the MPID Act.

QUESTION (ii): -

45. This takes us to the Second question as to "Whether the properties of Judgment Debtors and Garnishees attached under the MPID Act would be available for the execution of decrees against the Judgment Debtors in view of the provisions of Moratorium under Section 14 of the IBC, 2016?"

46. The bone of contention raised by the learned counsel appearing for the NSEL and the State of Maharashtra is that the properties of the Judgement debtor/Garnishees having already stood attached under the provisions contained in Section 4 of the MPID Act, much prior to coming into force of the IBC,

2016 and there being no retrospective operation of Section 14 pertaining to Moratorium, such attached properties under the MPID Act would no longer be available as the properties of the Corporate Debtor to be considered for the purpose of Resolution Plan under the IBC. According to them, on the issuance of Notification under Section 4 of the MPID Act, the attached the properties would vest in the Competent Authority appointed by the State Government, and therefore such properties would no longer be the properties of the judgment debtor or of the Garnishee, and therefore would be outside the scope of operation and application of IBC. Per contra the learned counsel for the Judgment Debtor/Garnishees have contended that the IBC being a complete and exhaustive Code in itself would override the provisions of the MPID Act.

47. As stated earlier, the MPID was enacted in the public interest to curb the unscrupulous activities of the Financial Establishments, who had defaulted to return the deposits of the public in the State of Maharashtra. The constitutional validity of the said Act has been upheld by this Court in ***Sonal Hemant Joshi and Ors.*** (supra) and in ***State of Maharashtra vs. 63***

Moons Technologies Ltd. (supra). As discussed while answering the first question, it was held that the MPID Act has been validly enacted by the Government of Maharashtra for the matters falling in List-II- State List, and therefore it would prevail in the State of Maharashtra. On the other hand, IBC has been 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 maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders. The subject matter of IBC being "Bankruptcy and Insolvency", is relatable to the Entry 9 of List III-Concurrent List. The MPID Act having been enacted for the matters relatable to the Entries-1, 30 and 32 in List-II-State List, and the IBC having been enacted for the matters relatable to the Entry-9 in List-III- Concurrent List, the provisions of Article 254 would not be attracted. As per the settled legal position discussed earlier, the issue of repugnancy or conflict as contemplated in Article 254 would arise only when the State Legislation and the Central Legislation, both, are relatable to the Entries

contained in List-III-Concurrent List of Seventh Schedule. A beneficial reference of the decision in case of ***Innoventive Industries Ltd. vs. ICICI Bank and Another***[14] be made in this regard.

48. In the instant case, there is also no overlap or inconsistency between the provisions contained in the IBC and MPID Act. As such, Section 14 of IBC has the connotation which is very much different from Section 4 of MPID Act. The proceedings under the IBC arise out of the Debtor-Creditor relationships of the parties. As per Section 14 of IBC, which pertains to the Moratorium, a declaration has to be made to an order by the Adjudicating Authority prohibiting the acts mentioned therein. Therefore, Section 14 of IBC is consequent upon the order passed by the Adjudicating Authority declaring Moratorium.

49. However, so far as the attachment of properties under Section 4 of the MPID Act is concerned, it is beyond the realm of the Debtor-Creditor relationship as contemplated in the IBC. On the publication of the Order of Attachment of Properties by the Government to protect the interest of the Depositors of the Financial Establishment, such properties and assets

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[14] **(2018) 1 SCC 407**

of the Financial Establishment and the persons mentioned in sub-section (1) of Section 4, would forthwith vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court. The procedure and powers required to be followed by the Designated Court after the receipt of the application from the Competent Authority under Section 5, have been prescribed in Section 7 of the MPID Act. As per the said procedure contained in Section 7, the Designated Court is required to issue a notice calling upon the Financial Establishments or to any other person whose property is attached and vested in the Competent Authority, to show cause as to why the Order of Attachment should not be made absolute. If no cause is shown or no objections have been raised before the Designated Court, the Designated Court can pass the 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 properties attached.

50. Thus, a conjoint reading of Section 4, 5 and 7 of the MPID Act, makes it clear that though Section 4(2) states about the attached properties being vested in the Competent Authority appointed by the Government, such vesting would be subject to the orders passed by the Designated Court. We therefore see no inconsistency between the provisions contained in the MPID Act and the IBC.

51. In absence of any inconsistency having been brought on record, between the provisions contained in the MPID Act and in the IBC, Section 238 of IBC, which gives overriding effect to the IBC over the other Acts for the time being in force, cannot be said to have been attracted.

52. In that view of the matter, it is held that the properties of the Judgment Debtors and Garnishees attached under the provisions of the MPID Act, would be available for the execution of the decrees against the Judgment Debtors by the S.C. Committee, despite the provision of Moratorium under Section 14 of the IBC.

53. For the reasons stated above, the Question No. (i) is answered in the negative and the Question No.(ii) is answered in the affirmative. As a consequence,

thereof, both the Orders passed by the Supreme Court Committee on 10.08.2023 and 08.01.2024 stand vindicated and upheld.

54. Let the IAs challenging the orders dated 10.08.2023 and 08.01.2024 passed by the S.C. Committee, be dealt with and decided, in the light of the findings recorded in this judgment.

……..…….. J.
[BELA M. TRIVEDI]

……..…….. J.
[SATISH CHANDRA SHARMA]

NEW DELHI,
MAY 15th, 2025.