NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 293 of 2020

[Arising out of Order dated 15.01.2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in CA 332/2018 in IB- 189 (ND) 2017]

In the matter of:

National Spot Exchange Limited
Through its Authorised Representative
6th Floor, Chintamani Plaza, Chakala,
Andheri Kurla Road, Andheri (East),
Mumbai- 400 099 **....Appellant**
Vs.

1. **M/s. Namdhari Food International Pvt. Ltd.**
   Through its Liquidator
   701, Vikrant Tower, Rajendra Place,
   Delhi 110008 **...Respondent No.1**

2. **Deputy Collector and Competent Authority (NSEL),**
   Office of Collector and District Magistrate,
   Mumbai City,
   1st Floor D.D. Building,
   Old Custom House,
   Fort, Mumbai 400001 **...Respondent No.2**

For Appellant: **Mr. Arun Kathpalia, Senior Advocate with Mr. Sandeep Bisht, Mr. Ranjan Kumar Pandey, Advocates.**

For Respondents: **Mr. Abhishek Anand, Ms. Mohak Sharma, Mr. Kunal Godhwani, Advocates for R-1.**

Mr. Aniruddha Joshi, Mr. Aaditya Pande, Mr. Rahul Chitnis, Advocates for R-2.

Company Appeal (AT) (Insolvency) No. 301 of 2020

[Arising out of Order dated 15.01.2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in CA 332/2018 in IB- 189 (ND) 2017]

In the matter of:

Deputy Collector and Competent Authority (NSEL)
Office of Collector and District Magistrate,
Mumbai City, Third Floor, MPID Branch
Old Custom House Fort,
Mumbai- 400001 **....Appellant**
Vs.

1. **Namdhari Food International Pvt. Ltd.**
   Through Liquidator- Shri Rakesh Kumar Gupta
   307, NDM-2, Netaji Subash Place
   Pitampura, Delhi- 110034 **...Respondent No.1**

2. **State Bank of India**
   Through its Counsel- PB Srinivasan
   Sri and Associates
   B-1/6, LGF Hauz Khas
   Delhi- 110016
   ...Respondent No.2

3. **Home Secretary**
   State of Maharashtra
   Madam Cama Road,
   Hutatma Rajguru Square,
   Nariman Point, Mumbai- 400032
   ...Respondent No.3

For Appellant: **Mr. Aniruddha Joshi, Mr. Aaditya Pande, Mr. Rahul Chitnis, Advocates.**

For Respondents: **Mr. Abhishek Anand, Ms. Mohak Sharma, Mr. Kunal Godhwani, Advocates for R-1.**

Mr. Arun Kathpalia, Senior Advocate with Mr. Sandeep Bisht, Mr. Ranjan Kumar Pandey, Advocates for NSE.

J U D G M E N T
(20th September, 2021)

A.I.S. Cheema, J.

1. Company Appeal (AT) (Insolvency) No.293 of 2020 arises out of impugned order dated 15th January, 2020 passed by the Adjudicating

Authority (NCLT), New Delhi, Court-III in CA 332 of 2018 in IB-189(ND)/2017.

2. Company Appeal (AT) (Insolvency) No. 301 of 2020 is also arising out of the same impugned order. The Deputy Collector and Competent Authority has filed the Appeal for National Spot Exchange Limited (NSEL) (Deputy Collector-in short)

3. CA 332 of 2018 was filed by the Resolution Professional when Corporate Insolvency Resolution Process (CIRP) was pending against the Corporate Debtor- 'Namdhari Food International Private Limited' seeking removal of attachment order dated 22.10.2018 vide which accounts of the Corporate Debtor in branches of the State Bank of India were attached. The Deputy Collector (Appellant in Company Appeal (AT) (Insolvency) No. 301 of 2020) inspite of service of notice did not respond and remained *ex parte*. The Adjudicating Authority after considering the matter for reasons recorded in the impugned order passed following operative directions: -

> *"6. The registration of CR No. 89/13 under the Provisions of the IPC and the MPID Act, is in relation to the alleged offences committed by the erstwhile management of the CD and other entities. But the Company (CD) cannot be prosecuted under the said provisions. Hence, the satisfaction of the claims of the creditors of the CD is possible only under the provisions of IBC. Therefore, in public interest, the Order dated 22nd October, 2018 read with notification dated 31st of March, 2017 is hereby* ***set aside*** *on the grounds stated by the Ld. Counsel for the Liquidator, to the extent of the attachment of the assets of the CD viz., Namdhari Food International Pvt. Ltd., with the direction to the Home Secretary of the State of Maharashtra and Deputy Collector, District Magistrate and Competent Authority for NSEL to hand over the assets of the CD viz., M/s. Namdhari Food international Pvt. Ltd., to the Liquidator*

viz. Mr. Rakesh Kumar Gupta, within three weeks from the date the copy of this order is received."

Re: Company Appeal (AT) (Insolvency) No.293 of 2020

Gist

4. NSEL has filed this Appeal claiming to be aggrieved by the impugned order. NSEL claims that it is an Electronic Spot Exchange providing a platform for trading in commodities. NSEL allows trading through its members called Trading Members or Trading-cum-Clearing Members as the case may be and only these members are entitled to trade on the exchange for themselves and/or their clients. The Corporate Debtor applied to NSEL and agreed to abide by the Rules, Regulation and Bye-laws of NSEL and started trading. The Corporate Debtor was trading member of the NSEL and traded on the said exchange platform and was liable to pay principal amount of approximately Rs.51.02 Crore to NSEL- Operational Creditor. When the Corporate Debtor failed to repay the amount to the trading clients and to fulfil obligations, the Corporate Debtor was declared defaulter as per Annexure A-3, Page 73. A three-member committee appointed by Hon'ble Bombay High Court filed Report No.4 of 2016 dated 27.01.2016, which was subsequently accepted by the Hon'ble Bombay High Court vide its order dated 27.02.2017. NSEL has filed copy of the Report (Annexure- A4, Page 74) and order dated 27.02.2017 of the Hon'ble Bombay High Court (Annexure- A5, Page 97). The Appeal claims and it is argued for the Appellant- NSEL that one of the trading clients namely- Pankaj Saraf has lodged a complaint with EoW and FIR was registered. Subsequently, charge sheet was filed against the Corporate Debtor under

various Sections of Indian Penal Code (IPC) and Section 3 of the 'Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999' ("MPID Act" for short). The charge-sheet was filed at designated MPID Court, Mumbai as Case No.5 of 2019 was registered. NSEL has stated that the Competent Authority/ Government of Maharashtra in exercise of its powers under Sections 4 and 5 of the MPID Act attached the properties of the Corporate Debtor vide notification dated 31.03.2017 (Annexure- A-6; Page 98) (Second Page of Annexure A-5 is also marked by Advocate as "98". We treat that Page as 97A). Further, the Government of Maharashtra in exercise of its powers under Section 4(1) of MPID Act, attached the bank account of the Corporate Debtor vide notification dated 19.10.2018 which was communicated to the State Bank of India by letter dated 22.10.2018 (Annexure- A7; Page 109).

5. Appeal page 128 shows that the State Bank of India had filed Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC" in short) having No.(IB)-189(ND)/2017 against the Corporate Debtor which came to be admitted on 30.08.2017. Thus, attaching account of the Corporate Debtor (Annexure- A7 dated 22.10.2018) was subsequent to the admission of Application under Section 7 and initiation of CIRP. The Resolution Professional (RP) Mr. Anil Katia filed CA 332 of 2018 in the Company Petition. The RP in para 7 of the Application claimed that:

> *"7. That a notification, dated 31st March, 2017, was issued by the Deputy Secretary, Home Department, Government of Maharashtra, under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("**MPID Act**") stating that certain complaints were received from*

> *number of depositors against the National Spot Exchange Ltd. and the defaulting Companies (including the Corporate Debtor), complaining that the National Spot Exchange Ltd. and the defaulting Companies (including the Corporate Debtor) had collected the fund and have defaulted to return the said deposits made by the depositors. As per the said notification, the Government of Maharashtra, to protect the interest of the depositors, attached the properties of the defaulted Companies. Certain properties owned by the directors/ promoters of the Corporate Debtor were also attached. A copy of the said notification dated 31st March 2017 is attached herewith as Annexure 2."*
>
> *(Emphasis supplied)*

6. The Resolution Professional thus stated that certain properties owned by the directors/ promoters of the Corporate Debtor have been attached vide the notification dated 31.03.2017 (the said notification in the Appeal is at Annexure A-6; Page 98). In the Application, Resolution Professional referred to the letter dated 22.10.2018 (Appeal Annexure A-8; Page 110) and the attachment of the accounts of the Corporate Debtor and the prayer made was:

> *"PRAYER*
>
> *It is, therefore, most respectfully prayed that this Hon'ble Adjudicating Authority may kindly be pleased to:*
>
> *a) Allow the present application under Section 60(5) read with Section 14 of the Insolvency and Bankruptcy Code, 2016;*
>
> *b) Pass an order directing the Deputy Collector and Competent Authority (NSEL), Office of Collector and District Magistrate, Mumbai City to remove the attachment on/ defreeze the bank accounts of the Corporate Debtor which were attached/frozen by the Deputy Collector and Competent Authority (NSEL), Office of Collector and District Magistrate, Mumbai City vide its letter dated 22 October 2018"*
>
> *(Emphasis supplied)*

7. Thus, the removal sought was of the attachment of the accounts of the Corporate Debtor.

8. The Appeal claims and it is argued for the Appellant that such CA 332 of 2018 was filed by the Resolution Professional. It is claimed that the Resolution Professional had sought intervention in MA 1512 of 2017 in MPID Special Case No. 1 of 2014 and its Application was rejected by the Designated Court, Mumbai under the MPID Act, vide order dated 30.11.2018 which declined to detach the properties of the Corporate Debtor but gave liberty to the IRP to contest the objection before the Court under Section 7 of the MPID Act. NSEL has attached copies of the MA and order passed in MA in the MPID Act as Annexures A-9 & 10 (Pages 230 and 243 of the Appeal). It is argued for NSEL that inspite of the liberty given to proceed under Section 7 of the MPID Act when the liquidator came to be appointed by the Liquidation order passed on 13.03.2019, the Liquidator rather sought decision of CA 332 of 2018 which had been filed during CIRP. The Appeal claims that the Application filed by RP did not seek detachment of the properties attached under the notification dated 31.03.2017 and still the impugned order was passed referring to that notification also. It is claimed that the RP did not rely on Section 32A of the IBC and still Adjudicating Authority relied on the same. The argument on behalf of the NSEL is that Section 32A could not be attracted towards properties which are neither part of a Resolution Plan nor sold as liquidation estate. It is claimed that Section 32A would not apply to investigation started prior to the commencement of the CIRP.

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Gist

9. The Deputy Collector and Competent Authority (NSEL) in its Appeal referred to the part of the impugned order Para 1 where Adjudicating Authority referred to the Affidavit filed for the Liquidator of proof of service of sending notice dated 13.12.2019 and proof of delivery of notice to the State Authorities. The Adjudicating Authority recorded that inspite of service of notice, there is no representation on behalf of the Respondents ((i)Home Secretary, State of Maharashtra; and (ii) Deputy Collector and Competent Authority for NSEL, Office of Collector and District Magistrate Bombay City) and that the service against them is held sufficient and, therefore, Home Secretary, State of Maharashtra, the Collector, District Magistrate Bombay City were being proceeded against *ex parte*. Company Appeal (AT) (Insolvency) No. 301 of 2020 claims and it is argued for the Deputy Collector that after receiving the notice to put appearance before the Adjudicating Authority, the Deputy Collector had sent his signed and affirmed reply to the appointed Advocate, who not only failed to place the reply on record but also failed to appear on the date when the matter was listed. The argument is that for failure of the Advocate, the party should not suffer (The Appeal does not appear to have referred as to who was the Advocate and any material to support the claim that the Advocate was instructed and given reply to be filed etc.)

10. In the Appeal, Deputy Collector has referred to the notification dated 31.03.2017 which was issued by the Government of Maharashtra and filed copy of the notification dated 19.10.2018 (Annexure A-D; Page 64 of the

Appeal) which apart from the Corporate Debtor took action against other defaulting entities also. Details of the various Bank accounts of the Corporate Debtor are at Serial No.6 of the Schedule where accounts other than State Bank of India are also attached under sub-section (1) of Section 4, Section 5 and Section 8 of the MPID Act.

11. In the Appeal, by the Deputy Collector, it is claimed that IBC is not meant to protect entities which have committed fraud. IBC cannot have overriding effect on MPID Act and the Corporate Debtor cannot take advantage of IBC.

12. We have already referred to the gist of the Appeals. Unless mentioned otherwise, we would be normally referring to documents and averments made at the time of arguments in Company Appeal (AT) (Insolvency) No. 293 of 2020.

Submissions in brief

13. Learned Senior Counsel for the Appellant- NSEL has argued that the Resolution Professional failed to intervene before the MPID Court and instead of filing Appeal, the Liquidator pursued CA 332/2018 before the Adjudicating Authority. It is argued that the relief could have been sought only under the MPID Act. According to the Learned Counsel for the Appellant, the Adjudicating Authority did not have power to set aside a gazette notification passed by an Administrative or quasi-judicial body. Reliance has been placed on judgment in the matter of ***"Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Ors." [2019 SCC OnLine SC 1542]***. It is also argued that Section 32A of the IBC gives immunity to the Successful

Resolution Applicant (SRA) and the buyer of the liquidation estate from future action and such provision cannot be interpreted to say that the attachments done before commencement of CIRP could be treated as illegal. The Learned Counsel referred to Section 32A (2) to submit that the protection is granted where such property is covered under a Resolution Plan or which results in change in control of the Corporate Debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of the IBC. Thus, it is trite to say that as property is not already sold in auction, action under Section 32A cannot be sought. It is also argued that Section 238 of the IBC cannot override the provisions of the MPID Act. The question of conflict between two statutes arises only if the two enactments contain inconsistent and irreconcilable provisions and they cannot stand together or operate in the same field. The Learned Counsel for the NSEL as well as the Learned Counsel for the Deputy Collector have argued relying on judgment in the matter of ***"K.K. Baskaran v. State" [(2011) 3 SCC 793]*** to submit that MPID Act has been held as enacted under List II of the Seventh Schedule of the Constitution over which it is argued that the State Legislature has exclusive domain to legislate. It is stated that in the judgment in the matter of ***"Innoventive Industries Ltd. v. ICICI Bank"*** **[(2018) 1 SCC 407]** in para 58 of the Judgment, the Hon'ble Supreme Court has held that IBC has been enacted under Entry 9 of List III which is concurrent list. It is argued on behalf of the Appellants in these matters that the enactment being enacted under two different legislative domain, the question of repugnancy would not arise as has been held by the Hon'ble Supreme Court in Paras 51.1 and 51.2., as under:-

> *"**51.1.** Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.*
>
> ***51.2.** In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other."*

14. It is argued that MPID Act having been enacted under the State List over which the Parliament has no jurisdiction to make enactments which would override the provisions of MPID Act. It is also argued that the IBC nowhere mentions or discusses attachment of properties and how the same are to be treated. Thus, reliance could not be placed on Section 238 of the IBC is submitted by the Appellants.

15. The Corporate Debtor through the Liquidator has supported the impugned order and is relying on Section 32A of the IBC. It is stated that under Sections 18, 25 & 35 of the IBC the IRP / RP / Liquidator are duty bound to take over the assets of the Corporate Debtor wherever the same may be so as to keep the Corporate Debtor as a going concern and to make efforts to find Resolution Plan during CIRP or to sell as going concern in liquidation and to follow procedure as found with regard to liquidation. It is argued that without taking charge of the property of the Corporate Debtor the Liquidator cannot proceed further. It is argued that no action can be taken against property of the Corporate Debtor in relation to an offence committed prior to

the commencement of the CIRP where such property is covered by the Resolution Plan which results in change in control of the Corporate Debtor to a person or where there is sale of liquidation assets under the provisions of Chapter III of Part II of the IBC when the property goes in the hands of a person who was not (i) a promoter or in the management or control of the Corporate Debtor or a related party of such a person, or (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. The Learned Counsel for the Liquidator has relied on the *explanation* below Section 32A of the IBC, which Section was introduced w.e.f. 28.12.2019. the *explanation* reads as follows:-

> ***"32-A. Liability for prior offences, etc.-***
> *xxx* *xxx* *xxx*
>
> *Explanation.- For the purposes of this sub-section, it is hereby clarified that,-*
>
> > *(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;*
> >
> > *(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable……"*
>
> *(Emphasis supplied)*

16. Relying on the above *explanation*, it is argued that the Liquidator is duty bound to take over the properties of the Corporate Debtor as per Section 35(1)(b) of the IBC and to form liquidation estate under Section 36 of the IBC and claims are to be verified and paid as per provisions found under Chapter III of Part II of the IBC. If there are deposit holders, they would have to be dealt with under these provisions of the IBC and they would get their dues. The proceeds from the sale would be distributed in terms of Section 53 of the IBC and thus, the attachment of accounts done cannot stand in the way of liquidator to perform his duty under the IBC. The attachment of accounts done after CIRP was initiated could not have been enforced in view of Moratorium which got attracted under Section 14 of the IBC. The attachment is civil in nature and no single class of creditors can benefit from the assets of the Corporate Debtor. It is argued that the Liquidator has admitted claim of NSEL to the extent of Rs.51,01,73,352.72/-.

17. The Counsel for the Liquidator has relied on judgment of this Tribunal in the matter of ***"Directorate of Enforcement vs. Manoj Kumar Agarwal"- [Company Appeal (AT) (Insolvency) No. 575/2019]*** which was in the context of 'Prevention of Money Laundering Act, 2002' ("PMLA" in short) where similar provisions as in MPID Act are there with regard to attachment and the Act has provisions for civil actions as well as criminal actions. Learned Counsel submitted that this Tribunal has held attachment being civil in nature during CIRP, Moratorium would apply and when it comes to liquidation, liquidator will be entitled to take into his control properties of the Corporate Debtor so

as to deal with the same under the provisions of the IBC with regard to liquidation.

Brief reference to MPID provisions

18. Having heard Counsel for both sides in these Appeals, it would be appropriate to briefly refer to the provisions of MPID Act. It appears that the Act received the assent of the President of India on 20.01.2000. As the name of the Act itself indicates, it was brought into force for protection of interest of depositors in financial establishments. The 'financial establishment' is defined by the MPID Act in Section 2(d). Section 3 of the Act makes 'Fraudulent default by Financial Establishment' a penal offence making liable 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, liable for conviction. Section 4 of the MPID Act provides for "Attachment of properties on default of return of deposits". Section 4 reads as under:-

> *"**4.** (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 a calculated manner detrimental to the interest 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 service 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 other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

(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 order 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."

19. The "Competent Authority" referred in sub-section (2) of Section 4 is appointed under Section 5(1) which states that the Government may while issuing the order under sub-section (1) of Section 4, appoint any of its officers not below the rank of the Deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under Section 4, of a Financial Establishment. As per Section 5, the Competent Authority shall, within thirty days from the date of the

publication of the said order, shall apply under Section 5(3) to the Designated Court, accompanied by one or more affidavits .stating the grounds on which the Government has issued the said order under Section 4 for seeking further orders as mentioned in sub-section. The Designated Court is created by notification under Section 6 of the MPID Act. The Designated Court has to be in the cadre of a District and Sessions Judge for such area or areas to be specified in the notification. Powers of the Designated Court are stated in Section 7 of the MPID Act. The section *inter alia* provides for issuing show-cause notice to the concerned as to why the order of attachment should not be made absolute. Thus, although Section 4(2) speaks about 'vesting' of the properties and assets in the Competent Authority, Section 7 shows procedure with regard to making of the attachment absolute. This would be in terms of the principles of natural justice. Section 7 of the MPID Act has procedure for dealing with objections and causing investigation under sub-section (5) and then passing orders under sub-section (6) either making order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment. Relevant portions of sub-sections (5) & (6) of Section 7 read as under:-

> *"**7.....(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, 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:……."*

Thus, provisions of CPC are attracted to deal with attachment made.

20. Section 8 deals with contingency where the assets available for attachment of a Financial Establishment or other person referred to in Section 4 are found to be less than the amount or value which such Financial Establishment is required to re-pay to the depositors. Section 9 deals with 'Security in lieu of attachment' for which the concerned Financial Establishment or person whose property has been or is about to be attached may apply to the Designated Court. Section 10 is regarding "Administration of property attached". Then there is provision of Appeal provided under Section 11 to the Hon'ble High Court which can be preferred by a person, including Competent Authority aggrieved by the order of the Designated Court.

Then the portion relating to Criminal Part is there. Section 12 deals with 'Appointment of Special Public Prosecutor'. Section 13 may be reproduced. The same reads as under:-

> *"**13.** (1) The Designated Court may take cognizance of the offence without the accused being committed to it for trial and, in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.*

> *(2) The provision of the Code of Criminal Procedure, 1973, shall so far as may be, apply to the proceedings before a designated Court and for the purpose of the said provisions a Designated Court shall be deemed to be a Magistrate"*

This is in context of Penal Section 3 of MPID.

21. Section 13 makes it clear that the offence under this Act will have to be tried in the manner provided for trial of warrant cases by Magistrate under the CrPC.

22. Section 14 also needs a reference which reads as under:-

> *"**14.** Save as otherwise provided in this Act, the provisions Act to override 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."*

23. The above are mainly the Sections relevant for deciding the present Appeals.

24. It appears that MPID Act was held unconstitutional by full Bench of Hon'ble Bombay High Court in the matter of ***"Vijay C. Puljal v. State of Maharashtra"*** *[(2005) 4 CTC 705 Bom].* Separately, similar Act- 'The Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997' came to be challenged before the Hon'ble Madras High Court and the constitutional validity of that Act was upheld. Judgment of the Hon'ble Madras High Court came to be challenged in the matter of ***"K.K. Baskaran v. State represented by its Secretary, Tamil Nadu and Ors." [(2011) 3 SCC 793]*** . The Hon'ble Supreme Court referred to the Statement of Objects

and Reasons of the Tamil Nadu Act and the Hon'ble Supreme Court dealt with Judgment in the matter of ***"Vijay C. Puljal***" (Supra) also and in para 15 of the judgment the Hon'ble Supreme Court held that the Hon'ble Supreme Court respectfully disagreed with the view taken by the Bombay High Court. It was observed that though there are some differences between the Tamil Nadu Act and the MPID Act, they were minor differences and the view the Hon'ble Supreme Court has taken will apply in relation to MPID Act also. The Hon'ble Supreme Court then referred to List I and List II (Union List and State List) under the Seventh Schedule of the Constitution and held that the Tamil Nadu Act enacted by State Legislature was not in pith and substance referable to legislative heads contained in List I of the Seventh Schedule of the Constitution though there may be some overlapping. The Hon'ble Supreme Court held in pith and substance the said Act comes under the State List of the Seventh Schedule. The Learned Counsel for the Appellants before us has referred to this portion of the judgment in the matter of ***"K.K. Baskaran"*** (Supra) to submit that MPID Act would be a matter under the State List. It is argued that the Hon'ble Supreme Court in the matter of ***"Innoventive Industries Ltd."*** (supra) held in para 58 that the IBC is Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the Seventh Schedule which reads as under:-

*"**9.** Bankruptcy and insolvency"*

25. Hon'ble Supreme Court after referring to case law held in Paras 51.1 and 51.2 that question of repugnancy under Article 254 would arise only if

both the Parliamentary (or existing law) and the State law are referable to List III of the Seventh Schedule.

In the matter which was before the Hon'ble Supreme Court in ***"Innoventive Industries Ltd."*** (supra) the question of repugnancy was looked into by the Hon'ble Supreme Court in the context of Maharashtra Relief Undertakings (Special Provisions) Act, 1958. Para 9 of the Judgment of the Hon'ble Supreme Court shows that it was argued before the Hon'ble Supreme Court that IBC relates to Schedule VII List III Entry 9 whereas the Maharashtra Act (i.e. Maharashtra Relief Undertakings (Special Provisions) Act, 1958) was a measure for unemployment relief under Schedule VII List III Entry 23 of the Constitution. Thus, both the enactments being dealt with by the Hon'ble Supreme Court were related to List III (concurrent list) and the observations made by the Hon'ble Supreme Court in Para 51.1 and 51.2 were accordingly in the context of Article 254 of the Constitution. But in the present matter, the context is regarding MPID Act which is stated to be in List II and IBC which is part of List III.

26. In the judgment in the matter of ***"Innoventive Industries Ltd."*** (supra) when conflict between Maharashtra Relief Undertakings (Special Provisions) Act, 1958 and IBC was to be resolved, Hon'ble Supreme Court referred to earlier judgments of the Hon'ble Supreme Court in the context of repugnancy and one of the judgments referred is ***"Hoechst Pharmaceuticals Ltd. v. State of Bihar" [(1983) 4 SCC 45]***. Said matter was in the context of Section 5(3) of Bihar Finance Act and if it was in conflict with Para 21 of Drugs (Prices Control) Order 1979 made under Section 3 of the Essential Commodities Act, 1955. Section 5(3) of Bihar Finance Act in pith and substance fell under Entry

54 of List II while Order made under Section 3 of the Essential Commodities Act was stated to be relating to Entry 33 of List III. Paras 67 to 69 of the said judgment may be referred. The same read as under:-

> *"**67.** Art. 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. Art. 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. Cl. (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 the general rule laid down in cl. (1), cl. (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 cl. (2). The proviso to Art. 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; M.*

Karunanidhi v. Union of India and T. Barai v. Henry Ah Hoe.

68. *We may briefly refer to the three Australian decisions relied upon. As stated above, the decision in Clyde Engineering Company case, lays down that inconsistency is also created when one statute takes away rights conferred by the other, per the illuminating judgment of Isaacs, J. In Ex Parte McLean's case, supra, Dixon J. laid down another test viz., two statutes could be said to be inconsistent if they, in respect of an identical subject-matter, imposed identical duty upon the subject, but provided for different sanctions for enforcing those duties. In Stock Motor Ploughs Limited's case, supra, Evatt, J. held that even in respect of cases where two laws impose one and the same duty of obedience there may be inconsistency. As already stated the controversy in these appeals falls to be determined by the true nature and character of the impugned enactment, its pith and substance, as to whether it falls within the legislative competence of the State Legislature under Art. 246(3) and does not involve any question of repugnancy under Art. 254(1).*

69. *We fail to comprehend the basis for the submission put forward on behalf of the appellants that there is repugnancy between sub-s. (3) of s. 5 of the Act which is relatable to Entry 54 of List II of the Seventh Schedule and paragraph 21 of the Control order issued by the Central Government under sub-s. (1) of s. 3 of the Essential Commodities Act relatable to Entry 33 of List III and therefore sub-s. (3) of s. 5 of the Act which is a law made by the State Legislature is void under Art. 254(1). The question of repugnancy under Art. 254(1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Art. 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and List I and List III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non-obstante clause in Art. 246(1) read with the opening words "Subject to" in Art. 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that*

the expression "a law made by Parliament which Parliament is competent to enact" in Art. 254(1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent sphere because Parliament is competent to enact law with respect to subjects included in List III as well as 'List I" But if Art. 254(1) is read as a whole, it will be seen that it is expressly made subject to cl. (2) which makes reference to repugnancy in the field of Concurrent List-in other words, if cl. (2) is to be the guide in the determination of scope of cl. (1), the repugnancy between Union and State law must be taken to refer only to the Concurrent field. Art. 254(1) speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law. There was a controversy at one time as to whether the succeeding words "with respect to one of the matters enumerated in the Concurrent List" govern both (a) and (b) or (b) alone. It is now settled that the words "with respect to" qualify both the clauses in Art. 254(1) viz. a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The under lying principle is that the question of repugnancy arises only when both the Legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Hence, Art. 254(1) can not apply unless both the Union and the State laws relate to a subject specified in the Con current List, and they occupy the same field."

27. Article 246 of the Constitution of India appears to be relevant which may be reproduced:-

*"**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 I 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)

> *(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"*

28. Keeping this Article of the Constitution before us and considering observations of the Hon'ble Supreme Court in para 69 the matter of ***"Hoechst Pharmaceuticals Ltd."*** (supra), we do not find that there is any difficulty with regard to primacy of IBC and applying Section 238 of the IBC which in case of inconsistency has overriding effect on other laws. Section 238 of the IBC reads as follows:-

> ***"238. Provisions of this Code to override other laws. -***
> *The provisions of this Code 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."*

29. Thus, although Section 14 of the MPID Act (which is an Act earlier to IBC) has effect notwithstanding anything inconsistent with any other law, the said Section 14 would be subject to the subsequent Code promulgated by the Government of India which has amended laws related to insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.

30. We have already referred to provisions of MPID Act in short. Earlier this Tribunal had occasion to deal with attachment made under PMLA in the matter of ***"Directorate of Enforcement vs. Manoj Kumar Agarwal"*** (supra). In that judgment of ours, we had examined the provisions of PMLA. In that

matter also there was resistance to taken over charge of the properties of the Corporate Debtor by the Resolution Professional and the ground of attachment of properties of the Corporate Debtor was obstruction to smooth CIRP.

31. Like the present matter, in the matter of ***"Directorate of Enforcement vs. Manoj Kumar Agarwal"***- also ground was raised that the Adjudicating Authority could not have decided the issue and should have referred the matter to the Competent Authority under the concerned Act. We reproduce portion of that judgment. In paras 19 to 22, we had observed:-

> *"**Power of Adjudicating Authority under Section 60(5) of IBC***
> ***19.*** *The Learned Counsel for the Appellant has argued that the Adjudicating Authority did not have jurisdiction to interfere in the Provisional Attachment which had been made by the Appellant and if the Resolution Professional had any grievance, it was for the Resolution Professional to move the Adjudicating Authority under PMLA or to file Appeals to the Appellate Tribunal under PMLA. The Learned Counsel relied on Judgment in the matter of "Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Ors." (2019) SCC Online SC 1542. Relying on the Judgment it is claimed that where Corporate Debtor has to exercise rights in judicial, quasi-judicial proceedings the Resolution Professional cannot short-circuit by bringing the claim before National Company Law Tribunal (NCLT in short) under Section 60 (5). It is argued that Hon'ble Supreme Court has further held that where Corporate Debtor has to exercise right which falls outside the purview of IBC especially in the range of public law they cannot through Resolution Professional take a bypass and go before the NCLT for enforcing such a right. Thus, the argument is that the Resolution Professional could not have moved the Adjudicating Authority under IBC for seeking relief of releasing the attachment and should have gone to the Authorities under the PMLA.*
>
> ***20.*** *We have gone through the Judgment relied on by the Learned Counsel for the Appellant. The facts in the*

matter of "Embassy Property Developments" (supra) can be seen in Paragraph 4 of the Judgment. In that matter, the Corporate Debtor was M/s. Tiffin Barytes Asbestos and Paints Ltd. CIRP started in that matter on 12th March, 2018 before NCLT, Chennai. The Corporate Debtor held a mining lease which was to expire on 25th May, 2018. Government of Karnataka had given pre-mature termination of lease notice on 09.08.2017. The IRP made effort by writing to the Director of mines and Geology seeking benefit of deemed extension of the lease up to 31st March, 2020 in terms of Mines and Minerals (Development and Regulation) Act, 1957. As there was no response, IRP filed a Writ Petition WP No. 23075 of 2018 before the High Court of Karnataka seeking relief. Government of Karnataka rejected the proposal of deemed extension on 26.09.2018. In view of such order, the IRP withdrew Writ Petition No. 23075 of 2018 with liberty to file fresh Writ Petition but instead filed Miscellaneous Application before the NCLT, Chennai which passed ex-parte orders on 11th December, 2018 setting aside order of Government of Karnataka treating it in violation of moratorium under Section 14 of IBC. Adjudicating Authority directed Government of Karnataka to execute Supplement Lease Deeds. The Government filed Writ Petition No. 5002 OF 2019 before the High Court of Karnataka. Considering factor of ex-parte Order, the Hon'ble High Court remanded back the matter to NCLT, Chennai. The matter in M.A. No. 632 of 2018 was again heard by NCLT which passed order dated 3rd May, 2019 allowing the M.A. and rejected the defence of the Government of Karnataka. The Government was directed to execute Supplement Lease Deeds. The Government challenged this in the High Court again in Writ Petition No. 41029 of 2019. As the Resolution Professional moved for action of contempt, the Hon'ble High Court granted stay to the directions contained in the order of NCLT. The matter was then carried to the Hon'ble Supreme Court by RP and others.

It is in the context of such facts that the Hon'ble Supreme Court considered jurisdiction and power of the Hon'ble High Courts under Article 226. The Hon'ble Supreme Court considered the matter on the principle whether the case of State of Karnataka fell under the category of (1) lack of jurisdiction on the part of the NCLT to issue a direction in relation to a matter covered by MMDR Act, 1957 and statutory rules issues thereunder, or (2) if it was mere wrongful exercise of a recognised jurisdiction. The Hon'ble Supreme Court in this context considered jurisdiction and powers of NCLT under the Companies Act read with provisions of IBC. In Paragraph 37 to 42 It was observed and held as under:

"37. From a combined reading of Subsection (4) and Sub section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be Subsection (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Subsection (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/ Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.)

38. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty bound under Section 20(1) to preserve the value of the property of the Corporate Debtor and that the word ***"property" is***

interpreted in Section 3(27) to include even actionable claims as well as every description of interest, present or future or vested or contingent interest arising out of or incidental to property *and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the Corporate Debtor.*

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

"18. Duties of interim resolution professional. The interim resolution professional shall perform the following duties, namely:
(a) …
(b)…
(c) …
(d)…
(e)…
(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—
(i)…
(ii)…
(iii)…
(iv) …
(v)…
(vi) assets subject to the determination of ownership by a court or authority;
(g) …
Explanation. For the purposes of this section, the term 'assets' shall not include the following namely:
(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

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

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

*"25. **Duties of resolution professional** – (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

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

(a)……

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

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

42. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it

is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

Having gone through the above Judgment and submissions made by the Learned Counsel for the Appellant to rely on Paragraphs 41 and 42 of the Judgment. Material would be to see if right concerned falls outside the purview of IBC, or within. We find that it would be a matter of applying facts to the law. The facts in the matter of "Embassy Property Developments" were clearly different. It is clear from the above Judgment that Hon'ble Supreme Court has observed that clause 'c' of sub-section 5 of Section 60 is very broad in its sweep. Under Section 14 of IBC once Insolvency commences inter alia moratorium applies to actions "against the Corporate Debtor". Under Section 25 of IBC, the Resolution Professional is inter alia duty bound to represent and act on behalf of the Corporate Debtor with third parties, to exercise rights for the "benefit" of the Corporate Debtor in judicial, quasi-judicial and arbitration proceedings. The Judgment of Hon'ble Supreme Court has observed that for such actions the Resolution Professional cannot move the NCLT/Adjudicating Authority under Section 60 (5). There cannot be any shortcut on such counts. Under Section 18(1) (f) the IRP when it takes control and custody of any asset over which Corporate Debtor has ownership rights as recorded in the balance-sheet of the Corporate Debtor, it can include asset regarding which there may be a dispute pending regarding ownership in a court of law. Such issue of Ownership only a Civil Court can decide. Under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons, Regulations 2016) (CIRP Regulations in short) Regulation 36(h) requires that information memorandum required to be issued by Resolution Professional shall contain "details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;".

21. *The Government has amended Section 11 of IBC by adding additional explanation as per Insolvency and Bankruptcy Code Amendment Act, 2020 published on 13.03.2020. Section 11 of IBC relates to persons who are not entitled to make application. Explanation 2 was added to clarify that nothing in the Section shall prevent a Corporate Debtor referred to in clause (a) to (d) of the Section from initiating Corporate Insolvency Resolution*

Process against another Corporate Debtor. The constitutional validity of Section 11 was challenged in the matter of ***"Manish Kumar vs. Union of India" (2021) SCC Online SC 30*** *and in Paragraphs 265 of the Judgment Hon'ble Supreme Court observed as under:*

> *"265.....The intention of the Legislature was always to target the corporate debtor only insofar as it purported to prohibit application by the corporate debtor against itself, to prevent abuse of the provisions of the Code. It could never had been the intention of the Legislature to create an obstacle in the path of the corporate debtor, in any of the circumstances contained in Section 11, from maximizing its assets by trying to recover the liabilities due to it from others. Not only does it go against the basic common sense view but it would frustrate the very object of the Code, if a corporate debtor is prevented from invoking the provisions of the Code either by itself or through his resolution professional, who at later stage, may, don the mantle of its liquidator. The provisions of the impugned Explanation, thus, clearly amount to a clarificatory amendment……."*

Thus, while Section 14 protects Corporate Debtor from actions, the Resolution Professional can pursue claims for the benefit of the Corporate Debtor.

22*. The observations of the Hon'ble Supreme Court in the matter of "Embassy Properties" do not appear to be helpful to the Appellant with regard to the facts involved and the law which is to be applied which we propose to discuss further. The Learned Counsel for Appellant is not reading the said Judgment correctly. On facts and law it does not help Appellant."*

32. In the present matter also, for similar reasons, we do not find any force in the argument of the Appellants that the Resolution Professional and later Liquidator could not have moved the Adjudicating Authority for orders to tide over the attachment. We reject the submissions made on this count.

33. Further, the question of applicability of Section 32A of the IBC also was dealt with in the matter of ***"Directorate of Enforcement vs. Manoj Kumar***

Agarwal" by us. We had referred to judgment of Hon'ble Supreme Court in the matter of "Manish Kumar" in this context. We recorded in para 23A to 24, as under:-

> *"**Section 32A of IBC***
>
> ***23(A).*** *After the Impugned Order dated 12th February, 2019 was passed, the Amendment Act, 2020, recorded above came to be passed. In the matter of "Manish Kumar" (Supra) the other Section, constitutional validity of which was challenged is Section 32A of IBC. Section 32A reads as under:*
>
> *"Section 32A inserted through the impugned amendment reads as follows: "32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—*
>
> *(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
>
> *(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:*
>
> *Provided that if a prosecution had been instituted during the corporate 7 insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:*
>
> *Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate*

debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

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

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

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

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

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

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in 9 this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or

person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

23 (B). *When the constitutional validity was challenged, Union of India defended these provisions (Please see Para 271 of the Judgment in Manish Kumar) by submitting that:*

"The stand of the Union, on the other hand, is as follows: Section 32A provides immunity to the corporate debtor and its property when there is approval of the resolution plan resulting in the change of management of control of corporate debtor. This is subject to the successful resolution applicant being not involved in the commission of the offence. Statutory basis has now given under Section 32A to the law laid down by this Court in the decision of Committee of Creditors of Essar Steel(supra). This Court took the view therein that successful resolution applicant cannot be faced with undecided claim after its resolution plan has been accepted. The object is to ensure that a successful resolution applicant starts of on a fresh slate. The relevant extracts of the Statement of Objects and Reasons relied upon by the Union of India are as follows:

"STATEMENT OF OBJECTS AND REASONS

xxx

2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity <u>against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency 69 framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.</u>

3.The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, inter alia, provides for the following, namely:—

xxx

(vii) to insert a new section 32A so as to provide that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency

resolution process shall cease under certain circumstances".

23(C). *The Union of India also placed reliance on the Report of Insolvency Law Committee which is referred by the Hon'ble Supreme Court in Para 272. Para 17.3 to 17.5 of the Report of the Committee are referred as under:*

"272…… (17.3) It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it had submitted for approval of the Adjudicating Authority. Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower on an average, even where the corporate debtor did not commit any offence and was not subject to investigation, due to adverse selection by resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

17.4. This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors, including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty bound to penalize the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced.

17.5. The Committee noted that the proceedings under the Code, which are designed to ensure maximization of value, generally require transfer of the corporate debtor to bona fide persons. In fact, Section 29A casts a wide net that disallows any undesirable person, related party or defaulting entity from acquiring a corporate debtor. Further, the Code provides for an open process, in which transfers either require approval of the Adjudicating Authority, or can be challenged before it. Thus, the CIRP typically culminates in a change of control to resolution

applicants who are unrelated to the old management of the corporate debtor and step in to resolve the insolvency of the corporate debtor following the approval of a resolution plan by the Adjudicating Authority".

With regard to the actions against the property of the Corporate Debtor, Report of Insolvency Law Committee Para 17.9 to 17.11 read as under:

"17.9. The Committee also noted that in furtherance of a criminal investigation and prosecution, the property of a company, which continues to exist after the resolution or liquidation of a corporate debtor, may have been liable to be attached, seized or confiscated. For instance, the property of a corporate debtor may have been at risk of attachment, seizure or confiscation where there was any suspicion that such property was derived out of proceeds of crime in an offence of money laundering. It was felt that taking actions against such property, after it is acquired by a resolution applicant, or a bidder in liquidation, could be contrary to the interest of value maximisation of the corporate debtor's assets, by substantially reducing the chances of finding a willing resolution applicant or bidder in liquidation, or lowering the price of bids, as discussed above.

17.10. Thus, the Committee agreed that the property of a corporate debtor, when taken over by a successful resolution applicant, or when sold to a bona fide bidder in liquidation under the Code, should be protected from such enforcement action, and the new Section discussed in paragraph 17.7 should provide for the same. Here too, the Committee agreed that the protection given to the corporate debtor's assets should in no way prevent the relevant investigating authorities from taking action against the property of persons in the erstwhile management of the corporate debtor, that may have been involved in the commission of such criminal offence.

17.11. By way of abundant caution, the Committee also recognised and agreed that in all such cases where the resolution plan is approved, or where the assets of the corporate debtor are sold under liquidation, such approved resolution plan or liquidation sale of the assets of the corporate debtor's assets would have to result in a change in control of the corporate debtor to a person who was not a related party of the corporate debtor at the time of commission of the offence, and was not involved in the commission of such criminal offence along with the corporate debtor".

24. *This Section also puts responsibility on the Corporate Debtor and bona fide purchaser to co-operate in investigation. In Paragraphs 279 to 280 of the Judgment in the matter of "Manish Kumar" Hon'ble Supreme Court observed in the above context as under:*

"279. The contentions of the petitioners appear to be that this provision is constitutionally anathema as it confers an undeserved immunity for the property which would be acquired with the proceeds of a crime. The provisions of the Prevention of Money-Laundering Act, 2002 (for short, the PMLA) are pressed before us. It is contended that the prohibition against proceeding against the property, affects the interest of stakeholders like the petitioners who may be allottees or other creditors. In short, it appears to be their contention that the provisions cannot stand the scrutiny of the Court when tested on the anvil of Article 14 of the Constitution of India. The provision is projected as being manifestly arbitrary. To screen valuable properties from being proceeded against, result in the gravest prejudice to the home buyers and other creditors. The stand of the Union of India is clear. The provision is born out of experience. The Code was enacted in the year 2016. In the course of its working, the experience it has produced, is that, resolution applicants are reticent in putting up a Resolution Plan, and even if it is forthcoming, it is not fair to the interest of the corporate debtor and the other stake holders.

280. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences

committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision."

Thus constitutional validity of Section 32A has been upheld."

34. In that matter, we discarded the argument that Section 32A of the Code was not helpful in that matter as case had not reached the stage of acceptance of Resolution Plan or had not reached stage of liquidation. In the present matter, the argument that unless liquidation takes place, protection of Section 32A cannot be invoked is not well founded. Unless property becomes available and is subjected to the Liquidation Process under Chapter III Part II of the IBC, the applicability or inapplicability of Section 32A cannot be claimed. As per Chapter III, the Liquidator is duty bound under Section 35 to take into custody or control all the assets, property, effects and actionable claims of the Corporate Debtor. *Explanation* below sub-section (2) of Section 32A makes it clear that no action shall be taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of CIRP and the action includes the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the Corporate Debtor. If in liquidation, there is a change of control of Corporate Debtor to a person who was not a promoter or in management or in control of the Corporate Debtor or a related party of such

person, the person will be protected. Thus, beforehand it cannot be claimed that protection of Section 32A is not available.

35. The reason why the attachment of property of Corporate Debtor cannot come in the way, we had dealt with in the judgment in the matter of ***"Directorate of Enforcement vs. Manoj Kumar Agarwal"***- in paras 27 to 34 as under:-

> *"**Aims and Objects to be achieved in IBC***
>
> ***27.*** *It is clear that Section 32A gives protection to the property of the Corporate Debtor in relation to an offence committed prior to commencement of CIRP where such property is covered under a resolution plan, on compliance with conditions stated. But then the question which has arisen before us is that if during CIRP the properties remain under attachment or seizure etc. can the apprehensions of prospective resolution applicants be allayed if the properties continue to be under attachment, seizure etc. and are inaccessible to the IRP/RP. There are many steps required to be taken during CIRP and which are all time bound so as to ensure maximisation of the value of the property to achieve the target of a successful resolution (which is in interest of Economy) and failure of which leads to liquidation.*
>
> ***28.*** *Some of the provisions may be referred.*
>
> ***29. (A).*** *The aim and object of PMLA under Section 5 for attaching the property alleged to be involved in money laundering is to avoid concealment, transfer or dealing in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under chapter III of PMLA. Thus, Provisional Attachment Order is issued for a period not exceeding 180 days from the date of Order. Now if Section 14 (1)(b) of IBC relating to moratorium is seen, on the insolvency commencement date, the Adjudicating Authority is required to pass order declaring moratorium, inter alia prohibiting "transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein" thus the moment CIRP is initiated, the property of the Corporate Debtor is protected by such moratorium. Thus both*

provisions seek to protect the property of Corporate Debtor from transfer etc. till further actions take place.

(B). *Under Section 17 of IBC from the date of appointment of the IRP, he has to manage the affairs of the Corporate Debtor which shall vest in IRP and the powers of directors or partners of the Corporate Debtor as the case may be, stand suspended and are to be exercised by the IRP.*

(C)*. Under Section 18 (1) (f), the IRP is required under the laws of IBC to take control and custody of any assets corporate debtor has ownership rights as recorded in balance sheet of the Corporate Debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets. The further sub-clauses give particulars of properties to be taken over. The explanation provides as to which assets shall not be included.*

(D). *Then under Section 20 of IBC, there is responsibility of IRP to make every endeavour to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern. When IRP is appointed as RP or is replaced by RP, even the RP has similar responsibility and powers as can be seen in Section 23 and 25.*

30. *Even on the stage of liquidation, under Section 34(2) of IBC all Powers of Directors etc. vest in the Liquidator. Under Section 35(1)(b), it is the duty of the liquidator to take into custody all the assets and properties of Corporate Debtor and also to carry on business of the Corporate Debtor for its beneficial liquidation as may be considered necessary by the Liquidator.*

Regulations to be complied

Apart from these Acts, the CIRP Regulations when considered, Regulation 27 requires the RP that he shall within 7 days of the appointment but not later than 47th day from Insolvency Commencement day appoint two registered valuers to determine the fair value and the liquidation value of the Corporate Debtor in accordance with the regulation 35. Earlier, under Regulation 36 of CIRP Regulations relating to information memorandum, the RP is required to submit information memorandum within two weeks of his appointment but not later than 44th day from insolvency commencement date, whichever is earlier. The information memorandum shall contain

"Details" of the Corporate Debtor "assets and Liabilities" with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values. The description has to include details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value and other relevant details.

31. *Under Insolvency and Bankruptcy Board of India (Liquidation Process) Rules, 2016 Regulation 9 requires a liquidator to apply to the Adjudicating Authority for a direction that a person who has possession of any of the properties of the Corporate Debtor shall co-operate with him in collection of information necessary for the conduct of the liquidation. Under Regulation 32A, the Liquidator may sell the assets of the Corporate Debtor in the various manners mentioned in the regulation including sale of the corporate Debtor as a going concern. Under Regulation 34, Liquidator is required to prepare assets memorandum which shall provide details in respect of assets which are entitled to be realised by way of sale giving "value of the asset, valued in accordance with regulation 35. Under Regulation 35, the Liquidator can adopt valuation under Section 35 of CIRP, Regulation but if Liquidation is of opinion that fresh valuation is required under the circumstance, he shall within 7 days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the Corporate Debtor.*

32. *Regulation 40A of CIRP, Regulations and Regulation 47 of Liquidation Regulations give model timelines.*

33. *Once CIRP starts, there may be a contingency of the admission order getting set aside in Appeal. There may be another contingency where under Section 12A of IBC withdrawal of the Application admitted under Section 7, 9 or 10 takes place. Apart from these two contingencies, the CIRP is bound to end into either in Resolution Plan getting accepted or the Corporate Debtor going into liquidation. These two contingencies are taken care of by Section 32 A which has been recently added in IBC. If the first two contingencies happen, the normal laws would naturally get attracted as there would be a reversal to management going back to earlier hands. However, when CIRP is pending and progressing with target of Resolution, whether the attachment or seizure can be made or continued of the properties of Corporate Debtor is required to be considered.*

Active Attachments, seizure etc. obstruct acts as above

> ***34.*** *It appears to us that if the aims and objects of IBC are to be achieved, and maximisation of value is material so as to reach a resolution, above acts in time bound manner are to be performed and there cannot be obstructions of attachments and seizures existing. If the property is under attachment or seizure, or possession is taken over, keeping the corporate debtor a going concern would be serious issues. Without the properties in possession of IRP/RP getting valuation done during CIRP or even liquidation stage, would be issues. Attachment remaining in force would affect value of the property and prospective applicants may not respond in the manner in which they would, if the property is not under active attachment or seizure."*

36. For similar reasons, in present matter also we hold that the seizure or attachment of accounts of Corporate Debtor cannot stand as obstruction when the Corporate Debtor is at the stage of liquidation under IBC.

MPID aims to protect interest of Depositors. IBC is broader and aims to consolidate and amend laws relating to re-organisation and insolvency resolution of corporate persons and partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons. The scheme aims at balancing interest of all stakeholders. This will include interest of Depositors. Thus, IBC has broader contours. Letting one set of creditors march over others is not permissible.

37. In Paras 38 to 42 of the judgment in the matter of ***"Directorate of Enforcement vs. Manoj Kumar Agarwal"-,*** we had dealt with the provisions of PMLA, as follows:-

> *"**38.*** *In PMLA offence of money laundering is defined and punishment prescribed in Chapter 2. Chapter 7 deals with special courts for trial of offence punishable under*

Section 4 which is found in Chapter 2. The offences are triable by Special Courts under Section 44 and the offence are cognizable and non-bailable as per Section 45.

Section 46 applies Code of Criminal Procedure before Special Court. There is provision of Appeal and Revision to the High Courts under Section 47 of PMLA. Thus, there is demarcation with regard to the attachment of property done under Section 5 of PMLA which is to be adjudicated under Section 8 before the Adjudicating Authority who has to deal with confirmation of attachment under Section 8 (3) of PMLA. On confirmation, the attachment continues during investigation for a period not exceeding 365 days or pendency of the proceedings relating to the offence under PMLA before a Court or under the corresponding law of any other country or before the Competent Court of any jurisdiction outside India as the case may be. The attachment confirmed by Adjudicating Authority becomes final after an order of confiscation passed under sub-section 5 or sub-section 7 of Section 8 or Section 58B or sub-section (2-A) of Section 60 by the special Court. It appears that because of such demarcations, the Government stated before the Hon'ble Supreme Court of India that the functions as regards the Adjudicating Authority are civil in nature to the extent that it does not decide on the criminality of the offence nor does it has power to impose penalty or impose punishment.

39. *Taking aid from this, it appears to us that after the attachment when matter goes before the Adjudicating Authority under PMLA, proceeding before Adjudicating Authority for confirmation would be civil in nature. That being so, Section 14 of IBC would be attracted and applies. In present matter, the Provisional Attachment took place on 29th May, 2018 and corrigendum was issued on 14th June, 2018. The CIRP started on 16th July, 2018. Once moratorium was ordered, even if the Appellant moved the Adjudicating Authority under PMLA, further action before Adjudicating Authority under PMLA must be said to have been prohibited. Even if confirmation has been done as stated to have been done on 20th November, 2018, the same will have to be ignored. Section 14 of IBC will hit institution and continuation of proceedings before Adjudicating Authority under PMLA. The CIRP will of course not affect prosecution before Special Court, till contingencies under Section 32A of IBC occur.*

40. *In Judgment in the matter of "P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd." (2021) SCC Online SC 152, Hon'ble Supreme Court of India considered the provisions of Section 138 of the Negotiable Instrument Act and Liabilities of the Corporate Debtor and Directors in the*

light of Section 14 of IBC and observed in Paragraph 63 as under:

> *"63. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, though couched in language making the act complained of an offence, is really in order to get back through a summary proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given our analysis of Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited hereinabove, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 of the IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding."*

Thus to quasi-criminal proceeding as regards Corporate Debtor, Section 14 applies has been found. Considering this as well as the nature of proceedings that takes place before the Adjudicating Authority under PMLA, it appears to us that even if the Authority issues order of provisional attachment, the institution and continuation of proceedings before the Adjudicating Authority for confirmation would be hit by Section 14 of IBC.

41. *Alternatively, even if for any reason it was to be held that Section 14 of IBC would not help, it appears to us that Section 238 of IBC would still apply. Although it is argued that PMLA is a special statute and has an overriding effect still Section 238 of IBC is also a special statute and which is subsequent statute. IBC has specific object, which is to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues.*

Section 238 of IBC reads as under:

> *"238. The provisions of this Code 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."

If this Section is perused, the provisions of this Code would have effect notwithstanding anything inconsistent therewith contained "in any other law" for the time being in force. Section 238 of IBC does not give over riding effect merely to Section 14. The other provisions also are material, and will have effect if there is anything inconsistent therewith contained in any other law for the time being in force. Thus if the Authorities under PMLA on the basis of the attachment or seizure done or possession taken under the said Act resist handing over the properties of the Corporate Debtor to the IRP/RP/Liquidator the consequence of which will be hindrance for them to keep the Corporate Debtor a going concern till resolution takes place or liquidation proceedings are completed, the obstructions will have to be removed. We have already referred to the various Acts required to be performed by IRP/RP/Liquidator to achieve the aims and objects of IBC in time bound manner. If properties of Corporate Debtor would not be available to keep it a going concern, or to get the properties valued without which Resolution/Sale would not be possible, the obstruction will have to be removed. To take over properties of Corporate Debtor, and manage the same, and keep Corporate Debtor a going concern are acts which fall within purview of IBC. IRP/RP/Liquidator under IBC have duty and right to take over and manage assets of Corporate Debtor as long as the assets are property of the Corporate Debtor, so that the other duties conferred on them by the statute are performed. These are issues relating to resolution/liquidation. If hindrance is being created by the attachment or by taking over the possession, it would be a question of priority arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor and such question can be decided by the Adjudicating Authority under Section 60 (5) (c) of IBC which reads as under:

"60.....

(5)....

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

> ***42.*** *In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfil objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."*

38. In the present matter also, if the MPID Act is seen, Section 7(5) makes it clear that when dealing with the attachment of property, the procedure to be followed by the designated court is as per the Code of Civil Procedure. In the subsequent part of the Act while dealing with offence (as per Section 3 of the PMLA), the procedure for taking cognizance of offence is given in Section 13 and provisions of CrPC as applicable for warrant trial cases is applied. There is similarity on these broad aspects between PMLA and MPID. Thus, for attachment under the MPID Act, Section 14 of the IBC dealing with Moratorium would apply and the provisions dealing with powers of IRP, RP and duty to take into custody and control the assets of the Corporate Debtor would be enforceable. At stage of liquidation, liquidator would be duty bound to take control of assets of Corporate Debtor. Any attachment to such extent under the State Act will have to give way to IBC, and obstruction has to be removed.

39. Coming to the facts of the present matter, while referring to the developments, we have noted and seen that there was attachment order issued by the Government of Maharashtra (Annexure A-6; Page 98) and under the title of name of Corporate Debtor, certain immovable properties were shown. The chart itself showed the names of the owners as Surjeet Singh and Inder Singh. Thus, properties of these individuals were attached. In fact, the

Resolution Professional had while filing CA 332 of 2018 (Annexure-110) not sought removal of attachment which was ordered in Notification dated 31.03.2017. We have already reproduced the prayer which the Resolution Professional made in the application. His prayer was only to remove attachment of bank accounts as per letter dated 22.10.2018. In para 7 of the Application, the Resolution Professional had clearly mentioned that certain properties owned by the Directors/ promoters were also attached and filed the notification dated 31.03.2017. Action against personal properties of owners/ promoters may continue under MPID. In IBC concern is with property of Corporate Debtor. The correspondence impugned before the Adjudicating Authority was the letter dated 22.10.2018 (Annexure-7; Page 109) sent by the Deputy Collector ordering attachment of the Bank Accounts of the Corporate Debtor in the State Bank of India, Anantpura and Rania. The document mentioned that it was in the context of Government of Maharashtra notification dated 19.10.2018. This notification is Annexure-D in Company Appeal (AT) (Insolvency) No. 301 of 2020. The Adjudicating Authority wrongly in the impugned order read this order dated 22.10.2018 with notification dated 31.03.2017.

40. Both the Appeals to this extent need to be allowed.

41. For the above reasons, Company Appeal (AT) (Insolvency) No. 293 of 2020 and Company Appeal (AT) (Insolvency) No. 301 of 2020 are partly allowed. From the impugned order para 6, the wording 'read with notification dated 31.03.2017' is deleted and expunged. Rest of the impugned order is

maintained. With these observations, both the Appeals stand disposed off. No order as to costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
Anjali