

IN THE COURT OF SPECIAL JUDGE FOR MPID
AT BOMBAY

ORDER BELOW APPLICATION EXH. 11
IN
MISC APPLICATION NO. 151 OF 2020
(CNR NO.MHCC02-001279-2020)
IN
MPID SPECIAL CASE NO.1 of 2014

State of Maharashtra

... Applicant

Versus

P. D. Agro Processors Pvt. Ltd. & Ors.

... Respondents

Appearances:

Ld. Adv. Mr. Vijay Singh alongwith Adv. Mr. Abhiraj Rao for Respondent No.2.

Ld. S.P.P. Mr. Sunil Gonsalves for the State/EOW.

Ld. Adv. Mr. Lakhawat alongwith Adv. Ms. Jalpa i/b MZM Legal LLP for intervener.

CORAM : HIS HONOUR SPECIAL JUDGE
SHRI V.P. DESAI
SPECIAL COURT (C.R.No.52)

DATE : NOVEMBER 4, 2023.

(DICTATED AND PRONOUNCED IN OPEN COURT)

:ORAL ORDER:

Vide the present application, Mrs. Kanta Gupta proprietor of M/s. Dulisons Cereals [R-2] has prayed that the proceedings Misc Application No.151 of 2020 filed u/s 8 of the Maharashtra Protection of Interests of Depositors [Financial Establishment] Act, 1999 [MPID Act] qua her be stayed on the count that State Bank of India (SBI) has filed application before NCLT Mumbai against her under section 95 (1) of the Insolvency

and Bankruptcy Code 2016 (IBC). This application was listed before the Hon'ble National Company Law Tribunal, Mumbai [NCLT] branch on 19.01.2022 and notice was issued to her.

2. Accordingly, interim moratorium has commenced against her in terms of section 96 of IBC. In view of interim moratorium, no legal action/proceedings can be instituted or commenced or continued against her and therefore the proceedings filed u/s 8 of the MPID Act be stayed.

3. Say of the State was called for. The State filed its say [Exh.11B] and resisted the application on the grounds that the proceedings are filed u/s 8 of the MPID Act. Mrs. Kanta Gupta is the sole proprietor of Dulisons Cereals. The provision of section 96 of IBC will only apply, if the court is satisfied that statutory attachment made by the State of Maharashtra u/s 4 of the MPID Act is a 'debt'. The attachment proceedings u/s 4, 7 or 8 of the MPID Act are not at all related to debt. There is no debtor-creditor relationship Mrs. Kanta Gupta and State of Maharashtra. The property of Mrs. Kanta Gupta has not been attached by the State to secure any debt. Section 96 of IBC Code does not apply to criminal prosecution. PD Agro Processors Pvt. Ltd. is declared as Financial Establishment and notification dated 31.03.2017 and 24.05.2018 are issued by the State of Maharashtra. That section 8 of the MPID Act provides for attachment of the properties of the transferee equivalent to the property value of malafide transfers of money/properties. The Stay of the proceedings qua Mrs. Kanta Gupta would effect the recovery vis-a-vis the outstanding amount of the alleged deposits. Mrs. Kanta Gupta who is sole proprietor of Dulisons

Cereals is also a family member of the director of P. D Agro Processors Pvt. Ltd. [R-1]. Thus, ultimately prayed for rejection of the application.

4. Intervener NSEL filed its say [Exh.11A] resisting the application on the same grounds as that of the State, with addition that PMLA Special Case No. 4 of 2015 is filed and pending against P. D. Agro Processors Pvt. Ltd.

5. Heard Ld. Adv. Mr. Vijay Singh, Ld. Adv. Mr. Abhiraj Rao for Mrs. Kanta Gupta [R-2]. Perused the written submission [Exh.17], Ld. SPP Mr. Gonsalves for the State and Mr. Lakhawat for the NSEL [intervener]. Also, perused the common written submission [Exh.18] and also [Exh.20].

6. After hearing the Ld. Advocates on record following points arise for my determination. The finding alongwith the reasons are stated herein below:-

SR. NOS.	POINTS	FINDINGS
1.	Whether the proceedings filed u/s 8 of the MPID Act against the R-2 be stayed ?	No
2.	What order ?	As per final order

REASONS

Arguments :

7. Ld. Adv. Mr. Abhiraj Rao has reiterated all the contentions of his application. Further more, he submitted that by virtue of filing the application u/s 95 of IBC, before the NCLT Court, interim moratorium

has been commenced against R-2 in terms of section 96 of the IBC. A bare perusal of the definition 'debt' provided under the IBC makes it abundantly clear that the recovery of the deposits as define under the MPID Act shall fall under the category of debt. The definition of debt as defined under section 3(11) of the IBC Code is vast and inclusive in the nature and in encompasses the term "deposit" as defined under the MPID Act, he submitted that initiation and continuation of the present proceeding under the MPID Act is completely against the scheme and object of the IBC, which is enacted to consolidate and amend the laws relating to recognition and insolvency resolution of individuals in time bound manner for maximizing the value of the assets of the debtors. According to Ld. Adv. the proceedings u/s 8 of the MPID Act is purely civil in nature as such the same are required to be stayed in terms of section 96 of IBC. He further submitted that in view of section 238 of IBC, it will have overriding effect on the provisions of the MPID Act which otherwise is the State Law enacted by the Government of Maharashtra and IBC is the Central Law enacted by Central Government. He further stressed his argument that in case of any conflict between the two enactments, one being Central Enactment and the other being State Enactment, the Central Enactment shall prevail and therefore the proceedings for attachment of properties of the R-2 should be stayed. He relied upon i) Sheetal Gupta vs. National Spot Exchange Limited & Anr. Criminal Application No. 1151 of 2022 decided on 10.01.2023 ii) P. Mohanraj and Ors. Vs. Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258, iii) Allahabad Bank and Ors. vs. Skyhigh Infraland Private Limited and ors. in CA No. 47/2019 in CP (IB) No. 161/Chd/Hry/2018 by NCLT, Chandigarh Bench, iv) Jitender Kumar Jain vs. State of Maharashtra order below Exh.136 in MPID Spcl

Case No. 34 of 2004, v) Dreams Infra India Pvt. Ltd. vs. Competent authority 2021 SCC OnLine Kar 14695.

8. Ld. SPP Mr. Gonsavles reiterated all the contents of his say. He submitted that there is no creditor-debtor relation between R-2 and the State of Maharashtra. The properties of the applicant, to whom direct money trail deposits from the Financial Establishment has been found by EOW - Mumbai and Enforcement Directorate are per se liable to be attached. The amount invested by the investors cannot be terms as debt. The sphere of MPID Act and that of the IBC Code is altogether different. Both the Acts are not overlapping each other. The proceedings u/s.8 of the MPID Act are not purely civil in nature. They are quasi civil and quasi criminal. If the prayer is granted, it will be difficult to satisfy the innocent people who have invested their hard earned money. He relied upon i) M. Karunabnidhi vs. Union of India Law Finder Doc Id# 104829 and ii) M/s. New Horizon Sugar Mills Ltd. vs. Govt. of Poudicherry Law Finder Doc Id # 396411 and prayed for rejection of the application.

9. Ld. Adv. Mr. Lakhawat in consonance with Ld. SPP Mr. Gonsavles submitted that there is no creditor-debtor relationship. The property of the applicant are not attached or the proceedings for attaching are not to secure any debt. The attachment is carried out in exercise of specific power granted by special Statue MPID Act which has been enacted as a public law remedy to protect the interest of innocent depositors who lost their money. Therefore, in absence of there being a 'debt' the moratorium u/s 96 of IBC is not applicable. He further pointed out that individual directors cannot be exempted or take shelter of the IBC Code.

He further submitted that there is no repugnancy between the IBC Code and the MPID Act.

10. He relied upon i) Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd. 2023 SCC OnLine SC 266, ii) Sandeep Gupta vs. Shri Ram Steel Traders and Anr. 2023 SCC OnLine Del 2786, iii) K.K. Baskaran vs. State represented by the Secretary Tamil Nadu and Ors. (2011) 3 SCC 793, iv) Innoventive Industries Limited vs. ICICI Bank and Anr. (2018) 1 SCC 407, v) State of Maharashtra vs. Anil Kohil 2021 (2) Mh.L.J. 647, vi) Dunar Food Ltd. vs. State of Maharashtra order below Exh.1 in Misc Application No. 237 of 2018 decided on 28.12.2018 and vii) Aastha Minmet (India) Ltd. vs. State of Maharashtra and Ors. in Misc Application No. 1303 of 2022 decided on 09.11.2022. Ultimately prayed for rejection of the application.

11. The brief background under which the proceedings u/s 8 of the MPID Act are initiated are set out as follows :

a) National Spot Exchange Ltd. [NSEL] is a company registered under the Companies Act, 1956 having its registered office at Chennai, Tamil Nadu. The NSEL provided an electronic platform for spot trading in commodities, and used to operate from 16 States across the country. The NSEL was promoted by Financial Technologies (India) Limited [FTIL], now known as "63 Moons Technologies Pvt. Ltd.", which holds 99.99% of the share capital of NSEL. The balance 0.01% of the share capital of the NSEL is held by the National Agricultural Co-operative Marketing Federation of India Ltd. (hereinafter referred as "NAFED").

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

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

d) The NSEL vide their circular dated 14/8/2013 announced a settlement schedule. According to this schedule, NSEL had to make payouts of Rs.5,574.31 crores to its members. The settlement calendar announced by NSEL was spread over 30 weeks for pay-out on pro-rata basis to 148 members. The NSEL subsequently defaulted in all the payouts since the announcement of the settlement plan resulting FIR bearing C.R. No. 216/2013 u/s 120B, 409, 465, 467, 468, 471, 474, 477(A) of Indian Penal Code [IPC] at MRA Marg police station.

Investigation was transferred to Economic Offences Wing - Mumbai who added the provisions of the MPID Act.

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

f) M/s. P. D. Agro Processors Pvt. Ltd. was one of the defaulters on the exchange platform of NSEL to the tune of Rs. 673.85 crores. Dullisons Cerrelas and its proprietors Mrs. Kanta Gupta are accused no.129 and 130 respectively in MPID Special case no. 1 of 2014. The Forensic Audit Report of M/s. U.S. Gandhi & Co., dated 26.02.2018, which forms part of the charge-sheet filed by EOW-Mumbai before this court, has crystalized the liability M/s. P. D. Agro Processors Pvt. Ltd. towards the intervener to the tune of Rs.680.02 crores as on 31.08.2013. The said forensic audit revealed money trail of about Rs.13.60 crores from M/s. P. D. Agro Processors Pvt. Ltd. to Dullisons Cereals Ltd. [R-2.] Vide proceedings u/s 8 of the MPID Act, the State has prayed for attachment of the properties of the transferee equivalent to the property value of malafide transfers of money/properties.

12. As per section 94 of the IBC Code, even a debtor who commits a default may apply personally or through resolution professional to the adjudicating authority for initiating the insolvency resolution process. As per section 95 of the IBC, the creditor may apply either by himself or jointly with other creditors ought through the resolution profession to

the adjudicating authority for initiating an insolvency resolution process. Thus, as SBI has initiated the insolvency resolution process, such a proceeding is u/s 95 of IBC Code.

13. Section 96 of the IBC deals with interim moratorium. According to this section, when an application is filed under section 94 of section 95 (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and during the interim-moratorium period - (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. (2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application. (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. Thus, u/s 96(b)(1) of the IBC Code, Mrs. Kanta Gupta, proprietor of Dulisons Cereals [R-2] has approached this court to stay the proceeding. At this juncture, there is no dispute that SBI has initiated Insolvency Resolution process against Dullisons Cereals [R-2] under section 95 of the IBC Code.

14. **Repugnancy not applicable :**

During the arguments, the rival parties have relied upon Article 245, Article 246 and 254 of the Constitution of India. So also, in connection with these Articles, judgments passed by the Hon'ble Supreme Court in

Innoventive's case, Hoechst Pharmaceuticals Ltd.'s are relied upon. After considering the above referred Articles and citations, the ratio can be curled out as under :

A. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. 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.

B. Clause (1) of Article 254 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.

C. 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.

D. 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.

E. 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'.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

15. Reference can be made to the Innoventive judgment, wherein para no. 58 specifically observed as under :

"there can be no doubt, therefore, that the Code is a 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'" Thus, what can be gathered is that IBC Code is the Parliament Act under List III.

16. Here the observations of the Hon'ble Supreme Court in **Baskaran's judgment**, needs consideration. In this judgment, the Hon'ble Supreme Court had decided the validity of the Tamil Nadu Protection of Interests of Depositors in Financial Establishments) Act, 1997 [T.N.P.I.D. Act 1997] which is para materia with the MPID Act. It is categorically held in this citation that the T.N.P.I.D. Act 1997 comes under List II Entries 1, 30 and 31 and not under List I Entries 43, 44 and 45 of Schedule VII of the Constitution. Even the MPID Act has been enacted by the State of

Maharashtra under List II as provided under Article 246 of the Constitution. Thus, it is amply clear that IBC Code is enacted by the Parliament under list III (Concurrent List) and MPID Act is enacted by the State Government under list II as provided under Art.246(3) of the Indian Constitution. Considering this factor, the first requirement of repugnancy that, both the Acts passed by the Parliament and the State Legislature should be under the Concurrent List is not satisfied and therefore, a question of repugnancy does not arise.

17. As far as assent of President is concerned, which is subject matter of Article 254(2), it can be gathered that if the Law is made by the Legislature of State with respect to one of the matters enumerated in the Concurrent List and any of the provisions is repugnant to the provisions of the earlier Law made by the Parliament on existing Law with respect to that matter, then the law so made by the Legislature of such State shall if it has assent of the President will prevail. As mentioned herein-above, the controversy arises when the law is legislated by the State in Concurrent List. IBC is under List III whereas MPID Act is under List II. Therefore, the provisions of Article 254(2) will not be applicable in the present case. Even otherwise, proviso to Articles 254 provides that nothing in this clause shall prevent the Parliament from enacting at any time, any law with respect to the same matter including a law adding to, amending, with varying or repealing the law so made by the Legislature. Thus, the protection of assent of President is with respect to the laws enacted under the Concurrent List and to the prevailing laws. However, the proviso to Article 254 gives ample power to Parliament to enact subsequent laws which may not be in harmony with the Acts legislated by the State to which the President has given assent. Here State law must give away to the subsequent

Parliamentary Law which adds to amends, varies or repeals the law made by the Legislature.

Legislative Competency :

18. If the State law enacted under List-II is in direct conflict with a Parliamentary law enacted under List-I or List-III, then the State law will have to give way to the Parliamentary law to the extent of such conflict not because of doctrine of repugnancy under Article 254, but because it is found that in pith and substance, the State law is relatable to a subject matter under List-I or List-III (and not List-II) and therefore it will be bad for want of legislative competence under Article 246 (and not due to repugnancy under Article 254). In *Vijay C Puljal Vs State of Maharashtra and Ors.*, 2005 (1) Bom. C. R. 481 (FB) Hon'ble Bombay High Court had held, that the Legislation [MPID Act] enacted by State Legislature directly conflicts with the provisions contained in Central Legislation. The essential character is not with reference to Public Order. Hence, the State Legislature was not competent to enact MPID Act, 1999 and declared ultra virus. However, in **K.K. Baskaran's** case mentioned herein above, the Hon'ble Supreme Court has conclusively held that the MPID Act in pith and substance falls within Entries 1, 30 and 32 of List-II. Thus, the Hon'ble Supreme Court in **K. K. Baskaran's** case has already upheld the validity of MPID Act and therefore, no question of the Act being bad for want of legislative competency.

19. As per section 238 of IBC deals with the overriding effect of this Code over the other laws if any inconsistency therewith contained in any other law for time being in force or any instrument having effect by virtue of any such law. It is clear that the later non-obstate clause of the Parliamentary enactment will also prevail over the limited non-obstante

clause contained in section 4 of the MPID Act. Thus, what is required to be seen is whether the provisions of section 96 of IBC are complied by the applicant to shield him.

20. The dictionary meaning of moratorium is a temporary stopping of an activity. Section 14 deals with moratorium for corporate debtor whereas section 96 deals with individuals. Moratorium under Section 14(1)(a) applies to institution of continuation of any proceeding against corporate debtor whereas 96(i)(b) applies to any legal action of proceeding pending in respect of any debt. Debt should be of the individuals against whom proceedings under section 96 has been initiated. In the instant case, creditor u/s 95 is State Bank of India as they have approached the NCLT against Mrs. Kanta Gupta.

21. As far as debtor creditor relationship is concerned, according to Ld. Adv. Mr. Abhiraj Rao the relation is between Financial Establishment (NSEL) and depositors (investments). Whereas, as per Ld. SPP Mr. Gonsalves and Ld. Adv. Mr. Lakhawat, there is no debtor-creditor relationship is between Mrs. Kanta Gupta (individual) and State of Maharashtra.

22. Moratorium will apply only if the legal action or proceedings are pending in respect of any debt, owed by R-2 and that the State of Maharashtra is a "creditor". There is nothing to show that there exists or ever existed a 'debtor-creditor' relationship between the R-2 and the State of Maharashtra. The proceedings are initiated for attachment of property equivalent to the proper value of the property malafidely transferred. There is a criminal angle involved in the proceedings initiated u/s 8 of the MPID Act as the transfer is not in good faith or for

consideration. These proceedings are initiated under specific power granted by a special statute MPID Act which has been enacted as a public law remedy to protect the interest of innocent depositors who lost monies. Even after considering the definition of debt u/s 3(11) of IBC Code, the same is silent about the term deposit, defined u/s 2(c) of the MPID Act. There is no debt owed by Mrs. Kanta Gupta to State of Maharashtra for recovery of which the present attachment proceedings have been initiated by the State of Maharashtra. Here it is a case where the depositors have traded on NSEL platform and the commitments were not honoured by NSEL, 25 trading members of NSEL [including P. D. Agro Processors Pvt. Ltd. and some brokers], leading to wrongful loss of about Rs.5600 crores to about 13000 investors. Therefore, in the absence of there being a 'debt', the moratorium u/s 96 of the IBC is not applicable in the instant case.

23. As per the application itself the moratorium has commenced on 19.01.2022 when Hon'ble NCLT was pleased to issue notice to Mrs. Kanta Gupta. As per section 12 of IBC, corporate insolvency resolution process shall be completed within period of 180 days from the date of admission of the application to initiate such process and it can be extended for further period of 90 days as per section 12(3) of IBC. Now if the moratorium has commenced on 19.01.2022 as claimed by the applicant, even after considering extension of 90 days i.e. approximately till the month of November 2022, then the same has already come to an end. The present application is filed in the month of January 2023 i.e. after span of two months of completion period of moratorium. For this reason also, the application is bound to be rejected.

24. As noted herein-above, the notifications issued by the State of Maharashtra u/s 4 of the MPID Act are of the year 2017 and 2018. Pursuant to this notifications, the competent authority is of the view that the properties attached of P. D. Agro Processors Pvt. Ltd., will not be sufficient to repay the depositors and that the transfer is malafide not in good faith and consideration. If the matter is stayed at this stage, grave prejudice will be caused to the innocent depositors, who are pursuing with the litigation for last ten years. They cannot be made to run from pillar to post to redress their grievances. The provisions of IBC cannot be stretched to protect persons who are charge for committing offences to defraud the investors.

25. As far as judgment of NCLT, Chandigarh in **Allahabad Bank's** case relied upon by Ld. Adv. Mr. Abhiraj Rao, is concerned, IRP was appointed on coming to know the properties attached by the competent authority approached the NCLT to de-attach all the properties of the corporate debtor. The competent authority has taken the stand that the attached properties are already made absolute. NCLT has directed the competent authority de-attach all the assets of the corporate debtor. However, in **Anil Khohil's** case, while setting aside the order of NCLT which had directed that the bank account of the corporate debtor to be defreezed, held that Designated Court u/s 7 of the MPID Act alone is having jurisdiction to decide the validity of the order passed under the MPID Act. Therefore, the judgment of the NCLT Chandigarh is not binding on this court as it is having only persuasive value. Hence, the judgment passed by the Hon'ble Bombay High Court will prevail.

26. As far as judgment of Hon'ble Karnatka High Court is concerned, this is u/s 14 of the IBC, already is pointed out that moratorium u/s 14

of the IBC in relation to corporate debtor whereas the present application is filed u/s 96 of IBC which deals with the moratorium about individuals. So also, it is categorically observed that the matter has been seized before the NCLT before initiating the proceedings under the MPID Act. In the case in hand, the notification attaching the properties were way back in August 2014 and June 2015. Whereas the insolvency proceedings under IBC were initiated in the year 2020. Thus, the judgment of Hon'ble Karnataka High Court is not binding.

27. As far as Sheetal Gupta's judgment relied upon by Ld. Adv. Mr. Abhiraj Rao is concerned, the Hon'ble Bombay High Court stayed the proceedings u/s 138 of the N. I. Act, in view of pending IBC proceedings. However, the Hon'ble Supreme Court in **Ajay Kumar Goenka vs. Tourism Finance Corporation, 2023 SCC Online SC 266**, after discussing the earlier judgment of P. Mohnraj has observed in para no. 16, 17, 18 observed that section 138 of N.I. Act proceedings arise from a default in financial debt, the proceedings u/s 138 should be taken as akin to civil proceedings rather than criminal proceedings. Section 138 of the N. I. Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under section 138 of the N.I. Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings. It cannot be said that the process under IBC whether section 31 or section 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. They are enable to accept that section 138 of N.I. Act proceedings are preliminary compensatory in nature and that the punitive element is incorporated only at forcing the compensatory proceedings. Considering these

observations of the Hon'ble Supreme Court, Sheetal Gupta's case is not helpful to R-2.

28. In view of the aforesaid discussion, the following order is passed:

ORDER

Application Exh.11 in Misc Application No. 151 of 2020 in MPID Special Case No. 1 of 2014 is rejected and disposed off accordingly.

Date: 04.11.2023

(V. P. Desai)
Special Judge (MPID)
City Civil & Sessions Court,
Gr. Bombay.

Dictated directly on computer :03 & 04.11.2023

Signed by HHJ on :06.11.2023

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

06.11.2023 (4.00 p.m.)

K.Y. INAMDAR

Name of the Judge (with Court Room No.)	Shri V.P. Desai C.R. No.52
Date of Pronouncement of JUDGMENT/ ORDER	04.11.2023
JUDGMENT/ORDER signed by P. O. on	06.11.2023
JUDGMENT/ORDER uploaded on	06.11.2023