2026 INSC 1279

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 6710 OF 2026)

STATE BANK OF INDIA ...APPELLANT

Versus

STATE OF MAHARASHTRA & ORS. ...RESPONDENT

J U D G M E N T

Signature Not Verified
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Date: 2026.11.26 17:51:38 IST
Reason:

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:

INDEX

A. FACTUAL MATRIX 2

B. SUBMISSIONS BY THE PARTIES 6

C. ISSUES FOR DETERMINATION 21

D. ANALYSIS 21

I. Scope and purpose of the MPID Act. 21

II. Competing interests of the secured creditors under SARFAESI Act and depositors under the MPID Act 29

(i) Analysis of the judgment in *NSEL (supra)*. 29

(ii) Conflict between the SARFAESI Act and MPID Act 42

III. Harmonious construction of competing provisions of SARFAESI Act and MPID Act 46

(i) Statutory scheme of the SARFAESI Act and MPID Act. 46

(ii) Principles for determination of precedence of a statute over another in case of conflict. 51

(iii) Nature of the security interest created by secured creditors and its effect on attachment under the MPID Act. 56

(iv) Priority of interest for secured creditors under the SARFAESI Act 60

- Meaning of ‘debt’ appearing in the expression ‘all other debts’ in Section 26E of the SARFAESI Act. 61
- ‘Priority of interest’ of secured creditors vis-à-vis the right of first charge for other statutory dues. 65

IV. SARFAESI Act – the dominant legislation as regards ‘recovery of dues’ 73

E. SUMMARY OF OBSERVATIONS 79

F. CONCLUSION 81

1. Leave granted.

2. This appeal arises from the judgment and order dated 09.12.2025 passed by the High Court of Judicature at Bombay, by which the Criminal Appeal (ST) No. 23135 of 2025 filed by the appellant herein against the order dated 29.09.2025 passed by the Designated Court under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (the "**MPID Act**") declining permission to the appellant to appropriate Rs. 3.5 crore obtained upon sale of the property mortgaged and securitized under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "**SARFAESI Act**") came to be dismissed.

A. FACTUAL MATRIX

3. The State Bank of India, i.e., the appellant herein, extended credit facilities to the respondent no. 2 company, for which the promoters thereof, i.e., the respondent nos. 3 and 4 respectively mortgaged two of their properties on 16.09.2009.

4. The appellant bank classified the loan account of the respondent no. 2 as a 'Non-Performing Asset' ("**NPA**") on 31.12.2012. The amount due to the appellant bank by the respondent no. 2 as on the said date was estimated at Rs. 67.82 crore. In such circumstances, the appellant bank exercised its

security rights under the mortgage agreement and sought to auction the mortgaged properties by invoking the provisions of the SARFAESI Act.

5. It came to the knowledge of the appellant bank on 16.08.2014 that the respondent no. 2 was involved in transactions that amounted to duping depositors *inter alia* under Sections 3 and 4 of the MPID Act, respectively. Pursuant to the charges being filed under the State enactment, the respondent no. 1, i.e., the State of Maharashtra, seized the two properties mortgaged with the appellant bank on 29.06.2014.

6. The respondent no. 1 further advised the appellant bank to obtain permission from the Designated Court under the MPID Act for the purpose of putting the mortgaged properties up for sale. Accordingly, the appellant bank preferred an application dated 28.11.2014 before the Designated Court seeking permission to proceed with the auction sale and to appropriate the sale proceeds. The Designated Court *vide* its order dated 24.03.2015 permitted the appellant bank to proceed with the auction sale and to deposit the proceeds from such sale in a Fixed Deposit Receipt (FDR). However, the Designated Court stipulated that the appellant bank was not at liberty to deal with the amount in the FDR till further orders.

7. The mortgaged properties were accordingly auctioned and sold for the amount of Rs. 18.22 crore on 27.03.2015. The amount received for the two

properties cumulatively amounted to Rs. 19.43 crore (principal amount along with interest for delayed payment).

8. Thereafter, the appellant bank, which sought to appropriate the auction proceeds under the SARFAESI Act, preferred an application dated 19.12.2015 before the Designated Court wherein it was averred that Section 34 of the SARFAESI Act bars all courts from granting injunction in respect of any action taken by the bank under the said Act. Further, Section 35 of the SARFAESI Act stipulates that its provisions shall override other laws. Therefore, the appellant bank prayed that it may be allowed to adjust its entire claim from the proceeds of the auction sale and to deposit any excess amount with the Designated Authority.

9. The Designated Authority permitted the appellant bank to credit the sum of Rs. 15.93 crore in the loan account of the respondent no. 2 and to leave Rs. 3.5 crore in the FDR. The said amount of Rs. 3.5 crore matured into a sum of Rs. 5.51 crore.

10. In the meantime, the respondent no. 1, by way of Notification dated 16.05.2016, attached the two properties in question, as provided under the MPID Act.

11. The respondent no. 1 received claims from 92 depositors for an aggregate amount of Rs. 4 crore, which was sought to be discharged from the corpus of Rs. 5.51 crore. The respondent no. 1 had already distributed Rs. 1.13 crore, leaving a balance of Rs. 2.87 crore, which is yet to be paid.

12. Aggrieved by the disbursal of claims from the aforesaid corpus of Rs. 5.51 crore, the appellant bank filed a miscellaneous application dated 21.12.2023 before the City Civil and Sessions Court, Greater Bombay, praying that the appellant be permitted to appropriate Rs. 3.5 crore lying in the form of fixed deposit, towards the outstanding amount of the loan due and payable by the respondent no. 2, as the said amount was received after auctioning of the secured property under the SARFAESI Act.

13. The Sessions Court, *vide* its decision dated 29.09.2025, dismissed the application of the appellant by placing reliance on this Court's judgment in ***National Spot Exchange Ltd. v. Union of India*****,** reported in **(2025) 8 SCC 393** (hereinafter referred to as "**NSEL**"). It was held by the Sessions Court that the judgment in ***NSEL*** *(supra)* observed that the provisions of the MPID Act would override the provisions of the SARFAESI Act. Since the appellant bank approached the court for permission to auction the properties in question, only after registration of the crime under the MPID Act, the appellant could not be said to be entitled to the claim of Rs. 3.5 crore. Such

amount along with the interest accrued thereupon would necessarily have to be used for the purpose of satisfying the claims of the depositors under the MPID Act.

14. The appellant bank, aggrieved by the aforesaid order, preferred an appeal before the High Court, praying that the same may be set aside. The High Court, *vide* the judgment dated 09.12.2025 (the "**impugned judgment**"), upheld the decision of the Sessions Court, observing that the judgment of this Court in ***NSEL*** *(supra)* clarified that the provisions of the MPID Act have to be given effect to irrespective of the provisions of the SARFAESI Act. Therefore, the claims under the MPID Act were not subservient to those of the appellant bank under the SARFAESI Act. The High Court further directed that the amount of Rs. 3.5 crore along with the interest obtained thereupon would be transferred to the bank account of the Competent Authority under the MPID Act.

15. In such circumstances referred to above, the Bank is before us with the present appeal.

B. SUBMISSIONS BY THE PARTIES

a. Submissions on behalf of the appellant

16. Mr. Rajiv Shakhder, the learned senior counsel appearing on behalf of the appellant bank, addressed himself on the conflict between the Central

legislation, i.e., SARFAESI Act and the State legislation, i.e., MPID Act. He submitted that the only issue that arose in the present appeal was whether the Central legislation would override the State legislation in cases of conflict between the two.

17. It was submitted that Chapter III of the SARFAESI Act opens with Section 13, which confers upon a secured creditor the right to enforce its security interest without the intervention of the courts, notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882 (the "**TPA**"), respectively. Therefore, the limitations placed upon a mortgagor under the TPA are removed by virtue of Section 13 of the SARFAESI.

18. The learned senior counsel submitted that the Competent Authority under the MPID Act had erroneously attached the properties in question which were mortgaged with the appellant. Further, the Authority sought to hold sway over the sale proceeds arising from the appellant's auction of the mortgaged property, with permission from the Designated Court under the MPID Act.

19. It was the submission of the learned senior counsel that once powers under Chapter III of the SARFAESI Act got triggered, no civil court, including the

Designated Court under the MPID Act, could exercise jurisdiction over the secured assets, i.e., the properties in question.

20. It was explained that Chapter III of the SARFAESI Act provides a step-by-step statutory mechanism wherein, once the borrower's account is declared a non-performing asset ("**NPA**"), the possession of its assets is taken over symbolically as well as physically. The process culminates in the recovery of dues through the public auction of the said assets, after allowing the borrowers or third parties to object and exercise remedies under Sections 17 and 18, respectively, of the SARFAESI Act. It was submitted that the scheme of Chapter III indicates the legislative intent that the enforcement of security interests by secured creditors ought not to be interdicted until the steps under Section 13(4) are completed, which include the takeover of possession of the secured assets.

21. Mr. Shakhder highlighted the conflict concerning the same subject matter, posed by the operation of the MPID Act by taking us through the objects and reasons thereof. It was submitted that the MPID Act was enacted to protect the interest of depositors/investors who deposited their money or valuable commodities (inclusive of the interest promised thereupon) to a financial establishment, which the financial establishment has failed to or is unlikely to return.

22. It was sought to be argued that the respondent no. 1, i.e., the State of Maharashtra, is empowered to pass an order of attachment under Section 4(1) of the MPID Act upon such default. Upon the publication of such order, the attached property vests in the Competent Authority appointed by the State Government under the MPID Act pending further orders of the Designated Court. The power to appoint the Competent Authority under the MPID Act is conferred upon the State Government under Section 5 of the Act. Similarly, Section 6 of the MPID Act empowers the State Government to constitute Designated Courts with the concurrence of the Chief Justice of the High Court of Judicature at Bombay.

23. The learned senior counsel further highlighted that the powers of the Designated Court under the MPID Act are delineated under Section 7 of the thereof. The provision in sub-section (3) provides for issuance of notice *inter alia* to the person whose property is attached and also provides opportunity to any person who claims to have interest in the attached property, to object to the attachment notwithstanding the fact that such person may not have been served with the notice of attachment. Section 7(5) provides that in the event objections are placed on record, the attachment cannot be made absolute till such time an investigation is carried out by the Designated Court. Section 7(4) stipulates that the order of attachment be made absolute in case objections thereto are not lodged.

24. It was submitted that the rules enacted under Section 16 of the MPID Act provide the mechanism of sale of the attached property, if deemed necessary. The aspect of attachment and sale of the attached property is an overlap between the SARFAESI Act and MPID Act respectively. Mr. Shakhder vehemently argued that such overlap presented a direct conflict between the Central and State legislation in respect of the same subject matter, i.e., secured assets.

25. The learned senior counsel would argue that the decision in ***NSEL*** *(supra)*, which forms the basis of the impugned judgment, does not deal with the sway that the central legislation, i.e., the SARFAESI Act, would have over secured assets. As a result, it does not, per se, address the conflict that would arise if the MPID Act is allowed to operate *qua* the same subject matter, i.e., secured assets. In this regard, the judgment in ***NSEL*** *(supra)* does not flesh out the scope, import and impact of clause (1) of Article 246 of the Constitution of India.

26. Mr. Shakhder also brought to our notice, the decision of this Court in ***UCO Bank & Anr. v. Dipak Debbarma & Ors.***, reported in **(2017) 2 SCC 585**, which dealt with a similar issue about conflict between the SARFAESI Act, i.e., a Central legislation and the Tripura Land Revenue Act, i.e., a State legislation.

27. It was submitted that when a conflict between the Central and State enactments arises, it can only be resolved by taking recourse to Article 246(1) of the Constitution, as held by this Court in ***Innoventive Industries Ltd. v. ICICI Bank***, reported in **(2018) 1 SCC 407**.

28. Therefore, although the Parliament and State legislature were competent to enact the two legislations, i.e., the SARFAESI Act and the MPID Act respectively, the latter could not have encroached upon the subject matter of secured assets, considering that the Central legislation governs the same. The learned senior counsel also submitted that the decision in ***NSEL*** *(supra)* failed to take into account that the SARFAESI Act was not only enacted later than the MPID Act but was also the dominant legislation governing the treatment of secured assets. As such, the MPID Act necessarily has to give way to the security rights created on such assets.

29. With the aforesaid averments as the backdrop of the dispute between the parties before us, the learned senior counsel presented the following issues that require answer by a larger bench:

(a) Whether the State legislation, i.e., the MPID Act, which is otherwise constitutionally valid, can trench upon the subject matter of secured assets that fall within the purview of the Central legislation, i.e., the SARFAESI Act?

(b) Whether the exercise of powers under the MPID Act over secured assets would cause conflict with the SARFAESI Act, which would then trigger the provisions under Article 246(1) of the Constitution?

(c) Whether the subsequent decision of this Court in the case of ***NSEL*** *(supra)* is rendered *per incuriam* as it failed to notice and consider the binding precedent of another coordinate bench in ***UCO Bank*** *(supra)*?

(d) By force of the non-obstante clause in clause (1) of Article 246, would Parliamentary legislation, i.e., the SARFAESI Act, prevail notwithstanding the exclusive power of the State legislature to make a law with respect to a matter enumerated in the State List?

(e) Whether the provisions of the MPID Act would override any claim for priority of interest by the secured creditors in respect of the properties which have been attached under the MPID Act, to protect the interest of the investors?

(f) Whether the MPID Act, a State legislation, is required to yield to the SARFAESI Act, a central legislation traceable to Entry 45 of the List I, to the extent that it is inconsistent with the SARFAESI Act? Whether such inconsistent provisions be deemed to be invalid, since the SARFAESI Act is the dominant legislation?

30. As regards the observations of this Court in ***NSEL*** *(supra)*, Mr. Shakhder submitted as follows:

a) The principles laid down in ***NSEL*** *(supra)* required reconsideration, as the same were inconsistent with the constitutional and statutory provisions. It was submitted that the judgment ignored the principle of federal supremacy of the Parliament over the State legislations, duly recognized under Article 246 of the Constitution.

b) The judgment in ***NSEL*** *(supra)* marked a significant departure from the principle of law laid down in ***Innoventive (supra)***, wherein the interplay between the Maharashtra Relief Undertakings Act, 1958 and the Insolvency and Bankruptcy Code, 2016 ("**IBC**") was under consideration. It was held therein that the IBC, being a complete and exhaustive code on insolvency matters, prevailed over the provisions of the State legislation which pertained to the same subject matter.

c) Further, the decision in ***NSEL*** *(supra)* overlooked the fact that the MPID Act was enacted under Entries 1 and 30 of List II which pertain to Public Order and Money Lending respectively. Though the Act may regulate depositors and fraudulent schemes by financial establishments, yet, when the State Government under the MPID Act seeks to take control of assets secured with banks, it encroaches upon

the subject matter of secured assets, which the SARFAESI Act, a Central legislation, governs.

d) It was also submitted that the SARFAESI Act, having been enacted later, would prevail over the MPID Act.

e) Similarly, if the dominant purpose test is applied, then the provisions of the SARFAESI Act would also prevail, considering that the said enactment seeks to recover debts from defaulting debtors, as opposed to the purpose of the MPID Act, which is to secure siphoned deposits made by the depositors.

f) As such, the judgment in ***NSEL*** *(supra)* ignores the fact that the enforcement of security interest is one of the primary objectives underlying the SARFAESI Act. While the said objective does not overlap with that of the MPID Act, yet the permissibility of attaching already secured properties under the MPID Act disrupts the functioning and operation of the Central legislations, i.e., SARFAESI Act and IBC respectively. This results in apparent repugnancy, and it is settled law that whenever such repugnancy arises, the Parliamentary enactments would prevail.

g) Therefore, the decision in ***NSEL*** *(supra)* did not correctly apply Article 246. It allowed State enactment to override or dilute Central legislation

enacted under Entry 45 of List I. This is in contravention of the doctrine of federal supremacy, which has been held to mean that State legislation cannot encroach on matters exclusively assigned to the Parliament under Schedule VII to the Constitution. Therefore, the attachment provisions of the MPID Act are in direct, irreconcilable conflict with the provisions governing the enforcement of security interests under the SARFAESI Act, rendering compliance with both impossible.

31. Mr. Shakhder submitted that the judgment in ***NSEL*** *(supra)* is liable to be declared *per incuriam* as the judgment of this Court in ***UCO Bank*** *(supra)*, which has a direct bearing on the issue involved, was not considered. The learned senior counsel placed reliance on paragraphs 11 and 18 of ***UCO Bank*** *(supra)* respectively to submit that if the courts cannot establish the mutual existence of two legislations which are in conflict, then by virtue of Article 246(1) of the Constitution, the Parliamentary legislation would prevail over the State enactment even though the latter was legislated competently within the field demarcated under List II of the Schedule VII.

32. It was also submitted that the judgment in ***NSEL*** *(supra)* did not take into account the observations of this Court in ***Hoechst Pharmaceuticals Ltd. v. State of Bihar*****,** reported in **(1983) 4 SCC 45,** in relation to the scope and

effect of Article 246(1) of the Constitution. It was submitted that paragraph 69 of the said judgment observed that in case of overlap between List II and List I or III, the State enactment under the former would be considered to be *ultra vires* in light of the *non obstante* clause in Article 246(1) read with the opening words of Article 246(3). For this reason, the judgment in ***NSEL** (supra)* is liable to be declared *per incuriam*.

33. The learned senior counsel submitted that the appellant bank acts as a custodian of public funds and operates primarily on the interest generated from loans and deposits. In order to safeguard the financial interests of the banks, it is vital to maintain an underlying security interest.

34. Lastly, it was submitted that the SARFAESI Act is a critical parliamentary statute designed to protect both the banks and their customers by expediting the debt recovery process, without the need for court intervention. Despite such legal frameworks, banks, including the appellant bank, continue to carry substantial non-performing assets ("**NPA**"). The learned senior counsel submitted that if the judgment in ***NSEL** (supra)* is not revisited, it could adversely impact the broader financial interests and stability of the banking sector and exacerbate the impact of NPAs on the banks.

b. Submissions on behalf of the respondent State

35. Mr. Shayam Mehta, the learned senior counsel appearing on behalf of the respondent State addressed himself on the scope and operation of Article 246 of the Constitution. It was submitted that before a Central legislation relating to List I can be said to override a State legislation relating to List II, it must be shown that the State legislation has transgressed upon the legislative field(s) mentioned in List I of the Schedule VII to the Constitution. For this purpose, it would be necessary to determine the pith and substance of the State legislation, and so long as the same is found to be referable to the fields in List II, the State enactment would be held to be legislated competently, even if some provisions may incidentally transgress any entry provided in List I of the Schedule VII.

36. It is well settled that in pith and substance, the MPID Act is referable to Entries 1, 30 and 32 of the List II. This aspect was considered by this Court in ***K.K. Baskaran v. State*****,** reported in **(2011) 3 SCC 793,** wherein the legislative competence of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 ("**TNPID Act**") was in question. The argument that the TNPID Act encroached upon the field specified in Entry 45 of List I was rejected. It was observed therein that the TNPID Act does not pertain to banking transactions or acceptance of deposits, rather, it is designed to protect the public from fraudulent financial

establishments. The Statement of Objects and Reasons ("**SOR**") of the TNPID Act indicate that the Act does not concern itself with the incorporation, regulation or winding up of banking corporations. Instead, the SOR of the Act states that its avowed objective is to punish fraudulent financial institutions and return the money of gullible depositors who were defrauded. The attachment of the properties of fraudulent financial establishments under the TNPID Act is intended to provide an effective and speedy remedy for aggrieved depositors to realise their dues.

37. It was submitted that this Court in ***K.K. Baskaran*** *(supra)* authoritatively opined that similar to the TNPID Act, the pith and substance of the MPID Act was also relatable to Entries 1, 30 and 32 of the List II respectively. It was further observed therein that the definition of 'financial establishments' under the MPID Act contained in Section 2(d) thereof excluded banking companies as defined in the Banking Regulation Act, 1949. Therefore, the MPID Act was in no way relatable to Entry 45 of List I of the Schedule VII to the Constitution.

38. Based on the judgment in ***K.K. Baskaran*** *(supra)*, Mr. Mehta submitted that the MPID Act did not even incidentally transgress Entry 45 of List I, and no conflict between the MPID Act and the SARFAESI Act exists. Therefore, Article 246(1) of the Constitution has no relevance in the present matter.

39. As regards the issue whether the MPID Act was repugnant to the SARFAESI Act and hence, was void in terms of Article 254(1) of the Constitution, the learned senior counsel submitted that any question in this regard would be wholly misconceived. He submitted that Article 254(1) had no application to the facts of the present matter since the legislations in consideration before us were not enacted in relation to List III of the Schedule VII to the Constitution.

40. Mr. Mehta further submitted that Section 4 of the MPID Act, which pertains to the attachment of the property of financial establishments, opens with a non obstante clause, making it effective notwithstanding any other law. On the other hand, Section 13(1) of the SARFAESI Act opens with a *non obstante* provision that applies only to Sections 69 and 69A of the TPA. Therefore, a perusal of the two provisions in consonance would indicate that Section 13(1) of the SARFAESI Act would not override Section 4 of the MPID Act, even if there is a conflict between the two enactments.

41. It was submitted that the prevalence of the MPID Act is further established by Section 37 of the SARFAESI Act, which *inter alia* provides that the SARFAESI Act and the Rules thereunder shall be in addition to and not in derogation of any other law for the time being in force. This indicates that the SARFAESI Act does not bar the application of the MPID Act.

42. Insofar as the overriding provisions of both the enactments are concerned, the learned senior counsel submitted that no application of the same as contained in Section 35 of the SARFAESI Act is envisaged. It was submitted that a similar provision was present in Section 14 of the MPID Act. Upon due consideration of the object and purpose of the MPID Act and the SARFAESI Act, it would be Section 14 of the MPID Act that would prevail over Section 35 of the SARFAESI Act, in the event of any inconsistency between the said legislations.

43. Lastly, Mr. Mehta took us through Section 26E of the SARFAESI Act, which provides priority of charge to the secured creditors. He submitted that the provision is inapplicable to the determination of the question before us, as it provides for priority of debts due to a secured creditor over 'other debts'. The term 'debt' is defined in Section 2(1)(ha) of the SARFAESI Act. Mr. Mehta submitted that the said definition clarifies that the word "deposit" as defined under Section 2(c) of the MPID Act could not fall within the meaning of 'debt' under the SARFAESI Act. In such circumstances, Section 26E of the SARFAESI Act finds no application to the present matter.

C. ISSUES FOR DETERMINATION

44. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

i. Whether there is a conflict between the provisions of the SARFAESI Act and the MPID Act, as regards the attachment of property secured under the former?

ii. Whether the decision in ***NSEL*** *(supra)* requires reconsideration to the extent that it holds that attachment of secured property under the MPID Act would prevail over the rights of the secured creditors under the SARFAESI Act?

D. ANALYSIS

45. Before adverting to the conspectus of facts before us, it is necessary to look into a few relevant provisions of the MPID Act and understand its avowed purpose.

I. Scope and purpose of the MPID Act.

46. The respondent State enacted the MPID Act to address the menace of fraudulent transactions by certain financial establishments that took deposits of the common people without any intention to refund the same along with the promised interest thereon, or to render the services guaranteed in

exchange for such sum. This presented a law and order problem for which suitable action was required. The respondent State enacted the MPID Act to curb unscrupulous activities by such financial establishments with the objective of ensuring effective remedy for the depositors who may have lost their money to such entities. The Statement of Objects and Reasons of the MPID Act reads thus:

> *"There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive interest rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits to public. As such deposits run into crores of rupees, it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, especially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to a make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra."*

47. The terms "deposit" and "financial establishment" respectively are defined in Sections 2(c) and 2(d) respectively, and read thus:

> "*2. Definitions.—*
> *(...)*

(c) "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity or any Virtual Digital Asset] by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidlines (sic guidelines) given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a cooperative bank or any other banking company as defined in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(iv) any amount received from,—

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

(c) any financial institution specified in or under Section 6-A of the Industrial Development Bank of India Act, 1964 (18 of 1964), or

(d) any other institution that may be specified by the Government in this behalf;

(v) amounts received in the ordinary course of business by way of,—

(a) security deposit,

(b) dealership deposit,

(c) earnest money,

(d) advance against order for goods or services;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to

money lending which is for the time being in force in the State; and

(vii) any amount received by way of subscriptions in respect of a Chit.

Explanation I.—"Chit" has the meaning as assigned to it in Clause (b) of Section 2 of the Chit Funds Act, 1982 (40 of 1982);

Explanation II.—Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;

(d) "Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);"

48. Section 3 of the MPID Act provides penal consequences for fraudulent default by a financial establishment. The provision reads thus:

"*3. Fraudulent default by Financial Establishment.—*

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

with fine which may extend to one lakh of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lakh of rupees.

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

(Emphasis supplied)

49. The aforesaid provision clarifies that fraudulent default occurs when the promise to return the deposits with interest or render service in return is made either with wrongful intention or is impracticable from the beginning. Section 3 punishes such fraudulent default by providing for imprisonment and fine for the persons involved in the management of the financial establishment, as well as fine for the financial establishment itself.

50. Section 4 of the MPID Act provides for attachment of properties on default of return of deposits. The provision reads thus:

"*4. Attachment of properties on default of return of deposits.—*

(1) Notwithstanding anything contained in any other law for the time being in force,—

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Fianancial (sic 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 investigaiton (sic investigation).”

(Emphasis supplied)

51. A bare textual reading of the provision referred to above indicates that where complaints have been received from depositors, or the government has reason to believe that the financial establishment is likely to default, it may attach the money or property of the financial establishment or its promoter, director, partner, or manager to protect the interests of the depositors.

52. What is discernible from the aforesaid provision is that the avowed objective of the MPID Act is not limited to criminal repercussions for the financial establishment and its management. The Act also seeks to restore the depositors to their original position by attaching the properties of the financial establishments and distributing the proceeds therefrom to the depositors.

53. Section 14 of the MPID Act provides that the Act shall override other laws. The section reads thus:

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

54. The scheme of the MPID Act and the relevant provisions indicate that the purpose of the Act is to safeguard the interests of the depositors by compensating them out of the properties of the financial establishments that defrauded them. For this purpose, the Act permits the attachment of properties of the financial establishment in Section 4 thereof and requires the Designated Court under Section 7 to make the order of attachment absolute so as to enable the State government to auction the property.

55. However, there is no gainsaying that the MPID Act does not provide any guidance for attachment of properties where the financial establishment may have secured the same to secured creditors under the SARFAESI Act. In such circumstances, we find it apposite to examine the position of law as regards the competing interests of the secured creditors and the depositors under the MPID Act and whether a reconciliation between the two is possible.

II. Competing interests of the secured creditors under SARFAESI Act and depositors under the MPID Act.

(i) Analysis of the judgment in ***NSEL*** *(supra)*.

56. The petitioner in ***NSEL*** *(supra)* was an exchange trading platform that defaulted in payment to its trading clients who had deposited their money therewith to be invested. Therefore, an FIR was filed by such persons under *inter alia*, the MPID Act. Accordingly, the State of Maharashtra attached movable and immovable properties of the petitioner company therein to ensure recovery of monies allegedly lost by genuine trading clients who deposited the same on the petitioner's platform.

57. Thereafter, insolvency proceedings against the petitioner came to be instituted, and the moratorium under Section 14 of the IBC started operating in respect of suits, disputes and transactions as regards the properties of the petitioner. After the initiation of the insolvency proceedings, the secured creditors of the petitioner submitted before this Court that they would have priority of interest over the properties attached by the State of Maharashtra under the MPID Act. It must be noted that it was not disputed by either side that the attachment under the MPID Act predated the initiation of the insolvency proceedings.

58. In this backdrop, this Court enquired into the question whether the secured creditors would have priority of interest of charge over assets already attached under the MPID Act.

59. The Bench observed that this Court, in ***Sonal Hemant Joshi & Ors. v. State of Maharashtra & Ors.***, reported in **(2012) 10 SCC 601,** has upheld the constitutional validity of the MPID Act, while relying on ***K.K. Baskaran*** *(supra),* which had upheld the constitutionality of the TNPID Act. It was held that the MPID Act contains similar provisions as in the TNPID Act, and as a consequence, the former was referable to Entries 1, 30 and 32 of List II of the Schedule VII in *pith and substance*. Hence, it was held that the MPID Act does not encroach on the legislative field occupied by Entry 45 of List I of the Schedule VII. The relevant portion of the judgment in ***NSEL*** *(supra)* reads thus:

> "*52. This Court in Sonal Hemant Joshi [Sonal Hemant Joshi v. State of Maharashtra, (2012) 10 SCC 601 : (2013) 1 SCC (Civ) 543 : (2013) 1 SCC (Cri) 1084] had upheld the constitutional validity of the MPID Act in view of the decision in K.K. Baskaran v. State [K.K. Baskaran v. State, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90], in which the Court was dealing with the identical legislation enacted by the State of Tamil Nadu, namely, the T.N. Protection of Interest of Depositors (in Financial Establishments) Act, 1997, enacted with the object to ameliorate the situation of the depositors from the clutches of fraudulent financial establishments, who had duped the investor/public by offering high rates of interest on*

deposits, and committed deliberate fraud in repayment of the principals and interests after maturity of such deposits.

53. In the said decision in K.K. Baskaran v. State [K.K. Baskaran v. State, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90], the Court had opined that the impugned Tamil Nadu Act was in pith and substance relatable to Entries 1, 30 and 32 of the State List (List II) of the Seventh Schedule. It further held that the financial institutions/establishments as contemplated in the Tamil Nadu Act did not come either under the Reserve Bank of India Act or the Banking Regulation Act. It further held that the Tamil Nadu Act was not focussed on the transaction of banking or acceptance of deposit, but was focussed on remedying the situation of the depositors who were deceived by the fraudulent financial establishments. The said Act was intended to deal with neither the banks which did the business of banking and were governed by the Reserve Bank of India Act and the Banking Regulation Act, nor the non-banking financial companies enacted under the Companies Act. In the case of the Tamil Nadu Act, the attachment of properties was intended to provide for an effective and speedy remedy to the aggrieved depositors for the realisation of their dues. Hence, the Reserve Bank of India Act, the Banking Regulation Act or the Companies Act did not occupy the field which the impugned Tamil Nadu Act occupied, though the latter might incidentally have trenched upon the former. The Court in the said judgment specifically disagreed with the Full Bench judgment [Vijay C. Puljal v. State of Maharashtra, (2005) 128 Comp Cas 196 : 2005 SCC OnLine Bom 1069] of the Bombay High Court, whereby the MPID Act was held unconstitutional. Subsequently, the Court in Sonal Hemant Joshi [Sonal Hemant Joshi v. State of Maharashtra, (2012) 10 SCC 601 : (2013) 1 SCC (Civ) 543 : (2013) 1 SCC (Cri) 1084], specifically relied upon the said judgment in K.K. Baskaran [K.K. Baskaran v. State, (2011) 3 SCC 793 :

(2011) 2 SCC (Civ) 90] and upheld the constitutional validity of the MPID Act. The said judgment was also relied upon by the three-Judge Bench in State of Maharashtra v. 63 Moons Technologies Ltd. [State of Maharashtra v. 63 Moons Technologies Ltd., (2022) 9 SCC 457 : (2023) 1 SCC (Civ) 429 : (2023) 2 SCC (Cri) 414]

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

(Emphasis supplied)

60. Having observed that the MPID Act was in pith and substance referable to the State List and not Entry 45 of the Union List, this Court made the following observations as regards the question whether the secured creditors would have priority of interest in the properties attached under the MPID Act:

a) *First*, reliance was placed on this Court's decision in ***Union of India* v. *Delhi High Court Bar Assn.*,** reported in **(2002) 4 SCC 275** wherein it was observed that the *recovery of dues is an essential function of any banking institution.* For this purpose, the Parliament is empowered to provide the mechanism by which the monies due to the banks would be recovered. In exercise of such power, the SARFAESI Act and the Recovery of Debts and Bankruptcy Act, 1993 ("**RDB Act**") respectively

were enacted, both of which provided mechanisms for banks to recover their dues. However, merely because the SARFAESI Act had been enacted by the Parliament in respect of Entry 45 of List I, it could not be said that it can override the provisions of the MPID Act which is another competently enacted legislation referable to Entries 1, 30 and 32 of List II. Such an interpretation would violate the federal structure of the Constitution, as it would amount to depriving the State legislatures of the power to enact and enforce legislation within their exclusive domain. The relevant portion of the judgment in ***NSEL*** *(supra)* is reproduced below:

> *"57. As held by the Constitution Bench in Union of India v. Delhi High Court Bar Assn. [Union of India v. Delhi High Court Bar Assn., (2002) 4 SCC 275 : (2002) 110 Comp Cas 141] , under Entry 45 of List I, it is Parliament alone which can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered.*
>
> *58. However, merely because the Sarfaesi Act and the RDB Act which are enacted in respect of the subject-matter falling in List I and having been enacted by Parliament, they could not be permitted to override the MPID Act, which is validly enacted for the subject-matter falling in List II — State List. If such an interpretation is permitted to be made, it would amount to denuding the State of its legislative power to enact and enforce legislation, which is within the exclusive*

domain of the State, and it would offend the very principle of federal structure set out in Article 246 of the Constitution of India, held to be a part of the basic structure of the Constitution of India."

(Emphasis supplied)

b) *Secondly*, it was observed that the federal nature of the Constitution cannot be bypassed on the basis of the principle of parliamentary supremacy. In the situation where there is an incidental overlap between a central legislation and state legislation such that it causes conflict between the two, it would be apposite to determine which of the two enactments is the dominant legislation [See: Paragraph 94 of ***ITC Limited v. Agricultural Produce Market Committee and Ors.***, reported in **(2002) 9 SCC 232**]. The relevant portion of the judgment in ***NSEL*** *(supra)* reads thus:

> *"61. In the said judgment Ruma Pal, J., in her concurring opinion observed in para 94 as under: (Agricultural Produce Market Committee case [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232] , SCC p. 282)*
>
> > *"94. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. [A.S. Krishna v. State of Madras, (1956) 2 SCC 692 : AIR*

> *1957 SC 297 : 1957 SCR 399; Chaturbhai M. Patel v. Union of India, 1959 SCC OnLine SC 35 : (1960) 2 SCR 362, 373 : AIR 1960 SC 424; State of Rajasthan v. G. Chawla, 1958 SCC OnLine SC 33 : AIR 1959 SC 544; Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P., (1980) 4 SCC 136, 146-47] This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail.""*
>
> (Emphasis supplied)

c) *Thirdly*, it was observed that the predominance of the Union list as provided in Article 246 of the Constitution would not prevent the State legislature from legislating on any matter falling within the purview of the State list, even though such exercise of legislative power may incidentally encroach on the items enumerated in the List I of the Schedule VII. As such, the MPID Act, i.e., the State legislation, would prevail in the State of Maharashtra in respect of the specific subject matter for which it was enacted. The relevant portion of the judgment in ***NSEL*** *(supra)* reads thus:

> *"63. It is true that sometimes the overlapping of legislations enacted with regard to the matters relatable to different entries in List I and List II in Seventh*

Schedule may occur, however in that case also as held by the Constitution Bench in State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201 : (2004) 266 ITR 721] , though, List I has priority over List III and List II, and List III has priority over List II, the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II, even if it may incidentally affect any item in List I. In the case at hand, the Sarfaesi Act and the RDB Act having been enacted by Parliament for the subject-matter falling in List I and the MPID Act having been enacted by the State Legislature for the subject-matter falling in List II in the Seventh Schedule, the latter would prevail in the State of Maharashtra in respect of the specific subject-matter for which the said Act was enacted, in view of clause (3) of Article 246."

(Emphasis supplied)

d) *Fourthly,* this Court considered Section 26E of the SARFAESI Act which provides thus:

"26. Priority to secured creditors.—
Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority."

As regards the argument that in light of Section 26E of the SARFAESI Act, the dues of the secured creditors shall be given priority in respect of the properties attached under the MPID Act, it was held that the same

was liable to be rejected. This Court observed that for the rights of secured creditors to be given priority under Section 26E, two conditions must be met. *First*, the creditor's security interest must be registered under Section 26D of the SARFAESI Act. *Secondly*, the "debt" which could be overridden by the interest of the secured creditor must be payable to the government or local authority. It was observed that the attachment of property under the MPID Act did not meet the second condition because even though such property, comes to be vested in the Competent Authority appointed by the State government, yet the attachment thereof is for the purpose of recovery of deposits to be paid to the depositors/investors whom the financial establishment allegedly defrauded. Therefore, it was held that the rights of the secured creditors could not be given priority over the rights of the depositors under the MPID Act. The relevant portion of the judgment in ***NSEL*** *(supra)* reads thus:

> "*64. It was next sought to be submitted by the learned counsel appearing for the secured creditors that in view of Section 26-E of the Sarfaesi Act, the debts due to the secured creditor have to be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority, and therefore, the security interest of the secured creditors in respect of the properties attached under the MPID Act should be given priority. <u>We do not find any merit in the said submission.</u>*

> *Apart from the fact that Section 26-E has come into force with effect from 1-9-2016, it gives right to the secured creditor, after the registration of security interest, to be paid in priority over all other debts and revenues, taxes, etc. payable to the Central Government or State Government or local authority.*
>
> *65. In the instant case, the attachment of the properties over which the secured creditors is said to have security interest, have been attached under Section 4 of the MPID Act. Such properties are believed to have been acquired by the financial establishment i.e. NSEL either in its own name or in the name of other persons from out of deposits collected by the financial establishment. All such properties and assets of the financial establishment and the persons mentioned in the said provision, vest in the competent authority appointed by the Government, pending further orders from the Designated Court. Such monies or the deposits of the depositors/investors, who have been allegedly defrauded by the financial establishment, and for the recovery of which the MPID Act has been enacted, could not be said to be a "debt" contemplated in Section 26-E of the Sarfaesi Act, and hence also the provisions of Section 26-E could not be said to have been attracted to the facts of the case.*"
>
> (Emphasis supplied)

61. Additionally, the judgment in ***NSEL*** *(supra)* observed that once the properties in question had been attached under the MPID Act, the same could not be included in the pool of assets for the purposes of insolvency proceedings and moratorium under Section 14 of the IBC would be inapplicable thereupon. This was said because the said properties had already vested in the Competent Authority under the MPID Act and were

not available to the corporate debtor for the discharge of its dues. The relevant paragraphs of the judgment in ***NSEL*** *(supra)* are reproduced hereinbelow:

> "*70. In the instant case, there is also no overlap or inconsistency between the provisions contained in IBC and the MPID Act. As such, Section 14 IBC has the connotation which is very much different from Section 4 of the MPID Act. The proceedings under IBC arise out of the debtor-creditor relationships of the parties. As per Section 14 IBC, which pertains to the moratorium, a declaration has to be made by an order by the adjudicating authority prohibiting the acts mentioned therein. Therefore, Section 14 IBC is consequent upon the order passed by the adjudicating authority declaring moratorium.*
>
> *71. However, so far as the attachment of properties under Section 4 of the MPID Act is concerned, it is beyond the realm of the debtor-creditor relationship as contemplated in IBC. On the publication of the order of attachment of properties by the Government to protect the interest of the depositors of the financial establishment, such properties and assets of the financial establishment and the persons mentioned in sub-section (1) of Section 4, would forthwith vest in the competent authority appointed by the Government, pending further orders from the Designated Court. The procedure and powers required to be followed by the Designated Court after the receipt of the application from the competent authority under Section 5, have been prescribed in Section 7 of the MPID Act. As per the said procedure contained in Section 7, the Designated Court is required to issue a notice calling upon the financial establishments or to any other person whose property is attached and vested in the competent authority, to show cause as to why the order of attachment should not be*

made absolute. If no cause is shown or no objections have been raised before the Designated Court, the Designated Court can pass the order making the order of attachment absolute and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the properties attached.

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

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

(Emphasis supplied)

62. The dictum in ***NSEL*** *(supra)*, therefore, clarifies in no uncertain terms that the attachment of property under the MPID Act would supersede the rights of the secured creditors.

63. However, in our considered view, the aforesaid exposition pertains to a peculiar conspectus of facts. It requires examination of further situations in which the interplay between the MPID Act and SARFAESI Act respectively may unfold in a different manner. We say so for the following reasons:

a) The judgment in ***NSEL*** *(supra)* held that the fact of incidental encroachment by the MPID Act on the legislative field governing the SARFAESI Act, i.e., Entry 45 of List I, should not be understood to mean that the latter could override it merely because it was the parliamentary legislation. While we do not disagree with this observation, yet it is worth noting that incidental encroachment of one legislation on another may cause conflict such that it may render the provision of the second statute unworkable.

b) In our considered view, the attachment provisions under Sections 4 and 7 of the MPID Act respectively, present a tangible conflict in relation to the recovery mechanisms stipulated under the SARFAESI Act and the RDB Act and *vice versa*. In other words, though the overlap is ancillary, yet it has the effect of derailing the recovery mechanisms of both the enactments unless a harmonious resolution is reached.

c) With all humility at our command, we are constrained to observe that the judgment in ***NSEL*** *(supra)* does not adequately resolve this conflict. We say so because the observations therein do not address the following issues:

- Whether the incidental encroachment by one legislation hampers the other legislation fundamentally?

- If yes, then whether harmonious construction is possible to resolve the conflict and make both legislations workable?
- If not, then whether the doctrine of dominant legislation as expounded in ***ITC Limited*** *(supra)* would provide guidance as regards which enactment is the dominant legislation?
- Whether the principle of parliamentary supremacy is attracted or not?

d) Further, the peculiar factual circumstances in ***NSEL*** *(supra)* did not require examining the scope of the attachment provisions of the MPID Act vis-à-vis the interest of an individual secured creditor who may have security rights against the specific property attached under the MPID Act. As such, we find it apposite to deal with the aforesaid issues.

(ii) Conflict between the SARFAESI Act and MPID Act

64. The position of law is well settled as regards the question whether the MPID Act encroaches into the Parliament's field of legislation under Entry 45 of List I such that the doctrine of pith and substance would hit it. The decisions of this Court in ***Sonal Hemant Joshi*** *(supra)* as well as ***K.K. Baskaran*** *(supra)* respectively, leave no manner of doubt that the MPID Act is referable to Entries 1, 30 and 32 of List II and does not present such a degree of invasion into the Parliament's legislative field provided under Entry 45

of List I that would require it to be declared unconstitutional. Therefore, the encroachment is merely incidental and ancillary.

65. However, there is no gainsaying that the incidental encroachment into the specific area of 'recovery of dues' by way of attaching properties under the MPID Act causes an impediment to the process of 'recovery of dues' provided in the SARFAESI Act and RDB Act, which provide for the banks to enforce their security interests. Though the encroachment may be ancillary for the purposes of determining legislative competence, it constitutes a significant hindrance insofar as the operation and implementation of the statutes are concerned.

66. In ***Dipak Debbarma*** *(supra)*, the issue before this Court pertained to the inconsistency between the SARFAESI Act and the Tripura Land Revenue and Land Reforms Act, 1960, both of which had been legislated competently under List I and List II of the Schedule VII respectively. This Court was faced with the question as to which legislation would have primacy. In this context, it was observed that when the legislations in question are found to be competently enacted, yet there is intrusion by one into the other, it is the duty of the courts to attempt to resolve the conflict arising from the intrusion. It is only when such resolution by way of harmonious reading of the statutes becomes impossible that the courts would be duty-bound to identify which

enactment is the dominant legislation. If the courts find that the central legislation is the dominant legislation, it shall prevail. The relevant portions of the judgment in ***Dipak Debbarma*** *(supra)* are reproduced hereinbelow:

> "*9. The second situation of repugnancy or inconsistency as in the present case is between a subsequent Central law (2002 Act) covered by Entry 45 of List I and an earlier State law (Tripura Act of 1960) relatable to Entries 18 and 45 of List II. How such a situation is to be resolved and answered and which legislation would have primacy is the moot question that arises for consideration in the present appeals. (...)*
>
> *11. In interpreting Article 246 regard must be had to the constitutional scheme which visualises a federal structure giving full autonomy to the Union Parliament as well as to the State Legislatures in their respective/demarcated fields of legislation. The problem may, however, become a little more complex than what may seemingly appear as the two legislations may very well be within the respective domains of the legislatures concerned and, yet, there may be intrusion into areas that fall beyond the assigned fields of legislation. In such a situation it will be plain duty of the constitutional court to see if the conflict can be resolved by acknowledging the mutual existence of the two legislations. If that is not possible, then by virtue of the provisions of Article 246(1), the parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II). This is the principle of federal supremacy which Article 246 of the Constitution embodies. The said principle will, however, prevail provided the pre-condition exists, namely, the parliamentary legislation is the dominant legislation and the State legislation, though within its own field, has the*

> *effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. This is the principle that is discernible from the Constitution Bench judgment of this Court in State of W.B.v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401].* (…)"
>
> (Emphasis supplied)

67. The aforesaid exposition clarifies that in situations where an incidental encroachment or intrusion might cause hindrance to the implementation of the Central and State legislation in issue, the first course of action is to determine whether harmonious reading of the conflicting provisions is possible.

68. In the present matter, we cannot say that there is no inconsistency between the SARFAESI Act and the MPID Act. As such, we cannot permit that the provisions of either the SARFAESI Act or the MPID Act become dead letter law in the absence of any resolution of the conflict as regards the implementation of such provisions for the objective of "recovery of dues".

69. Therefore, it is apposite for us to see whether harmonious construction of the provisions of both the statutes is possible so as to offer a feasible resolution.

III. Harmonious construction of competing provisions of SARFAESI Act and MPID Act

(i) Statutory scheme of the SARFAESI Act and MPID Act.

70. Section 13 of the SARFAESI Act empowers a secured creditor to enforce the security rights created in its favour without the intervention of the courts if the liability of the debtor is declared a non-performing asset and continues to remain unpaid despite notice by the secured creditor. For the purposes of this judgment, we may take a closer look at sub-section (4) of Section 13, which provides thus:

> "*13. Enforcement of security interest.—*
> *(...)*
> *(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—*
> *(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*
> *(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:*
> *Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:*
> *Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such*

business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt. (...)"

71. It is worth noting that Section 13(4) aims to *realise the secured asset* by providing the secured creditor with the right to take possession of the secured asset for transfer by way of lease, assignment or sale, or managing the said asset. What can be discerned from the aforesaid provision is that the enforcement of security revolves around the secured asset, without which the existence of security rights in favour of a creditor stands ineffective and futile.

72. On the other hand, a bare textual reading of Section 4 of the MPID Act would indicate the following:

- *First*, once there is a default committed in terms of Section 3 of the MPID Act, the initial course of action for the State Government would be to attach the money or property believed to be acquired in the name of the financial establishment or any other person, out of the deposits collected (hereinafter referred to as "**Category I properties**").

- *Secondly*, if the money or property acquired out of the deposits is unavailable or insufficient to repay the depositors, then the State Government may attach the other properties of the financial establishment, or its promoters, directors or partners (hereinafter referred to as "**Category II properties**").
- *Lastly,* the properties so attached would come to be vested in the Competent Authority appointed by the State Government pending the orders of the designated court under the MPID Act.

73. It is abundantly clear from the perusal of Section 4 of the MPID Act that apart from the Category I properties, any other property which would fall in Category II is not specifically identified for the discharge of dues under the MPID Act. It can be any property which, in the opinion of the State government, would be sufficient to repay the interest of the depositors.

74. Section 13 of the SARFAESI Act provides the secured creditors with the right to enforce their interest on the property in question whereas Section 4 of the MPID Act empowers the State government to attach the very same property for achieving the objects of the Act. Both proceedings intersect at the rights sought to be enforced simultaneously in respect of the defaulter's singular property.

75. In such a scenario, the issue that arises is whether the interest of the secured creditor would gain priority over the interests of the depositors which the MPID Act seeks to protect.

76. To answer this issue, we find it apposite to understand the statutory scheme of both the enactments to determine whether the legislature itself has provided any remedy to such conflict. In this regard, we may refer to Section 35 of the SARFAESI Act which reads thus:

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

77. A bare textual reading of Section 35 of the SARFAESI Act indicates that the provisions thereunder would prevail in a situation where there is a conflict or an inconsistency posed by any other law. It is a well-settled position of law that the non-obstante clause under Section 35 cannot be invoked to stultify the provisions of every statute. The expression "*any other law for the time being in force*" would cover only the legislations that operate in the same field as the SARFAESI Act [See: ***Vishal N. Kalsaria v. Bank of India*****,** reported in **(2016) 3 SCC 762**].

78. Therefore, another issue which crops up is whether the non-obstante clause under Section 35 of the SARFAESI Act effectively prioritizes the rights of the secured creditors in relation to the rights of depositors under the MPID Act. However, we need not delve into this question in light of Section 14 of the MPID Act, which provides that the MPID Act would have an overriding effect in case of inconsistency with any other law. Section 14 of the MPID Act reads thus:

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

79. Since the non-obstante clauses under both Section 35 of the SARFAESI Act and Section 14 of the MPID Act are couched in strict language, a clear conclusion as regards which overriding provision would prevail cannot be discerned from the plain language of the said provisions. Therefore, the tension between the recovery mechanisms of both the statutes in respect of their implementation continues to remain. In such circumstance, we may refer to the principles which are germane to the determination of precedence of a statute over another in case of conflict between the two.

(ii) Principles for determination of precedence of a statute over another in case of conflict.

80. At this juncture, we find it apposite to clarify the principles enunciated by this Court to determine which statute will have precedence in case of a conflict. In ***Kumaon Motor Owners' Union Ltd. v. State of U.P.***, reported in **1965 SCC OnLine SC 117**, this Court highlighted three elements to resolve conflict between two statutes, which are as follow:

- If there is a conflict between the provisions of two statutes and nothing is repugnant, the provisions in the later statute would prevail.
- While resolving such conflict, the court must look into the object behind the two statutes. In other words, what is to be looked at is what necessitated the legislature to enact a particular provision later in time, which may be in conflict with the provisions of an earlier statute.
- The court must look into the language of the provisions. If the language of a particular provision is found to be more emphatic, the same would be indicative of the intention of the legislature that the same shall prevail over other statutes.

The relevant paragraphs of the judgment in ***Kumaon Motor*** *(supra)* are reproduced hereinbelow:

> "*12. This argument is met on behalf of the State by reference to Section 43 of the Act which lays down that "the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect*

notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act". It does appear that there is some apparent conflict between Section 43 on the one hand and Section 68-B of the Motor Vehicles Act read with Section 6(4) of the Act on the other, and that conflict has to be resolved. The only way to do it is to decide whether in such a situation, Section 43 of the Act will prevail or Section 68-B of the Motor Vehicles Act will prevail. We are of opinion that Section 43 of the Act must prevail. In the first place. Section 43 appears in an Act which is later than the Motor Vehicle Act and therefore in such a situation unless there is anything repugnant the provisions in the later Act must prevail. Secondly, if we look at the object behind the two statutes, namely, the Act and the Motor Vehicles Act, there can be no doubt that the Act, which was passed to meet an emergency arising out of the Chinese invasion of India in 1962, must prevail over the provisions contained in Chapter IV-A of the Motor Vehicles Act which were meant to meet a situation arising out of the taking over of motor transport by the State. Thirdly, if we compare the language of Section 43 of the Act with Section 68-B of the Motor Vehicles Act we find that the language of Section 43 is more emphatic than the language of Section 68-B. Section 43 provides that the provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act. This would show that the intention of the legislature was that the Act shall prevail over other statutes. But we do not find the same emphatic langauge in Section 68-B which lays down that the provisions of Chapter IV-A would prevail notwithstanding anything inconsistent therewith contained in Chapter IV of the Motor Vehicles Act or in any other law for the time being in force. The intention seems to be clear in view of the

collocation of the words "in Chapter IV of this Act" with the words "in any other law for the time being in force" that Chapter IV-A was to prevail over Chapter IV of the Motor Vehicles Act or over any other law of the same kind dealing with motor vehicles or for compensation. On the other hand Section 43 of the Act emphatically says that the Act will prevail over any enactment other than the Act, and this suggests that the legislature intended that the emergency legislation in the Act will be paramount if there is any inconsistency between it and any other provision of any other law whatsoever. Such a provision is understandable in view of the emergency which led to the passing of the Act."

(Emphasis supplied)

81. Similarly, in ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.***, reported in **(2001) 3 SCC 71**, this Court observed that in case of conflict between two special legislations, the later must prevail. It was held so because, at the time of the later statute's enactment, the legislature could be said to have been aware of the previous statute and its non-obstante clause. In such a case, if the legislature still conferred the later statute with a non-obstante clause, the inference ought to be that it was the intention of the legislature that the later enactment prevailed [See: Paragraph 11 of ***Solidaire*** *(supra)*].

82. What is discernible from the aforesaid expositions is that the bright-line test for determining precedence of one statute over another in the event of a

conflict which does not amount to repugnancy involves testing on the following touchstones:

1) **Provision enacted later in time**: The resolution of implementational conflict between the SARFAESI Act and the MPID Act using the principle of 'primacy of subsequent legislation' is not difficult, since the SARFAESI Act was enacted later than the MPID Act. However, before we arrive at a conclusion in respect of the issue of primacy of the SARFAESI Act over the MPID Act, we must satisfy ourselves as regards the other two principles discernible from the dictum of this Court in ***Kumaon Motor*** *(supra)*.

2) **Objective underlying the conflicting statutes**: The decision of this Court in ***NSEL*** *(supra)* clarifies the objectives underlying the MPID Act as well as the SARFAESI Act.

   (a) The Statement of Objects and Reasons of the MPID Act and the language of the provisions thereunder indicate two objectives: *firstly*, punishment for fraudulent default by the Financial Establishments, and *secondly*, recovery of the deposits by attachment of assets of the Financial Establishment and other associated persons and its return to the common public.

(b) On the other hand, the objective underlying the SARFAESI Act is the speedy recovery of debts which have been declared as non-performing assets by banks through enforcement of security rights that such banks hold in securitized properties of the defaulting borrower. The purpose of speedy recovery, without the need to go through lengthy civil litigation, lies at the core of the SARFAESI Act.

(c) We are conscious of the fact that the avowed objectives of both the statutes are in the interest of welfare of the public. However, in our considered opinion, the provisions of the SARFAESI Act must prevail over the provisions of the MPID Act. We say so because even though both the statutes have been enacted for recovery of monies, yet 'recovery of dues' by banks stands at a higher pedestal since banks are the custodians of public money [See: ***Om Sakthi Sekar v. V. Sukumar*****,** reported in **2026 SCC OnLine SC 368** and ***SBI v. Sayed Arman Rabbani*****,** reported in **2024 SCC OnLine NCDRC 733**].

(d) In such view of the matter, we find it vital to the interests of the public at large that the objective of 'recovery of dues' of secured creditors is allowed to take precedence over the recoveries sought to be made under the MPID Act.

3) **Emphatic language of conflicting provisions**: As discussed in the aforesaid part of this judgment (more particularly paragraphs 78 and 79 hereof), the non-obstante clauses under both Section 35 of the SARFAESI Act and Section 14 of the MPID Act, are couched in strict language. Hence, a decision in respect of which overriding provision would gain precedence is not discernible from the limited perusal of the said sections. As such, we find it necessary to conduct a further examination of the statutory scheme of the two enactments.

83. We may clarify at this stage that though our observations as regards the first and second principles, expounded hereinabove, may render such examination academic yet, we find it indispensable for addressing comprehensively the issues raised in the present litigation and the observations of this Court in ***NSEL*** *(supra)*.

84. Before we delve into the study of the statutory schemes of the SARFAESI Act and MPID Act, it is apposite that we explain briefly the nature of security interests that the SARFAESI Act governs.

(iii) Nature of the security interest created by secured creditors and its effect on attachment under the MPID Act.

85. The term "security interest" has been defined in Section 2(zf) of the SARFAESI Act and reads thus:

"*2. Definitions.—*

(...)

(zf) "security interest" means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;"

86. The plain text of the aforesaid provision makes it clear that *interest of any kind* constitutes a security interest and specifically includes *inter alia* mortgage, charge, hypothecation, assignment of a right or any other kind of right, title or interest. Such interest in the property that is created in favour of the secured creditor is therefore, in the nature of an encumbrance on the property.

87. It is a settled position of law that encumbrance, being a charge on the property, must run with it and become the liability of the person or the authority in the hands of which rights to the property lie [See: ***AI Champdany Industries Ltd. v. Official Liquidator*****,** reported in **(2009) 4 SCC 486** and ***State of Karnataka v. Shreyas Papers (P) Ltd.*****,** reported in **(2006) 1 SCC 615**].

88. Having regard to the aforesaid position of law, we may say without any manner of doubt that though there may be a security interest in favour of the secured creditor that puts a charge on the property, yet such charge places no bar on the attachment of the said property under the MPID Act.

89. However, such attachment is subject to the caveat that the security interest in favour of the secured creditor, being a charge on the property, shall run with it, i.e., the property cannot be attached encumbrance-free. We say so because the MPID Act, more particularly, Sections 4 and 7 thereof, which deal with attachment of property, do not stipulate that the attachment of the property shall be free of encumbrances. In other words, the interest of the secured creditor is not defeated by the factum of attachment of property under the MPID Act.

90. At this juncture, it is apposite to understand that the expression "attachment" has no definite connotation and it does not by itself create a charge on the

property attached. The limited purpose of attachment is to take the property into custody of the law to seize or hold the property for the payment of the debts of the owner of such property or to prohibit the transfer, conversion, disposition or movement of the property [See: ***Kerala State Financial Enterprises Ltd. v. Official Liquidator*****,** reported in **(2006) 10 SCC 709**].

91. In our considered view, the purpose of attachment in the MPID Act is not dissimilar. Section 4(2) of the MPID Act stipulates that on publication of the notice of attachment, the properties of the Financial Establishment or any other persons, as mentioned in such notice, shall forthwith vest in the Competent Authority under the MPID Act pending further orders from the designated court. The MPID Act vests the attached property in the Competent Authority to restrain alienation thereof by the Financial Establishment. Such vesting is *cum onere* and does not remove any prior charges or interests in the property. We say so because the MPID Act does not provide for attachment and vesting free from all encumbrances, as is the case, say, in the National Highways Act, 1956, or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

92. Therefore, the factum of 'vesting' of the property in the Competent Authority under the MPID Act does not defeat or hamper the security interests and rights of the secured creditor in the property.

93. The discussion in the aforesaid paragraphs clarifies two things: (a) the tension as regards the conflict in simultaneous implementation of the SARFAESI Act and the MPID Act remains unresolved despite the provision of non-obstante clauses in both the statutes; (b) the attachment of secured property under the MPID Act is not prohibited, and the security rights and interest in such property would run with it despite attachment.

94. The question that naturally follows the above discussion is that even though the attachment and vesting of secured property under the MPID Act is insufficient to defeat the interest of the secured creditor, would it still have any detrimental effect on the right of the secured creditor to receive its dues from the secured property? In other words, would the secured creditors continue to have priority of interest in the property despite its attachment under the MPID Act?

(iv) <u>Priority of interest for secured creditors under the SARFAESI Act.</u>

95. Since the attachment of the secured property under the MPID Act is permissible so long as the security interests run with the property attached, the issue that lies at the root of the conflict is whether it is the secured

creditor who will have priority of interest over the proceeds from the property or the depositors under the MPID Act.

96. We may refer to Section 26E of the SARFAESI Act in this regard. Section 26E provides that the "*debts due to any secured creditors shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority"*.

97. We may clarify at the outset to obviate any confusion that we are not concerned with the expression "*all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority*" appearing in Section 26E of the SARFAESI Act. The sole focus of the present examination is the expression "*all other debts*" appearing in Section 26E of the SARFAESI Act.

- ***Meaning of 'debt' appearing in the expression 'all other debts' in Section 26E of the SARFAESI Act.***

98. The term "debt" is used twice in Section 26E – *first*, to describe the debts which are due to the secured creditors and have been defined in Section 2(ha) of the SARFAESI Act read with Section 2(g) of the RDB Act; and *secondly*, to describe such debts which may be due to anyone else other than the secured creditors.

99. We may take a look at Section 2(g) of the RDB Act which reads thus:

> "*2. Definitions.—*
>
> *(...)*
>
> *(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956, by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or; "*
>
> (Emphasis supplied)

100. A bare textual reading of the aforesaid provision indicates that the term 'debt' as defined under Section 2(g) of the RDB Act includes only such dues that are claimed by banks or financial institutions during the course of banking activity. Therefore, there is no manner of doubt in our minds that the expression "*debts due to any secured creditor*" includes those debts that fall within the definition under Section 2(g) of the RDB Act. However, could

it be said that the term 'debt' appearing in the expression "*all other debts*" includes only those dues which can be claimed by banks and financial institutions involved in banking? In our considered view, the answer to the aforesaid question must be an emphatic 'No'.

101. We say so because Section 26E seeks to give priority to the debts due to secured creditors over "*all other debts*". If we restrain "*all other debts*" to those that fall within the definition provided under Section 2(g) of the RDB Act read with Section 2(ha) of the SARFAESI Act, then we may be narrowing down the scope of the priority clause under Section 26E of the SARFAESI Act without any legislative indication to that effect. We do not see any reason for the legislature to restrict the priority provision to only those "other debts" which may be due to banks or financial institutions, especially when Section 26E also prioritizes the interests of the secured creditor over "*all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority"*. We say so because the amounts due to the government or crown debts are also not such debts that arise during the course of banking activities. If secured debts are prioritized over crown debts (non-banking debts), then to say that they will not be prioritized over such "other debts" that are also non-banking debts, would be erroneous in our considered opinion, especially when there is no indication by the legislature to that effect.

102. Therefore, with all humility at our command, we disagree with the observation in ***NSEL*** *(supra)* that Section 26E of the SARFAESI Act is inapplicable insofar as the 'recovery of the deposits' under the MPID Act is concerned, as the same cannot be said to be 'debts' which are covered under Section 26E. While we are in complete agreement with the first prong of the decision in ***NSEL*** *(supra),* that the priority clause under Section 26E would come into effect only when the security interest has been registered in terms of Section 26D of the SARFAESI Act, we do not find ourselves in agreement with the second prong of its analysis of this aspect, that the debts of the secured creditor would not be discharged in priority over the repayment of deposits under the MPID Act.

103. However, we may also clarify with a view to obviate any confusion that the factual conspectus in which the aforesaid observation was made in ***NSEL*** *(supra)* was different from the one before us. The facts therein required this Court to decide the question of priority of interest of secured creditors who asserted priority of repayment during insolvency proceedings against the debtor and prayed that the properties attached under the MPID Act therein be included in the insolvency pool. We do not know, for certain, whether the properties therein were securitized. Therefore, our disagreement as regards the finding in ***NSEL*** *(supra)* that the 'repayment of deposits' under the MPID Act cannot be included within 'all other debts' appearing in Section

26E of the SARFAESI Act is a general observation. In our considered view, this aspect requires further deliberation and clarification by a larger bench.

- ***'Priority of interest' of secured creditors vis-à-vis the right of first charge for other statutory dues.***

104. Having raised our doubts regarding the aforesaid aspect, we find it apposite to deal with the question of 'priority of interest'. The non-obstante clause in Section 26E is worded broadly and provides overriding effect in relation to *any other law for the time being in force*. On the other hand, a perusal of the MPID Act indicates no such provision that would expressly provide the depositors with the 'right of first charge' over the attached property of the Financial Establishment or any other person. In other words, a juxtaposition of the SARFAESI Act and the MPID Act as regards the question of 'priority of interest' shows that the claim of the secured creditors would be prioritized over the claims of the depositors under the MPID Act.

105. We say so in light of the settled position of law that the dues of any person or authority that become payable as a result of statutory right may be prioritized over the debts due to the secured creditor when such statute creates the right of first charge in respect of such claims. In other words, when repayment is sought from the attachment of property and enforcement of rights therein as provided by way of a statutory enactment, the same is subservient to the enforcement of security rights and repayment under the

SARFAESI Act unless and until the statute so enacted provides clear priority over the repayment to secured creditors under the SARFAESI Act and RDB Act.

106. The observations of this Court in ***Jalgaon District Central Coop. Bank Ltd. v. State of Maharashtra*****,** reported in **2025 SCC OnLine SC 2513,** provide sufficient clarity on the question whether the statutory first charge provision prevails over the security rights sought to be enforced under the SARFAESI Act. The relevant portion of the judgment in ***Jalgaon District Central Coop. Bank*** *(supra)* reads thus:

> "*25. Hence, when there are two enactments conferring priority in satisfaction of a debt coming under the respective enactments, by virtue of a non-obstante clause overriding the provisions of any law in force at that time, the time in which the statute was enacted or the provision was incorporated, assumes significance and the provision latter in time would prevail. However, if there is a first charge statutorily created, validly, dehors the non obstante clause conferring priority over other debts, the statutory charge would prevail. With these principles in mind, when we look at the provisions under the SARFAESI Act and the EPF&MP Act, the former with the incorporation of Section 26-E, we are of the opinion that there has to be found a first charge to the EPF&MP Act dues, under Section 11(2) of that Act.*
>
> *26. We extract Section 11(2) of the EPF Act and Section 26-E of the SARFAESI Act hereunder.*
>
> *"Sec. 11(2): Without prejudice to the provisions of sub-section (1), if any amount is due from an employer,*

whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.

Sec. 26-E: Priority to secured creditors— Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority."

27. Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers' or employees' contribution, which would include any interest or damages also as has been held in Maharashtra State Co-operative Bank Limited. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in Central Bank of India. There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.

(Emphasis supplied)

107. A careful perusal of the aforesaid exposition reveals two principles to be adhered to when looking at the question of 'priority of interest':

i. Where there are two enactments containing non obstante clauses which conflict with each other, the later enactment ordinarily prevails.

ii. However, where the competing enactments deal with priority in the satisfaction of debts, the above principle does not automatically apply. The Court must first ascertain whether a statutory first charge has been validly created dehors the non obstante clause. If such a statutory first charge, dehors the non obstante clause, exists, it will prevail. In other words, a non obstante clause conferring priority in recovery must yield to a statutory provision independently creating a first charge.

[See: ***Omkara Assets Reconstruction (P) Ltd. v. Official Liquidator of BPL Engineering Ltd.***, reported in **2026 SCC OnLine Kar 12342**].

108. In ***Jalgaon District Central Coop. Bank*** *(supra)*, it was held that the dues of workmen would be paid in priority over the debts due to the secured creditors under the SARFAESI Act, by virtue of the statutory first charge provided under Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF&MP Act**"). A perusal of the language of Section 11(2) of the EPF&MP Act stipulates with clarity that the dues of the workmen shall be treated as first charge on the assets of the

employer establishment *notwithstanding anything contained in any other law for the time being in force*.

109. On the other hand, in ***Punjab National Bank v. Union of India*****,** reported in **(2022) 7 SCC 260**, this Court was faced with the issue whether the amounts due to the Central Excise Authority would be paid in priority over the debts due to the secured creditors. Upon juxtaposing Section 11E of the Central Excise Act, 1944 with Section 35 of the SARFAESI Act, it was observed that even though Section 11E of the Central Excise Act, 1944 created a statutory right of first charge that would ordinarily provide precedence to the payment of dues to the Central Excise Authority, yet, the same was made subject to the repayment of debts due to the secured creditors. Thus, the non-obstante clause under Section 35 of the SARFAESI Act would prevail. The relevant portion of the judgment in ***Punjab National Bank*** *(supra)* is reproduced hereinbelow:

> "*50. In view of the above, we are of the firm opinion that the arguments of the learned counsel for the appellant, on Issue 2, hold merit. Evidently, prior to insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, there was no provision in the 1944 Act inter alia, providing for first charge on the property of the assessee or any person under the 1944 Act. Therefore, in the event like in the present case, where the land, building, plant, machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provisions contained in Sections 2(1)(zc) to (zf) of the Sarfaesi Act, 2002, read with*

provisions contained in Section 13 of the Sarfaesi Act, 2002, the Secured Creditor will have a first charge on the secured assets. Moreover, Section 35 of the Sarfaesi Act, 2002 inter alia, provides that the provisions of the Sarfaesi Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11-E of the Central Excise Act, 1944 are subject to the provisions contained in the Sarfaesi Act, 2002.

51. Thus, as has been authoritatively established by the aforementioned cases in general, and Union of India v. Sicom Ltd. [Union of India v. Sicom Ltd., (2009) 2 SCC 121] in particular, the provisions contained in the Sarfaesi Act, 2002, even after insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, will have an overriding effect on the provisions of the 1944 Act."

(Emphasis supplied)

110. We may also refer to the dictum of this Court in ***Union of India v. SICOM Ltd.*****,** reported in **(2009) 2 SCC 121**. The relevant observations therein read thus:

"*9. Generally, the rights of the crown to recover the debt would prevail over the right of a subject. Crown debt means the 'debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors'. [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.) p. 1147]. Such creditors, however, must be held to mean unsecured creditors. Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force*

of the Constitution of India are saved by reason of the aforementioned provision. A debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one."

(Emphasis supplied)

111. At the outset, we may clarify with a view to obviate any confusion that the aforesaid exposition predated the insertion of Section 26E of the SARFAESI Act. One may then question why reference has been made to the observations in ***SICOM*** *(supra)*. Our answer is simple – this Court, in the said decision, observed in clear terms that the debts which are secured would always constitute a first charge over the assets in question and relegated even crown debt to the status of an unsecured debt over which the repayment of secured debt shall be given priority. This position preceded the insertion of Section 26E which, in light of the dictum in ***SICOM*** *(supra)*, can be said to be the codification of an already existing principle.

112. The concurrent reading of this Court's decisions in ***Jalgaon District Central Coop. Bank*** *(supra)*, ***Punjab National Bank*** *(supra)* and ***SICOM*** *(supra)* would indicate that to ensure primacy of the repayment of any other dues over and above the recovery of secured debts, the enactment of a statutory provision to that effect is a requisite. What has been conveyed by this Court

in so many words is that such provision must create an independent right of first charge, couched in language so emphatic as to expressly highlight the legislature's intention to prioritize the amounts due under the statute over the repayment of secured debts under the SARFAESI Act.

113. On a plain reading of the MPID Act, it is limpid that no such independent right of first charge has been created that would provide priority to the recovery of deposits thereunder by way of attachment of the property. On the other hand, the Parliament has codified the position of law expounded in ***SICOM*** *(supra)* by including Section 26E in the SARFAESI Act, which mandates that priority be given to the recovery of debts due to secured creditors. Even otherwise, had the Parliament not inserted Section 26E, the repayment of secured debts ought to have been prioritized in light of the decision in ***SICOM*** *(supra)*.

114. In such view of the matter, we can say without any manner of doubt in our minds that the repayment of the secured debt of the appellant herein must necessarily be prioritized over the 'recovery of deposits' under the MPID Act, which in our considered opinion fall in the category of unsecured debts.

115. We may, at this juncture, revisit the questions that we sought to address ourselves on in paragraph 63(c) of this judgment. We observed that if the conflict between the implementation of the recovery mechanisms under the

SARFAESI Act and MPID Act is not possible by harmonious construction, then we shall delve into the question of which enactment is the dominant legislation.

116. In our considered view, Part III of this exposition sufficiently clarifies that a harmonious construction of the statutory schemes of both the SARFAESI Act and the MPID Act is possible. Through such exposition, we have observed that priority must be given to the recovery of debts due to secured creditors under the SARFAESI Act.

117. However, we are also conscious that our observations in the aforesaid parts of this judgment may not be congruent with the dictum of the two-Judge bench of this Court in ***NSEL*** *(supra)*. Therefore, for a comprehensive analysis which may aid a larger bench in *seisin* of the issues addressed herein, we may look at the question of primacy of SARFAESI Act over the MPID Act from one another angle. In other words, we find it apposite to also discuss the issue before us on the touchstone of the doctrine of dominant legislation.

IV. SARFAESI Act – the dominant legislation as regards 'recovery of dues'.

118. This Court in ***ITC Limited*** *(supra)*, observed that where an incidental encroachment by one legislation causes conflict with the other legislation, the courts must determine which enactment has been legislated by the

dominant power. If the Parliamentary enactment is the dominant legislation and the State enactment has the effect of incidentally encroaching thereon, the principle of federal supremacy would require that the Central legislation prevail.

119. However, the principle of dominant legislation should not be taken to mean that Central legislation would, in all situations, be accorded primacy over State legislation in cases of incidental encroachment. The dictum in ***Dipak Debbarma*** *(supra)* clarifies that the federal structure of the Constitution can also nullify any incidental inroads that a Parliamentary enactment may make into a State legislation. Therefore, where it is determined by the courts that the dominant power is the State, the provisions of statute enacted by the State legislature would be given primacy. The relevant paragraphs of the judgment in ***Dipak Debbarma*** *(supra)* read thus:

> "*13. The federal structure under the constitutional scheme can also work to nullify an incidental encroachment made by the parliamentary legislation on a subject of a State legislation where the dominant legislation is the State legislation. An attempt to keep the aforesaid constitutional balance intact and give a limited operation to the doctrine of federal supremacy can be discerned in the concurring judgment of Ruma Pal, J. in ITC Ltd. v. Agricultural Produce Market Committee [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232] , wherein after quoting the observations of this Court in S.R. Bommai v. Union of India [S.R. Bommai v. Union of India, (1994) 3 SCC 1] , the learned Judge has gone to observe as*

follows : (ITC Ltd. case [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232] , SCC p. 282, paras 93-94)

"93. ... '276. The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States.' (S.R. Bommai case [S.R. Bommai v. Union of India, (1994) 3 SCC 1] , SCC pp. 216-17, para 276)

94. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. [A.S. Krishna v. State of Madras [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409] ; Chaturbhai M. Patel v. Union of India [Chaturbhai M. Patel v. Union of India, (1960) 2 SCR 362 : AIR 1960 SC 424] ; State of Rajasthan v. G. Chawla [State of Rajasthan v. G. Chawla, AIR 1959 SC 544 : 1959 Cri LJ 660] and Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P. [Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P., (1980) 4 SCC 136] This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers

> *under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail."*
>
> *14. The aforesaid view in the concurring judgment of Ruma Pal, J. in ITC Ltd. v. Agricultural Produce Market Committee [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232], seems to have been echoed in a recent pronouncement of this Court in Vishal N. Kalsaria v. Bank of India [Vishal N. Kalsaria v. Bank of India, (2016) 3 SCC 762 : (2016) 2 SCC (Civ) 452] , wherein this Court had held that the provisions of the 2002 Act will not have an overriding effect on the provisions of the State Rent Control Acts."*
>
> (Emphasis supplied)

120. In light of the aforesaid expositions in ***ITC Limited*** *(supra)* and ***Dipak Debbarma*** *(supra)*, we find it apposite to examine whether it is the SARFAESI Act or the MPID Act that is the dominant legislation. It is apposite to clarify that the overlap between the two enactments pertains to the 'recovery of dues', for the secured creditors under the SARFAESI Act on the one hand and, for the depositors under the MPID Act on the other hand. The crux of the conflict, however, remains the same – priority of recovery for which group of debtors.

121. Having identified the root cause of the conflict, we may refer with profit to the dictum of this Court in ***Delhi High Court Bar Assn.*** *(supra)* wherein it was observed that the *recovery of dues is an essential function of any*

banking institution. This has been reaffirmed in ***SBI v. Santosh Gupta*****,** reported in **(2017) 2 SCC 538** and ***Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd.*****,** reported in **(2020) 9 SCC 215**. The observation in ***Delhi High Court Bar Assn.*** *(supra)* reads thus:

> "*14. (...) Entry 45 of List I relates to "banking". Banking operations would, inter alia, include accepting of loans and deposits, granting of loans and recovery of the debts due to the bank. There can be little doubt that under Entry 45 of List I, it is Parliament alone which can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered.*"
>
> (Emphasis supplied)

122. Therefore, it is as clear as a noon day that the process of 'recovery of dues' is essential to the activity of banking which falls directly within the legislative purview of the Parliament by virtue of Entry 45 of List I to the Schedule VII.

123. In our considered view, the aspect of 'recovery of dues' cannot be said to be as essential to Entries 1, 30 and 32 of List II to the Schedule VII, as it evidently is to Entry 45 of List I. In such view of the matter, could it be said that it is the State legislature which is the dominant power insofar as the

aspect of ‘recovery of dues’ is concerned? In our considered opinion, the answer to the aforesaid question must be an emphatic ‘No’.

124. Therefore, the MPID Act, which has been enacted in exercise of the legislative powers of the State under Entries 1, 30 and 32 of List II, cannot be held to be the dominant legislation when compared with the SARFAESI Act or RDB Act, respectively, which have been enacted under Entry 45 of List I.

125. However, the aforesaid discussion in respect of the doctrine of dominant legislation is largely academic since, we have, in no uncertain terms, observed that the SARFAESI Act would overrise the provisions of the MPID Act, by harmonious construction of the statutory schemes of the two enactments.

126. As such, there remains no doubt in our minds that the priority over the amounts received from the attachment and enforcement of rights in the properties herein must go towards discharging the secured debt due to the appellant herein. It is only if surplus monies remain after satisfying the debt of the appellant that the deposits under the MPID Act can be recovered.

E. SUMMARY OF OBSERVATIONS

127. We may summarize our observations in the aforesaid parts of this judgment as follows:

a) While both the SARFAESI Act and MPID Act have been legislated competently by the Parliament and the State legislature respectively, yet the incidental overlap as regards 'recovery' mechanisms presents a conflict when the two statutes are sought to be implemented simultaneously.

b) The harmonious construction of the statutory provisions of the SARFAESI Act and the MPID Act respectively, indicates that the recovery of secured debts under the former must be prioritized over the recovery of deposits under the latter for the following reasons:

- *First*, the non-obstante clause under the SARFAESI Act, having been enacted at a later point in time, must provide overriding effect insofar as the recovery provisions under the MPID Act are concerned.

- *Secondly*, the objective of speedy recovery of secured debts under the SARFAESI Act must be given precedence over the objective of recovery of deposits under the MPID Act, as the banks are custodians of public monies. If speedy recovery of secured debts

is made subservient to the recovery provisions under the MPID Act, it would have a detrimental impact on the interests of the public at large.

- *Lastly*, though the non-obstante provision under Section 35 of the SARFAESI Act is equally matched by the non-obstante clause under Section 14 of the MPID Act, yet the insertion of Section 26E in the SARFAESI Act strengthens the claim of priority in respect of recovery of secured debts. Section 26E codifies the position of law expounded in ***SICOM*** *(supra)* that the security interests of the secured creditors would always prevail over the interests of the unsecured creditors.

c) The SARFAESI Act is the dominant legislation insofar as the aspect of 'recovery of dues' is concerned. We have said so because 'recovery of dues' is essential to the activity of banking, which falls in the legislative field of the Parliament under Entry 45 of List I to the Schedule VII of the Constitution. Therefore, it is the Parliament that is the dominant power in this regard, and State legislation, i.e., the MPID Act, must bow to it.

d) As regards the applicability of Section 26E to situations in which recovery under the MPID Act is involved, we have, with all humility

at our command, disagreed with the dictum of this Court in ***NSEL*** *(supra)* wherein it was held that the 'deposits' under the MPID Act cannot be treated as 'debt' for the purposes of Section 26E. However, in our considered view, the 'deposits' under the MPID Act would squarely fall within the category of "*all other debts*" over which Section 26E provides priority to secured debts. As such, this aspect requires clarification by a larger bench of this Court.

e) As regards the observation of this Court in ***NSEL*** *(supra)* that 'recovery of deposits' under the MPID Act would gain precedence over the recoveries under the SARFAESI Act and RDB Act, we find it apposite to observe that in our considered opinion, the resolution of conflict between the two legislations was not adequately approached. In all humility, we have sought to answer the questions that remained unresolved in ***NSEL*** *(supra)*, i.e, the questions in respect of harmonious construction of the two statutes and dominance of legislation. We find it necessary to refer these aspects to the larger bench for clarification.

F. CONCLUSION

128. In view of what has been pointed out hereinabove, we are of the opinion that, for a comprehensive consideration and an authoritative pronouncement after taking into account all aspects, including those dealt with hereinabove,

the matter needs to be placed before Hon'ble the Chief Justice of India to constitute an appropriate three-Judge Bench.

129. The three-Judge Bench constituted may address itself to the following questions:

(i) Whether the 'deposits' sought to be recovered under the MPID Act would fall within the ambit of the expression "*all other debts*" appearing in Section 26E of the SARFAESI Act?

(ii) Whether the harmonious construction of the statutory schemes of the SARFAESI Act and the MPID Act indicates that the 'recovery of dues' under the former should be given priority over the latter?

(iii) Whether it is the Parliament which is the dominant power insofar as the aspect of 'recovery of dues' is concerned because the same is essential to the activity of banking which falls within the legislative field of the Union under Entry 45 of List I to the Schedule VII? In other words, whether the SARFAESI Act is the dominant legislation and, as such, would prevail over the MPID Act?

130. Before we part with the matter, we find it apposite to grant the interim reliefs prayed for by the appellant till this matter is finally resolved. We direct the respondent State not to transfer, utilise, appropriate or disburse the amount of Rs. 5,51,59,816/-.

131. The Registry is directed to place these matters before Hon'ble the Chief Justice of India for appropriate orders.

132. Before we close this matter, we would like to say something as regards the litigation which has unfolded before us. The SARFAESI Act was legislated and brought into effect in 2002, approximately three years after the MPID Act was enacted by the State of Maharashtra. As has been discussed in the aforesaid parts of this judgment, this fact by itself plays a vital role in determining which enactment overrides the other. However, we may, nevertheless point out, that despite the SARFAESI Act being enacted later in point of time, it does not provide any clarity as regards the competing priorities between the secured creditors under the SARFAESI Act vis-à-vis the beneficiaries under the MPID Act. The vacuum in this regard has given rise to several litigations including the matter before us.

133. Although our final conclusion has been to refer the issue to a larger bench yet we consider it apposite to suggest to the Parliament to bring about an appropriate amendment to Section 26E of the SARFAESI Act whereby an explanation of the expression "all other debts" may be provided authoritatively. In our considered view, this would provide much clarity & respite to the banking and financial sector from the plethora of litigations that seek to judicially eradicate the ambiguity in this regard. We find it

pertinent to place this suggestion before the Parliament as any uncertainty that surrounds 'recovery of debts' due to secured creditors is detrimental to the interest of the public at large and an anathema to the financial machinery of the nation. We urge the Department of Financial Services, Ministry of Finance to seriously consider our suggestion and bring about necessary amendments.

134. The Registry shall forward one copy each of this judgment to the Principal Secretary, Ministry of Finance, Government of India and to the learned Attorney General for India.

…….J.
(J.B. PARDIWALA)

…….J.
(UJJAL BHUYAN)

New Delhi.
26th November, 2026.