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Property Attachments under the MPID Act are not barred by the IBC Moratorium

The Supreme Court in the matter of National Spot Exchange Ltd. v. Union of India and Ors.[1] ruled that the moratorium under the Insolvency & Bankruptcy Code ("IBC") doesn't prohibit attachment of properties under the Maharashtra Protection of Interest of Depositors Act ("MPID Act").

The Bench comprising Justice Bela M Trivedi and Justice Satish Chandra Sharma was hearing the case that arises from the 2013 National Spot Exchange Limited (NSEL) scam, where NSEL, a commodity exchange platform, defaulted on payments worth ₹5,600 crores to around 13,000 traders. This led to the filing of multiple legal proceedings; however, due to difficulties in executing decrees across multiple jurisdictions, the Appellant-NSEL filed a writ petition before the Supreme Court in 2019, seeking the consolidation of proceedings.

In exercise of its powers under Article 142 of the Constitution, the Court constituted a Supreme Court Committee (SCC) headed by a retired judge who executed all decrees/awards against defaulters, sold attached properties (even those under PMLA/MPID Act) to repay investors, and distributed proceeds equitably among depositors.

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The aforesaid proceedings by SCC were challenged by the corporate debtor, stating that when moratorium under IBC was in force then no attachment proceedings under MPID Act can continue. The Supreme Court at the outset upheld the validity of the Supreme Court Committee formed by it vide its order dated 4 May 2022, using its powers under Article 142 of the Constitution of India.

The Court rejected the contention that the moratorium imposed under IBC bars attachment of properties under MPID Act. It held that the primary purpose of MPID Act is to facilitate recovery for victims of financial fraud through attachment of assets. Consequently, once a property vests with the State Competent Authority under MPID Act, such vesting cannot be impeded by invoking the IBC moratorium. The Court categorically held that secured creditors acting under the aegis of the SARFAESI Act and RDB Act cannot claim primacy or precedence over asset attachments lawfully effected under the MPID Act. The Supreme Court affirmed that the State of Maharashtra was acting within its legislative competence in enacting the MPID Act, the subject matter of which, in its pith and substance, falls squarely within Entries 1, 30, and 32 of List II (State List) of the Seventh Schedule to the Constitution of India. The Supreme Court further observed that although the SARFAESI and RDB Acts are legislations enacted by Parliament in respect of subjects falling under List I (Union List), the existence of such Central enactments cannot be construed to override or render nugatory a law that the State is constitutionally empowered to make.

Any such interpretation, the Supreme Court cautioned, would effectively denude the States of their constitutionally conferred legislative competence and would be in direct contravention of the principles governing India's federal structure, as enshrined under Article 246 of the Constitution. The Court reiterated that the federal structure is a part of the basic structure doctrine, and any attempt to disturb the legislative equilibrium between the Centre and the States must be viewed with circumspection.

Further, the Court dismissed the argument of inconsistency or overlapping between the provisions contained under MPID Act and IBC to give primacy to central law – IBC under Article 254 of the Constitution, stating that both the Acts operate within their field drawing legislative support from their respective lists under Schedule VII of the Constitution. The Court added that MPID Act was enacted by the Maharashtra Government under the State List, therefore, moratorium declared under IBC would not preclude State Competent Authority from attaching the defaulter's property to facilitate recovery for victims of financial fraud.

With respect to question of *whether the properties of the Judgment Debtors and Garnishees attached under the provisions of the MPID Act, 1999 would be available for the execution of*

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decrees against Judgments Debtors in view of the provisions of the Moratorium under Section 14 of the IBC, the learned counsel appearing for NSEL and State of Maharashtra contented that any property of a Corporate Debtor which already stood attached under Section 4 of the MPID Act, prior to the coming into force of the moratorium under Section 14 of IBC would not be considered as property of the Corporate Debtor for the purpose of the Resolution Plan.

The Court clarified that upon the publication of order of attachment of properties by the State Government to protect the interest of the depositors, such properties and assets of the Financial Establishment (in this case 'NSEL') would vest in the Competent Authority appointed by the Government under the MPID Act, pending further orders from the Designated Court. The Designated Court will issue a notice to concerned persons to show cause as to why the order of attachment should not be made absolute. If no cause is shown, the Designate Court can pass the order making the order of attachment absolute and issue such directions for realisation of the assets attached and equitable distribution among the depositors of the money realised from out of the properties attached. Thus, the properties attached under MPID Act before the moratorium date are vested with the Competent Authority and aren't part of insolvency proceedings. These properties can be used for realisation as per the order of the Supreme Court.

Thus, IBC moratorium cannot obstruct the enforcement of statutory attachments that were made in the public interest prior to the commencement of insolvency proceedings. The Court emphasised that the IBC and the MPID Act operate in distinct and non-conflicting domains, and there is no inconsistency between them that would trigger Article 254 of the Constitution to grant overriding effect to the IBC for barring such attachments during the moratorium period.

1. WRIT PETITION (CIVIL) NO.995 OF 2019