

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-07-2024 AT 10:30 AM**

CP(IB) No.299/7/HDB/2018

AND

IA (IBC) 308/2024 & IA (IBC) 1394/2024 in IA (IBC) 308/2024 in

CP(IB) No.299/7/HDB/2018

u/s. 7 of IBC, 2016

IN THE MATTER OF:

Punjab National Bank

(erstwhile Oriental Bank of Commerce)

...Financial Creditor

AND

NCS Sugars Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 308/2024

Orders pronounced. In the result, the present application is CLOSED giving liberty to the Applicant to seek revival of the same after the disposal of the Writ Petition by the Hon'ble Supreme Court, if occasion arises.

Accordingly IA is disposed of.

IA (IBC) 1394/2024

No representation for the applicant. Matter passed over.

Matter called again. No representation for the applicant. Hence, matter adjourned to 15.07.2024.

Sd

MEMBER (T)

pavani

Sd

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

**IA (IB) 308 OF 2024
IN
CP (IB) No. 299/7/HDB/2018**

Under Section 60(5)(c) of the Insolvency and Bankruptcy Rules, 2016

Between:

Mr. K.Sivalingam

(Reg No. IBBI/IPA-001/IP-P01597/2018-19/12430)
Resolution Professional of M/s.NCS Sugars Limited

...Applicant

AND

1. The Competent Authority cum Deputy Collector,
Mumbai, 3rd Floor, Old Custom House, Shahid Bhagat
Singh Marg, Kalaghoda, Fort Mumbai – 400001
Also at:
2nd Floor, DD Building, Old Custom House,
S B Road, Mumbai – 400001
2. Chief Investigation Officer (SIT-NSEL),
Economic Offences Wing, 3rd Floor, New Building,
Police Commissionerate, Compound Opp Crawford Market,
Mumbai – 400 001.
3. M/s. National Spot Exchange Limited
Rep by its Authorized representative having office at
Malkani Chamber, 1st Floor, Nehru Road,
Vile Parle (east), Mumbai – 400 099.
4. N.Nageswara Rao,
Son of Late Narasimha Murthy,
Resident of H.No. 8-2-120/86/9A, Plot No.10,

Road No.2, Banjara Hills, Hyderabad – 500 034.

5. Kondreddy Venkata Siva Reddy
1-1322, Flat No. 4-1, Sri Nagar Colony,
DS Max Apartments, NH 44, Anantapur,
Anantapuramu, Andhra Pradesh – 515001.
6. Sub-Regisrar Office Kadiri,
4575-CF9, Court Road, Court Complex Kadiri,
Revenue Colony, Kadirim, Andhra Pradesh – 515591.
7. Committee of Creditors of NCS Sugars
Through Alchemist Asset Reconstruction Company Limited
(Assignee of Andhra Bank Exposure)
Having office at A-270, 1st and 2nd Floor, Defence Colony,
New Delhi – 110 024, India.
8. Jakkula Rama Rao
Residing at 1-7-7/1F, 203,
Kamala Nagar, Secunderabad, Hyderabad – 500062.

...Respondents

In the Matter of:

Punjab National Bank (Erstwhile Oriental Bank of Commerce)

...Financial Creditor

And

NCS Sugars Limited

...Corporate Debtor

DATE OF ORDER: 09.07.2024

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

PARTIES/COUNSELS APPEARANCE: -

- For the Applicant : Mr. Y.Suryanarayana, Counsel
- For the Respondent No.3 : Mr.Srinivas Iyengar, Sr.Counsel assisted by
Mr.Hirendernath, Counsel
- For the Respondent No.5 : Mr.Dammalapati Srinivas, Sr.Counsel
assisted by Ms.G.Pujitha, Counsel

PER: BENCH

ORDER

1. This Application has been filed by the Applicant Under Section 60(5)(c) of the Insolvency and Bankruptcy Rules, 2016 praying to:
 - a. Annul the sale of the said Land bearing Survey No. 343, 339-2 admeasuring 25.53 Acres at Village Obulareddepalle, Talupula Mandal, District Anantapur, Andhra Pradesh belonging to the Corporate Debtor illegally permitted by Respondent No.1 in favour of Respondent No.5.
 - b. Declare the Certificate of Sale of Property dated 30th November, 2023, Encumbrance created by Registration executed on 22nd December, 2023 and the sale deed, if any, executed in pursuance thereof in respect of the said Land bearing Survey No. 343, 339-2 admeasuring 25.53 Acres at Village Obulareddepalle, Talupula Mandal, District Anantapur, Andhra Pradesh issued by Respondent No.1, in favour of Respondent No.5 as being illegal and/or invalid and/or improper;

- c. Declare that the sale deed executed by and between the Respondents in respect of the said Land bearing Survey No.343, 339-2 admeasuring 25.53 Acres at Village Obulareddepalle, Talupula Mandal, District Anantapur as being illegal and/or invalid and/or improper;
- d. Order and grant a permanent injunction restraining the Respondents from acting upon and/or giving effect to, directly or indirectly, in any manner whatsoever, the Certificate of Sale of Property dated 30th November, 2023, including by further dealing with, selling, transferring, alienating or mortgaging the said Land;
- e. Direct the Respondent Nos. 1 and 5 to handover physical possession of the said Land to the Applicant; and
- f. Direct Respondent Nos. 1 and 2 de-attach the assets attached under MPID Act.

2. Gist of the Application:

- 2.1 It is stated that the Respondent No. 3 / NSEL is obligated to recover the money from the defaulters of the exchange. It has secured decrees/ arbitral awards against certain Members including the Corporate Debtor. NSEL had filed proceedings for execution of the decrees and awards against the defaulters across five States. Since the process was taking time, NSEL instituted a petition (WP (C) No. 995 of 2019) before Apex Court under Article 32 seeking a consolidation of all execution proceedings.

- 2.2 It is stated that the Apex Court, in exercise of powers under Article 142, vide Order dated May 4, 2022 constituted a Supreme Court Committee to deal with execution of the decrees/ arbitral awards. Orders of Hon'ble Supreme Court dated April 5, 2021, February 22, 2021 and May 5, 2022 would clearly establish that the Writ Petition and the consequent constitution of Hon'ble SCC pertains to execution of decrees/ arbitral award obtained by NSEL. Even the comprehensive report filed before Apex Court by SCC and the chart along with brief note filed by NSEL pursuant to Apex Court Order dated January 30, 2024 and February 20, 2024 clearly establish the domain of SCC and the nature of applications pending in relation proceedings of the SCC.
- 2.3 It is stated that at the time of filing of the Application by the Applicant, only the order passed by the SCC dated January, 8, 2024 was available with the Applicant and the same was also filed by the Applicant as Annexure-S at Page 702 to 709 the Application. Further, in Para 34 of the Application at Page 9, the Applicant had also stated that the Applicant was in the process of impugning the said order passed by the SCC before the Hon'ble Supreme Court. Therefore, it is submitted that there was no suppression of any fact by the Applicant before this Hon'ble Tribunal. The Hon'ble Supreme Court Order framing the issue is based on the challenges preferred by aggrieved against the order passed by the SCC dated January 8, 2024 as reflected in the last line of the question framed by the Hon'ble Supreme Court.
- 2.4 It is stated that the issue pending before the Hon'ble Supreme Court (on account of order of the SCC) is arising out of the execution

proceedings in respect of the arbitration awards passed in favour of the Respondent No. 3 herein. Whereas it is the independent action of selling the said Land by the Respondent No. 1 i.e., the Competent authority by virtue of the provisions under the MPID Act, 1999 which is under challenge by the Applicant under the instant Application. The Respondent No. 1 herein is not even a party before the Hon'ble Supreme Court. Therefore, the cause of action in the proceedings before the Hon'ble Supreme Court and this Hon'ble Tribunal is entirely different. Respondent No. 1 has been set ex-parte by this Hon'ble Tribunal in the instant Application. The subject attached land was sold by Respondent No. 1 on November 30, 2023, much prior to SCC Order dated January 8, 2024., which establishes that the actions undertaken by Respondent No. 1 are independent from the proceedings before SCC and hence adjudication for setting right the illegality committed by Respondent No.1 during moratorium is within the jurisdiction of this Hon'ble Tribunal. In fact, adjudication by Hon'ble NCLT in instant Application would be required to protect the object of the Code.

- 2.5 It is stated that as per Hon'ble Supreme Court order dated May 4, 2022, the domain of SCC for execution is irrespective of attachment under MPID / PMLA and hence it is an independent proceeding from the proceeding under MPID Act and hence the Supreme Court Order dated April 2, 2024 arising out of proceedings of SCC is limited to the execution of arbitral award.

- 2.6 It is stated that without any uncertainty, that the Hon'ble Supreme Court Order has framed issue with respect to availability of property attached under provisions of MPID Act, 1999 for execution of arbitral award in view of moratorium under Section 14 of the Code. Whereas, the issue before this Hon'ble Tribunal is whether attachment proceedings under MPID Act, 1999, which are civil proceedings in nature can continue and whether consequential proceedings including sale of attached assets, be affected once moratorium is imposed under IBC. Hence, the issue and cause of action is entirely distinct and independent from the issue and cause of action which the Apex Court is seized with.
- 2.7 It is averred that the action of selling the said Land by Respondent No.1 during moratorium is in teeth of the Supreme Court Order. It is also pertinent to note that the subject land is exclusively charged to lender(s) of Corporate Debtor even prior to attachment under MPID Act.
- 2.8 It is stated that the prayer in the present Application is to set aside sale which has been given effect by Respondent No.1 during imposition of moratorium. This Hon'ble Tribunal is vested with absolute jurisdiction to entertain the present application since the issue and cause of action of the present Application is completely different from the matter pending before Apex Court. It is further stated that this Hon'ble Tribunal had passed an Interim Order on February 20, 2024 to protect the assets of the Corporate Debtor and to uphold object of Code and ensure smooth conduct of CIRP.

2.9 It is stated that the present Application is for 25.53 Acres land of the Corporate Debtor out of aggregate 229 Acres land in Anantapur District which forms critical part of asset base of the Corporate Debtor. The Applicant has filed another IA (IA 924/2024) w.r.t balance land of Corporate Debtor in Anantapur District and the Tribunal had granted similar ad-interim relief by Order dated May 10, 2024. If the Hon'ble Tribunal does not entertain the instant Application and/or if Interim Order is vacated, the entire CIRP process will be vitiated as any third-party interest created over the said Land will lead to protracted litigation discouraging any prospective resolution applicant from showing interest in revival of the Corporate Debtor. It is submitted that during the moratorium, the assets of the Corporate Debtor have to be preserved and protected and any kind of transfer or alienation of properties during CIRP will put the entire CIRP into jeopardy rendering the CIRP proceedings otiose.

2.10 It is stated that this Adjudicating Authority exercises its jurisdiction to adjudicate present application to ensure a class of creditor (i.e., depositors) is not given preferential treatment over all other stakeholders and thus defeat objective of IBC w.r.t balancing interest of stakeholders.

3. **Counter filed by the Respondent No.3, inter-alia stating that:**

3.1 It is stated that land being Survey No. 343, 339-2, admeasuring 25.53 Acres at Village Obulareddepalle Taupula Mandal, District Anantapur,

Andhra Pradesh (“subject Land”) has already been sold by registered sale deed by Respondent No.1 to Respondent No.5 as admitted by the Applicant in its Application in para no.4 of the Application and further sale Certificate is also annexed to the Application which is at page no.24 and clear copy is at page no.28. Therefore, the reliefs sought under the present application has become infructuous and this Hon’ble Tribunal does not have jurisdiction to grant any reliefs that are sought by the Applicant.

3.2 It is stated that on 22.08.2013, NCS Sugars Ltd./ Corporate Debtor, was declared as a defaulter on Respondent No.3 Exchange Platform with an outstanding default amount of Rs.58,85,09,205.34/-, along with 23 other defaulters. Thereafter, in an arbitration proceeding before the Learned Sole Arbitrator Justice (Retd.) Arvind V.Savant, an arbitral award dated 26.03.2018 was passed in favour of Respondent No.3 against the Corporate Debtor for payment of Rs.58,50,09,205/- as principal with interest @ 18% p.a. w.e.f. 01.08.2013 till date of payment and costs of arbitration of INR Rs.1,66,77,025/-. A copy of the arbitral award dated 26.03.2018, passed in favour of Respondent No.3 is filed as **Annexure No.1**.

3.3 It is stated that the Hon’ble Supreme Court vide Order dated 04.05.2022, constituted an Hon’ble Committee, chaired by Hon’ble Justice Pradeep Nandrajog, retired CJI of Bombay High Court, for execution of various decrees/ orders/ arbitral awards, in regard to Respondent No.3, pending across various Courts in the country. The Hon’ble Supreme Court vide the said Order made under Article 142 of

the Constitution *inter alia* has clearly granted power to the SCC to sell the property of the judgment-debtors. Finally, the Supreme Court has observed that any person aggrieved by an order/ direction of the Supreme Court Committee shall be entitled to move the Hon'ble Supreme Court. A copy of the Order dated 04.05.2022 in W.P. (C) No. 995 of 2019 is filed as **Annexure No.2**.

- 3.4 It is stated that SCC vide order dated 08.01.2024 has decided the issue relating to the properties attached under MPID Act prior to the imposition of the moratorium under Section 14 of the Code. The SCC in paragraph 99 of the said Order has held that:

“...as regards properties which were attached under Section 4 MPID Act, 1999, prior to imposition of the respective dated of moratorium of the Judgment Debtor or Garnishee(s) under Section 14 or Section 96, Insolvency and Bankruptcy Code, 2016 2016 (as the case may be), the property having vested in the Competent Authority appointed by the State of Maharashtra, such property is not liable to be made part of insolvency proceedings and would be available to this Committee for realization.”

This has been admitted by the Applicant in paragraph 34 of the Application. A copy of the Order dated 08.01.2024 passed by the Hon'ble SCC is annexed as **Annexure 3**.

- 3.5 It is stated that in paragraph 34 of the Application, it is clearly admitted by the Applicant that there is an Order dated 08.01.2024 of the SCC and the Applicant is in the process of impugning the said Order, before the Hon'ble Supreme Court. Infact, Applicant has filed IA.No. 61511 of 2024 on 09.03.2024 in the Hon'ble Supreme Court. It is stated that the

Hon'ble Supreme Court vide order dated 02.04.2024 has recorded that Hon'ble Supreme will decide issues with regard to:

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

It is stated that as the Hon'ble Supreme Court would be deciding the aforesaid issues, hence this Hon'ble Tribunal does not have jurisdiction to the contention raised with respect to the aforesaid issues. A copy of the Hon'ble Supreme Court order dated 02.04.2024 is herewith annexed as **Annexure-4**.

3.6 The Respondent No.3 also filed para wise reply, stating that:

3.6.1. It is stated that with regard to the averments in paragraphs 8 to 11 of the Application, the contents therein are a matter of record, however this Respondent craves leave to and rely upon the interpretation of Admission order dated 29.06.2022 passed by this Tribunal read with Order dated 08.01.2024 passed by the Hon'ble SCC.

3.6.2. It is stated that with regard to the averments in paragraphs 22 to 25 of the Application, the contents therein are denied and the Applicant is put to strict proof of the same. It is stated that the SCC Order dated

08.01.2024 clearly states that the properties attached under the MPID Act, prior to the imposition of the moratorium under section 14 of the Code, would not be part of the imposition of the moratorium under section 14 of the Code, would not be part of the insolvency proceedings. The sale of the subject property by Respondent No.1 was taken under provisions of the MPID Act and since the subject property was attached much prior to CIRP, the imposition of the moratorium is inconsequential, and the sale of the said property is valid and legal. Furthermore, all the properties of the Corporate Debtor that were attached prior to the moratorium, will not be part of the insolvency proceedings and any sale of such properties as per the MPID Act shall be legal and valid.

3.6.3. It is stated that with regard to the averments in paragraphs 32 and 33 of the Application, it is stated that the contents therein are not relevant to the present matter. Further, the said interim orders in Writ Petition 356 of 2024 and Writ Petition 470 of 2024 have been obtained behind the back of this Respondent and this Respondent has already filed petitions to vacate the stay, which are pending before the respective Hon'ble High Courts.

3.6.4. It is stated that with regard to the averments in paragraph 34 of the Application, it is clearly admitted by the Applicant that there is an Order dated 08.01.2024 of the SCC which has held that the properties attached under the MPID Act, prior to the imposition of the moratorium under section 14 of the Code, would not be part of the insolvency proceedings. The Applicant has also admitted that he is in the process of impugning

the said Order, before the Hon'ble Supreme Court. Infact, Applicant has filed IA No. 61511 of 2024 on 09.03.2024 in the Hon'ble Supreme Court. It is submitted that the Hon'ble Supreme Court vide order dated 02.04.2024 has recorded Hon'ble Supreme court will decide issues with regards to i) whether the Secured creditors would have priority of interest over the assets attached under the Provisions of Prevention of Money Laundering Act, 2002, (PMLA) and Maharashtra Protection of Investors and Depositors Act, 1999 (MPID), by virtue of the Provisions of SARFAESI Act, 2002 and RDB Act, 1993; (In view of order dated 10.08.2023 passed by the Committee) and ii) whether the properties of the Judgment Debtors and Garnishees attached under the Provisions of MPID Act, 1999 would be available for the execution of the decrees against Judgment Debtors in view of the Provision of Moratorium under Section 14 of the IBC, 2016; TRA 28 In view of the Order dated 08.01.2024 passed by the Committee). It is stated that as the Hon'ble Supreme Court would be deciding the aforesaid issues, hence this Hon'ble Tribunal does not have jurisdiction to the contentions raised with respect to aforesaid issues. It is therefore submitted that the present Application is without cause and requires to be dismissed.

3.6.5. It is stated that with regard to the averments in paragraph 46 and 48 of the Application, the contents therein are denied. It has been held by Hon'ble Supreme Court in *KK Bhaskaran v. State of Tamilnadu*, followed in *New Horizon Sugar Mills* that TNPID Act (which is pari materia with MPID Act) and other similar depositor laws are enacted by the State legislature under List II (State List) of the Constitution. It

is submitted that in *New Horizon Sugar Mills Limited Vs Government of Pondicherry* (2012) 10 SCC 575, has considered the provisions incorporated in clause (1) of Article 254 of the Constitution and concluded that under clause (2) provides that where a law of State is in conflict with the law made by Parliament, the law so made by the State Legislature shall prevail in the State, if it has received the assent of the President. So far as MPID Act is concerned, it has also received assent of the President on 20.01.2000. Therefore, in view of the aforesaid law laid down by the Hon'ble Apex Court, MPID Act would prevail over any other Central law i.e., the law enacted by Parliament.

“55. As will be evident from the above clause (1) of Article 254 provides that when there are two laws enacted by Parliament and the State Legislature in which certain inconsistencies occur, then subject to the provisions of clause (2), the law made by Parliament would prevail and the law made by the State Legislature to the extent it is repugnant to the Central Law, shall be void. Clause (2), however, also provides that in a given situation where a law of a State is in conflict with the law made a Parliament, the law so made by the State Legislature shall, if it has received the assent of the President, prevail in that State. In the instant case, the Pondicherry Act had received the assent of the President attracting the provisions of Article 254 (2) of H the Constitution.”

It is further stated that Hon'ble SCC has passed an order dated 10.08.2023 read with 17.08.2023 decided the issue repugnancy between the State law and the Central laws. Copy of the order dated 10.08.2023 read with 17.08.2023 is annexed as **Annexure 5**. In accordance with the said Order, the assets/properties attached prior to the imposition of the moratorium will not be part of the insolvency proceedings.

3.6.6. It is stated that with regard to the averments in paragraph 53 of the Application, the contents therein are denied. It is stated that in view of

the SCC Order dated 08.01.2024, the Certificate of Sale of Property issued by Respondent No. 1 is regarding property that was attached as per the provisions of the MPID Act by the Competent Authority, vide gazette notification dated 11.04.2016. Such attachment was made prior to the imposition of the moratorium on 29.06.2022. Hence, the sale of the said property is valid and legal.

4. Counter filed by the Respondent No.5, inter-alia stating that:

4.1 It is stated that the State of Maharashtra is a competent authority is empowered under the MPID Act, 1999 to attach properties of any Financial Establishment defaulting on repayments, resulting in non-payment of depositors. The Corporate Debtor and other borrowers reportedly defaulted to the M/s. National Spot Exchange Limited wherein the Corporate Debtor was the trading member of the financial establishment NSEL and who have received monies from NSEL and have defaulted in payment to NSEL, leading to the Corporate Debtor's failure to repay its depositors.

4.2 It is stated that the Police, M.R.A. Marg Police Station, Mumbai registered FIR No.216/2013 on 30.09.2013 for IPC offences against several entities being the defaulted borrowers of the NSEL including the Corporate Debtor when the NSEL defaulted to pay its depositors. The Director of the Corporate Debtor company Mr. Narayanam Nageshwar Rao was arrested on 11.08.2014 by EOW, Mumbai in Crime No.89 of 2013. The Senior Inspector Economic Offences Wing has

lodged charge-sheet while invoking additionally the provisions of MPID Act, 1999 vide Case No.1/2014 on the file of the Hon'ble MPID Court at Maharashtra. A copy of Bail order dated 11.09.2014 in EOW C.R.NO.89 2013 is annexed as **Annexure A1**.

4.3 It is stated that the State of Maharashtra issued a Public Notification vide no. MIS2014/CR541/Pol 11 on 17.03.2016 for making attached properties absolute. Subsequently the Hon'ble MPID Court passed Roznama dated 17.02.2023 in Exh. 129 in MPID case No. 1 of 2014 in C.R.No.89 of 23 to serve notices to the list of properties attached, where no objections have been filed by the applicants/objectors till date even after service of notice of notification dated 11.04.2016. The attached properties of M/s. NCS Sugar Ltd. described in the notification dated 31.03.2017 were made absolute under the provisions of section 7(4) of the MPID Act. Vide order dated 03.04.2023, 19.04.2023 & 18.09.2023 passed by the Special Judge (MPID) City Civil & Sessions Court Bombay. A copy of the orders dated 03.04.2023, 19.04.2023 & 18.09.2023 is annexed as **Annexure-A2, A2(1), A2(2)**.

4.4 It is stated that the State of Maharashtra issued a Public Notification on 03.10.2023 in reference to Government of Maharashtra, home Department Notification No. MPI 2014 CR.541/Pol-11 dated 11.04.2016 and MIS.2014/CR. 541/POL-11 dated 22.06.2015 and attached various properties of the Corporate Debtor under section 4(1) of MPID Act vide notification issued in Anantapur in pursuant to the notification dated 11.04.2016 issued by the Maharashtra for attachment of properties U/s.4(1) of MPID Act, including the Corporate Debtor's

property in Anantapur stating that the mentioned properties pertaining to NCS group of Companies and individuals related to the company where above properties are falling under various Sub Registrar office under their jurisdiction and hence requesting to inform all respective offices for doing needful and will also remain attached and prohibited for transfer until further information.. A Copy of Public Notification is annexed as **Annexure-A3**.

4.5 It is stated that the Deputy Collector cum Competent Authority (NSEL) reportedly appointed the M/s. Quikr Realty Private Limited as its selling agent of the schedule property along with other's properties and had given paper publication of Notice of sale on 07.10.2023 for online Auction of the NCS Sugars Property i.e., Corporate Debtors property situated at Anantapur. As such the Competent Authority invited bids from the intending bidders along with the bid deposits. The copy of paper publication of Notice of sale is annexed herewith ad **Annexure-A4**.

4.6 It is stated that the Competent Authority issued sale certificate vide No MPID/NSEL/Sale Certificate/Anantapur NCS Sugars/2023/21481 dated 30.11.2023 after auction conducted on orders of MPID Court for attachment of Corporate Debtors property situated at Anantapur in view of permission granted by the Hon'ble MPID Court to the Competent Authority to sell the attached property of Corporate Debtors property situated at Anantapur by auction. The Respondent No.5 herein i.e., Mr. Kondreddy Venkata Siva Reddy has participated in the aforementioned bid and purchased the auctioned asset. The Competent Authority has

sold the auctioned asset belonging to the Corporate Debtor being plot of Agriculture land bearing Survey Numbers 343, 339/2 Total Extent admeasuring 25 Acres, 53 Cents situated at Obulreddipalli Village, Talupula mandal, Anantapur District, Andhra Pradesh. More fully set out in the statement of Encumbrance Certificate dated 23rd December, 2023, in favour of the 5th Respondent, Mr. Kondreddy Venkata Siva Reddy. The Copy of Sale Certificate is annexed as **Annexure-A5**.

4.7 It is stated that the Resolution Professional on behalf of the Corporate Debtor has filed an application vide IA. No. of 2024 before this Tribunal on 20.02.2024 seeking injunction relief towards the attached properties of the Corporate Debtor in restraining the Respondent No.1 i.e., Office of Deputy Collector Competent Authority (NSEL) & Respondent No.5 i.e., Mr. Kondreddy Venkat Reddy to not meddle deal with the properties of Corporate Debtor and the relief was granted by this Hon'ble Tribunal until 05.03.2024. Copy of this Hon'ble Tribunal order dated 20.02.2024 is annexed as **Annexure-A6**.

4.8 It is stated that the MPID Act, 1999 has received Presidential Assent on 20.01.2000 and while the IBC 2016 has an overriding provision contained in Section 238 so does the MPID, 1999 as provided for in Section 14. The validity of the MPID Act, 1999 and as to whether Central legislation would have an overriding effect has been settled by the Hon'ble Supreme Court in a catena of the decision law including *(2012) 10 SCC 599 State of Maharashtra v. Vijay C. Puljal & Ors*, and *(2012) 10 SCC 601 Sonal Hemant Joshi & Ors. v. State of Maharashtra & Ors.*; applying the law laid down in the decisions reported as *(2011)*

3 SCC 793 K.K. Baskaran v. State Represented by Its Secretary, Tamil Nadu & Ors., and (2012) 10 SCC 575 New Horizon Sugar Mills Lid. v. Government of Pondicherry Through Additional Secretary & Anr. Held that as per Article 254(2) of the Constitution of India, where a law of states is in conflict with the law made by the Parliament, the law so made by the state Legislature shall, if it has received the assent of the President, shall prevail in that state.

4.9 It is stated that the Hon'ble Supreme Court in the decision reported as *(2014) 8 SCC 319 Commercial Tax officer, Rajasthan vs Binani Cement* held that general law must yield to special law. The Supreme Court Committee has already in its order dated 10.08.2023 when dealing with the primacy of the MPID, 1999 over SARFAESI 2002 and RDB Act 1993 held that when applying the General Vs Special Legislation test, the committee finds that the assets of the Corporate Debtor have been attached under the provisions of the MPID Act, 1999 or the PMLA, 2002 both of which are special legislation in the field.

4.10 It is stated that the Supreme Court Committee in the matter of *NSEL Vs NCS Sugars Ltd & Ors.*, at Para 99 holds that the property of the Corporate Debtor attached under the provisions of the MPID, 1999 will continue to so remain attached and would be available to the Committee for disposal in terms of order dated 04.05.2022 passed by the Hon'ble Supreme Court in WP 449/2019 and the moratorium under Section 14 or Section 96, IBC 2016, as the case may be, the property having vested in the Competent Authority appointed by the State of Maharashtra, such property is not liable to be made part of insolvency proceedings and

shall have no effect on the enforcement of the attachment over such assets and would be available to this Committee for realization in terms of the order of the Hon'ble Supreme Court dated 04.05.2023 passed in Writ Petition (C) 99 of 2019. As regards property which are sought to be attached after the date of commencement of moratorium (if any) or assets of the Judgement Debtor/Garnishee/Corporate Debtor which have not been attached under the Provisions of the MPID Act, the Decree Holder would be entitled to pursue its claim as a Financial Creditor / Secured Financial Creditor, as the case may be in such individual cases under the provisions of the IBC, 2016. The copy of order passed by Supreme Court Committee is annexed herewith as **Annexure-A7**.

4.11 It is stated that the nature of the attachment under Section 4, MPID, 1999, the vesting of the assets in the Competent Authority prior to imposition of the moratorium the Respondent No.5 also relies upon, for persuasive value on various orders passed by the Ld. MPID Court being:

- a. Order dated 11.05.2023 passed by the Court of Special Judge, MPID in Misc. Appl No. 692/2022 in MPID Case No.1/2014 in *State of Maharashtra v. The LOIL Group of Companies and M/s. Lakshmi Energy and Foods Ltd.* The copy of order dated 11.05.2023 is annexed herewith as **Annexure-A8**.
- b. Order dated 02.08.2023 passed by the Court of Special Judge, MPID in Misc Appl No. 1560/22 in MPID special Case 1/14 in *The State of Maharashtra (EOW) v. NCS. Sugar Limited, Narayanam Nageswara Rao*.
- c. Orders dated 04.11.2023 passed in Order below Application Exh 11 in MPID Special Case no. 1 of 2014 dismissing applications filed dated 04.11.2023

passed by the Ld. MPID Court dismissing applications preferred by Mr. Surender Gupta, Mrs. Sheetal Gupta, Mrs. Kanta Gupta (as proprietor of Dullison Cereals) seeking stay of proceedings on the ground of the moratorium under Section 95. The copy of order dated 04.11.2023 is annexed herewith as **Annexure-A9.**

the Hon'ble Supreme Court Committee records that the judgments of the Learned MPID Court are being considered as having persuasive value, especially given the fact that such Court is the Designated Court under Section 6 of the MPID, 1999 and statutorily empowered with giving effect to the provisions of the MPID, 1999.

4.12 It is stated that in the above proceedings before the Hon'ble Supreme Court Committee in W.P.(C) NO.995/2019 in the matter of *NSEL Vs NCS Sugars Ltd & Ors* vide its order dated 08.01.2024, despite the Resolution Professional having been provided with the liberty to file objections to the execution proceedings mandated by the Supreme Court Committee within four weeks from the date of order, the Resolution professional chose not to object to the execution proceedings by fearing the adverse repercussions and had approached the NCLT Hyderabad Bench for the relief as a Bench hunting and forum shopping. It is humbly submitted that the Corporate Debtor by suppressing the aforesaid material facts pertaining to the attachment proceedings and the proceedings took place before Supreme Court Committee thereby misleading this Hon'ble Tribunal has played fraud upon this Hon'ble tribunal by approaching this Hon'ble tribunal with unclean hands and obtained an interim relief which is a sheer abuse of the process of law.

4.13 It is stated that the NCLT has no jurisdiction to examine legality or validity of action taken under MPID Act and it is only the Designated Court constituted under Section 6 of the MPID Act that will have exclusive jurisdiction to deal with the same. Therefore, the impugned order passed by the NCLT is without jurisdiction. The statement of law which is applicable to the present case as found in paragraphs 40 & 41 in the Judgment of *Embassy Property Developments Pvt. Ltd. vs State of Karnataka & Ors. 2019 SCC Online SC 1542*

“40. If NCLT has been conferred with jurisdiction to decide all types of claims to property of the corporate debtor, Section 18(ivi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by court or other authority. This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(3).

"41 Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

“Emphasis Supplied”

4.14 It is stated that in the similar circumstances of a case pertaining to MPID Court, the apex Court went on to hold that the designated judge in the High Court of Bombay under the Maharashtra Protection of Interests of Depositors (in Financial Establishment) Act, 1999 would be more

appropriate forum. In *Ashita Nilesh Patel and Anr Vs. Deputy Secretary, Home Department and Ors.* Supreme Court held that:

The High Court has, inter alia, rejected the petition filed by the petitioners on the principle of forum conveniens holding that the designated Judge in the High Court of Bombay under the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 would be more appropriate forum. We do not see any reason to interfere with this order. It is submitted that the petitioners have raised the issue of jurisdiction before the High Court of Gujarat viz the petitioners are not the financial establishment. Since the notifications dated 12.03.2015 and 22.06.2015 Issued by the Government of Maharashtra are challenged on this ground, it would be open to the petitioners to raise this issue before the High Court of Bombay.

“Emphasis Supplied”

5. On an application by RP in IA No.308/2024, this Tribunal after having heard the learned Counsel for the RP passed the following ad-interim order on 20.02.2024:
 - (a) A temporary injunction restraining the 1st Respondent from acting upon and/or giving effect to, directly or indirectly, in any manner whatsoever. from auctioning and/or selling the assets of the Corporate Debtor, which have been attached under the provisions of the MPID Act, till 05.03.2024, is hereby granted, till 05.03.2024.
 - (b) A temporary injunction restraining the Respondents from creating any third-party interest over the said Land bearing Survey No. 343, 339-2 admeasuring 25.53 Acres at Village Obularedepalle, Talupula Mandal, District Anantapur, is hereby granted, till 05.03.2024.

6. Subsequently, Respondent no.3&5 having made their appearances through their counsels, have submitted that the main issue involved in

this case, namely, “whether the order of attachment of the part of the properties of the corporate debtor by the competent Authority under the provisions of Maharashtra Protection of Interest of Depositors Act, 1999 and the subsequent sale of the property attached, in favour of the 5th Respondent is hit by moratorium which is in vogue having been passed by this Tribunal, under Section 14 of IBC”, is squarely covered in the Writ Petition No.995/2019 filed by National Spot Exchange Limited which is pending before Hon’ble Supreme Court of India, the order dated 20.02.2024 passed against the 5th Respondent is liable to be vacated forthwith.

7. Pursuant thereto this Tribunal has heard the submissions of the learned counsels for both sides:

Mr.Y.Suryanarayana, Ld.Counsel for Applicant/RP contended that the issues framed by the Hon’ble Supreme Court has no bearing on the issue involved in the present proceedings. According to the Ld.Counsel, the issues framed by the Hon’ble Supreme Court are in respect of remedies available for execution of the decree against the Judgment Debtor during the period of moratorium imposed under Section 14 of IBC, and not in respect of an order of attachment made by the competent authority under the MPID Act during the moratorium. Ld.Counsel further submits that even assuming that the issue before this Tribunal and the one covered by the order of this Hon’ble Supreme Court referred supra being same yet, since the issues are yet to be answered by the Hon’ble Supreme Court, there is no bar for this Tribunal to proceed with. Ld.Counsel also submits that the cause of action for this

Application and the one relating to the proceedings before Hon'ble Supreme Court being different, this Tribunal can still make enquiry on the aspect whether or not Section 14 of the I&B Code, 2016 applies to the order of attachment made by the competent authority MPID Act.

Mr.Srinivas Iyengar and Mr.Dammalapati Srinivas Learned Sr.Counsels for R.3 and 5 have submitted, that the issue framed by the Hon'ble Supreme Court squarely takes in its fold the contentions now raised by the Applicant herein as regards the enforcement of moratorium imposed under section 14 of the Insolvency and Bankruptcy Code, as against the order of attachment passed under MPID Act and affected during the moratorium besides the contention that the provisions of Insolvency and Bankruptcy Code, 2016 would prevail over the MPID Act.

8. Having heard the learned counsels for both sides, and on perusal of the record placed before us, at the outset, we intent to state that while granting ad-interim order dated 20.02.2024 in favour of 5th Respondent, we have taken a view that the provisions of IBC would prevail over the provisions of MPID Act, by placing reliance on the ruling of Hon'ble Supreme Court of India, in re Anand Rao Korada v. Varsha Fabrics Pvt. Ltd., (2020) 14 SCC 198, Hon'ble Supreme Court wherein it was held that:

“Section 14 provides that on the insolvency commencement date, the Adjudicating Authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or “proceedings” against the corporate debtor, including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or any other authority. [Section 14](#) reads as follows :

“14. Moratorium. – (1) Subject to provisions of subsections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of subsection (1) shall not apply to —

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

7. Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows :

“238. Provisions of this Code to override other laws. – The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

8. *Section 231 of the IBC bars the jurisdiction of civil courts in respect of any matter in which the Adjudicating Authority i.e. the NCLT or the NCLAT is empowered by the Code to pass any Order. Section 231 is set out hereinbelow for ready reference :*

“231. Bar of jurisdiction. – No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”

9. *In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4–Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.*

If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders.

As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.”

- *Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd & others, (2021) 9 SCC 657, the applicant has relied on paras 71 & 80:*

“71. Perusal of the SOR would reveal, that one of the prime objects of I&B Code was to provide for implementation of insolvency resolution process in a time bound manner for maximisation of value of assets in order to balance the interests of all stakeholders. However, it was noticed, that in some cases there was extensive litigation causing undue delays resultantly hampering the value maximisation. It was also found necessary to ensure, that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain

provisions of the I&B Code. Clause (f) of para 3 of the SOR of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 would amply make it clear, that the legislative intent in amending subsection (1) of Section 31 of I&B Code was to clarify, that the resolution plan approved by the Adjudicating Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities.”

“80. The faulty drafting in the provision was capable of being interpreted, that the legislative embargo imposed on a person from procreating and giving birth to a third child in the context of holding the office of a member of a municipality remained in operation for a period of one year only and thereafter it was lifted. It could be interpreted, that on the date on which [Section 13A](#) was brought on the statute book i.e. dated 5.4.1994, even if a person became disqualified, the disqualification ceased to operate and he became qualified once again to contest the election and hold the office of member of a municipality on the expiry of one year from 5.4.1994. After realizing the error, [Section 13A](#) came to be amended as under:

“2. In the proviso to clause (c) of subsection (1) of [Section 13A](#) of the Haryana Municipal Act, 1973 (hereinafter called the principal Act), for the word ‘after’, the word ‘upto’ shall be substituted.” [emphasis supplied]”

9. However, the committee constituted by Hon’ble Supreme Court vide order in WP No.995/2019 dated 04.05.2022, in its report dated 08.01.2024 opined as below:

“An issue has arisen for determination before this Committee as to whether properties of the Judgment Debtor and Garnishee(s) attached under the provisions of the Maharashtra Protection of Depositors Act, 1999 (MPID, 1999) would be available to this Committee for execution of decrees against the Judgment Debtor in terms of order dated 04.05.2022 passed by the Hon'ble Supreme Court in Writ Petition 775/2019, in view of the commencement of moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016) on account of the initiation of insolvency proceedings against the Judgment Debtors. A similar issue has arisen

with regard to the commencement of the interim moratorium under Section 96 under the provisions of the IBC, 2016 with regard to the Garnishee(s) in their capacity as personal guarantors of a Corporate Debtor”.

10. Thus, it is clear that the issue whether the order of moratorium passed under Section 14 of IBC will over ride provisions of MPID Act, which is the main issue in this application, is being examined by the committee, as per the directions of the Hon’ble Supreme Court of India. It is pertinent to not that Applicant/NCS Sugars Ltd, being party to the above proceedings before Hon’ble Supreme Court of India, has not placed the copy of the order and committee report before us at the time of passing the Interim order.
11. Therefore, in the light of our discussion as above we are of the considered view that our order of ‘status quo’ granted on 20.02.2024 as regards the alienation of properties purchased by the 5th respondent under the impugned sale by the Competent Authority under MDIP Act, is put on ‘**hold**’ till such time the Hon’ble Supreme Court of India, decides the point framed in above referred Writ petition however, by observing that **alienation(s) if any made by the respondents from the date of filing of this Application till disposal of the above Writ Petition by Hon’ble Supreme Court, will be subject to the final outcome of the Writ Petition No.995/2019. The respondents shall accordingly inform the prospective purchasers in writing before making alienations if any.**

12. Therefore, the present application is CLOSED giving liberty to the Applicant to seek revival of the same after the disposal of the Writ Petition by the Hon'ble Supreme Court, if occasion arises.
13. The IA is disposed of accordingly.

SD

Charan Singh
Member (Technical)

SD

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher/pavani