

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**CA No. 47/2019
In
CP (IB) No. 161/Chd/Hry/2018
(Admitted Matter)**

**Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:-

Allahabad Bank

...Financial Creditor

Vs.

Skyhigh Infraland
Private Limited

...Corporate Debtor

And in the matter of CA No. 47/2019:-

Jalesh Kumar Grover,
Resolution Professional of
Skyhigh Infraland Pvt. Ltd.

...Applicant-Resolution Professional

Vs.

The Collector and
District Magistrate,
Mumbai & others

...Respondents

Order delivered on: 06.10.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:-

For the applicant-Resolution Professional : 1). Mr. Manish Jain, Advocate
2). Mr. Jalesh Kumar Grover,
applicant-Resolution
Professional in person.

For the respondent No. 2 : Mr. Akhilesh S. Dubey,
Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No. 47/2019

1. This application has been filed by the Resolution Professional of M/s Skyhigh Infraland Pvt. Ltd. against the Collector and District Magistrate, Mumbai and two others under Section 60(5) of the IBC Code, 2016 seeking the following reliefs:-

- “i. Direct the Respondent to forthwith release/de-attach all the assets/properties of the Corporate Debtor attached by it in terms of the notification dated 28.08.2014;*
- ii. Direct the Respondent to co-operate with the RP and supply him with all the necessary documents and information pertaining to the property of the Corporate Debtor for smooth conduct of CIRP;*
- iii. Direct the Respondent to file its claim with the RP;*
- iv. Pass any other order(s) as this Hon’ble Tribunal may deem fit in the given facts of the present case.”*

2. Heard Mr. Manish Jain, the learned counsel for the applicant-Resolution Professional and Mr. Akhilesh S. Dubey, the learned counsel for respondent No. 2 and perused the pleadings on record.

3. It is stated that CP (IB) No. 161/Chd/Hry/2018 seeking initiation of CIRP against the corporate debtor was admitted on 29.10.2018. The process has been commenced on 02.11.2018 when an Interim Resolution Professional was appointed. On coming to know that the second respondent-Deputy Collector and Competent Authority (NSEL), Mumbai attached some of the properties of the corporate debtor, vide Annexure A-4 dated 03.11.2018 the applicant-RP informed to the respondent No. 2 about the initiation of the Insolvency Resolution Process against the corporate debtor and requested to de-attach all the properties of the corporate debtor. But the second respondent vide Annexure A-6 letter dated 12.11.2018 stated that the properties of the corporate debtor were attached by

the Government of Maharashtra vide notification dated 28.08.2014 under the provisions of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 (MPID Act) and hence, w.e.f. the said date the property, legally, does not belong to the corporate debtor and the said attachment was made absolute vide orders dated 06.02.2018 and accordingly, rejected the request of the applicant-Resolution Professional. Hence, the CA.

4. Mr. Manish Jain, the learned counsel appearing for the applicant-Resolution Professional while drawing our attention to Section 238 of the IBC, 2016 submits that the Code is having overriding effect against all other laws including the MPID Act under which the second respondent is claiming rights over the property of the corporate debtor.

5. The learned counsel for the applicant-Resolution Professional placed reliance on the following decisions in support of his submission:

- i. *Manish Kumar v. Union of India & Anr.*, 2021 SCC OnLine SC 30;
- ii. *Bank of India v. Tirupati Infraprojects Pvt. Ltd.* CA # 1312(PB)/2018 In (IB)-104(PB)/2017; NCLT, New Delhi, Special Bench;
- iii. *SREI Infrastructure Finance Limited v. Sterling SEZ and Infrastructure Limited*, MA # 1280/2018 In CP # 405/2018; NCLT, Mumbai Bench;
- iv. *Leo Edibles & Fats Ltd. v. Tax Recovery Officer (Central), Hyderabad*, [2018] 99 taxmann.com 226 (Andhra Pradesh and Telangana);
- v. *Raman Ispat Private Limited v. Executive Engineer Paschimanchal Vidyut Vitran Nigam Limited & Ors.*, CA # 88/ALD/2018 In CP # (IB) 23/ALD/201; NCLAT, Allahabad Bench at Allahabad; and
- vi. *Surendra Kumar Joshi v. REI Agro Limited*, CA (IB) # 453/KB/2018 In CP (IB) # 73/KB/2017; NCLT, Kolkata Bench;

6. On the other hand, Mr. Akhilesh S. Dubey, the learned counsel appearing for the second respondent submitted that the CA itself not maintainable as the applicant can challenge the attachment made under the

MPID Act only before the designated court established under the said Act but not before this Tribunal and this Tribunal has no jurisdiction to entertain the instant C.A. He further submitted that even otherwise the provisions of IBC, 2016 have no overriding affect on the provisions of the MPID Act.

7. The learned counsel for the second respondent further placed reliance on the following decisions in support of his submissions:-

- i. *Ashita Nilesh Patel and another v. Deputy Secretary – Home Department & others, C/SCA/18637/2015;*
- ii. *Ashita Nilesh Patel and another v. Deputy Secretary – Home Department & others, SLP No. 10626-10627 of 2019, dated 17.04.2017, Supreme Court;*
- iii. *White Water Foods Pvt. Ltd. & another v. State of Maharashtra & others, CWP No. 11189 of 2014, dated 25.10.2017, Punjab and Haryana High Court;*
- iv. *Embassy Property Developments Pvt. Ltd. v. 2019 SCCOnline SC 1542;*
- v. *K.K. Baskaran v. State Represented by its Secretary, Tamil Nadu and others; (2011) 3 SCC 793;*
- vi. *Vishal N. Kalsaria v. Bank of India and others. (2016) 3 SCC 762;*
- vii. *Central Bank of India v. State of Kerala and others, (2009) 4 SCC 94;*
- viii. *The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999;*
- ix. *Ashita Nilesh Patel and another v. Deputy Secretary, Home Department and others, Special Leave to Appeal (C) No(s). 10626-10627/2017, dated 17.04.2017, Supreme Court; and*
- x. *Ashita Nilesh Patel & another v. Deputy Secretary – Home Department & others, C/SCA/18637/2015*

8. In the backdrop of the above submissions the issues fell for our consideration in this CA are:-

- (i) Whether this Tribunal has jurisdiction to entertain the instant CA?

- (ii) Whether the attachment of the properties of the corporate debtor made under the provisions of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 (MPID Act) vide notification dated 28.08.2014 i.e. prior to the date of initiation of CIRP against the corporate debtor is liable to be de-attached in view of the overriding affect under Section 238 and other provisions of IBC 2016?

9. Before we consider the various decisions on the subject, it is relevant to refer some of the provisions of IBC 2016:-

“Section 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.

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“32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

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

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

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

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

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

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

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

10. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank & another, 2018 (1) SCC 407***, while dealing with the overriding effect of the Code under Section 238 of IBC with reference to Maharashtra Relief Undertakings (Special Provisions) Act, 1958 observed as under:-

35. *On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-*

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.”(Emphasis Supplied)”

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50. *The case law referred to above, therefore, yields the following propositions:*

51.1. *Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.*

51.2. *In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.*

51.3. *The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254 speaks of repugnancy not merely of a statute as a whole but also “any provision” thereof.*

51.4. *Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy – care should be taken to see whether the two do not really operate in different fields qua different subject matters.*

51.5. *Repugnancy must exist in fact and not depend upon a mere possibility.*

51.6. *Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.*

51.7. *Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.*

51.8. *A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says “do” and the other says “don’t”. Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.*

51.9. *Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.*

51.10. *The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso.*

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60. *It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:*

“Sec. 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.”*

It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.

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65. *The appeals, accordingly, stand dismissed. There shall, however, be no order as to costs.”*

11. The Hon’ble NCLT New Delhi Bench in ***Bank of India vs. Tirupati Infracorps Pvt. Ltd., (IB)-104(PB)/2017 dated 01.02.2019*** examined the overriding effect of the IBC with reference to the very same Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 i.e. the MPID Act itself, as under:-

“8. *The Resolution Professional asserted that in the annual report of M/s. Mohan India Limited, there is no subsidiary except M/s. Mohan Infracorps Limited nor there is any joint-venture/associate company. It has been accepted that Mohan India Ltd. and Mohan Infracorps Pvt. Ltd. are not shareholders of the Corporate Debtor.*

9. *Apart from the lack of connection between the Corporate Debtor and Mohan India Ltd., there is moratorium operating under Section 14 of the Code for the period of Corporate Insolvency Resolution Process. It attracts prohibition on continuation of pending suits or proceedings against the Corporate Debtor in any court of law, arbitration, tribunal, panel or other authority. It has been submitted that non obstante clause in Section 238 of the IBC provide for over-riding effect on the provisions of the Code over all other laws in the country including the provisions of the MPID Act. In that regard, reliance has been placed on the judgment rendered by Hon’ble Supreme Court Innoventive Industries Ltd. v. ICICI Bank Ltd. & anr. (2018) 1 SCC 407. Despite the knowledge of moratorium period the respondent issued a notification dated 19.10.2018 (A-3) which attracts punishment provided by Section 74 of the Code.*

10. *Reply to the application has been filed by non-applicant State of Maharashtra. In the preliminary objections the maintainability of the application filed by the Resolution Professional is doubted on the ground that the NCLT has no jurisdiction. However attachment order has been passed under the Provisions of MPID Act, and it would amount to assert the power of the designated MPID code constituted under the Act. Disclosing the facts, it has been asserted that in September, 2013 an offence was registered by the Economic Offence Wing of Mumbai Police against the National Spot Exchange Limited (CR 89 of 2013) which included the directors and members under various provisions of the IPC and Section 3 & 4 of the MPID Act. It is however conceded that the notification dated*

19.10.2018 attaching the bank accounts was issued. Reliance has been placed on Section 6(2) of the MPID Act to assert that no court other than the designated court could exercise jurisdiction over the attached property. Reference has also been to Seventh Schedule, 1. Union List, 2. State List and 3 Concurrent List to submit that these three lists have distribution of subjects on frame laws. The MPID Act, 1999 is a State enactment connected to heading 1 of the public order of the State List of the Seventh item 9 (the Bankruptcy and Insolvency) of the concurrent list. It is sought to be argued that the Code can over-ride a prior act enacted by the State under the concurrent list but cannot over-ride a statute enacted under the State list. Therefore, moratorium imposed under Section 14 of the Code would not have any application in criminal proceedings instituted in the year 2013 nor Section 74 would not have any such application.

11. Having heard learned counsel for the parties, we find that the issue whether a State Act is to give way to the Insolvency and Bankruptcy Code passed by the Parliament is no longer *res integra*. The question arose before Hon'ble the Supreme Court in the case of *Innoventive Industries Ltd. v. ICICI Bank Ltd. & anr.* (2018) 1 SCC 407 in that case also the conflict between the provisions of Maharashtra Relief Undertaking (State Provisions) Act, 1958 and Insolvency and Bankruptcy Code, 2016 came to the fore-front in the context of imposition of moratorium. The view of Hon'ble the Supreme Court is discernible from the head notes prepared by the learned Editors of the reports and the same read as under:-

"A. Insolvency and Bankruptcy Code, 2016 – Maharashtra Relief Undertakings (Special Provisions) Act, 1958 – Repugnancy with 2016 and Effect of – Moratorium given to company under the Maharashtra Act, as in the present case where, by Notifications dt. 22-7-2015 and 18-7-2016 under Maharashtra Act, liabilities of the appellant were temporarily suspended for a period of one year – Irrelevance of, for stalling of insolvency proceedings against such company under the 2016 Insolvency Code

- Held, the Insolvency Code is a Parliamentary law that is an exhaustive code on the subject – matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the Seventh Schedule – Further, earlier State Law (Maharashtra Act) is repugnant to the later Parliamentary enactment (Insolvency Code) as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Ss. 13 and 14 of 2016 Code takes place under S. 4 of the Maharashtra Act – Thus held, unless the Maharashtra Act is out of the way, the possible to go ahead with the Insolvency resolution process outlined in the 2016 Code – Further, the later non obstante clause of the Parliamentary enactment would also prevail over the limited non obstante clause contained in S. 4 of the Maharashtra Act – Therefore, Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the 2016 Insolvency Code – Constitution of India – Art. 254 and Entry 9, List III of Seventh Schedule – Maharashtra Relief Undertakings (Special Provisions) Act, 1958 (96 of 1958), S. 4

B. Constitution of India – Art. 254 – Laws made Parliament and Legislature of States – when are repugnant – Doctrine of pith and substance – Applicability of, for such determination – Laws made by

Parliament – When prevail over State Laws – Parliamentary Law which is a complete code – Principles for such a situation, clarified – Repugnancy must exist in fact and not depend upon a mere possibility and inconsistency between the competing Acts must be clear and direct and of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey one.

without disobeying the other – Further, even in absence of a direct conflict, where the Parliamentary law is intended to be a complete, exhaustive or exclusive code, a State law so long as it is referable to the same subject – matter as the Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognizes other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy

C. Constitution of India – Art. 254 – Repugnant State law – when prevails over Parliamentary law – Effect of subsequent Parliamentary law

-Repugnant legislation by the State is void only to the extent of the repugnancy – Further, when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Art. 254(2), and Presidential assent is received for State legislation, the State legislation prevails over Parliamentary legislation or an existing law within that State – However, here also the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Art. 254(2) proviso

D. Constitution of India – Art. 254 – Laws made by Parliament and legislature of State – When, even in the absence of a direct conflict, are repugnant – Test of implied repeal – Applicability of – Held, the test applied in such cases is based on the principles on which the rule of implied repeal rests, namely, that if the subject – matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation

E. Constitution of India – Art. 254 – Onus to prove repugnancy – Held, since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity

F. Insolvency and Bankruptcy, 2016 – Ss. 7 and 9 – Appeal against the orders of NCLAT by erstwhile Directors of the Company – Non-maintainability of – Held, once an insolvency professional is appointed to manage the Company, the erstwhile Directors who are no longer in management cannot maintain an appeal on behalf of the Company.”

12. *It has also been concluded by citing the provisions of Section 238 of the Code that the later non obstante clause of Parliamentary enactment would prevail over the limited non obstante clause contained in Section 4 of the Maharashtra Relief Undertaking Act (supra).*

13. *It is thus evident that Section 14 of the Code would continue to apply and the moratorium issued by this Court would govern the affairs of the Corporate Debtor. The repugnancy between the provisions of Section 14*

and those of the MPID, have to be resolved by upholding the provisions of the Code. The MPID Act must give way to the Parliamentary Statute.

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15. As a sequel to the above discussion, this application is allowed. The notification dated 19.10.2018 is hereby set aside to the extent the Bank Accounts of the Corporate Debtor has been attached and 50 % of the shares in the Radisson Blue Hotel have further been attached. The attachment from the bank account as well as from the Radisson Blue Hotel is deemed to have come to an end on 01.02.2019.”

12. In spite of the clear dicta of the Hon'ble Apex Court in ***Innoventive Industries Ltd. (supra)*** with reference to the State Act of the same State, the Hon'ble High Court of Judicature at Bombay in ***WP No. 3396 of 2019 with Civil Application No. 29 of 2020 in the State of Maharashtra vs. Anil Kohil, RP for Dunar Foods Ltd.*** in its judgment dated 09.11.2020 observed as under:-

“1. In the present case a very interesting question arises as to whether action taken under the provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as "MPID Act") against a "Financial Establishment", as contemplated under the MPID Act, can be challenged not before the Designated Court under the MPID Act but before the National Company Law Tribunal (hereinafter referred to as "NCLT") by resorting to the remedy provided under the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I.B. Code"). On the application of a "Financial Creditor" as contemplated under I.B. Code, an Interim Resolution Professional (hereinafter referred as "IRP") is appointed by NCLT by exercising power under section 7 of the I.B. Code against the Corporate Debtor as contemplated under I.B. Code, which is also the Financial Establishment under the MPID Act and de-freezing of the corporate Debtor's account attached in MPID proceedings is ordered. This order is the subject matter of challenge in this petition.

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26. The learned counsel of the Respondent relied on judgments of Hon'ble Supreme Court in *West U.P. Sugar Mills Association (supra)*, *M.Karunanidhi (supra)* and *Innoventive Industries Ltd. (supra)*. All these judgments are on the issue of repugnancy. In paragraph 50 of *Innoventive Industries Ltd. (supra)*, the following propositions are set out.

"50. The case law referred to above, therefore, yields the following propositions:

i) *Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.*

ii) *In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.*

iii) *The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254 speaks of repugnancy not merely of a statute as a whole but also "any provision" thereof.*

iv) *Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy - care should be taken to see whether the two do not really operate in different fields qua different subject matters.*

v) *Repugnancy must exist in fact and not depend upon a mere possibility.*

vi) *Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.*

vii) *Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary*

statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."

The above position of law is well settled and there cannot be any dispute about the same. However, in this particular case it is not even argued before us by the learned counsel for the Respondent that the provisions of MPID Act are repugnant with the provisions of I.B. Code.

(Emphasis added)

He only raised three contentions: (i) in view of availability of alternate remedy under Section 61 of I.B. Code of Appeal to be preferred to the NCLAT, the Writ Petition is not maintainable, (ii) in view of Section 32-A of the I.B. Code the proceedings under the MPID Act shall cease and cannot be proceeded with and (iii) Alternatively to submissions at Sr. Nos.(i) and (ii), he submitted that, as IRP was appointed by NCLT on 22.12.2017 and the attachment of the said account took place subsequently by issuance of notification dated 19.10.2018 issued under Section 4 of the MPID Act, although the attachment of other properties which are subject matter of section 4 notification issued earlier may be permissible, at least, the attachment of the said account is totally impermissible.

27. We have already made it clear that in the present Writ Petition we are only examining the aspect regarding the forum in which the action taken under the MPID Act can be challenged and not the merits of the case. In fact, the Respondent can file objections to the attachment under Section 7 of the MPID Act before the Designated Court under the MPID Act and can point out the provisions of the I.B. Code to the Designated Court. The statement of law which is applicable to the present case as found in paragraphs 40 and 41 in the judgment of Embassy Property Developments Pvt. Ltd. (supra) is, at the cost of repetition, again quoted hereinbelow:

"40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority.

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

Thus it is clear that the appropriate forum to challenge the attachment of the account of the Respondent is the Designated Court under MPID Act where the Respondent can raise all contentions on merits and also can point out the provisions of I.B. Code and the effect of the same on the steps taken under the MPID Act. It will be for the MPID Court to consider the interplay of the provisions of the MPID Act and the I.B. Code and rule on the matter. Such ruling would obviously include even the aspect of prior appointment of IRP by NCLT and subsequent attachment of the said account by notification dated 19.10.2018 issued under Section 4 of the MPID Act.

28. The Respondents have also relied on the judgment of the Designated Court under the MPID Act at Bombay City Civil and Sessions Court, Mumbai in Roofit Industries Limited Vs. The State of Maharashtra in MPID Special Case No. 34 of 2004. A perusal of said order dated 18.08.2017 passed by the Special Judge, MPID Act clearly shows that provisions of I.B. Code were pointed out to the Court and after giving hearing to Competent Authority, depositors, objectors and others, Competent Authority and EOW were directed to hand over certain properties to the Applicant in the said case who claims to be an Interim Resolution Professional appointed by the NCLT for Roofit Industries Ltd. The operative portion of said order dated 18.08.2017 is reproduced herein below:-

"ORDER

1. Application is allowed.

2. Competent Authority and EOW is directed to hand over to applicant/intervener the custody and charge of the immovable properties mentioned at Sr. No. 8,10, 12,16,17,18,19, 20 and 23 of the

notification dtd. 06.05.2016 alongwith all documents, record etc., within two weeks from today. They are further directed to handover to applicant office equipment, computers, furnitures and fixture in premises at Sr.5 and 24 of the notification.

3. The Competent Authority and EOW are directed to hand over amount of Rs.40 Lakhs alongwith accrued interest, if any to the applicant, within two weeks from today.

4. The Competent Authority is directed to the represent all depositors/investors before the applicant/intervener and to file the claims on their behalf. CA shall do all acts necessary for safeguarding and protecting the interest of depositors in Roofit Industries.

Date: 18.08.2017 A. S. Kaloti Special Judge, M.P.I.D. Act & Addl. Sessions Judge, City Civil & Sessions Judge At Bombay. "

Thus, even the said order, on which reliance is placed by the Respondents, shows that the IRP in that case approached the Designated Court under the MPID Act and after hearing all the parties, an order was passed and certain directions in the interest of depositors as contemplated under the MPID Act were also issued.

29. The learned counsel for the Petitioner has also relied on the judgment of NCLAT in the case of JSW Steel Ltd.(supra) wherein it has been held that the action of Directorate of Enforcement did not meet the criteria under Section 32-A (1) (b) of I.B. Code. However, in the present case, the Designated Court under MPID Act will examine the said aspect and therefore, the said judgment is not applicable to the present case.

30. Thus, in view of the above discussion, we hold 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 and therefore, amenable to a challenge in our writ jurisdiction.

31. Thus, it is clear that the only remedy for Respondent-IRP is to approach the Designated Court under Section 7 of the MPID Act. Therefore, the impugned order passed by NCLT by which the said account was directed to be de-frozen, is without jurisdiction. The learned AGP has rightly relied on the judgments in Whirlpool Corporation (supra), Harbanslal Sahnia (supra), Committee of Management(supra) and Godrej Sara Lee Ltd. (supra) wherein it is consistently held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". Under Article 226 of the Constitution, the High Court, having regard to the facts of the case,

has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any fundamental right or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

32. *In view of above discussion, we quash and set aside the order dated 28/01/2019 passed by the NCLT in M.A.No.1372/2018 in C.P.No.1138/I & BC/NCLT/MB/MAH/2017 by which the said account was directed to be de-frozen. The Respondents can approach the Designated Court under section 7 of the M.P.I.D. Act seeking appropriate reliefs. We have not dealt with the merits of the case and the contentions in that behalf are expressly kept open. Rule is made absolute in above terms with no order as to costs.*

33. *In view of disposal of the Writ Petition, Civil Application No.29 of 2020 does not survive and is disposed of as such.”*

13. The Hon’ble High Court of Bombay in Anil Kohil case while setting aside the order of the NCLT wherein it was directed that the bank account of the corporate debtor to be defrozen, held that the designated court under Section 7 of the MPID Act alone is having jurisdiction to decide the validity of any order passed under MPID Act. However, in our considered view the said judgment has no application to the facts of the present case in view of the observations made in Para 26 of the said judgment itself. In the said judgment the Hon’ble High Court of Bombay after considering the judgment of the Hon’ble Apex Court in Innoventive Industries Limited (Supra) categorically observed that the position of law as held by the Hon’ble Apex Court in Innoventive Industries Limited is well settled and there cannot be any dispute about the same however, in the case on hand i.e. in Anil Kohil’s case, the learned counsel for the respondent i.e. the RP of the corporate debtor therein has not argued that the provisions of MPID Act are repugnant with the provisions of I&B Code whereas in the instant case both the

counsels argued elaborately on the issue of repugnancy of the provisions of MPID Act to that of provisions of IBC 2016. In view of categorical declaration of law on the issue of overriding effect of the provisions of IBC over any Act, more particularly on a State Act similar to the MPID Act i.e. Maharashtra Relief Undertakings (Special Provisions) Act, 1958, the provisions of which are akin to MPID Act, both the issues framed in the instant IA deserved to be held in favour of the applicant.

14. In these circumstances and for the aforesaid reasons, the instant CA No. 47/2019 is allowed and the respondents are directed to release/de-attach all the assets/properties of the corporate debtor and to cooperate with the RP and to supply all the necessary documents and information pertaining to the property of the corporate debtor. However, in the circumstances, the respondents are permitted to file their claims, if any, with the RP within two weeks from the date of receipt of this order and in such an event the RP shall consider the same in accordance with the Code and Regulations made thereunder and shall not reject the same on the ground of delay in submission of the claims.

15. Accordingly, CA No. 47/2019 disposed of.

Sd/-

(Raghu Nayyar)
Member (Technical)

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

October 06th, 2021
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