<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY,</u>

<u>NAGPUR BENCH, NAGPUR</u>

<u>CRIMINAL WRIT PETITION NO.849 OF 2018</u>

Chandraprakash s/o.Prakash Wadhwani,
Aged about 35 years, Occ.Business,
96, Farmland, Ramdaspeth,
Nagpur-440010. .... <u>PETITIONER</u>

// **<u>VERSUS</u>** //

1. State of Maharashtra,
   through its Secretary,
   Deptt. of Home,
   Mantralaya, Mumbai-32.

2. The District Collector,
   Nagpur Collectorate
   Building, Nagpur District,
   Nagpur. .... <u>RESPONDENTS</u>

Mr.A.M.Sudame, Advocate for the Petitioner.
Ms M.H.Deshmukh, A.P.P. for respondents/State.

CORAM : P. N. DESHMUKH
AND
MRS. SWAPNA JOSHI, JJ.

DATE : 29.8.2018.

ORAL ORDER :

1. The petitioner has approached this Court by invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India and had sought the following directions to the respondents :

> *i) to forthwith take all steps as provided under Section 4 to 8 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the **"MPID Act"**) against the financial establishment namely National Spot Exchange Ltd. (hereinafter referred to as **"the NSEL"**) and the concerned connected persons including the Broker Members, to attach their monies and properties to protect the interests of various unpaid depositors from Nagpur District.*
>
> *ii) to direct the Respondents to inform to the petitioner whatever action that may be taken on the petitioner's prayers in his Complaint dated 18.08.2018.*

2. The petitioner claims to be interested in protecting the interests of various depositors from Nagpur District, who allegedly invested their hard-earned money by giving deposits for the benefits promised by the Broker Members and the said Financial Establishment, viz. NSEL. He has also prayed therein for considering him for any suitable reward if recoveries are made pursuant to his efforts. In support of the petition, the petitioner had filed list of depositors from Nagpur district who, however, are duped by the Financial Establishment and its respective Brokers who have committed fraud by not making repayments of such deposits with the benefits thereof as promised to its depositors.

3. According to the petitioner, the NSEL was India's first electronic commodity spot exchange, of which modus operandi is culled out in the order of this Court passed in Criminal Bail Application No.1263 of 2014 vide which bail was granted to one of its Directors, copy of which is annexed with the petition. The petitioner in support of the petition has also annexed copy of order in Writ Petition No.1403 of 2015 of this Court challenging invocation of provisions of MPID Act in Crime No.89 of 2013 registered with EOW, Mumbai in connection with the said NSEL

Scam. However, this Court has not decided the issue of disputed applicability of MPID Act and had left the same to be considered by the appropriate Court in discharge application, if any filed by the accused. The limited relief sought in this petition is that of directions to respondent no.2 to take steps as contemplated under Sections 4 to 8 of the MPID Act to attach money and property of Brokers, Members of NSEL Ltd. and to inform the petitioner about action taken by respondent no.2 with regard to his complaint to respondent no.2 made on 18.8.2018; thus, we restrict ourselves in giving any finding on the subject matter in the petition except for directions as prayed for and stated above.

4. Copy of complaint addressed by petitioner to respondent no.2 under sub-section (1) of Section (4) of MPID Act admittedly is dated 18th August, 2018. The petition is filed on 23.8.2018. We, therefore, find that, immediately after filing complaint as aforesaid with the Competent Authority, the petitioner without waiting for a reasonable period, approached this Court seeking directions to the Competent Authority to take steps as contemplated under Sections 4 to 8 of the MPID Act. In view of above stated facts, we thus find that the petition is pre-mature and therefore, do not find any reason to

issue any directions as prayed for. Even otherwise, the petitioner admittedly is not a depositor of NSEL and in that view of the matter, cannot claim to have sustained any loss; monetary or otherwise, to him. Learned Counsel for the petitioner for that purpose referred to sub-section (1) of Section (4) of MPID Act and has stressed that, as per said provision, complaint can be made to Government by the depositors or any other person. For the purpose of convenience, we have re-produced sub-section (1) of Section (4) of MPID Act as under :

> "4. **<u>Attachment of properties on default of return of deposits</u>** :
>
> (1) Notwithstanding anything contained in any other law for the time being in force,
>
> > (i) where upon complaints received from the depositors **<u>or otherwise</u>**, the Government is satisfied that any Financial Establishment has failed,
> >
> > (a) to return the deposit after maturity or on demand by the depositor; or
> >
> > (b) to pay interest or other assured benefit; or
> >
> > (c) ....
> >
> > (ii) ....

> and if the Government is satisfied that such financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the service against which the deposit is received, the Government may, in order to protect the interest of the depositors of the Government may, in order to protect the interest of the depositors of such financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit."

5. The main emphasis of the petitioner is on the word used *"otherwise"* appearing in sub-section (1)(i) of Section (4) and the words used in the later part of sub-section 1(ii) of Section (4) "*or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the Promoter, Director, Partner or Manager or Member of the said Financial Establishment as the Government may think fit*."

6. From the plain reading of sub-section (1) of Section (4) of the Act, it is found that, under this provision, Government is empowered to attach money or property for the purpose of re-payment of depositors. Section 4(1) of the MPID Act specifically uses the words "*from out of the deposits collected by the Financial Establishment*". In the circumstances, it is noted that only if there is flow of funds from out of the deposits collected by the Financial Establishment to its Director, Partner, Manager, Promoter or Member that the same can be attached in whatever form it is available and if it is converted into property, such property can also be subject to attachment, but if such money or property is not available with the Member, Director, Promoter etc. or is insufficient for repayment, any other property of equivalent value owned by them can also be subject to attachment. In the background of Scheme of MPID Act, we, therefore, find no merit in the contention of the petitioner that irrespective of the source of funds, which means, even without having received any money *"from out of the deposits collected by the Financial Establishment"*, in case of insufficiency for the purpose of repayment, every property, even if unconnected, legitimate or ancestral, would be liable to be attached, merely because owner thereof is a Promoter, Director, Partner,

Manager or Member. If the contention of the petitioner is accepted, then the same would lead to absurdity. It is not the legislative intent to attach even those untainted properties, which are neither procured with any money which is arising *"from out of the deposits collected by the Financial Establishment"*, nor represent the equivalent value of any such monies actually received by a Promoter, Director, Partner, Manager or Member. "

7. Having considering the facts involved in the petition as aforesaid, we, therefore, find no substance in the petition for the reason that the same is pre-mature; secondly, because the petitioner admittedly is not a depositor with the financial Company alleged to be involved in the present petition and find it necessary to leave to the respondents/State to ascertain factual position regarding deposits alleged to be collected by the Financial Establishment and to adopt proper recourse as contemplated under Section 4(1) of the Act. Learned Counsel for the petitioner seeks liberty to approach this Court if his complaint is not decided within a considerable period. According to sub-section (1) of Section (4) of MPID Act, we find the petitioner to be competent to make complaint to respondent

no.2; however, he being not a depositor of NSEL, cannot be granted liberty to approach this Court for seeking relief as aforesaid.

8. We are conscious of the fact that the High Courts are authorised under Article 226 of the Constitution of India to issue directions, order, writs to any person or Authority, including any Government to enforce fundamental rights and, *"for any other purpose"*. It is manifest from the difference in phraseology of Articles 32 and 226 of the Constitution of India that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed by Article 32 can be exercised only for enforcement of fundamental right conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for enforcement of the fundamental right but as well, i.e. for enforcement of any legal right conferred by the Statute etc.

9. In view of the facts involved in the petition and settled legal provisions, we dismiss the same even without issuing notice to the respondents. However, we find it necessary to grant liberty in

favour of the depositors, to adopt recourse as available under law. The petition is accordingly disposed of in the above terms.

JUDGE **JUDGE**

[jaiswal]