

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5272 OF 2025

Dwarka Iron Industries Pvt. Ltd. ... Petitioner
Versus
Competent Authority (under MPID Act, 1999)
& Anr. ... Respondents

Mr. Ashish Kamat, Senior Advocate, a/w Mr. Subir Kumar, Ms. Vaishnavi Pawar, Ms. Ashita Aggarwal i/by SDS Advocates for Petitioner.

Mr. B. V. Samant, Addl. G. P., a/w Ms. P. J. Gavhane, AGP for Respondent Nos.1 and 2-State.

**CORAM : MANISH PITALE AND
SHREERAM V. SHIRSAT, JJ.**

**RESERVED ON : 17th APRIL 2026
PRONOUNCED ON : 8th JUNE 2026**

Judgment (*Per Manish Pitale, J.*) :

. This petition raises questions pertaining to Section 32A of the Insolvency and Bankruptcy Code, 2016 (IBC) in the context of the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act). The petitioner is seeking quashing of a notification dated 19.03.2016 issued by the respondent No.1 i.e. the Competent Authority under the MPID Act in respect of a property belonging to a corporate debtor. The respondent No.2-State is opposing the prayer made in the present application, *inter alia*, on the ground

that the object of enactment of the MPID Act needs to be taken into consideration by this Court, while determining the effect of Section 32A of the IBC, in the facts and circumstances of the present case. In order to properly appreciate the rival contentions and the questions sought to be raised by the rival parties, it would be necessary to briefly refer to the chronology of events, leading to filing of the present writ petition.

2. The corporate debtor in the present case is M/s. Abhirama Steels Limited and it is represented by the Successful Resolution Applicant i.e. Dwarka Iron Industries Pvt. Ltd. On 06.09.2008, much prior to the alleged offence registered in the present case attracting the provisions of the MPID Act, the corporate debtor purchased the subject immovable property bearing Survey No. 272/1, Chityala Village, Pargi Mandal, Dist. Rangareddy, Telangana, by way of registered sale deed. On 29.12.2008, the corporate debtor was incorporated under the provisions of the Companies Act and it commenced its business of manufacturing basic iron and steel. In the year 2010, the Indian Bank sanctioned various credit facilities to the corporate debtor. In that context, the corporate debtor created an equitable mortgage over the subject property in favour of the Indian Bank.

3. On 30.12.2013, the respondent No.2-State through the Economic Offences Wing (EOW) registered C.R. No. 168 of 2013 under Sections 420, 409, 477A and 120B of the Indian Penal Code, 1860 (IPC) against an entity called Birla Power Solutions

Ltd. The corporate debtor was not named as an accused in the said FIR. In the year 2014, the investigating agency filed charge-sheet in the said matter against accused persons, which included the father of the Managing Director of the corporate debtor. At this stage also, the corporate debtor was not arraigned as an accused and the subject property was not shown as having been acquired as proceeds of crime. On 19.03.2016, the respondent-State of Maharashtra issued impugned notification under the provisions of the MPID Act, attaching several properties, including the subject property belonging to the corporate debtor. Since, the corporate debtor was neither the financial establishment, in the context of which the provisions of the MPID Act were invoked, nor was it an accused in the case, it submitted its objection on 19.08.2016 before the respondent No.1-Competent Authority, challenging the alleged illegal attachment of the subject property.

4. On 31.03.2017, the Indian Bank classified the loan account of the corporate debtor as a Non-Performing Asset (NPA). On 03.05.2017, the Indian Bank issued demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act). Thereupon, the Indian Bank took symbolic possession of the secured asset to initiate steps for e-auction of the subject property. At this stage, in the year 2017, the corporate debtor filed Miscellaneous Application No. 1280 of 2017 in the concerned MPID Case No. 4 of 2014, before the designated Court, where

the MPID case was pending, in order to challenge continuation of the proceedings under the Securitisation Act. On 25.07.2018, the designated MPID Court refused to grant stay on the e-auction, but it is an admitted position that the auction sale did not materialize in respect of the subject property.

5. On 16.11.2021, an operational creditor filed proceedings under Section 9 of the IBC and National Company Law Tribunal (NCLT), Hyderabad, admitted C.P. (IB) No.525/9/HDB/2019. As a consequence, Corporate Insolvency Resolution Process (CIRP) was initiated in the context of the corporate debtor and an Interim Resolution Professional was appointed. Upon admission of the CIRP on 23.11.2021, the resolution professional issued a public notice in Form A, inviting claims from creditors. Thereupon, expressions of interest were invited in Form G from prospective resolution applicants. The order of the NCLT, admitting the corporate debtor in CIRP was confirmed, when National Company Law Appellate Tribunal (NCLAT) dismissed the Company Appeal on 08.07.2022. Thereafter, an appeal was filed before the Supreme Court, wherein status-quo was granted. But, eventually, on 26.02.2024, the appeal was dismissed and the interim order was vacated. As a consequence, the CIRP proceedings continued.

6. On 17.09.2024, the NCLT, Hyderabad, approved the resolution plan submitted by the successful resolution applicant. As per the position of law recognized by the Supreme Court in a

series of judgments, the corporate debtor was to now start its activities on a clean slate. On 09.10.2024, the successful resolution applicant paid amount of Rs.14.50 crores to the Indian Bank in full and final settlement of its dues. Consequently, Indian Bank issued no objection certificate and no charge remained on the subject property.

7. It is relevant to note that in the meanwhile, the resolution professional had filed Writ Petition No. 3447 of 2022, before this Court for challenging the attachment of the subject property of the corporate debtor. On 26.02.2025, this Court permitted the said writ petition to be withdrawn, with liberty to file fresh proceedings in the light of the resolution plan having been approved.

8. It is in this backdrop that the present writ petition was filed, relying upon Section 32A of the IBC, for quashing and setting aside of the impugned notification dated 19.03.2016, so that the subject property would be released from attachment. On 04.11.2025, this Court after hearing the petitioner and the respondents, through their respective counsel, granted interim relief in terms of prayer clause (b). As a consequence, the attachment of the subject property in terms of notification dated 19.03.2016 was released, subject to the petitioner furnishing bank guarantee in favour of the Registry of this Court for a sum of Rs.74.24 lakhs. Subsequently, the time period for furnishing such bank guarantee was extended and it is an admitted position that

the petitioner indeed furnished the bank guarantee. The pleadings in the writ petition were completed and it was taken up for hearing.

9. Mr. Ashish Kamat, learned senior counsel appearing for the petitioner, invited attention of this Court to Section 32A of the IBC, to contend that the moment the resolution plan was accepted, the corporate debtor could not be made subject matter of any prosecution and its properties became immune from any action, including attachment, as per the impugned notification dated 19.03.2016. The learned senior counsel appearing for the petitioner relied upon the text of Section 32A of the IBC to submit that a plain reading of the same would show that no other interpretation was possible.

10. In order to bolster the aforesaid submission, attention of this Court was invited to judgment of the Supreme Court in the case of *Manish Kumar vs. Union of India & Anr.*, (2021) 5 SCC 1. It was submitted that criminal liability of the corporate debtor stood extinguished under Section 32A of the IBC and the property of the corporate debtor could no longer be subject to such attachment. It was further submitted that the Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited & Ors.*, (2021) 9 SCC 657 emphasized the position that upon the resolution plan being accepted, the corporate debtor started on a clean slate, thereby indicating that the effect of the impugned notification

could no longer survive. He further referred to the judgment of the Supreme Court in the case of *Kalyani Transco vs. Bhushan Power and Steel Ltd. & Ors.*, **2025 SCC OnLine SC 2093** to demonstrate that the effect of non-obstante clause at the beginning of the Section 32A of the IBC clearly demonstrated that no action could be taken in respect of the subject property of the corporate debtor in respect of any offence committed prior to the commencement of the CIRP, particularly when such property was covered under the resolution plan approved by the adjudicating authority.

11. It was further submitted that a Division Bench of this Court in the case of *Shiv Charan & Ors. vs. Adjudicating Authority*, **2024 SCC OnLine Bom 701** had followed the said position of law. It was fairly brought to the notice of this Court that in the Special Leave petition, challenging the said judgment of the Division Bench of this Court, leave was granted and interim order was continued.

12. On the basis of the aforesaid judgments of the Supreme Court and this Court, it was asserted that the attachment of the subject property of the corporate debtor could no longer survive. On the aspect of the interpretation of the order dated 17.09.2024 passed by the NCLT, Hyderabad, approving the resolution plan, it was submitted that a proper reading of the same, including paragraph 8(g), would demonstrate that the logical consequence of the effect of Section 32A of the IBC clearly inured in favour of the

petitioner. It was submitted that although, the NCLT had granted liberty to the petitioner to approach the Competent Authority under the MPID Act for lifting the attachment on the subject property, the present writ petition was clearly maintainable, as a pure question of law arose in the matter. Merely because liberty was granted to approach the designated Court, the same would not take away the jurisdiction of this Court in considering the present writ petition. In that context, reliance was placed on judgment of the Supreme Court in the case of *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority & Ors.*, 2023 SCC OnLine SC 95.

13. It was further submitted that the respondents cannot rely upon the judgment of the Supreme Court in the case of *National Spot Exchange Limited vs. Union of India & Ors.*, (2025) 8 SCC 393, as the Supreme Court had considered a different controversy while making observations about the interplay between the provisions of the IBC and the MPID Act. It was submitted that the subject property was merely attached under Section 4 of the MPID Act and its vesting would become absolute only upon the designated Court passing an appropriate order under Section 7 of the MPID Act. Since no such order had been passed till date, there was no question of vesting of the subject property with the competent authority, thereby showing that the writ petition deserves to be allowed.

14. On the other hand, Mr. B. V. Samant, learned Additional

Government Pleader (AGP) appearing on behalf of the respondents-State Authorities, submitted that the petition deserves to be dismissed. It was submitted that the petitioner could not be permitted to wriggle out of order of the NCLT, as the adjudicating authority, when it approved the resolution plan as per order dated 17.09.2024. Attention of this Court was specifically invited to paragraph 8(g) of the said order, to contend that the NCLT had clarified that the prayer for lifting of the attachment could be made before the competent authority and that such a prayer made while submitting the resolution plan was specifically refused. It was submitted that if the petitioner was aggrieved by the said order, it should have challenged the same under the provisions of the IBC and in absence thereof, the said order had attained finality. Therefore, the only forum available for the petitioner for seeking lifting of the attachment of the subject property, was the designated MPID Court. Instead of approaching the said Court, the petitioner had filed the present writ petition, which ought not to be entertained by this Court.

15. It was submitted that although the position of law, regarding the corporate debtor starting on a clean slate after approval of the resolution plan has been recognized by the Supreme Court in various judgments, in the case of *National Spot Exchange Limited vs. Union of India & Ors.* (supra), the Supreme Court had an occasion to specifically consider the interplay between the provisions of the IBC and the MPID Act. It was submitted that

upon a proper application of the ratio of the said judgment, it would become evident that once the impugned notification dated 19.03.2016 was issued, attaching the subject property, it vested in the competent authority and it was no longer available for the process of CIRP. Therefore, the subject property could never be subject matter of the resolution plan, even if it was accepted. On this basis, it was submitted that the contentions raised on behalf of the petitioner cannot be accepted and that writ petition deserves to be dismissed.

16. We have considered the rival submissions in the light of the provisions of the IBC and MPID Act, as also the aforementioned judgments upon which reliance has been placed. It would be appropriate to refer to Section 32A of the IBC and the relevant provisions of the MPID Act.

17. Section 32A of the IBC reads as follows :

“32A. Liability for prior offences, etc.--(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 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 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.”

18. Sections 4 to 7 of the MPID Act, read as follows :

“ 4. Attachment of Properties on default of return of deposits.— (1) Notwithstanding anything contained in any other law for the time being in force,—

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,—

(a) to return the deposit after maturity or on demand by the depositor; or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intension to defraud them;

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

(2) On the Publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority Appointed by the Government, pending further order from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.

5. Appointment of Competent Authority.— *(1) The Government may while issuing the order under sub-section (1) of section 4, appoint any of its officers not below the rank of the Deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4, of a Financial Establishment.*

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) The Competent Authority shall, within thirty days from the date of the publication of the said order, apply to the Designated Court, accompanied by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as found necessary.

6. Designated Court.— *(1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the Bombay High Court by notification in the Official Gazette, constitute one or more Designated Court in the cadre of a District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification.*

(2) No court including the court constituted under the Presidency Towns Insolvency Act, 1909 (3 of 1909) and the Provincial Insolvency Act, 1920 (5 of 1920), other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other court to which the provisions of this Act apply shall, on the date of coming into force of this Act, stand transferred to the Designated Court.

7. Powers of Designated Court regarding attachment.— *(1) Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorder, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.*

(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 (5 of 1908) and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.”

19. A perusal of Section 32A of the IBC shows that a corporate debtor cannot be prosecuted for offence committed prior to commencement of the CIRP, from the date the resolution plan is approved by the adjudicating authority under Section 31 of the IBC, if the resolution plan results in change in the management or control of the corporate debtor. Sub-section (2) of Section 32A further provides that no action shall be taken against the property of the corporate debtor in relation to such an offence committed prior to the commencement of CIRP when such property is covered under the resolution plan approved by the adjudicating authority. The explanation to the aforesaid provision clarifies that action against the property of the corporate debtor in relation to an offence includes attachment, seizure, confiscation, etc. The corporate debtor, despite the immunity is required to provide assistance to the investigating authority in relation to such an offence. Thus, a bare reading of the above quoted Section 32A of the IBC makes it abundantly clear that neither can prosecution against the corporate debtor be continued, nor can any action of attachment, seizure, confiscation, etc. in respect of property of the corporate debtor be continued, the moment the resolution plan is approved by the adjudicating authority.

20. The Supreme Court in the case of ***Manish Kumar vs. Union of India & Anr.*** (supra) while considering the said provision of the IBC, observed as follows :

“317. Section 32-A has been divided into three parts consisting of sub-sections (1) to (3). Under sub-section (1), notwithstanding anything contained, either in the Code or in any other law, liability of a corporate debtor, for an offence committed prior to the commencement of the CIRP, shall cease. Further, the corporate debtor shall not be liable to be prosecuted for such an offence. Both these immunities are subject to the following conditions:

317.1. A resolution plan, in regard to the corporate debtor, must be approved by the adjudicating authority under Section 31 of the Code.

317.2. The resolution plan, so approved, must result in the change in the management or control of the corporate debtor.

317.3. The change in the management or control, under the approved resolution plan, must not be in favour of a person, who was a promoter, or in the management and control of the corporate debtor, or in favour of a related party of the corporate debtor.

317.4. The change in the management or control of the corporate debtor must not be in favour of a person, with regard to whom the relevant investigating authority has material which leads it to entertain the reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a report before the relevant authority or the Court. This last limb may require a little more demystification. The person, who comes to acquire the management and control of the corporate person, must not be a person who has abetted or conspired for the commission of the offence committed by the corporate debtor prior to the commencement of the CIRP. Therefore, abetting or conspiracy by the person, who acquires management and control of the corporate debtor, under a resolution plan, which is approved under Section 31 of the Code and the filing of the report, would remove the protective umbrella or

immunity erected by Section 32-A in regard to an offence committed by the corporate debtor before the commencement of the CIRP. To make it even more clear, if either of the conditions, namely, abetting or conspiring followed by the report, which have been mentioned as aforesaid, are present, then, the liability of the corporate debtor, for an offence committed prior to the commencement of the CIRP, will remain unaffected.

318. The first proviso in sub-section (1) declares that if there is approval of a resolution plan under Section 31 and a prosecution has been instituted during the CIRP against the corporate debtor, the corporate debtor will stand discharged. This is, however, subject to the condition that the requirements in sub-section (1), which have been elaborated by us, have been fulfilled. In other words, if under the approved resolution plan, there is a change in the management and control of the corporate debtor, to a person, who is not a promoter, or in the management and control of the corporate debtor, or a related party of the corporate debtor, or the person who acquires control or management of the corporate debtor, has neither abetted nor conspired in the commission of the offence, then, the prosecution, if it is instituted after the commencement of the CIRP and during its pendency, will stand discharged against the corporate debtor. Under the second proviso to sub-section (1), however, the designated partner in respect of the liability partnership or the officer in default, as defined under Section 2(60) of the Companies Act, 2013, or every person, who was, in any manner, in charge or responsible to the corporate debtor for the conduct of its business, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. This is despite the extinguishment of the criminal liability of the corporate debtor under sub-section (1). Still further, every person, who was associated with the corporate debtor in any manner, and, who was directly or indirectly involved in the commission of such offence, in terms of the report submitted and report filed by the investigating authority, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor.

319. Thus, the combined reading of the various limbs of sub-section (1) would show that while, on the one hand, the corporate debtor is freed from the liability for any offence committed before the commencement of the CIRP, the statutory immunity from the consequences of the commission of the offence by the corporate debtor is not available and the criminal liability will continue to haunt the persons, who were in charge of the assets of the corporate debtor, or who were responsible for the conduct of its business or those who were associated with the corporate debtor in any manner, and who were directly or indirectly involved in the commission of the offence, and they will continue to be liable.

320. Coming to sub-section (2) of Section 32-A, it declares a bar against taking any action against property of the corporate debtor. This bar also contemplates the connection between the offence committed by the corporate debtor before the commencement of the CIRP and the property of the corporate debtor. This bar is conditional to the property being covered under the resolution plan. The further requirement is that a resolution plan must be approved by the adjudicating authority and, finally, the approved plan, must result in a change in control of the corporate debtor not to a person, who is already identified and described in sub-section (1). In other words, the requirements for invoking the bar against proceeding against the property of the corporate debtor in relation to an offence committed before the commencement of the CIRP, are as follows:

320.1. There must be resolution plan, which is approved by the adjudicating authority under Section 31 of the Code.

320.2. The approved resolution plan must result in the change in control of the corporate debtor to a person, who was not — (a) a promoter; (b) in the management or control of the corporate debtor; or (c) a related party of the corporate debtor; (d) a person with regard to whom the investigating authority, had, on the basis of the material, reason to believe that he has abetted or conspired for the commission of the offence and has submitted a report or a complaint. If all these aforesaid conditions are fulfilled then the law giver has provided that no action can be taken against the property of the corporate debtor in connection with the offence.

321. *The Explanation to sub-section (2) of Section 32-A has clarified that the words “an action against the property of the corporate debtor in relation to an offence”, would include the attachment, seizure, retention or confiscation of such property under the law applicable to the corporate debtor. Since the word “include” is used under sub-clause (i) of the Explanation, the word “action” against the property of the corporate debtor is intended to have the widest possible amplitude. There is a clear nexus with the object of the Code. The other part of the clarification, under the Explanation, is found in the second sub-clause of Explanation (ii).*

322. *Under the second limb of the Explanation to Section 32-A(2), the law giver has clearly articulated the point that as far as the property of any person, other than the corporate debtor or any person who had acquired the property of the corporate debtor through the CIRP or liquidation process under the Code and who otherwise fulfils the requirement under Section 32-A, action can be taken against the property of such other person.*

323. *Thus, reading sub-section (1) and sub-section (2) of Section 32-A together, two results emerge:*

323.1. *Subject to the requirements embedded in sub-section (1) of Section 32-A, the liability of the corporate debtor for the offence committed under the CIRP, will cease.*

323.2. *The property of the corporate debtor is protected from any legal action again subject to the safeguards, which we have indicated.*

323.3. *The bar against action against the property, is available, not only to the corporate debtor but also to any person who acquires property of the corporate debtor under the CIRP or the liquidation process. The bar against action against the property of the corporate debtor is also available in the case of a person subject to the same limitation as prescribed in sub-section (1) and also in sub-section (2), if he has purchased the property of the corporate debtor in the proceedings for the liquidation of the corporate debtor.”*

21. In its judgment in the case of ***Ghanashyam Mishra and Sons***

Private Limited vs. Edelweiss Asset Reconstruction Company Limited & Ors. (supra), the Supreme Court reiterated the position that upon approval of the resolution plan, the corporate debtor starts on a clean slate. Subsequently, in its judgment in the case of ***Kalyani Transco vs. Bhushan Power and Steel Ltd. & Ors.*** (supra), the Supreme Court further referred to Section 32A of the IBC and observed as follows :

“117. It can thus be seen that section 32A of the IBC which begins with a non obstante clause provides that the liability of the corporate debtor for an offence committed prior to the commencement of the CIRP 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 of the IBC, if the resolution plan results in the change in the management or control of the corporate debtor or if the erstwhile promoter or any other person who has been retained has not been found to have abetted or conspired in the commission of the offence. It further provides that no action shall be taken against the properties of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31 of the IBC.”

22. This Court followed the said position of law in its judgment in case of ***Shiv Charan & Ors. vs. Adjudicating Authority*** (supra). In the said judgment, it was observed as follows :

“20. Therefore, as a matter of law, once the resolution plan is approved with the attendant conditions set out in Section 32A being met, further prosecution against the corporate debtor and its properties, would cease. Section 32A(3) enjoins the corporate debtor to continue to cooperate with the enforcement agencies in the continued prosecution against the

individuals in question.”

23. We are of the opinion that even if leave has been granted in the Special Leave Petition filed against the said judgment and interim order has been granted, the purport of Section 32A of the IBC is made abundantly clear by the Supreme Court in the aforementioned judgments in the cases of *Manish Kumar vs. Union of India & Anr.* (supra) and *Kalyani Transco vs. Bhushan Power and Steel Ltd. & Ors.* (supra).

24. Much emphasis was placed on behalf of the respondents-State on the judgment of the Supreme Court in the case of *National Spot Exchange Limited vs. Union of India & Ors.* (supra). A perusal of the said judgment shows that the questions framed for consideration in the said judgment concerned the effect of moratorium under Section 14 of the IBC in respect of execution of decrees against judgment debtors, where the properties of the judgment debtors were attached under the provisions of the MPID Act. The Supreme Court was not considering the effect of Section 32A of the IBC and the discussion with respect to the interplay between the provisions of the IBC and the MPID Act was not in the context of Section 32A of the IBC. Yet, the learned AGP emphasized that the Supreme Court had made observations about the effect of an order of attachment under Section 4 of the MPID Act, indicating that the property had vested in the competent authority. On this basis, it was contended that once the property stood vested with the competent authority under the MPID Act,

there was no question of the said property being part of the resolution plan and that it could not be considered as a property of the corporate debtor for attracting the provisions of Section 32A of the IBC.

25. We find the said argument to be fallacious for the reason that a proper reading of Sections 4 to 7 of the MPID Act, quoted hereinabove, would show that ‘vesting’ of the properties occurs only after the designated Court passes an order under Section 7 of the MPID Act, making absolute the order of attachment passed under Section 4(1) thereof. It is pertinent to note that sub-section (2) of Section 4 of the MPID Act specifically records that the property made subject matter of the order of attachment under sub-section (1) vests in the competent authority ‘pending further orders from the designated Court’. Thus, the process of vesting is still inchoate and it achieves finality only upon the designated Court passing an order under Section 7 of the MPID Act, for making absolute the order of attachment issued under Section 4(1) thereof. Thus, the contention raised on behalf of the respondents-State that upon issuance of the impugned notification dated 19.03.2016, attaching the subject property, it vested in the competent authority under the MPID Act, is rejected.

26. Once this finding is reached, we find that there is no substance in the contention raised on behalf of the respondents-State that the subject property was not available with the corporate debtor at the stage of approval of the resolution plan.

We also do not find much substance in the contention raised on behalf of the respondents that, in view of paragraph 8(g) of the order dated 17.09.2024 passed by the NCLT, approving the resolution plan, the subject property could not be said to be part of the resolution plan. A proper reading of the said order, including paragraph 8 thereof, shows that the NCLT thought it fit to call upon the successful resolution applicant to approach the competent authority i.e. the designated Court under the MPID Act for lifting of the attachment. When as a matter of law and by operation of Section 32A of the IBC, the attachment could no longer continue, particularly in the absence of any order being passed by the designated Court under Section 7 of the MPID Act, making the order of attachment absolute, there was no question of the subject property not being part of the resolution plan or the full effect of Section 32A of the IBC not coming into play.

27. Since the effect of Section 32A of the IBC, on a bare reading of the said provision and the position of law being elaborately clarified by the Supreme Court, is essentially a pure question of law, we find that the petitioner is clearly entitled to press for relief in this writ petition itself. Merely because the NCLT in the said order dated 17.09.2024 reserved liberty for the successful resolution applicant to approach the competent authority under the MPID Act for lifting of attachment, would not adversely affect the power of this Court under writ jurisdiction to entertain the present writ petition. In this context, we find substance in reliance

placed on behalf of the petitioner on the judgment of the Supreme Court in the case of ***Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority & Ors.*** (supra). In paragraph 8 of the said judgment, the Supreme Court observed as follows :

“8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of U. P. v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the High Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of ; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this court found the issue raised by the appellant to be pristinely legal requiring determination by the High Court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.”

28. We further find that in the present case, it is an admitted position that neither at the stage of the registration of the FIR nor at the filing of the charge-sheet was the corporate debtor ever made an accused in the criminal proceedings that led to issuance of the order of attachment dated 19.03.2016 under the MPID Act. The respondents-State admitted the position that the corporate debtor is not an accused. It was also conceded that the designated Court has not passed any order under Section 7 of the MPID Act, making absolute the order of attachment of the subject property.

The corporate debtor upon approval of the resolution plan satisfies all the requirements of Section 32A of the IBC and there can be no dispute about the same. Therefore, the logical consequence thereof must follow and there ought to be no impediment in releasing the subject property from attachment, so that the corporate debtor proceeds on a clean slate, in line with the objects and reasons of enactment of the IBC. Although, the learned AGP sought to indicate that the objects and reasons for enactment of the MPID Act were clearly distinct from those of the IBC and that the protection of investors ought to be given higher priority by this Court, we are not impressed with the said contention in the light of the facts and circumstances of the present case, wherein the corporate debtor is not even an accused in the said offences and Section 32A of the IBC must apply in full force in terms of the law laid down by the Supreme Court.

29. As noted hereinabove, by interim order dated 04.11.2025, the attachment of the property was already released by way of interim order, subject to the petitioner furnishing bank guarantee of Rs.74.24 lakhs with this Court. Since we have reached the conclusion that the writ petition deserves to be allowed and the attachment cannot continue in the light of the operation of Section 32A of the IBC, the interim order is made absolute and the impugned notification dated 19.03.2016, to the extent that it applies to the subject property, is quashed and set aside.

30. Consequently, the Registry of this Court is directed to return

the bank guarantee to the petitioner, in the light of the writ petition being allowed in the above terms.

31. The writ petition is disposed of. Pending applications also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)