

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

CRIMINAL APPEAL NO. 210 OF 2026

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ASREC (India) Limited
a Company incorporated under the
Companies Act, having its registered office
at Solitaire Corporate Bank, Bldg. No. 2
Unit No. 201-202A & 200-202B
Gr. Floor, Andheri-Ghatkopar Link Road,
Chakala, Andheri (East)
Mumbai 400 093.

.. Appellant

versus

1. State of Maharashtra
(At the instance of EOW, Unit 5,
Mumbai) Through Government Pleader.
2. Amit Mukharjee & Ors.
Accused Persons in
MPID Case/01/2014, Pending before
The Hon'ble Special Judge for MPID
at Bombay, Mumbai.
3. The Sub-Registrar,
Office of Sub-Registrar,
Kothawada, Autonagar, Warangal.
4. The Tahsildar office of Mandal
Revenue Officer,
Near Police Station, Nallabelli,
Warangal-506349,
Telangana Warangal
5. National Spot Exchange Ltd. (NSEL)
Malkani Chambers Condominium,

Corrected vide speaking to the minutes of the order dated 26.03.2026

- 2 -

Malkani Chambers, 1st floor,
off Nehru Road, Vile Parle, East,
Mumbai-400099.

6. Deputy Collector MPID,
Office of the Deputy Collector &
Competent Authority (NSEL), 3rd floor
MPID Branch, Old Custom House,
Mumbai – 400001

.. Respondents

Mr. Prathamesh Kamat along with Mr. Shashikant P. Choudhari
along with Mr. Kayush Zaiwalla along with Ms. Snehal Choudhari
and Mr. Atharva Nalawade, Advocates for Appellant instructed by
Maharashtra Law Associates.

Mr. R. M. Pethe, APP for the State.

Ms. Leena Patil, SPP for Respondent Nos. 1 and 2.

Mr. Arvind Lakhawat along with Mr. Jalpa Shah, Mr. Nimeet Sharma,
Ms. Himani Narula, Advocates instructed by MZM Legal LLP for
Respondent No. 5.

CORAM : R. M. JOSHI, J.
RESERVED ON : 12TH MARCH, 2026.
PRONOUNCED ON : 18TH MARCH, 2026.

JUDGMENT :

1. By consent of both sides, heard finally at the stage of
admission.

2. This Appeal filed under Section 11 of Maharashtra Protection
of Interest of Depositors (In Financial Establishments) Act, 1999 (for
short 'MPID' Act) taking exception to the judgment and order dated

08.01.2026 passed by the Special Judge under the Act in Misc. Application No. 1293/2022 in MPID Special Case No. 1/2014, whereby attachment of properties ('subject properties' for short) by different notifications under Section 4 of the Act is made absolute.

3. Appellant took exception to the attachment of the subject properties set out in Annexure A to the Misc. Application No. 1293/2022 on the ground that the initiation of proceeding upon registration of charge on 06.07.2012 with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) is much prior to the action taken under Section 4 of the MPID Act vide Gazette Notification No. NPI-1121/CR-541/Pol-11 dated 22.06.2015 as well as notices issued under Sections 4 and 5 dated 22.08.2015 and 05.09.2025. It is claimed that the said registration precedes order dated 30.07.2018 by which National Spot Exchange Limited (NSEL) raised its claim as a decree holder and subsequent notice issued by Economic Offence Wing (EOW). Thus, in short, it is the contention of the Appellant that since there is already an order of creation of security interest of Appellant as secured creditor under the provisions of Section 13 of SARFAESI Act, the order of attachment passed under Section 4 of the MPID Act

subsequent to which creation of interest would not sustain. It is claimed by Appellant that subject properties are mortgaged by their borrowers in the accounts of Balaji Stake rice Industries Limited and Balaji Stake rice Industries and such mortgage has been created much prior to the period of crime wherein there is alleged non-refund of the deposits. Appellant also took exception to the Notification under Section 4 of the MPID Act of attachment of subject properties on the ground that there is no subjective satisfaction recorded by the Competent Authority for the purpose of attachment of properties in question. It is claimed that the properties in question were acquired much prior to the commission of the offence and as such it cannot be claimed that the properties are purchased out of the crime money.

4. Learned Counsel for the Appellant at the outset submits that the concerned establishment is not a Financial Establishment within meaning of Section 2(a) of the MPID Act nor the amount involved can be considered as 'deposit' under Section 2(d) thereof. It is submitted that in absence of satisfying these twin conditions, MPID Act would not apply to the present case. It is his further submission that the attachment order dated 22.08.2015 records no subjective satisfaction of the competent authority for the purpose of attachment of the

subject properties. He drew attention of the Court to the evidence led before the Special Court, more particularly, evidence of the Chartered Accountant Mr. Gandhi who, in his cross-examination, has given admission to the effect that except for the balance-sheet, nothing was ascertained by him much less, the actual properties held by the MSR Foods. To support this submission with regard to 'reason to believe' he relied upon judgment in case of **The Income Tax Officer vs. Lakhmani Mewal Das, (1976) 3 SCC 757** (paragraph No. 12) and judgment of Gujrat High Court in case of **MV Silvia Glory vs. Dan Bunkering** (paragraph No. 35). It is his contention that by virtue of mortgage deeds executed much prior to commission of crime, the security interest therein stood vested in favour of the Appellant which is a secured creditor. According to him, pursuant to the claim made by the secured creditors that the Appellant who has stepped into the shoes of the original secured creditor State Bank of Hyderabad by virtue of deed of assignment dated 30.09.2014, security interest in respect of the loan accounts of Balaji Stake Rice Industries Limited and Balaji Stake Rice Industries stood lawfully assigned to it. It is his further contention that the mortgage over the subject properties was created in the year 2005 i.e. much prior to the alleged crime and also issuance of attachment

notification under Section 4 of the Act on 22.06.2015 and 11.04.2016 and hence needs to be considered as genuine. In order to support his submissions, he drew attention of the Court to the documents on record in respect of the subject properties which, according to him, indicate that the subject properties were acquired much prior to the commission of crime and hence, it cannot be held that the properties are acquired out of the proceeds of the crime so also its mortgage. In order to support his submissions, he placed reliance on judgment of the Division Bench of this Court in case of Chandrashekhar Parwardhan vs. State of Maharashtra, **2004 SCC OnLine 4137**. He also referred to judgment of Division Bench of this Court in case of UCO Bank vs. Kanji Manji Kolhari, **2008(4) Mh.L.J. 424** and judgment of Hon'ble Supreme Court in case of Travancore Rayon Ltd. vs. Union of India, **(2008) 1 SCC 125**, to argue that notice under Section 13(4) is not mere show cause notice and it continues an action taken by Bank/Financial Institution, for the purpose of NPA Act.

5. Learned Counsel for the NSEL and learned Counsel for the Competent Authority opposed the appeal. The first and the foremost contention of learned Counsel for NSEL is that there is notification

issued by the Competent Authority in the year 2017 declaring MSR Foods as Financial Establishment within meaning of Section 2(a) of the MPID Act and the definition of deposit is wide enough to cover the transaction in question and thus there is no substance in the submission of learned Counsel for the Appellant in this regard. It is submitted that the Supreme Court in case of NSE Ltd. vs. Union of India, **2025 SCC OnLine SC 1137**, has settled the position of law that the provisions of MPID Act would prevail over SARFAESI Act. In this regard, attention of the Court is drawn to the observations made in the said judgment in paragraph Nos. 42 and 43 to the effect that attachment of properties over which secured creditor is said to have security interest, it could not be 'debt' as contemplated by Section 26E of SARFAESI Act and hence no priority interest can be claimed by secured creditors. It is further submitted that in view of the provisions of Section 13(6) of SARFAESI Act, right, title and interest in the subject properties can be said to have vested only in case of sale of such property and not at any prior stage thereto. According to him, the Hon'ble Supreme Court in case of Travancore Rayon Ltd. vs. Union of India & Another (supra), has dealt with the said issue and it is held that vesting of the rights does not mean transfer of title in the subject property in favour of secured creditor. It is his

submission that in view of the settled position of law with regard to the interest of the depositors to be given precedence over the secured creditors, there is no substance in the challenge to the impugned order. It is his submission that before the Special Court, evidence is led in order to indicate that out of total liability only an amount of Rs. 32 Lakhs is recovered from MSR Foods and Rs. 8.82 Crores is the balance amount. Similarly, there is evidence of money trail to M. S. Rao and therefore, there is no perversity in the order passed by the Special Court. It is further argued that once notification is issued under Section 4 of the MPID Act, the properties stand vested in the Competent Authority and in such case, no other person including secured creditors under the SARFAESI Act would be entitled to seek any claim of precedence over such property. He took this Court through judgments cited by learned Counsel for Appellant to argue that in case of **Chandrashekhar Patwardhan** (supra) a finding is recorded therein that property is not acquired from money of investors and it belonged to relative of defaulter. According to him, in case of **UCO Bank** (supra), Division Bench of this Court, it is only held that security interest is created in favour of secured creditor but in view of judgment in case of **NSEL** (supra), Supreme Court concluded that there is precedence of the depositors under MPID Act

over secured creditors. Finally, it is argued that undisputedly, M. S. Rao is an accused and the subject properties are his properties and therefore properties of Financial Establishment and hence, there is no merit in the Appeal.

6. Learned Counsel for the Competent Authority, apart from adopting above arguments, submitted that the order passed by the Special Court is well reasoned order and the same has been passed on rightly assessing the evidence led before it. In such circumstances, there is no substance in the challenge to the impugned order. She placed reliance on order dated 15.12.2025 passed by Division Bench of this Court in Criminal Appeal No. 263/2013 and others, in case of ICICI Bank Ltd. vs. State of Maharashtra.

7. In order to appreciate the rival contentions, it would be relevant to take note of the background in which the offence came to be registered and order impugned is passed.

8. It is not in dispute that NSEL provided an electronic platform for trading of commodities between willing buyers and sellers

through members/brokers representing them. The Department of Consumer Affairs issued notification dated 05.06.2007 exempting NSEL under Section 27 of the Forward Contract (Regulation) Act, 1952, exempting forward contract of one day duration for sell and purchase of commodities traded on NSEL from operation of the provisions of FCRA. In October 2008, NSEL commenced its operation. As per the scheme applicable, the trading on the exchange platform of NSEL could be undertaken by the registered members of the exchange either on their own behalf or on the behalf of their clients. At the request of the clients, the members of NSEL would place orders for buying /selling commodities and the orders placed would get matched automatically on NSEL exchange platform based on the price and time priority and it was resulted in a trade. Later on, however, it was found that there used to occur contract extending the said forward contract not for a period of one day but for a period of 30 days. On 27.04.2012, the Department of Consumer Affairs, Government of India, issued a show cause notice to NSEL as to why action should not be initiated against it for promoting transaction in the alleged violation of exemption granted to it under FCRA under notification dated 05.06.2007. An undertaking was obtained from NSEL that no further contract shall be launched until further

instructions and all existing contracts shall be settled on due dates. Accordingly, an undertaking was given by NSEL on 22.07.2013. On 31.07.2013, NSEL suspended its exchange operation and called upon its members to complete their respective delivery and payment obligations for the outstanding trades as on 31.07.2013. As on that day, 13000 persons who traded on the platform of NSEL claim to have been duped by about 24 trading members and the said default amounted to Rs. 5,600 Crores.

9. First Information Report came to be registered with M.R.A. Police Station vide Crime No. 216/2013. This offence came to be transferred to EOW and was renumbered as Crime No. 83/2013. In connection with several claims, suits came to be filed by the traders who were allegedly duped on the trading platform. Having regard to the nature and volume involved in the crime in question, the investigation continued for a substantial period and as and when role of entities was revealed, the appropriate Government by issuing notification declared the said entities as Financial Establishment. As far as MSR Foods is concerned, it was declared as Financial Establishment by notification issued in the year 2017.

10. Insofar as the contention of learned Counsel for the Appellant with regard to MSR Foods being not a Financial Establishment is concerned it is falsified by the documentary evidence on record i.e. by notification dated 31.03.2017 issued by the appropriate Government whereby MSR Foods is declared as Financial Establishment. The term Financial Establishment is defined under Section 2(d) of the Act which reads as under :-

“Financial Establishment”:

It means any person accepting the deposit under any Scheme or Arrangement or in any other manner but does not include a Corporation, Co-operative Society (owned or controlled by the State or Central Government or Banking Company)

The aforestated definition indicates that any person accepting deposits under any scheme or arrangement or in any other manner, except the Corporation or Co-operative Society owned or controlled by the State or Central Government or Banking Company, is a Financial Establishment. On the face of it, such declaration of MSR Foods as a Financial Establishment cannot be faulted with.

Section 2(c) of the Act defines ‘Deposits’ which reads as under:-

“Deposits” :

It includes any receipt of money by way of deposit or loan or in any other form by a Company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

11. A bare perusal of these provisions indicates that the definition of deposits is wide and inclusive in nature. It is wide enough to cover the transactions in question. This Court, therefore, finds no hesitation to hold that MSR Foods is a Financial Establishment within meaning of Section 2(d) of the MPID Act and the defaulted amount is a deposit under Section 2(c) thereof. The provisions of MPID Act, therefore, have been rightly invoked in this case.

12. As far as reliance placed by NSEL Ltd. on judgment of Hon'ble Supreme Court in case of NSEL Ltd. (supra), it would be relevant to consider the issue raised before the Supreme Court while challenging the order passed by the Supreme Court Committee. It would be fruitful to refer to Paragraph Nos. 15 to 20 of the said judgment, which read thus :-

"15. As transpiring from the impugned order dated 10-8-2023 passed by the SC Committee, one Modern India Ltd., Shree Rani Sati Investment and Finance Pvt. Ltd., Modern Derivatives and Commodities Pvt. Ltd., and F. Pudumjee Investments Company Pvt. Ltd. has filed a

suit on the Original Side of the Bombay High Court, impleading Financial Technologies India Ltd. (now known as 63 Moons Technologies Ltd.) as Defendant 1 and NSEL as Defendant 2, apart from 36 other individuals and companies who were impleaded as Defendants 3 to 38. The said suit was registered as Suit No. 173 of 2014. NSEL – Defendant 2 took out third-party notices in the said suit against its Trading Members who had defaulted in their funds “Pay-in” obligations, resulting in decrees being passed against such Trading Members and their lands by the Bombay High Court in favour of NSEL. Additionally, in some cases the arbitral awards were obtained by NSEL against some of the defaulting Trading Members. Therefore, such defaulting Trading Members of NSEL were the judgment-debtors, on whom the liability was affixed in respect of the third-party proceedings in Suit No. 173 of 2014. In separate actions, the Enforcement Directorate under the provisions of the PMLA and the competent authority under the provisions of the MPID Act had also attached the properties belonging to the judgment-debtors who were the defaulting Trading Members of NSEL.

16. During the course of execution proceedings before the SC Committee, a few financial creditors of some of the judgment-debtors (the secured creditors) had filed applications seeking intervention on the ground that in the capacity as secured creditors they would have priority of interest of the charge over the attached properties of the judgment-debtors.

17. In view of the aforesaid factual matrix, the SC Committee raised an issue as to “Whether the secured creditors would have priority of interest over assets attached under the provisions of PMLA, 2002, and the MPID Act, by virtue of the provisions of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act, 2002”) and the Recovery of debts and Bankruptcy Act, 1993 (hereinafter referred to as “the RBD Act”)

18. The SC Committee addressing the said issue concluded vide the order dated 10-8-2023 that given the overriding effect, the secured property being in the nature of proceeds of crime, as held by the attachment orders, no priority of interest can be claimed by the secured creditors against such attached property. As regard the properties attached under the MPID Act, on which the secured creditors laid their claims, the SC Committee further concluded that the provisions of the MPID Act, would override any claim for priority of interest by the secured creditors in respect of the property which has been attached under the MPID Act.

19. It further appears that during the course of proceedings before the SC Committee another issue that was raised for determination was “whether properties of the judgment-debtor and garnishees attached under the MPID Act would be available to the said Committee for execution of decrees against the judgment-debtor in terms of the order dated 4-5-2022, passed by the Supreme Court, in WP (C)No. 995 of 2019, in view of the commencement of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (“IBC” for short), on account of the initiation of insolvency proceedings against the judgment-debtors.” A similar issue also arose with regard to the commencement of the interim moratorium under Section 96 IBC in respect of the garnishees in their capacity as personal guarantors of a corporate debtor.

20. *The SC Committee vide the order dated 8-1-2024 concluded inter alia that as regards the properties which were attached under Section 4 of the MPID Act prior to imposition of the respective dates of moratorium of the judgment-debtor or garnishee under Section 14 or Section 96 IBC, the property having been vested in the competent authority appointed by the State of Maharashtra, such properties were not liable to be made part of insolvency proceedings, and could be available to the said Committee for realisation in terms of the order dated 4-5-2022 passed by the Supreme Court. It further concluded that as regards the properties which were sought to be attached after the date of commencement of moratorium (if any) or assets of judgment-debtor/garnishee/corporate debtor which were not yet attached under the provisions of the MPID Act, the decree-holder would be entitled to pursue its claim as a financial creditor/secured financial creditor, as the case may be in such individual cases under the provisions of IBC.”*

It is clear from the said observations that in the light of secured creditors claim of priority of interest of charge over the attached properties of judgment debtor, objection was raised and determined by the Committee. It is pertinent to note that in the said order of Committee, it is not clear as to whether any prior order was passed under SARFAESI Act. However, from observations in Paragraph No. 20 above, it can be seen that the properties attached under Section 4 of MPID Act were prior to imposition of respective dates of moratorium of judgment debtor or garnishee under Section

14 or Section 96 IBC and hence, property was already vested in Competent Authority appointed by the State of Maharashtra. Consequently, it is held that such properties were not liable to be made part of insolvency proceedings. However, thereafter it is categorically held by the Committee that as regards to the properties which were sought to be attached after the date of commencement of moratorium (if any) of assets, of Judgment Debtor, the decree holder would be entitled to pursue its claim as financial creditor/secured creditor, as the case may be in such individual cases under provisions of IBC. The orders dated 10.08.2023 and 08.01.2024, came to be confirmed and upheld by Supreme Court. In this backdrop, Hon'ble Supreme Court while answering the issue as to whether the secured creditor would have priority of interest over the assets attached under the provisions of MPID Act by virtue of provisions of SARFAESI Act has held that the provisions of MPID Act would prevail over the latter act. Consequently, in paragraph No. 66 of the said judgment it is held thus :-

“In that view of the matter, it is held that no priority of interest can be claimed by the secured creditor against the properties attached under MPID Act and that the provisions of MPID Act would over ride any claim for

priority of interest by secured creditor in respect of the properties which have been attached under MPID Act.”

13. These observations are made while answering the question as to whether the secured creditor would have priority of interest over the assets attached under the MPID Act. With utmost respect, the issue as to whether the properties in respect of which the secured interest is already enforced and vested into the secured creditor under the provisions of Section 14 of the SARFAESI Act before passing of order under MPID Act has not been raised and hence considered. Pertinently, when the order passed by Committee upholding right of secured creditor after the date of commencement of moratorium or assets of Judgment Debtors which were not attached under MPID Act, are held to be available for pursuing claim of secured financial creditor in such individual cases, is upheld there is reason to hold that the same analogy/principle would apply in case of the rights already vested in secured creditor under SARFAESI Act.

14. It is relevant to take note of the fact that insofar as the subject properties in question are concerned, admittedly, prior to issuance of notification under Section 4 of the MPID Act, there was mortgage in

favour of secured creditor in respect of the properties of MSR Foods and pursuant to the provisions under Section 14 of the Act, the secured interest is vested into the secured creditor i.e. Appellant who has stepped into the shoe of secured creditor and the creditor has obtained possession of properties in the year 2014. As far as NSEL is concerned, its claim also is that of a secured creditor by virtue of a decree passed by High Court dated 30.07.2018 in Suit No. 173/2014. Thus, a distinction will have to be drawn in respect of claim of NSEL as creditor but not secured creditor and claim of Competent Authority under the provisions of MPID Act. NSEL cannot therefor, claim precedence over the claim of Appellant, who is admittedly a secured creditor.

15. Needless to emphasise that SARFAESI Act is a complete code in itself which provides for the remedy under Section 17 thereof to any person including borrower who is aggrieved by any measures referred to in sub-section 4 of Section 13 taken by the secured creditor or his authorised officer under this Chapter. This Court is not informed that the order passed by the competent authority under SARFAESI Act invoking provisions of Section 14 thereof has not been taken exception to till date by any party. Thus, it can be safely said

that at this stage the same still holds field and has attained finality. Now, the question arises as to whether it would be open for the Competent Authority or Court under Section 7 of the MPID Act to pass an order of attachment by invoking Section 4 of the Act which would over ride and nullify the order passed under Section 13 of the SARFAESI Act. Once it is accepted that the SARFAESI Act is a complete and self-contained code, question arises as to whether without challenge to the action under Sections 13 and 14 under the provision/remedy prescribed under the said Act, the same could be set aside or over-ridden by any subsequent action of attachment of the subject properties in any other law including MPID Act. In considered view of this Court, said question must be answered in negative. The reason therefor is that there is a provision under Section 17 of the SARFAESI Act raising challenge to such action and such action would only be challenged under the said Act and cannot be allowed to be over-ridden by any subsequent attachment of the subject properties under MPID Act.

16. In absence of any such steps being taken as provided by the said act, it would not be open for any other authority under the

different statute to either directly or even indirectly set aside the order passed therein.

17. A question therefore would arise as to whether it would be open for the Competent Authority to attach the subject properties, which are already attached and secured interest is vested in secured creditor in that regard. In case, the contention of NSEL and Competent Authority is accepted that order passed under Section 4 of MPID Act would prevail over the order passed under provisions of SARFAESI Act, it would lead to creating a situation of a conflict in two different statutes and ultimately it will culminate into a situation wherein the authorities under the different act would be permitted to over ride/set aside the order passed earlier in time which, in considered view of this Court, is wholly impermissible in law.

18. It is relevant to note that in the order dated 15.12.2025, passed in case of ICICI Bank (supra), relied by learned Counsel for Competent Authority, when possession was attempted to be taken under Section 14 of the Act, the property was already attached by State of Maharashtra under MPID Act. In this backdrop of the facts, the challenge to impugned order therein was rejected. For difference

in facts in both cases, the said judgment has no application to the present case.

19. It would be different situation wherein no order has been passed under the SARFAESI Act on the claim of a secured creditor including interim measures of attachment of subject properties, and, in that case, it is not open for the secured creditor to oppose any order passed under MPID Act before the Special Court. Apart from this, there could be another eventuality wherein after commission of the crime, in order to defeat the claim of the depositors, a mortgage is executed in respect of the properties in question and collusive proceeding is filed under SARFAESI Act and order is obtained therein, still in such case, it could be said that there would not be any right of precedence to the secured creditor. This however, cannot be made applicable to the cases wherein admittedly there is no nexus between the crime and acquisition of properties and mortgage came to be executed much prior to occurrence of the offence. In such case, unless contrary is shown, it needs to be accepted as genuine transaction which would give right to the secured creditor to avail the remedy available under the SARFAESI Act. However, in such case too, if there is no order passed by the authority under the SARFAESI

Act, even by way of interim measure, it could not be said that secured interest is vested into the creditor under the provisions of SARFAESI Act and the order passed under Sections 4 and 5 of the MPID Act would prevail and it would not be open for the secured creditor to claim precedence.

20. It needs to be recorded that unless the Competent Authority/Special Court finds that the creation of mortgage in respect of a particular property is in order to circumvent the provisions of MPID Act and to defeat interest of depositors, in such case, it would be open for the Court to hold that since the transaction in question being not bonafide but intended overcoming of the provisions of MPID Act, the order under Section 4 would prevail. This however, cannot be permitted in absence of any such finding recorded by the Competent Authority and affirmed by Special Court under Section 7 of the Act.

21. In the instant case, admittedly, the mortgage in question is of the year 2005. The offence is committed after incorporation of NSEL and grant of permission to it to enter into transaction in the year 2008. Thus, it can be said that the properties were purchased by

MSR Foods much prior to commission of crime and hence not acquired from deposits. Similarly, the mortgages are executed much prior to the offence hence, need to be accepted as transaction. Undeniably, the secured creditor has already invoked the provisions of SARFAESI Act and order under Section 13 came to be obtained in the year 2014 i.e. prior to passing of order under MPID Act. In such circumstances, it cannot be said that by passing of the order of attachment under Section 4 of the Act, the order passed under SARFAESI Act gets superseded. In considered view of this Court, once an order is passed under the provisions of SARFAESI Act, any challenge thereto is permissible only under the provisions of same statute. Without taking recourse of the said remedy and unless order is passed setting aside of such order, it would not be open for the Competent Authority to pass any order of attachment under Section 4 of MPID Act and any such order if passed would become inconsequential.

22. It is rightly canvassed by learned Counsel for NSEL that Section 4 of the Act enables the competent authority to pass appropriate order of attachment of properties on default of return of deposits. According to him, the said provision can be divided in two

different parts i.e. attaching money or other property believed to have been acquired by such Financial Establishment or if it transpires that such money or other property is not available for attachment or not sufficient for payment of deposits, such other properties of the Financial Establishment or Promoters, Directors etc. may be attached. It would be relevant to take note of provisions of Section 4 of the Act which reads thus :

“Section 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 depositors; 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 intention 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 service against which the deposit is received, the Government may, in order to protect the interest of the depositors or 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."

Section 7 provides for powers of Designated Court regarding attachment. It lays down procedure for making attachment absolute. It contemplates issuance of notice, hearing of aggrieved parties, examination of parties by adopting summary procedure and after investigation under sub-section (5) to pass order.

23. The scheme of the Act therefore indicates that the competent authority on having satisfied that any property believed to have been acquired by such Financial Establishment, can attach the same under Section 4 of the Act. Here in this case, admittedly, the properties in question are acquired much prior to the commission of crime and as such, on the face of it, it cannot be said that there is reason to believe that the properties have been acquired by such Financial Establishment out of the deposits collected by it. Thus, this Court has no hesitation to hold that the first part of Section 4 of the Act has no application to the present case.

24. At this stage, it would be relevant to take note of the notification by the competent authority under Section 4 of the Act dated 31.03.2017. Relevant portion thereof is reproduced hereunder :-

“No. MPI. 2016/C.R. 541/B/Pol.11 – Whereas complaints have been received from number of depositors against National Spot Exchange Ltd. and Defaulter Companies M/s Metkore Alloys and Industries Lt., M/s Mohan India Ltd., M/s NCS Sugar Ltd., M/s Namdhari Foods International and M/s Namdhari Rice and General Mills, M/s Shree Radhey Trading, M/s N. K. Proteins Ltd., M/s P. D. Agro Processors Ltd., M/s Yathuri Associates Ltd, M/s White Water Foods Ltd., M/s P. D. Agro Processors Ltd., M/s Swastik Overseas Corporation, M/s Spin-Cot Textiles Ltd., M/s Vimaladevi Agrotech Ltd., M/s Swastik Overseas Corporation, M/s Spin-Cot Textiles Ltd., M/s MSR Food Ltd.,

M/s N. K. Proteins (Brand), M/s Dunar Foods Ltd. (Brand), M/s Lakshmi Energy and Foods Ltd. (Brand) (hereinafter referred to as "the said Financial Establishment") complaining that they had collected the Fund and have defaulted to return the said deposits made by the depositors on demand;

And whereas, an offence has been registered against the accused at E.O.W. Mumbai vide C.R. No. 89/2013, u/s 409, 465, 467, 468, 471, 474, 477(A), 120(B) IPC r/w 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act 1999:

And whereas, the State Government is satisfied that the said Financial Establishment and its Chairman/Directors are not likely to return the deposits to the depositors and hence the Government has to protect the interests of the depositors;

And whereas, the properties specified in the Schedule appended hereto are alleged to have been acquired by the said Financial Establishment and its Chairman/Directors from and out of the deposits collected by the said Financial Establishment.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4, section 5 and section 8 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (Mah. XVI of 2000) (hereinafter referred to as "the said Act") the Government of Maharashtra hereby attaches the properties of the said Financial Establishment and in the name of its Chairman/Directors as specified in the Schedule."

25. It is the contention of learned Counsel for NSEL that the present case is covered by the second part of Section 4 of the Act. It is his submission that MSR Foods is a propriety concern of Mr. M. S. Reddy and therefore, there cannot be any distinction made in

respect of the ownership of the property for Financial Establishment and its Directors, Promoters, Partners etc. It is his submission that all properties of MSR Foods become properties of Financial Establishment of M.S.Rao and hence, there is no justification for the Appellant to challenge the order under Section 4 of the Act.

26. No doubt, the record indicates that MSR Foods is a propriety concern of Mr. Rao and hence, his properties could be considered as the properties of Financial Establishment. As stated above, MSR Foods is declared as Financial Establishment by virtue of notification for the year 2017. Thus, it can be said that Mr. Rao in the name of MSR Foods is a Financial Establishment. As noted above, Section 4 permits attachment of properties acquired from or out of deposits collected by Financial Establishment. So, if there is reason to believe that properties are acquired from such deposits, there would be no difficulty to confirm the said attachment. However, in order to apply second part of provision, it must transpire that such money or property which is acquired from deposits is not available or not sufficient and it is only then other properties even of Financial Establishment could be attached under the said provision. Needless to say that every word used by legislature must be given due

weightage as legislature is expected not to use any word without reason. Thus, in case there is a need to attach properties even of Financial Establishment, which are not acquired from deposits of question, it must transpire that such money and properties from deposit are not available or not sufficient and then the other properties could be attached. The ordinary meaning of word 'transpire' is becoming known of the fact. Thus, it is necessary for Competent Authority to conclude so and then the same must be reflected in the order of attachment. Moreover, it must be so established before the Special Court seeking affirmation of attachment of properties.

27. In this backdrop, coming back to the notification dated 31.03.2017, perusal thereof indicates that the satisfaction of the competent authority i.e. the State Government for the purpose of attachment of the subject properties was that the Financial Establishment is not likely to return the deposits of the depositors and hence, the Government has to protect the interest of the depositors. Secondly, the properties specified in the Schedule appended thereto are alleged to have been acquired by the said Financial Establishment from and out of the deposits collected by the

said Financial Establishment. There is no satisfaction recorded that there is no money or property from deposit and, therefore other properties, which are not acquired from deposits are attached.

28. It is thus clear from the said notification that the sole basis of issuance of notification and attachment of the properties in question is that the Government is satisfied that the Financial Establishment is not likely to return the deposits to the depositors and that the said properties have been acquired from and out of the deposits collected by the said Financial Establishment.

29. Now, it is admitted fact that the properties in question are not acquired from and out of the deposits collected by the Financial Establishment. Thus, the first part of Section 4 of the Act has no application to the present case. Now, question arises as to whether before issuance of notification it was transpired to the competent authority and the State Government that the money or other properties were not available for attachment or were not sufficient for repayment of the deposits and therefore, the other properties than the one acquired from and out of the deposits collected by the Financial Establishment would be attached. As recorded above,

Notification dated 31.03.2017 is silent on this aspect. Thus, before attachment of the properties in question which are now admittedly not acquired from and out of the deposits collected by the Financial Establishment, there is no satisfaction recorded by the Government about the properties acquired from the deposits being not available for attachment and therefore, the second part of Section 4 came to be invoked. Apart from the fact that no such satisfaction has been recorded by the State Government, even evidence led before the Special Court justifying the said attachment does not indicate so.

30. Perusal of record indicates that Mr. Uday Gandhi, Chartered Accountant, led his evidence indicating that the properties in question belong to MSR Foods. He, however, admits that other than the transaction mentioned in the bank statements and contract notes, no information was provided to him. He further accepts that EOW has furnished him documents which are reflected in his report and that he has not examined and verified the books of accounts of MSR Foods. According to him, since he has not examined the books of accounts of MSR Foods, he cannot tell the details of movable or immovable properties of MSR Foods. Once these admissions are given by the witness and as there is no other evidence to indicate

that there are no properties available other than the attached properties belonging to the Financial Establishment i.e. Mr. Rao, it cannot be said that it was transpired that such money or other property is not available for attachment which is acquired from the deposits in question. As admitted by the witness, the forensic audit report states about the liability of MSR Foods but does not indicate the assets of MSR Foods. Moreover, perusal of Forensic Audit Report itself indicates that defaulter has not submitted Bank Accounts and other relevant record. There is no audited balance-sheet before Auditor to determine properties of MSR Foods. The said evidence on record, therefore, more than clearly indicates that there is no material on record in order to hold that other than the attached properties, there is no money or other property available for attachment which were acquired from deposits.

31. In this backdrop, now admittedly, the security interest has been created in favour of Appellant through State Bank of Hyderabad by order dated 21.04.2014 passed under Section 13 of the SARFAESI Act. Pursuant to the said order, the possession of the properties in question has gone to the Appellant. Apart from the possession, rights are vested in the Appellant for further transfer of the said

rights to the third party on sale of the subject properties. As discussed hereinabove, it was not open for any other authority but for the authority under the provisions of SARFAESI to set aside the order and de-vest the said properties on the basis of subsequent order of attachment even under MPID Act. Thus, the order of attachment passed by Competent Authority under Section 4 of the Act is inconsequential and in any case, it would not override the order under SARFAESI Act.

32. The impugned order does not take into consideration these aspects and more particularly the fact that there is no evidence on record to show that there are no other properties available for attachment and hence, the properties in question would be attached. Since the order in question is admittedly not covered by the first part of Section 4 of the Act, it was incumbent on the part of the NSEL to substantiate that there is no money or other property acquired from deposits is available with Mr. Rao/MSR Foods in order to satisfy the repayment of deposits and therefore, the properties in question could be attached. Finally, consequence of upholding order under MPID Act is that the said authority practically set aside the order passed under SARFAESI Act irrespective of the fact that Section 17 provides

for challenge to such interim measures and such challenge can be undertaken not only by the borrower but by any person.

33. In view of above discussion, the Appeal must succeed. Hence, the following order :-

ORDER

- (i) The impugned order is set aside.
- (ii) It is declared that the impugned notifications of attachment of subject properties under Section 4 of the Act are illegal and hence set aside, qua properties of Appellant.

(R. M. JOSHI,J.)