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# **RECONCILING STATE LAWS WITH THE INSOLVENCY & BANKRUPTCY CODE: A CRITICAL REVIEW OF THE SUPREME COURT'S NSEL JUDGMENT**

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## ***Abstract***

*This article critically analyses the Supreme Court's ruling in National Spot Exchange Ltd. v. Union of India, where the Court upheld state-ordered property attachments under the Maharashtra MPID Act, even in the face of the statutory moratorium imposed by Section 14 of the Insolvency and Bankruptcy Code (IBC), 2016. The Court's reasoning in distinguishing two statutes overlooks the precedents that recognise the overriding effect of the IBC under Section 238 when inconsistencies arise. The judgment disrupts the Code's carefully constructed framework, particularly the equitable distribution mechanism under Section 53, by allowing state-led actions to take precedence over the single window process envisaged by the IBC. Further, it fails to engage with Section 32A(2), which provides immunity for the corporate debtor's assets. The failure to raise these concerns weakens the doctrinal coherence of the ruling. The article analyses this approach, which compromises rights of the creditors and resolution applicants, by adopting a narrower option instead of a liberal one. This position has been premised on the earlier interpretations of the Supreme Court on Article 254 and Section 238. This article further recommends the consideration of this issue by the larger bench and amendment to section 53 of IBC to explicitly include public depositors, ensuring their claims are addressed within the insolvency resolution framework itself.*

## **I. Introduction**

In the recent decision of National Spot Exchange Ltd. v. Union of India<sup>1</sup>, the Apex Court dealt with the scam that originated from the commodity exchange platform of the petitioner company, National Spot Exchange Pvt. Ltd.(NSEL), which had committed a default and fraud amounting to ₹5,600 crores. In response, the defaulters' properties were attached under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999<sup>2</sup> (**MPID Act**) to alleviate the loss caused to the depositors.

<sup>1</sup> *National Spot Exchange Ltd v Union of India* (2017) 141 CLA 203 (Bom).

<sup>2</sup> Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act 1999 (Act 16 of 2000).

Subsequently, a secured creditor, upon initiating the Corporate Insolvency Resolution Process (CIRP), questioned the non-application of the moratorium to the already attached properties of the corporate debtor under the MPID Act. Addressing this issue, a two-judge bench comprising Justice Bela M. Trivedi and Justice Satish Chandra Sharma ruled in favour of the attachment of the property, thereby prioritising the attachment under the MPID Act over the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC)<sup>3</sup>. Although the Court's interpretation sought to improve the circumstances of depositors who had been defrauded by the exchange platform, it neglected to take into account Section 238<sup>4</sup> of the IBC's overriding effect. Additionally, it disrupted the waterfall mechanism under Section 53 of the IBC<sup>5</sup>. The Court's narrow interpretation of the law came at the expense of the IBC's core objectives

This article, therefore, critically analyses the Supreme Court's reasoning behind the non-application of the moratorium to state-ordered attachments and its failure to uphold the distribution mechanism provided under the IBC.

## II. Appraisal Of The Judgement

One of the complex issues considered by the Court in the NSEL case was whether the moratorium under Section 14 of the IBC<sup>6</sup> would apply to properties already attached under Section 4 of the MPID Act<sup>7</sup> upon initiating the CIRP. In addressing this issue, the two-judge bench observed that the Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) was enacted in the interest of depositors defrauded by financial establishments. In contrast, the IBC aims to consolidate and amend laws relating to corporate persons' reorganisation and insolvency to maximise their assets' value. Since both legislations govern different subject matters, the MPID Act falling under Entries-1, 30 and 32 of the State List and the IBC under Entry-9 of the Concurrent List, the Court held that the IBC moratorium would not override attachments made under the MPID Act.

Furthermore, the Court reasoned that, as the properties had been transferred to the competent authority (Maharashtra State Government's order) before CIRP was initiated, they were no

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<sup>3</sup> Insolvency and Bankruptcy Code 2016 (Act 31 of 2016) s 14.

<sup>4</sup> Insolvency and Bankruptcy Code 2016 (Act 31 of 2016) s 238.

<sup>5</sup> Insolvency and Bankruptcy Code 2016 (Act 31 of 2016) s 53.

<sup>6</sup> Insolvency and Bankruptcy Code 2016, s 14 (n 3).

<sup>7</sup> Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act 1999 (Act 16 of 2000) s 4.

longer part of the corporate debtor's assets. Therefore, the moratorium would not apply to these attachments.

Finally, the Court observed no inconsistency between Section 14 of the IBC<sup>8</sup> and Section 4 of the MPID Act<sup>9</sup>, as both serve different purposes and adopt different mechanisms. Hence, the overriding effect of Section 238 of the IBC<sup>10</sup> could not be invoked in this case.

However, the Court's reasoning overlooks the rights of creditors when assets already attached are kept outside the insolvency process. This is contrary to the IBC, which is designed as a single-window mechanism for unified resolution of claims. Allowing exceptions for certain assets due to parallel state actions weakens the objectives of the IBC and disrupts the fair distribution framework under Section 53<sup>11</sup>, which clearly sets out priority among classes of creditors.

### **III. Repugnancy, Overriding Provisions, And Doctrinal Inconsistency In The NSEL Judgment**

The Supreme Court's reasoning for prioritising the MPID Act over the IBC rests on the classical interpretation of Article 254 of the Indian Constitution<sup>12</sup>, particularly the absence of inconsistency between the two laws. The Court based this conclusion on the distinction in the two statutes legislative lists and subject matter, observing that the MPID Act falls under the State List while the IBC is placed in the Concurrent List. However, the Court failed to consider its earlier observations in *Innoventive Industries Ltd. v. ICICI Bank*<sup>13</sup>, where, while adopting a liberal approach, it held that repugnancy could arise when one statute frustrates the purpose of another law. They are so designed that only one can be effectively applied.

This was not the only instance where the Court adopted such an interpretation of repugnancy. In the case *West U.P. Sugar Mills Association v. State of U.P.*<sup>14</sup> and *M. Karunanidhi v. Union of India*<sup>15</sup>, the Court similarly noted that conflict arises when different legislations produce

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<sup>8</sup> Insolvency and Bankruptcy Code 2016, s 14 (n 3).

<sup>9</sup> Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act 1999 (n 7).

<sup>10</sup> Constitution of India, art 238 (n 4).

<sup>11</sup> Insolvency and Bankruptcy Code 2016, s 14 (n 3).

<sup>12</sup> The Constitution of India, 1950 art 254.

<sup>13</sup> *Innoventive Industries Ltd v ICICI Bank* (2018) 1 SCC 407.

<sup>14</sup> *West U.P. Sugar Mills Association v State of U.P.* (2002) 2 SCC 645.

<sup>15</sup> *M Karunanidhi v Union of India* (1979) 3 SCC 431.

different legal consequences for the same fact scenario or hinder each other's operation such that only one can prevail.

This case serves as an example of a situation where assets that have already been attached under the MPID Act are not eligible for equitable distribution under Section 53 of the IBC<sup>16</sup> or for the application of a moratorium.

In cases of such inconsistency, Section 238 of the IBC<sup>17</sup>, being a non obstante clause, typically holds precedence, granting the IBC overriding effect over conflicting laws. However, the Supreme Court, in declining to apply Section 238<sup>18</sup> over the MPID Act's attachment proceedings, failed to refer to its earlier ruling in *Innoventive Industries*<sup>19</sup>, where, in dealing with a similar conflict between state law and the IBC, it had upheld the supremacy of the IBC. The Court ruled that repugnancy between Section 14 of the IBC and the MPID Act must be resolved in favour of the IBC as a parliamentary statute. The Court also held that the non-obstante clause in Section 238 of IBC would prevail over the more limited non-obstante clause in the Maharashtra Relief Undertaking Act.

A similar stance was taken in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*<sup>20</sup>, where the Court noted that even if two legislations operate in entirely different spheres, in the event of a conflict, RERA would yield to the provisions of the IBC.

Another serious shortcoming in the *NSEL* judgment is the Court's failure to consider Section 32A (2) of the IBC<sup>21</sup>. This provision states that no action shall be taken against the property of a corporate debtor concerning an offence committed before the commencement of the CIRP, where such property is covered under a resolution plan approved by the Adjudicating Authority, which either results in a change in control of the corporate debtor or the sale of liquidation assets. Since the fraudulent activities in *NSEL* occurred before the initiation of CIRP, the Court should have considered the applicability of this section in scenarios where the assets had already been attached.

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<sup>16</sup> Insolvency and Bankruptcy Code 2016 (Act 31 of 2016) s 53.

<sup>17</sup> Constitution of India, art 238 (n 4).

<sup>18</sup> *ibid.*

<sup>19</sup> *Innoventive Industries* (n 13).

<sup>20</sup> *Pioneer Urban Land and Infrastructure Ltd v Union of India* (2019) 8 SCC 416.

<sup>21</sup> Insolvency and Bankruptcy Code 2016 (Act 31 of 2016) s 32A(2).

The judgment reflects a case of doctrinal regression, where the Court appeared to favour the interests of depositors over the integrity of the insolvency regime. In doing so, it departed from its earlier liberal interpretations that upheld the broader objectives of the Code.

#### **IV. Conclusion & Suggestions**

The ruling of the Supreme Court deviates considerably from accepted IBC jurisprudence. The Court has disregarded important IBC objectives, including value maximisation of assets, a single settlement process, and equitable distribution under Section 53, by maintaining the MPID Act's attachment of assets and exempting them from the moratorium's provisions under Section 14 of the IBC. Despite conflicting precedents, the Court's unwillingness to apply Section 238 of the IBC further demonstrates a conservative approach that jeopardises the primacy of the Code. Notably, a crucial statutory mistake is indicated by the total silence on Section 32A (2), which shields resolution applicants from pre-CIRP penalties.

The implications of this judgment go beyond one single case, as it creates a 'in rem' situation where state laws may sidestep the structured insolvency process under the IBC, fostering uncertainty for creditors and resolution applicants alike.

To address these concerns, we first suggest that the Supreme Court should consider referring such matters to a larger constitutional bench to clarify the scope of Article 254 and Section 238 in case of a conflict. A clearer and purposive judicial approach would reaffirm the supremacy of the IBC and restore certainty for investors and creditors. Second, in order to clearly acknowledge public investors as a separate class in the waterfall process, the legislature ought to think about revising Section 53 of the IBC. This would ensure that cases of large-scale financial frauds are equitably treated within the mechanism rather than being relegated solely to state-led machinery.