

MHCC020165122019



**IN THE COURT OF SPECIAL JUDGE, MPID FOR GR.BOMBAY**  
**AT BOMBAY**

**Misc Application No. 1767 of 2019**

(CNR NO.MHCC02-016512-2019)

**In**

**MPID Case No. 1 of 2014**

**ICICI Bank Limited**

ICICI Bank Towers,

North Tower 8<sup>th</sup> Floor,

Bandra-Kurla Complex,

Bandra (E), Mumbai 400051.

Through its Attorney/Authorised

Representative Priyanka S. Dhamnaskar

... **Applicant**

**VS**

**1. The State of Maharashtra(EOW)**

(At the instance of EOW SIT NSEL)

**2. The Senior Police Inspector – EOW, SIT NSEL,**

3<sup>rd</sup> Floor, New Bldg., Police Commissioner -

Office Compound, Nr. Crawford Market,

Mumbai – 400 001.

**3. Office of the Competent Authority**

Bandra – 1, MHADA Building,

Ground Floor, room No.68,

Kalanagar, Bandra (E),

Mumbai – 400 051.

... **Respondents**

**Appearances:**

Ld. Adv. Shri. Santosh Bhide for applicant.

Ld. S.P.P. Shri. Sunil Gonsalves for the State/EOW.

Ld. Adv. Shri. Arvind Lakhawat for intervener.

Ld. Adv. Shri. Vinay Bhanushali for intervener.

**CORAM : HIS HONOUR SPECIAL JUDGE  
SHRI A.S. SAYYAD  
SPECIAL COURT (C.R.No.52)  
DATE : JANUARY 10, 2023.**

**(DICTATED AND PRONOUNCED IN OPEN COURT)**

**:ORAL ORDER:**

This is an application filed by the applicant for lifting attachment of properties by the State of Maharashtra under its notification.

Background facts:

2. According to applicant, it is a Public Limited Company under the provisions of Companies Act 1956 and banking company under the provisions of Banking Regulation Act 1949, also a Scheduled Bank according to Reserve Bank of India Act 1934. The applicant contends that in the month of October 2012, one Mr. Kamal Kant Dewan alongwith his brother approached to applicant bank situated at Zirakpur Dist. Mohali for the purpose of availing house loan to the tune of Rs.3,63,95,020/- for purchase of residential property situated at House No.564, Sector 8B, Chandigarh alongwith land. Thereafter, Mr. Kamal Kant Dewan also applied for Top Up Loan amounting to Rs.6,36,04,980/-. The said loan was availed by Mr. Dewan in his personal capacity and not in the capacity of being one of the Director of

M/s. White Water Foods Pvt. Ltd. Accordingly, applicant bank sanctioned the above mentioned loan against the mortgage of property House No.564, Sector 8B, Chandigarh alongwith land. Later on, Mr. Dewan being borrower of the applicant defaulted to repay amount. As a result, the account was classified as Non Performing Asset (NPA) on 31.01.2018. Later on, by virtue of rights available under SARFAESI Act 2002, the applicant bank initiated legal action under section 13(2) and issued notice to borrower on 22.01.2018. However, borrower failed to repay loan amount of the applicant. Therefore, the applicant bank took symbolic possession of the mortgage property on 28.05.2018 and the same was published in the newspaper in accordance with law. Subsequently, as borrower failed to repay the loan, the applicant bank constrained to file application under section 14 under SARFAESI Act before the Ld. District Magistrate, Chandigarh, whereby, the said application came to be allowed the applicant bank to take physical possession of the mortgage property with assistance of the Tahsildar (Revenue) and police officials. Accordingly, when the applicant bank approached the authorities for taking physical possession of the mortgage house, it was revealed that the said property was attached by the Government of Maharashtra under CR No. 89 of 2013 which was filed against M/s. White Water Foods Pvt. Ltd. which is borrower company of NSEL. The applicant also received letter dated 08.03.2019 from respondent no.2 wherein they recorded their objections for the selling of property and directed bank to file the objections before the court concerned and obtained permission for initiating any steps in relation to aforesaid property.

3. According to applicant, the provisions of SARFAESI Act over ride the provisions of any other law (whether State and Central Act) which is

inconsistent therewith. The respondent no.2 should have issued the notice to applicant before attaching the property. Infact no any notice was issued by the respondent no.2 in accordance with law. Thus, the attachment made by the the State of Maharashtra bad in law. The applicant is a custodian of public money has acted in accordance with the provisions of law. Therefore, the applicant is legitimately right to dispose of the flat and and recovery of dues. On the grounds as above and others, the applicant bank prayed for allow the application.

4. This application was strongly opposed by the competent authority vide its reply Exh.8 contending therein that at the first blush the application deserves to be rejected as it is filed without any substance. According to competent authority, MPID Act is an Act of 'Restitution' under which the State is duty bound to recover the money owed to depositors by the Financial Establishment by attaching properties acquired out of deposits and in case in transpires that those properties are not available or not sufficient for repayment, other properties of the Financial Establishment, its Directors, Managers etc. are liable to be attached. Section 8 of the MPID Act also envisages that where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors, and where the Designated Court is satisfied that there is reasonable cause for believing that the said Financial Establishment has transferred any of the property otherwise than in good faith and for consideration, the Designated Court can issue show cause as to why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached. According to prosecution, forensic Audit has established that M/s. White Water Foods

Pvt. Ltd. received an amount of approximately Rs.94 crores from NSEL and has a liability of approximately Rs.85 crores. The Hon'ble Supreme Court has held in Central Bank of India V/s. State of Kerala & Ors. (2009) 4 SCC 94 that “There is no provision in the DRT Act or the Securitization Act by which first charge has been created in favour of banks, financial institutions or secured creditors qua the property of the borrower.” Whereas, as per section 4(2) of the MPID Act, once the notification issued by the Government is published in the Official Gazette, the attached property vests in the competent authority. Therefore, where there is no first charge created, the applicant cannot lay claim to the attached properties. As per section 7(5) of the MPID Act, any person making an objection is required to adduce evidence to show that on the date of attachment, he had some interest in the property attached. In the present matter, the property was attached on 13.01.2016, whereas, as per applicant's own admission in para 2 (c) of the application the account was classified as Non Performing Asset on 31.01.2018 i.e. two years after the date of attachment.

5. The crux of the reply of competent authority is that State Government of Maharashtra has attached the property defaulters first thus subsequent charge cannot be created and the applicant could not entitle to claim for de-attachment of the property. Competent authority thus on the grounds as above and others, prayed for rejection of the application.

6. The objector/intervener NSEL also filed its reply vide Exh.9 and taken strong objection for lifting of the attachment of property under the notification of MPID Act. Intervener by its reply supported to competent authority by putting some additional facts in respect of

litigation pending between its company and company of borrower of the applicant. The intervener also prayed for rejection of the application.

7. Heard Ld. Advocate Shri. Santosh Bhide for the applicant, Ld. SPP Shri. Sunil Gonsalves for the State/EOW, Ld. Advocate Shri. Arvind Lakhawat and Ld. Advocate Shri. Bhanushali for intervener at the length of considerable time. I have bestowed my best consideration to their respectful submissions. The following points arise for consideration:

SR. NOS.	POINTS	FINDINGS
1.	Whether applicant has made out case for de-attachment of property under notification in question as sought for ?	No
2.	Whether applicant is entitled so as to relief as sought for ?	No
3.	What order ?	As per final order.

### REASONS

#### As to all points together :

8. At the very outset, it would relevant to mention some undisputed facts which emerges from the averments of the parties as under :

ICICI Bank is a public limited company incorporated under the provisions of Companies Act and also under the provision of Banking Regulation Act of Reserve Bank of India Act. Mr. Kamal Kant Dewan is a Director of M/s. White Water Foods Pvt. Ltd. and who is a borrower of

the applicant bank. The applicant given huge loan to Mr. Kamal Kant Dewan for purchasing residential property at House No.564, Sector 8B, Chandigarh alongwith land subject to mortgage of said property. On 28.07.2012 and 06.11.2012. The applicant sanctioned huge loan to Mr. Kamal Kant Dewan as Mr. Kamal Kant Dewan became defaulter his account classified as NPA on 31.01.2018. Legal action initiated by the applicant bank on 28.05.2018 under the provision of SARFAESI Act 2002. Thereafter, for taking physical possession obtained order of Collector dated 25.10.2018. The State Government of Maharashtra under its notification attached the said property on 13.01.2016 vide Gazette notification MIS.2014/CR.541/Pol-11. The symbolic possession taken by the applicant bank of the subject property on 28.05.2018.

9. The applicant bank claimed the attachment of property under notification of MPID Act is illegal wholly on the ground that as the applicant firstly created charge over the subject property in the year 2012 and State Government of Maharashtra have attached the subject property under attachment later on in the year 2016. According to applicant bank, as the bank initiated legal action against the borrower under the provision of SARFAESI Act and thereafter taken the said property in its possession, SARFAESI Act is a Central Legislature and the MPID Act is a State Legislature. Subject property which attached under the MPID Act is a State Legislature and the charge created by the applicant bank under the SARFAESI Act is a Central Legislature which have prevailed on the State Legislature. Thus, whatever attachment by the State Government is bad in law and the same required to be released forthwith from attachment.

10. With regard to legal objection raised by the applicant as above, it would be relevant here to mention that the applicant itself comes with the specific averment that the applicant bank initiated legal action under SARFAESI Act against its borrower on 28.05.2018 and on the same date taken symbolic possession. When the applicant obtained order from the Collector for taking physical possession of the subject property on 25.10.2018, then they came to know the subject property was already attached by the State of Maharashtra vide Gazette notification dated 13.01.2016. If the series of dates as above, taken into consideration, then it would be clear like a noon day that the subject property was attached under MPID Act prior to the date of account of Mr. Kamal Kant Dewan being declared as NPA by the applicant bank and prior to alleged symbolic possession being taken by the applicant bank under SARFAESI Act. Thus, attachment under MPID Act in the present case was prior to date when SARFAESI Act became applicable to the instant case. Not only this but section 37 of SARFAESI Act clearly states that provisions and rules under said Act shall be in addition to, and not in derogations of any other law for time being in force.

11. In view of the factual scenario and circumstances, the attachment of the subject matter of Mr. Kamal Kant Dewan under MPID Act appears to be valid and it needs to continue considering the object of MPID Act of the protection of the interest of the depositors. Moreover, it appears that the applicant has also filed another application no. 977 of 2022 under section 7(3) of the MPID Act, seeking therein relief to restrain the opponents for making the attachment of mortgage property i.e. the subject property. By way of these two applications, the applicant direct and indirect claimed one and the same relief.



12. So far as the legal question which law is prevailed whether Central or State in the present scenario. From both the sides, it is tried to support their respectful submissions. The applicant vehemently submitted Central law is prevailed over the State law and because of that the attachment in question under MPID Act is illegal. Having regard that, it would relevant to mention here that if the factual aspects taken into consideration in its entirety, it would become clear that in the instant case there is no dispute or conflict between two Acts whether which one is prevailed. Having regard that if the decision of Hon'ble Apex Court in the matter of *M/S New Horizon Sugar Mill V/S State of Pondicheerry* (Civil Appeal No. 6673-6674-of 2009) is to be taken into consideration, it would make clear that if there is conflict between two Acts, then State Act which received assent precedent would prevail. However, in this case, in my opinion, there is no dispute between the State and Central law as factual aspects are made very clear that subject matter was attached by the State of Maharashtra under Gazette notification under the provisions of MPID Act prior to legal action under SARFAESI Act. Therefore, submission of the applicant as above, deserves to be non consideration. The applicant therefore failed to make out prima facie case to show the attachment in question is bad in law. The application is devoid of merit and deserves to be rejected. I answered the above points accordingly and following order would meet the end of justice :

**ORDER**

1. Misc Application No. 1767 of 2019 in MPID Special Case No. 1 of 2014 is rejected.
2. The attached subject property under notification dated 13.01.2016 under MPID Act ordered to be made absolute forthwith.

3. The Competent Authority is directed to take an appropriate step in compliance of order.
4. Misc Application is disposed of accordingly.



**(A.S. Sayyad)**  
Special Judge (MPID)  
MPID, Special Court,  
City Civil & Sessions Court,  
Gr. Bombay.

Date: 10.01.2023

Dictated on :09 & 10.01.2023  
Transcribed on :09 & 10.01.2023  
Signed by HHJ on :10.01.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME	NAME OF STENOGRAPHER
10.01.2023 (5.08 p.m.)	MRS. K.Y. INAMDAR

Name of the Judge (with Court Room No.)	Shri A.S. Sayyad C.R. No.52
Date of Pronouncement of JUDGMENT/ ORDER	10.01.2023
JUDGMENT/ORDER signed by P. O. on	10.01.2023
JUDGMENT/ORDER uploaded on	10.01.2023