

Hon'ble Supreme Court dismisses SLP filed by few trading clients whose outstanding are above Rs. 10 Lakh

The Hon'ble Supreme Court was pleased to dismiss the SLP (Criminal) No. 7435/2021, filed by Olinda Rebello & Ors. opposing payments to 6445 trading clients of NSEL who fall between ₹2 lakhs to ₹10 lakhs.

Few of the trading clients whose outstanding is above Rs. 10 Lakh had challenged the March 8th, 2021 order of the Hon'ble Bombay High Court which had ruled in favour of immediately releasing payments due between Rs 2 lakh to Rs 10 lakh to 6445 trading clients of NSEL on a priority basis from the escrow account of the competent authority (CA).

ITEM NO.28 Court 5 (Video Conferencing) SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s).7435/2021

(Arising out of impugned final judgment and order dated 08-03-2021 in CRLA No. 451/2020 and CRLA No. 88/2021 passed by the High Court of Judicature at Bombay)

OLINDA REBELLO & ORS.

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(WITH I.R. and IA No.41480/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.41479/2021-PERMISSION TO FILE SLP)

WITH

SLP(Cr1) No. 2499/2021 (II-A)

(WITH I.R. and IA No.41201/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(Cr1) No. 2539-2540/2021 (II-A)

(WITH I.R. and IA No.41534/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.41535/2021-EXEMPTION FROM FILING O.T.)

Date : 26-03-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Jayant Mehta, Sr. Adv.
Mr. Bhushan Shah, Adv.
Mr. Akash Jain, Adv.
Mr. Rishab Jain, Adv.
Mr. Tanmay Gor, Adv.
Ms. Anindita Mitra, AOR

Mr. Ajit Bhasme, Sr. Adv.
Mr. Rahul Kaushik, AOR

Mr. Venkatesh Dhond, Sr. Adv.
Ms. Sanjana Saddy, Adv.
Mr. Sanyat Lodha, AOR

For Respondent(s) Mr. Ajit Bhasme, Sr. Adv.
Mr. Rahul Kaushik, AOR

Mr. Rahul Chitnis Adv.
Mr. Sachin Patil AOR.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Permission to file the Special Leave Petitions granted.
- 2 We are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.
- 3 The Special Leave Petitions are accordingly dismissed.
- 4 Pending applications stand disposed of.

**(SANJAY KUMAR-I)
AR-CUM-PS**

**(SAROJ KUMARI GAUR)
COURT MASTER**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.451 OF 2020

Rabibai Mohamad Ismail]
R/o. 404, Sky High Height, N.I.B.M.]
Pune.] ... Appellant

Versus

1. The State of Maharashtra]
(Through the Competent]
Authority appointed under the]
MPID Act, 1999), First Floor, Old]
Custom, Fort, Mumbai – 400 001.]

2. NSEL Investor Action Group,]
having its office at, 305, “B” Wing,]
Kemp Plaza, Chincholi, Bunder]
Road, Malad (West), Mumbai –]
400 064.] ... Respondents

ALONG WITH
CRIMINAL APPEAL NO.88 OF 2021

The State of Maharashtra,]
Through the Competent Authority]
appointed under the Maharashtra]
Protection of Interest of Depositors (in]
Financial Establishments) Act, 1999.] ... Appellant

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Versus

1. Sureshchandra Kishanlal Vaishnav]
C-701, Shilalekh Apt. Opp.]
Shahibaug Police Stadium,]
Shahibaug, Ahmedabad – 380]
002.]
2. Nilima Dayal,]
A-35, Hill View Apartments,]
Vasant Vihar, New Delhi – 110]
057.]
3. Pankaj Ramnaresh Saraf]
182, Venus Apartment, 87, Cuffe]
Parade, Mumbai – 400 005.]
4. Arun K. Rane]
A-503, Krishna Regency, Behind]
Sunder Nagar, Malad (West),]
Mumbai – 400 064.]
5. Jay Dharendra Doshi,]
5, Motisagar Kaluskar Road South,]
Shivaji Park, Dadar, Mumbai –]
400 028.]
6. Ashok Rameshchandra Gupta]
501, Vaidya Villa, 55, J.K. Mehta]
Street, Off. Swami Vivekanand]
Road, Santacruz (West), Mumbai]
– 400 054.]

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7. NSEL Investors Action Group,]
305, "B" Wing, Kemp Plaza,]
Chincholi, Bunder Road, Malad]
(West), Mumbai – 400 064.]
8. L.J. Tanna Enterprises Pvt. Ltd.]
Tanna House, 2nd floor, 11 A, N.D.]
Parekh Marg, Colaba, Mumbai –]
400 005.] ... Respondents

...

Mr. Chetan Kapadia with Ms. Vidisha Rohria for the appellant in Criminal Appeal No.451 of 2020 and for respondent No.6 in Criminal Appeal No.88 of 2021.

Mr. Avinash B. Avhad, Special Public Prosecutor with Mr. J.P. Yagnik, A.P.P. for the appellant in Criminal Appeal No.88 of 2021 and for the respondent/State in Criminal Appeal No.451 of 2020.

Mr. Piyush Raheja i/b Bellator Legal Service for respondent No.3.

Mr. Venkatesh Dhond, senior advocate with Mr. Piyush Raheja, Mr. Akash Jain, Mr. Tanmay Gor i/b Mansukhlal Hiralal & Co. for respondent No.2 in Criminal Appeal No.451 of 2020 and for respondent No.7 in Criminal Appeal No.88 of 2021.

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**CORAM : S.S. SHINDE &
MANISH PITALE, JJ.**

RESERVED ON : 05TH FEBRUARY, 2021

PRONOUNCED ON : 08TH MARCH, 2021.

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JUDGMENT:- [Per: Manish Pitale, J.]

1. These two appeals have been filed under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as “**the MPID Act**”). Criminal Appeal No.451 of 2020 is filed by the appellant claiming to be a small investor, who is aggrieved by orders dated 22/10/2020 and 03/11/2020 passed by the Designated Court for cases arising from the MPID Act at Mumbai. Criminal Appeal No.88 of 2021 has been filed by the State of Maharashtra, through the Competent Authority appointed under the MPID Act, challenging orders dated 16/10/2018 and 23/04/2019 passed by the aforesaid Designated Court. These appeals raise a common question as to the manner in which the Designated Court under Section 7(4) of the MPID Act is supposed to distribute money realized from assets attached under the provisions of the MPID Act. It is contended that when the Designated Court under the aforesaid provision is required to ensure equitable distribution of such money amongst the depositors, it can be distributed in a graded or preferential manner in terms of the object of the MPID Act and not merely equally or on prorata basis.

2. On 30/09/2013, a First Information Report (“**FIR**”) bearing No.216 of 2013 was lodged at the behest of one Pankaj Saraf at

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M.R.A. Marg Police Station, Mumbai, for offences punishable under Sections 409, 465, 467, 468, 471, 474, 477(A) and 120B of the Indian Penal Code (“IPC”). The investigation in respect of the said FIR was taken over by the Economic Offences Wing (“EOW”) and it was renumbered as EOW CR No.89 of 2013. The provisions of the MPID Act were applied on 03/10/2013 and the case stood transferred to the aforesaid Designated Court. The Home Department of the Government of Maharashtra appointed the Competent Authority as contemplated under Section 5 of the MPID Act and consequent action of attachment and liquidation of assets was undertaken by the Competent Authority, as a consequence of which, funds stood deposited in the account of the Competent Authority.

3. The original informant filed an application on 21/10/2016 before the Designated Court praying for equitable distribution of the funds collected as per Section 7(4) of the MPID Act. On 03/11/2017, the State, through the Competent Authority, filed its reply to the said application and, thereafter on 06/07/2018, an additional reply was filed. In this additional reply, it was brought on record that the funds collected through liquidation of assets were distributed during the period 2014-15 in such a manner that the entire outstanding amounts of 608 investors, whose outstanding amounts were less than Rs.2 lakhs were paid and 50% of the outstanding amounts of 6445 investors, whose

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outstanding amounts were more than Rs.2 lakhs but less than Rs.10 lakhs were also paid. Insofar as 5682 investors, whose outstanding amounts were more than Rs.10 lakhs, were concerned, about 6.5% of the outstanding amounts were paid to them. After placing on record such details, the Competent Authority submitted before the Designated Court that it should be permitted to equitably distribute the funds available in the account of the Competent Authority.

4. It is relevant that on 20/08/2018, the Department of Economic Affairs of the Government of India through its adviser, sent a D.O. letter to the Additional Chief Secretary (Home) of the Government of Maharashtra, suggesting that an application may be made before the Designated Court to distribute money to the small depositors with outstanding amounts falling between Rs.2 lakhs and Rs.10 lakhs and that this may be pleaded as equitable distribution of money contemplated under Section 7(4) of the MPID Act. Pursuant to this letter, on 01/09/2019, the Deputy Secretary to the Home Department of the Government of Maharashtra addressed a letter to the Joint Commissioner of Police, EOW, Mumbai, as also to the Competent Authority, instructing them to make necessary application before the Designated Court for appropriate relief.

5. The Designated Court had already closed the matter on
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24/07/2018 for orders, as a consequence of which, the Special Public Prosecutor (“Spl. P.P.”) appearing for the Competent Authority made an oral request for a direction to distribute the available funds to the investors, whose outstanding amounts were between Rs.2 lakhs and Rs.10 lakhs. On 16/10/2018, the Designated Court pronounced its order rejecting the aforesaid request on two counts. Firstly, for the reason that the arguments of the parties had already concluded and the matter was reserved for orders when the oral request was made and secondly, when such request was made, the contesting parties were not present. As a consequence, the aforesaid application filed by the original informant was allowed and it was directed that the available funds be equitably distributed amongst all the investors/depositors.

6. In terms of the said order, the Competent Authority distributed an amount of Rs.35 crores amongst 12127 investors/depositors. According to the Competent Authority, since the amount was distributed amongst all the investors, each investor received a paltry sum of 0.75% of their total outstanding amounts as on 16/10/2018, which was not of much help to the investors.

7. Thereafter, an amount of Rs.40 crores again became available for distribution amongst the investors. In view of the aforesaid experience, the Competent Authority made a fresh

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application before the Designated Court in December, 2018 praying for permission to make graded distribution to the investors, whose outstanding amounts fell between Rs.2 lakhs and Rs.10 lakhs. It was submitted on behalf of the Competent Authority that in order to give priority to the small investors, it would be appropriate to first clear the dues of the investors, whose outstanding amounts fell between Rs.2 lakhs and Rs.10 lakhs. This application was opposed by the intervenor (Respondent No.8 in Criminal Appeal No.88 of 2021).

8. On 23/04/2019, the Designated Court rejected the aforesaid prayer made on behalf of the Competent Authority to distribute the funds available to the investors, whose outstanding amounts fell between Rs.2 lakhs and Rs.10 lakhs. It was observed that the Competent Authority ought to have challenged the earlier order dated 16/10/2018. It was also held that the meaning of the word 'equitable' will have to be taken as equal or reasonable. It was further held that the Designated Court under Section 4 of the MPID Act has no option to make graded distribution as suggested by the Competent Authority. Accordingly, by the said order, the Competent Authority was directed to make equitable distribution of the amount available with it.

9. The appellant in Criminal Appeal No.451 of 2020 filed an
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application for intervention before the Designated Court in the aforesaid proceedings, claiming to be an aggrieved person and also opposed the application filed by the NSEL Investors Action Group (Respondent No.2 in Criminal Appeal No.451 of 2020 and Respondent No.7 in Criminal Appeal No.88 of 2021). The said application had been filed by the aforesaid respondent for a direction to the Competent Authority to comply with the aforesaid order dated 23/04/2019. On 22/10/2020, the Designated Court rejected the said application filed by the appellant in Criminal Appeal No.451 of 2020. Thereafter, on 03/11/2020, the Designated Court allowed the aforesaid application filed by respondent-NSEL Investors Action Group for implementation of the order dated 23/04/2019. Accordingly, the Competent Authority was directed to distribute the available amount as per the order dated 23/04/2019 within three months from the date of the order.

10. The appellant in Criminal Appeal No.451 of 2020 approached this court by filing the said appeal to challenge orders dated 22/10/2020 and 03/11/2020 passed by the Designated Court. On 17/12/2020, this court issued notice in the aforesaid appeal. Thereafter, in January, 2020, the State, through the Competent Authority, filed Criminal Appeal No.88 of 2021 along with an application for condonation of delay of 225 days. This was because the State, through the Competent Authority,

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had filed the appeal in January, 2020 to challenge the aforesaid impugned orders dated 16/10/2018 and 23/04/2019 passed by the Designated Court, whereby the plea of the State for graded distribution of the available funds, first to the investors, whose outstanding amounts were between Rs.2 lakhs and Rs.10 lakhs, had been rejected.

11. On 22/12/2020, when Criminal Appeal No.451 of 2020 came up for hearing, this court was informed about the aforementioned appeal filed by the State, through the Competent Authority along with an application for condonation of delay. This court found that when the basic order dated 23/04/2019 was the subject matter of challenge in the appeal filed by the State, it would not be desirable for the Competent Authority to distribute the amounts as per the order dated 23/04/2019. Accordingly, it was directed that the two appeals be taken up together for consideration and that the Competent Authority would not act upon the direction of the Designated Court given in the order dated 03/11/2020 to distribute the amounts as per the order dated 23/04/2019. Thus, the effect of the order dated 23/04/2019 remained in abeyance. Thereafter, on 07/01/2021, this court issued notice in the application for condonation of delay of 225 days in filing of the appeal preferred by the State before this court.

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12. On 22/01/2021, the application for condonation of delay was allowed as no specific objection was raised by the respondents in that regard. The appeals were heard on merits on 05/02/2021 and judgment was reserved.

13. Mr. Avinash Avhad, learned Spl.P.P. appearing on behalf of the State, through the Competent Authority, submitted that the Designated Court had erred in passing the impugned order, whereby the prayer of the Competent Authority for graded distribution of the amounts to the investors was rejected. It was submitted that the Designated Court failed to appreciate the true purport of Section 7(4) of the MPID Act and true scope of the word 'equitable' used in the said provision. It was submitted that the object of the MPID Act was to protect the small investors and that therefore, the Competent Authority was justified in making the prayer for graded distribution of the available funds in favour of the small investors. By placing reliance on facts and figures stated in paragraph No.12 of the appeal memo of Criminal Appeal No.88 of 2021, learned Spl. P.P. vehemently submitted that the Designated Court ought to have taken into consideration the fact that the distribution of available funds as prayed by the Competent Authority would advance the object of the MPID Act. It was submitted that if such graded distribution was permitted, outstanding amounts of huge number of comparatively small

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investors would be satisfied. On this basis, it was submitted that the orders impugned in Criminal Appeal No.88 of 2021 i.e. the orders dated 16/10/2018 and 23/04/2019 passed by the Designated Court deserved to be set aside.

14. Mr. Chetan Kapadia, learned counsel appearing for the appellant in Criminal Appeal No.451 of 2020 submitted that the Designated Court had failed to appreciate the entire scheme of the MPID Act and its emphasis on protection of the small investors. It was emphasized that the appellant was a small investor, who had lost her entire savings and that it would have been in the interest of justice, if her intervention application had been allowed and graded distribution had been permitted. Much emphasis was placed on the definition of the word 'deposit' as defined in Section 2(c) of the MPID Act. The Statement of Objects and Reasons of the MPID Act was also brought to the notice of this court to contend that the Designated Court had erred in refusing graded distribution of available funds in favour of small investors. Learned counsel relied upon the mischief rule of interpretation of statutes to support his contentions. In support of his submission, learned counsel relied upon the judgments of the Hon'ble Supreme Court in the case of *New Horizon Sugar Mills v. Government of Pondicherry*¹, *K.K. Bhaskaran v. State*² and judgment of the

¹ (2012) 10 SCC 575

² (2011) 3 SCC 799



Division Bench of this Court in the case of **Ashish Mahandakar v. State**³.

15. Mr. Venkatesh Dhond, learned senior counsel appearing for respondent No.2 in Criminal Appeal No.451 of 2020 and respondent No.7 in Criminal Appeal No.88 of 2021, vehemently opposed the contentions raised on behalf of the appellants. It was submitted that equitable distribution of available funds as per Section 7(4) of the MPID Act meant equal distribution of the available money amongst all the depositors. It was submitted that any other interpretation would amount to reading words into Section 7(4) of the MPID Act, which was not permissible. Learned senior counsel submitted that all the depositors, who had been duped, deserved repayment of amounts due to them and that artificial classification of depositors was not permissible. It was submitted that the Designated Court had correctly interpreted the word 'equitable' to hold that graded distribution could not be permitted and that the available amount was necessarily required to be distributed equally or on prorata basis. According to learned senior counsel appearing for the said respondent, any other interpretation of Section 7(4) of the MPID Act would do violence to the said provision, which was impermissible. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Committee of Creditors of**

³ 2019 All M.R. Cri. 4429



*Essar Steel India Limited v. Satish Kumar Gupta & Ors.*⁴,
*Manzoor Ahmad Shah v. Golden Forests (I) Ltd.*⁵ and *Anant Kajare v. Eknath Aher & Ors.*⁶

16. Mr. Piyush Raheja, learned counsel appearing for respondent No.3 supported the contentions raised on behalf of respondent–NSEL Investors Action Group.

17. Considering the contentions raised on behalf of the rival parties, it becomes necessary to interpret Section 7(4) of the MPID Act. The said provision reads as follows:

“7. Powers of Designated Court regarding attachment. -

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(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*

⁴ (2020) 8 SCC 531

⁵ Order dated 05/01/2005 in Writ Petition (Civil) No.693 of 2004

⁶ Order dated 13/12/2019 in Civil Appeal No.20971 of 2017



the money realised from out of the property attached.”

18. But, before interpreting the true scope of the aforesaid provision, it would be relevant to consider the Statement of Objects and Reasons, for which the MPID Act was enacted. The Statement of Objects and Reasons reads as under:

“There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the premises of unprecedented high attractive interest rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on public. As such deposits run into crores of rupees it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra.”

19. A perusal of the aforesaid Statement of Objects and Reasons shows that the purpose of enacting the MPID Act is to deal with
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the crisis faced by the middle class and poor depositors, who stand duped on the promise of unprecedented high attractive interest rates on deposits. The provisions of the MPID Act also show that there are no classes of depositors identified and the word 'deposit' defined in Section 2(c) of the MPID Act refers to any receipt of money or acceptance of any valuable commodity by any financial establishment to be returned after a specified period with or without any benefit in the form of interest, bonus, profit or any other forms. The appointment of the Competent Authority under Section 5 of the MPID Act and constitution of the Designated Court under Section 6 thereof with specific powers conferred under Section 7 thereof, demonstrate the emphasis under the MPID Act for protection of small investors. The power of attachment and liquidation of assets shows the concern under the said legislation for protecting the interest of the small investors.

20. It is in this backdrop that the true purport of the word 'equitable' used in Section 7(4) of the MPID Act needs to be appreciated. It is the contention of the appellants that equitable distribution of money available with the Competent Authority cannot be interpreted to mean equal or prorata distribution. On this basis, it is claimed that while distributing the money that becomes available, the Designated Court does have the power to use its discretion to direct distribution of such funds in a manner

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that sub-serves the object of the MPID Act. On the other hand, according to the respondents, the only way in which the Designated Court can direct distribution of available funds under Section 7(4) of the MPID Act is to distribute it equally or on prorata basis, because no classification of the depositors can be made to treat one preferentially over the other.

21. In the present case, it is an admitted position that initially when the funds became available for distribution in the year 2014-15, the outstanding amounts of the investors, whose outstanding amounts were less than Rs.2 lakhs, were first satisfied. The distribution of amounts was made in such a manner that about 50% of the investors, whose outstanding amounts fell between Rs.2 lakhs and Rs.10 lakhs stood satisfied and only 6.5% of outstanding amounts of investors, who were to be paid more than Rs.10 lakhs, were satisfied. Thus, during the initial phase, when distribution of amounts were made, the smallest of investors had their dues satisfied entirely. At this stage, it becomes relevant to quote the facts and figures stated on behalf of the Competent Authority in paragraph No.12 of the appeal memo in Criminal Appeal No.88 of 2021. The said figures read as follows:

“12. The table showing the outstanding amounts and number of investors involved is shown below :

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<i>Outstanding Amounts</i>	<i>No of investors</i>	<i>Approximate amount outstanding as on 31.7.2013</i>	<i>Remarks</i>
<i>Less than Rs. 2 lakhs</i>	<i>608</i>	<i>Rs.9.35 Crores</i>	<i>608 investors have been repaid fully by NSEL under the aegis of the FMC</i>
<i>More than Rs.2 lakhs and less than Rs.10 lakhs</i>	<i>6445</i>	<i>Rs.345.77 Crores</i>	<i>50% of the outstanding amount has already been repaid by NSEL under the aegis of the FMC</i>
<i>More than Rs. 10 lakhs</i>	<i>5682</i>	<i>Rs.5048.47 Crores</i>	<i>6% of the outstanding amount has already been repaid by NSEL under the aegis of the FMC</i>
<i>Total</i>	<i>12735</i>	<i>Rs.5403.19</i>	

22. The aforesaid details do show that largest number of investors are those whose outstanding amounts fall between Rs.2 lakhs and Rs.10 lakhs. It becomes clear that if the prayer of the Competent Authority for distribution of money in a graded manner by giving preference to the said category of investors is accepted, it would satisfy almost entirely the dues payable to them. But, if the amounts are equally distributed or distributed on

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prorata basis, the amounts that would be paid to each investor would be in a small proportion, thereby leading to a situation where none of the investors would get any substantial amount. But, the factor to be considered is, as to which category of the investors would be hit harder by such markedly reduced payment of dues. The State had suggested to the Competent Authority that if the Designated Court was requested to give preference to the investors, whose outstanding amounts fell between Rs.2 lakhs and Rs.10 lakhs, larger amounts could be paid to such investors, thereby almost completely satisfying their dues, which could be said to be an equitable distribution of money in accordance with Section 7(4) of the MPID Act.

23. The question is, as to whether such a request made on behalf of the Competent Authority could be entertained by the Designated Court under Section 7(4) of the MPID Act.

24. At the heart of the matter is the issue as to whether the Designated Court has any discretion in such matters while exercising power under Section 7(4) of the MPID Act. A perusal of the impugned orders passed by the Designated Court would show that it has proceeded on the basis that the term 'equitable' will have to be taken as equal or reasonable. The said court has referred to the meaning of the word 'equitable' given in the *Oxford Dictionary* as fair and impartial and yet, the court has

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concluded that under Section 7(4) of the MPID Act, while issuing directions for distribution of monies realized, equitable distribution ought to mean distribution of such money equally amongst all the depositors/investors.

25. The way in which the Designated Court has proceeded in the matter demonstrates that 'equitable distribution' has been treated as 'equal distribution'. This indicates that according to the Designated Court, it has no discretion under Section 7(4) of the MPID Act to apply its mind while directing distribution of money amongst the depositors/investors.

26. We are of the opinion that the said approach adopted by the Designated Court cannot be said to be in consonance with the objects and reasons of the MPID Act. The expression 'equitable distribution' has to be interpreted in terms of the said objects and reasons as also the purpose for which the MPID Act was enacted.

27. It would be helpful to refer to ***Blacks' Law Dictionary***, Eighth Edition to appreciate the exact meaning of the expression 'equally' as opposed to 'equitable'. In the said dictionary, 'equality' is stated to be the quality or state of being equal and 'equalize' is said to be to make equal or be the same in amount or degree. As opposed to this, in the said dictionary, 'equitable' is defined as just, consistent with principles of justice and right. In ***Stroud's***

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Judicial Dictionary of Words and Phrases, Seventh Edition, 'equal' is defined as equal division in a will *prima facie* meaning division per capita and 'equally' is said to mean in equal shares, while 'equitable' is referred to with the term 'just', thereby indicating the quality of being fair and reasonable.

28. Thus, it becomes clear that the term 'equitable' is not the same as 'equal'. We are of the opinion that when this definition is kept in mind, it becomes clear that the approach adopted by the Designated Court in proceeding on the basis that equitable distribution would necessarily mean equal distribution, is not correct. Otherwise, the legislature would have thought it fit to simply use the words 'equal distribution' in Section 7(4) of the MPID Act instead of the words 'equitable distribution'. By using the said specific expression in the context of the power available with the Designated Court to give a direction for distribution of monies amongst the depositors, it has been clearly indicated that the Designated Court would have the power and discretion to pass appropriate direction for equitable distribution of money in terms of the object of the MPID Act. In a given case, depending on the facts and circumstances, equitable distribution may mean equal distribution of money amongst the depositors. But, this cannot lead to a conclusion that in particular facts and circumstances where the Designated Court may find it just, fair and reasonable to give appropriate direction for distribution of

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money amongst the depositors not necessarily in equal proportion but, in a graded manner, it cannot do so. This aspect was not appreciated in the correct perspective by the Designated Court while passing the impugned order.

29. Another relevant aspect in the present case is the mischief rule of interpretation of statutes. Under the said rule, the court while interpreting a particular provision can examine as to the mischief that such a provision or statute intends to remedy. If the interpretation put on the provision or statute is in consonance with addressing such a mischief and providing a remedy, such an interpretation needs to be adopted. In the case of *ArcelorMittal India Private Ltd. v. Satish Kumar Gupta & Ors.*⁷, the Hon'ble Supreme Court referred to the objects and reasons of the statute under consideration and in the context of interpretation, held as follows:

“29. It is in this background that the Section has to be construed. In Eera v. State (NCT of Delhi) [(2017) 15 SCC 133], this Court, after referring to the golden Rule of literal construction, and its older counterpart the "object rule" in Heydon case [76 ER 637], referred to the theory of creative interpretation as follows: (SCC ppp. 200-01 and 204, paras 122 and 127).

“122. Instances of creative interpretation are when the Court looks at both the literal language as well as the purpose or object of the statute in order to better determine what the

⁷ (2019) 2 SCC 1
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words used by the draftsman of legislation mean. In D.R. Venkatachalam v. Transport Commr. [(1977) 2 SCC 273], an early instance of this is found in the concurring judgment of Beg, J. The learned Judge put it rather well when he said: (SCC p. 287, para 28)

28. It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or Rule made to subserve an assumed "basic" requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for a Section or a chapter in a statute is provided: firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the Preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last mentioned method consists of an application of the mischief rule laid down in Heydon case [76 ER 637] long ago.

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127. It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the "Lakshman Rekha" has in fact been extended to move away from the strictly literal Rule of interpretation back to the Rule of the old English case of Heydon [76 ER 637], where the Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case [76 ER 637], which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon case [76 ER 637]."

30. In the present case, a perusal of the above-quoted objects and reasons for enactment of the MPID Act would show that the MPID Act was primarily enacted for protecting the interests of the poor and middle class depositors/investors, who had become the victim of Establishments, whose sole object was to grab their money. Keeping the said objects and reasons in mind, and applying the mischief rule while interpreting Section 7(4) of the MPID Act, it can be said that the Designated Court may issue an appropriate direction in the facts and circumstances of a particular case, to direct graded distribution of money to depositors/investors, depending on the extent of outstanding amount payable to them. This would

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advance the purpose for which the MPID Act has been enacted.

31. Once it is found that the Designated Court can indeed use its discretion under Section 7(4) of the MPID Act for equitable distribution of monies amongst depositors, in terms of the object and purpose of the MPID Act, the facts in the present case need to be appreciated to examine the challenge raised on behalf of the appellant.

32. In the present case, the appellant-State in paragraph No.12 of the appeal memo quoted above, has put certain facts and figures on record to indicate as to why it moved the aforesaid application before the Designated Court for graded distribution of monies to the depositors. It is evident from the said material placed on record that the maximum number of depositors are in the category where the outstanding amounts due to them range between Rs.2 lakhs and Rs.10 lakhs. Thereafter, comes the number of depositors, whose outstanding amounts are above Rs.10 lakhs. But, what is crucial is that the approximate outstanding amount payable to 6445 depositors in the category between Rs.2 lakhs and Rs.10 lakhs is only Rs.345.77 crores while the outstanding amounts for 5682 depositors in the category of more than Rs.10 lakhs is a huge amount of Rs.5048.47 crores.

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33. Therefore, when amounts that become available with the Competent Authority, are to be equally distributed amongst all depositors, the share that would come to each depositor becomes a minuscule amount. As a result, those depositors, whose outstanding amounts are much smaller, get the same quantum as those, whose outstanding amounts are much bigger.

34. It is in this backdrop that on the basis of the D.O. letter sent by the concerned officer, the Competent Authority had moved an application before the Designated Court for graded distribution of the amounts available, by giving preference to those depositors falling in the category of Rs.2 lakhs to Rs.10 lakhs, so that outstanding amounts payable to such depositors, admittedly of substantial number, would be fully satisfied and further amounts would then be distributed amongst the depositors, who fell in the category of Rs.10 lakhs and above.

35. Such a prayer made by the Competent Authority ought to have been considered by the Designated Court on the principle of equitable distribution. Instead of doing so, the Designated Court proceeded on the basis that whatever amounts became available for distribution, the Competent Authority was necessarily required to distribute the same equally amongst all depositors. As noted above, in a given case, the distribution of

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available amounts equally amongst depositors may be justified, but, categorization of depositors on the basis of quantum of outstanding amounts due, is a reasonable basis of classification to identify small depositors as opposed to others. This is clearly in furtherance of the object of the MPID Act and in the facts of the present case, the prayer made on behalf of the Competent Authority ought to have been favourably considered by the Designated Court. It is significant that during the initial period of distribution of available amounts in the year 2014-15, distribution was made in favour of depositors, whose outstanding amounts were less than Rs.2 lakhs so as to fully satisfy their grievances. Hence, the prayer for making graded payment to depositors falling in the category of Rs.2 lakhs to Rs.10 lakhs, was a reasonable request made on behalf of the Competent Authority.

36. At one point of time, learned senior counsel appearing for respondent-NSEL Investors Action Group submitted that the facts and figures stated in paragraph No.12 of the appeal memo quoted above, and the submission made in that backdrop on behalf of the State, is a “populist” submission. It was submitted that the same was not in consonance with the spirit of Section 7(4) of the MPID Act. We are not in agreement with the said submission. We are of the opinion that the prayer made on behalf of the Competent Authority for graded distribution of the

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available amounts to the depositors falling in the category of Rs.2 lakhs to Rs.10 lakhs was based on the discretion available to the Designated Court under Section 7(4) of the MPID Act. If the amounts are to be only equally distributed, then as the earlier experience had shown, each depositor would get about 0.75% of the amount due to them, which would leave all the depositors dissatisfied.

37. On the other hand, the graded distribution proposed by the Competent Authority satisfies as many as 6445 depositors falling in the category of Rs.2 lakhs to Rs.10 lakhs, which would certainly be a more equitable distribution of the available amount, in furtherance of the object of the MPID Act. It is also significant that the facts and figures stated in the appeal memo quoted above, show that 6% of the outstanding amounts due to the category of depositors, whose outstanding amounts are more than Rs.10 lakhs, have already been distributed. Considering the total outstanding amount of depositors in the said category, 6% of the amount would come to about Rs.303 crores. This amount has to be appreciated in the backdrop of the fact that the total amount due to 6445 depositors falling in the category of Rs.2 lakhs to Rs.10 lakhs is Rs.345.77 crores. This would show that the prayer made on behalf of the Competent Authority was towards equitable distribution of the available amounts.

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38. Much emphasis was placed on behalf of the contesting respondent on the observation of the Designated Court that in a given case an investor may have deposited entire life savings of more than Rs.10 lakhs as opposed to a corporate body, which may have deposited less than Rs.10 lakhs and that therefore, if the prayer made on behalf of the Competent Authority was to be accepted, it would lead to an incongruent situation. The said argument is fallacious for the reason that when the basis of a classification is found to be reasonable, a cut off adopted for identifying such classification cannot be faulted because a few cases may be an exception to the general rule. In the present case, we have not been presented with any such contingency and, therefore, the aforesaid reason given by the Designated Court in the impugned order dated 23/04/2019, is found to be untenable.

39. In this context, the judgments relied upon by learned counsel appearing for the appellant support the view that we are taking. The beneficial nature of the legislation to protect the interest of small investors has to be taken into consideration because it is generally such small depositors, who are at the receiving end in such scams.

40. The Hon'ble Supreme Court has so held in the case of *New Horizon Sugar Mills (supra)* and *K. K. Bhaskaran*

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(supra) emphasized that the court must take into consideration economic realities and aspirations of the people to further social interest, which is the purpose of a legislation like the MPID Act. In the case of **Ashish Mahandakar (supra)**, relied upon by learned counsel appearing for the appellant, it has been held as follows:

“38. The matter can be looked at from another angle. The clubbing of the corporate depositors with the other depositors and investors as 'depositors', for the purpose of prosecution and proceedings under the MPID Act, may, in a given situation, work to the detriment of the small time depositors. If a corporate depositor has made a huge and bulk deposit with a financial establishment, which commits a fraudulent default in repayment of the said deposit, along with the deposits of other small depositors and the properties of such financial establishment are attached and ultimately disposed of for realization of those deposits, in that event, if the corporate depositor competes with the small depositors and claims pari passu distribution, then the small depositors would be deprived of realization of their money to full potential.”

41. On the other hand, in the judgment, relied upon by the learned senior counsel appearing for the contesting respondent, in the case of **Committee of Creditors of Essar Steel India Limited (supra)**, the court was considering a case under the Insolvency & Bankruptcy Code, 2016 (“**IB Code**”), the purpose, object and

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reasons of which are distinct from those of the MPID Act. Learned senior counsel has relied upon observations made by the Hon'ble Supreme Court in paragraph Nos.143 to 145 to contend that the distribution of monies ought to be on *prorata* basis. Apart from the fact that the said judgment pertains to the provisions of the IB Code, the Hon'ble Supreme Court in the very same judgment in paragraph Nos.74 and 75 has referred to the equality principles and ensuring equitable treatment of similarly situated creditors. The Hon'ble Supreme Court has quoted UNCITRAL Legislative Guide, in the context of equitable treatment to creditors, wherein it is stated that the objective of equitable treatment is based on the notion that in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their claim in accordance with their relative ranking and interests. This key objective recognizes that all creditors do not need to be treated identically. Therefore, it becomes evident that the said judgment of the Hon'ble Supreme Court does not take the case of the contesting respondent any further.

42. As regards the order passed in the case of **Manzoor Ahmad Shah (supra)** is concerned, it is only a short order passed in the facts of the said case which pertains to allotment of premises to various parties and, therefore, it is distinguishable from the present case. So far as the order in the case of **Anant Kajare**

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(supra) is concerned, we do not find any finding or reasoning to support the contentions raised on behalf of the contesting respondent that equitable distribution of monies under Section 7(4) of the MPID Act necessarily means equal distribution to all the depositors. Hence, we find that the said judgments and orders relied upon by learned senior counsel appearing for the contesting respondent do not support their contentions.

43. In view of the above, we are inclined to allow the appeal filed by the State, through the Competent Authority. The other appeal filed by the person, who sought to intervene in the proceedings before the Designated Court, concerns the orders passed consequent to the order impugned in the appeal filed by the State. It is relevant that learned Spl.P.P. appearing for the Competent Authority specifically objected to the right of the appellant in Criminal Appeal No.451 of 2020 to maintain her application for intervening in the proceedings before the Designated Court. Since we are inclined to allow the appeal of the State, i.e. Criminal Appeal No.88 of 2021 challenging the substantial orders, we do not wish to make any comments on the right of the appellant in Criminal Appeal No.451 of 2020 to have a right to intervene in the proceedings before the Designated Court. Since the substantial orders are being set aside, the consequential orders passed by the Designated

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Court also shall stand set aside. In view of the above, the appeals are allowed in the following terms:

- (i) Criminal Appeal No.88 of 2021 is allowed. The impugned orders dated 16/10/2018 and 23/04/2019 passed by the Designated Court in Misc. Application No.384 of 2016 and Misc. Application No.90 of 2018 are quashed and set aside and the said applications are allowed.
- (ii) Consequently, the State, through the Competent Authority, is allowed to distribute the available amount to 6445 depositors/investors, whose outstanding amounts fall within the range of Rs.2 lakhs to Rs.10 lakhs.
- (iii) It is made clear that the amounts already distributed, shall not be reopened.
- (iv) Criminal Appeal No.451 of 2020 is allowed and the impugned order dated 03/11/2020 being a consequential order is quashed and set aside. As regards the impugned order dated 22/10/2020 passed in Misc. Application No.193 of 2020, the same is set aside and it is left open to the appellant

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in Criminal Appeal No.451 of 2020 to pursue her right to intervene in the proceedings before the Designated Court. If such an issue is again raised by the said appellant before the Designated Court, the same shall be decided by it on its own merits without being influenced by this judgment and order.

44. The appeals are disposed of in the above terms.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)

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45. Upon pronouncement of the judgment, learned counsel appearing for the respondent-NSEL Investors Action Group as also first informant prayed for grant of stay of the order passed by this Court on the ground that they wish to challenge the present order before the Hon'ble Supreme Court.

46. Learned A.P.P. appearing for the State opposes the aforesaid prayer.

47. Considering the fact that the present controversy involves the question of distribution of available amount amongst the investors/depositors by the Competent Authority, in the interest of justice, we are inclined to grant stay of this order for a limited period. Hence, the order passed today is directed to be kept in abeyance for a period of two weeks. It is made clear that no further extension of time will be granted.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)

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