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Before the Hon'ble MR. R. SUBHASH REDDY, Chief Justice the Hon'ble MR. VIPUL M. PANCHOLI, JUSTICE

ASHITA NILESH PATEL AND ORS. Vs. DEPUTY SECRETARY - HOME DEPARTMENT AND ORS.

SPECIAL CIVIL APPLICATION No: 18637 of 2015 , Decided On: 29/03/2017

(A) [Head Notes Incorporated when Published in GUJARAT LAW REPORTER]

SCA Nos. 18637 of 2015 & 18639 of 2015, LPA Nos. 463 OF 2015, 464 of 2015 & 480 OF 2015: MR K. S. NANAVATI, Sr. Adv. ASSISTED BY MR NANDISH CHUDGAR, RAHEEL PATEL AND PRATEEK BHATIA, FOR NANAVATI ASSOCIATES, for the Petitioner(s) No. 1 - 2 MR P. K. JANI, Sr. Adv. WITH MR AVINASH AVADH, for Respondent Nos. 1 - 2 MR KAMAL TRIVEDI, Sr. Adv. WITH MR ARJUN R SHETH, for the Respondent(s) No. 10 MR MIHIR THAKORE, Sr. Adv. WITH MR. BHADRISH S RAJU, for the Respondent(s) No. 9 SCA No. 18638 of 2015 and LPA No.481 of 2015 MR MIHIR JOSHI, Sr. Adv. ASSISTED BY MR NANDISH CHUDGAR, RAHEEL PATEL AND PRATEEK BHATIA, FOR NANAVATI ASSOCIATES, for the Petitioner(s) No. 1 - 2 MR P. K. JANI, Sr. Adv. WITH MR AVINASH AVADH, for Respondent Nos. 1 - 2 MR KAMAL TRIVEDI, Sr. Adv. WITH MR ARJUN R SHETH, for the Respondent(s) No. 10 MR MIHIR THAKORE, Sr. Adv. WITH MR. BHADRISH S RAJU, for the Respondent(s) No. 9

VIPUL M. PANCHOLI, J. 1. All the captioned petitions being Special Civil Application Nos. 18637 of 2017 to 18639 of 2017 are filed by the concerned petitioners under Article 226 of the Constitution of India, whereby the petitioners have challenged the notifications dated 12.03.2016 and 22.06.2015 issued by respondent No.1 purportedly on behalf of the State of Maharashtra, stating that the properties enlisted therein are attached under Sections 4(1) and 5(1) of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (hereinafter referred to as MPID Act). Petitioners have also challenged the direction given by respondent No.2 to respondent Nos. 5 and 6, whereby they were directed to make necessary entries in the revenue records regarding the properties of the petitioners.

2. Whereas, Letters Patent Nos.463 of 2015 to 464 of 2015 and 480 of 2015 to 481 of 2015 are filed under Clause 15 of Letters Patent against a common CAV order dated 24.02.2015 passed by the learned Single Judge in Special Civil Application No.4689 of 2014 and allied matters, whereby the learned Single Judge has dismissed the petitions without entering into the merits on the ground of forum conveniens reserving liberty to the concerned petitioners to move the Bombay High Court or any Court subordinate thereto.

3. The issue involved in the aforesaid petitions as well as Letters Patent Appeals is similar and therefore this Court, by an order dated 03.03.2016, directed the Registry to place the papers of

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Letters Patent Appeal 464 of 2015 and allied matters along with the aforesaid petitions and with the consent of the learned advocates appearing for the parties, the aforesaid appeals are heard with the aforesaid petitions and are being disposed of by this common judgment. However, for the sake of convenience, the facts narrated in Special Civil Application No.18637 of 2015 are recorded.

4. The facts in nutshell are as under:

4.1. That N.K.Proteins Private Limited, formerly known as N.K.Proteins Limited (hereinafter referred to as NKPL) is a Private Limited Company registered under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing, processing and marketing of vegetable edible oils, viz. Washed Cotton Seed Oil, Crude Palm Oil, Crude Degummed Soyabean Oil, Crude Sunflower Seed Oil, Groundnut Oil, etc. The same is also engaged in seed processing, solvent extraction and also trading in edible/non-edible oils. One Mr. Nilesh Patel is the Managing Director of the said company, whereas Mr. Nimesh Patel is Chairman of the said Company. Petitioner No.1 of Special Civil Application No.18637 of 2015 is wife of Mr. Nilesh Patel, whereas petitioner No.2 is wife of Mr. Nimesh Patel and both are also holding shares of NKPL.

4.2. National Spot Exchange Limited (hereinafter referred to as NSEL) is a company registered under the provisions of the Companies Act, 1956, which was incorporated in May 2005. The main object of NSEL was of providing electronic platform for the purpose of trading of agricultural based commodities. The Government of India, vide notification dated 05.06.2007 issued under Section 27 of the Forward Contracts (Regulation) Act of 1952, exempted NSEL from the operation of the provisions of the said Act on certain conditions. The said Electronic Exchange of NSEL became operative from 15.10.2008. NKPL became a member of the said Exchange from October 2008. Thus, NKPL was permitted to carry out activities on the said Exchange for itself and/or on behalf of its clients. However, by communication dated 12.07.2013, the Central Government had directed the NSEL that no fresh contracts shall be launched on or through the Exchange Platform of NSEL until further instructions from the concerned Authority and therefore, NSEL, vide its Circular dated 31.07.2013, had suspended all the contracts until further notice. As a result of the aforesaid crisis, many investors, who claimed to have invested their funds with NSEL, through the mode of Electronic Exchange of NSEL, did not receive back their money. As a result of which, a complaint is filed by one Mr. Pankaj Saraf.

4.3. On the basis of the complaint received from Mr. Pankaj Saraf, Senior Police Inspector, Unit- V, Economic Offences Wing, Crime Branch, Mumbai - respondent No.2, registered FIR being No.216 of 2013 against the Directors and key management personnel of NSEL, its borrowers and others under Sections 409, 465, 467, 468, 471, 474, 477A and 120B of Indian Penal Code. Thereafter, during the course of investigation, Sections 3 and 4 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (hereinafter referred to as MPID Act) were added. Investigation of the said FIR has been carried out by the respondent No.2.

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4.4. It is the case of the petitioners that certain disputes arose between NSEL and NKPL and therefore NSEL preferred an application being Arbitration Petition (L) No.1524 of 2013 under Section 9 of the Arbitration and Conciliation Act, 1996 before the High Court of Bombay seeking interim orders for recovery of dues of NSEL from NKPL. However, it is the say of the petitioners that the Bombay High Court has declined to grant ad interim relief in favour of NSEL. Subsequently, NSEL has withdrawn the said petition which was subsequently numbered as Arbitration Petition No.27 of 2014.

4.5. Petitioners submitted that in pursuant to the FIR registered against the Director and office bearers of NKPL, they have cooperated with the Investigating Agency and Mr. Nilesh Patel has been enlarged on bail by the Bombay High Court vide order dated 28.01.2014.

4.6. In the meantime, the respondent No.2 issued notices/orders dated 09.11.2013 under the provisions of the MPID Act to the Collector, Ahmedabad, Collector, Mehsana and Collector, Patan, directing them not to create any third party interest in respect of the properties mentioned in the said order without permission of Special Sessions Court, Mumbai, designated under the MPID Act, and also directed to make necessary entries in the record to that effect. Petitioners therefore filed Special Civil Application No.4689 of 2014 and allied matters before this Court against the action of respondent No.2. That the learned Single Judge of this Court, by common judgment dated 24.02.2015 passed in the said petition, dismissed all the petitions on the ground of forum conveniens without deciding on the merits of the case. At this stage, it is relevant to note that against the said order, the petitioners preferred Letters Patent Appeal No.463 of 2015 and allied matters under Clause 15 of the Letters Patent, which are also heard along with these petitions.

4.7. It is the say of the petitioners that NSEL has filed a suit for recovery of the alleged outstanding amount of Rs.969.89 crores against NKPL and 50 others including the petitioners before the Bombay High Court by filing Suit No.432 of 2015 along with Notice of Motion No.749 of 2015. As per the case of the petitioners the said suit is still pending.

4.8. Even as per the case of the petitioners, NSEL had filed writ petition challenging the addition of provisions of MPID Act in the First Information Report by filing Writ Petition No.1403 of 2015 before the Bombay High Court. The said petition is dismissed.

4.9. Mr. Nilesh Patel and Mr. Nimesh Patel of NKPL have preferred Writ Petition (Criminal) No.3342 of 2014 under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 before the Bombay High Court seeking quashing of FIR being CR No.89 of 2013 qua them and as per the say of the petitioners the said matter is pending.

4.10. Yet another proceeding is pending at Bombay High Court being Suit No.173 of 2014 filed by one Modern India as a representative suit against NSEL, Future Technologies India Limited and

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other sister concerns including their promoter for recovery of approximately Rs.5600 crores. In the said suit, third party notices were issued to several entities as per the procedure laid down under the Bombay High Court Rules. The learned Single Judge of the Bombay High Court passed an order on 02.09.2014 appointing three members committee purporting to facilitate settlements between the parties and NSEL and to ensure speedy recovery of the alleged dues. NKPL was not a party in the said proceedings and therefore NKPL challenged the order dated 02.09.2014 by filing Appeal(L) No.741 of 2014 along with Notice of Motion (L)2744 of 2014 before the Division Bench of Bombay High Court. The said appeal has been admitted and the Division Bench has stayed the operation of the order dated 02.09.2014 passed by the learned Single Judge qua NKPL.

4.11.In the aforesaid background of the matters, the grievance of the petitioners is that the respondent No.1 while exercising powers under Section 4(1) and Section 5(1) of MPID Act issued notifications dated 12.03.2015 and 22.06.2015, copies of which are sent to respondent Nos. 5 and 6 i.e. the statutory authority of State of Gujarat with a direction by respondent No.2 to make necessary entries in the register in respect of the properties of the petitioners by way of letter dated 05.09.2015. The respondent No.2 has also addressed a letter dated 05.09.2015 to NKPL, wherein the directions were issued by respondent No.2 not to dispose of or create any third party rights over the properties described in the annexure therein. By way of the aforesaid notifications dated 12.03.2015 and 22.06.2015 various properties of NKPL and other entities including the petitioners of Special Civil Application No. 18637 of 2015 have been attached. It is the grievance of the petitioners that property includes the petitioners land, bungalow and office premises situated at Ahmedabad, Mehsana and Patan. Petitioners have therefore filed the present petitions challenging the notifications dated 12.03.2015 and 22.06.2015 issued by the respondent No.1 as well as the letter dated 05.09.2015 issued by the respondent No.2.

4.12.As observed above, petitions being Special Civil Application Nos.18638 of 2015 and 18639 of 2015 have been filed by the respective petitioners, whereby the said petitioners have also challenged the aforesaid notifications.

4.13.In another set of petitions being Special Civil Application No.4689 of 2014 and allied matters, the petitioners challenged the notice/order dated 09.11.2013 issued by the respondent No.2 herein to the Collector of Ahmedabad, whereby the said authority informed the Collector that the properties of NKPL and other petitioners, details of which are given in the notice, which are situated in the territorial jurisdiction of the Collector, Ahmedabad, are secured in the interest of investors, for the reasons and the circumstances mentioned in the said notice/order with the further stipulation that no third party interest in the said properties be created without the permission of the Special Sessions Court designated under the MPID Act. As observed hereinabove, the learned Single Judge, by the common order dated 24.02.2015, dismissed the said petitions on the ground of forum conveniens without going into the merits of the case. Therefore, against the said common order passed in Special Civil Application No.4689 of 2014 and allied matters, Letters Patent Appeal No.463 of 2015 and allied matters are preferred under Clause 15 of the Letters Patent.

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5. Heard learned Senior Counsel Mr. K.S.Nanavati and learned Senior Counsel Mr. Mihir Joshi assisted by learned advocate Mr. Nandish Chudgar for Nanavati Associates for the petitioners as well as appellants in the respective petitions and the appeals, learned Senior Counsel Mr. P.K.Jani appearing for respondent Nos. 1 and 2, learned Senior Counsel Mr. Mihir Thakore appearing with learned advocate Mr. B.S.Raju for respondent No.9 and learned Senior Counsel Mr. Kamal Trivedi assisted by learned advocate Mr. Arjun Sheth for respondent No.10.

6. Learned Senior Counsel Mr. K. S. Nanavati and learned Senior Counsel Mr. Mihir Joshi appearing for the petitioners and appellants would contend that the impugned notifications are issued by a person who has no authority of law to issue an order to attach the properties in question under section 4 of the MPID Act read with Rule 3(1) of the MPID Rules framed under section 16(1) of the MPID Act. It is submitted that section 4 read with section 3 of the aforesaid Act and the Rules confer powers on the State Government to issue an order to attach the properties of persons falling under the purview of Section 4 of the MPID Act. As per Rule 3 of the Rules such powers can be delegated to an officer not below the rank of Secretary. In the present case, the respondent No.1, who issued the impugned notifications, is the Deputy Secretary and therefore he had no authority to pass the impugned notifications. Therefore, the impugned notifications/orders are without jurisdiction. It is submitted that every act done by the Government or its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority. In support of the said contention, learned counsel have relied upon the decision rendered by the Honble Supreme Court in Bishambhar Dayal Chandra Mohan and Ors. v/s. State of Uttar Pradesh, reported in (1982) 1 SCC 39.

6.1. It is contended that from the record, the respondent Nos. 1 and 2 have failed to point out that the power has been delegated to the respondent no.1 by following due process of law. It is submitted that reliance placed by the respondent nos. 1 and 2 on Rule 13 of Maharashtra Government Rules of Business and Instructions for contending that respondent No.1 has authority and power to issue the impugned notifications/orders is misconceived. At this stage, it is pointed out that Rule 13 of the aforesaid Rules only deals with mechanically signing of the order of the Government and not issuing the order while exercising statutory power of the Government, whereby the concerned authority would have to record reasons and satisfaction for issuing the notifications. Thus, mere power to sign the orders/notifications cannot empower the concerned authority to issue an order under Section 4 of the MPID Act. At this stage, learned counsels have placed reliance upon the decision rendered by the Honble Supreme Court in State of Andra Pradesh v/s. Vishwanadula Chetti Babu, reported in (2010) 15 SCC 103 in support of their contention.

6.2. Learned counsel appearing for the petitioners thereafter submitted that petitioners are neither Financial Establishment as defined by Section 3(d) of the MPID Act nor are promoters, directors, partners, managers or shareholders of the financial establishment i.e. NSEL. Therefore, the properties of the petitioners cannot be attached under Section 4 of the MPID Act. At this stage, learned counsels referred to the provisions contained in Sections 2(c) and (d), 3 and 4 of the MPID Act and submitted that the object and purpose of the MPID Act is to confiscate and sell the properties of a Financial Establishment held by it in its own name or Benami or standing in the names of the persons connected with the Financial Establishment in their capacity as promoters, directors, partner, manager or members of Financial Establishment. After referring to the impugned

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notifications, it is submitted that notification defines NSEL as a Financial Establishment and it is not alleged in the said notifications that the petitioners are the financial establishment. Therefore, the petitioners would be outside the purview of the MPID Act and hence the respondent No.1 has no authority under the MPID Act to attach the properties of the petitioners. At this stage, it is further submitted that MPID Act is not enacted to enable financial establishment to recover its dues from its defaulters/debtors. However, the said Act regulates the relationship between the financial establishment and its depositors. Therefore, it is contended that because the petitioners are shareholders of NKPL and NKPL is a defaulter/debtor of NSEL, the properties of the petitioners cannot be attached under the provisions of the MPID Act. Hence, the impugned notifications be quashed and set aside.

6.3. Learned counsel for the petitioners would contend that exercise of powers under Section 4 of the MPID Act is misconceived so far as the petitioners are concerned because the powers under the said Section are invoked on the assumption that the properties narrated in the schedule to the notifications are alleged to have been acquired by NSEL and its Chairman/Directors, whereas in fact the petitioners are the owners.

It is submitted that the properties in dispute are not the properties of the financial establishment i.e. NSEL or its Chairman or Director. Section 4 of MPID does not provide for attachment of properties of the shareholders or a member of a financial establishment. Thus, it is submitted that the properties of borrowers or defaulters or debtors of a financial establishment are not liable to be attached or confiscated under Section 4 of the MPID Act.

6.4. Learned counsel appearing for the petitioners have thereafter contended that the impugned orders/notifications are issued without complying the condition precedent for acquiring jurisdiction to pass orders under Section 4 of MPID Act and the impugned notifications suffer from non-application of mind and colourable exercise of powers. In support of the said submission, learned counsel referred the details of the properties enclosed with the impugned notifications and submitted that the said properties includes trade mark of NKPL as well as the properties of the petitioners and NKPL. It is contended that the action of attachment of Trade Marks, which are intellectual properties and came to be acquired by NKPL after it was originally incorporated in 1992 and some other properties acquired by the petitioners prior to establishment of NSEL, shows complete non-application of mind. It is submitted that powers of attachment of properties can be exercised by the State Government only if it has recorded subjective satisfaction on objective facts that the properties sought to be attached are the properties believed to have been acquired by the 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 and reasons for such satisfaction have been recorded in writing. It is contended that these conditions are not fulfilled in the impugned notifications. From the impugned notifications, it has been pointed out that the same does not contain reasons or grounds but only stated that the properties are alleged to have been acquired.

6.5. It is further submitted that in the impugned notifications, the respondent Nos. 1 and 2 concluded that the schedule properties are acquired by the financial establishment and its Chairman/Director

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out of the deposits but no grounds/reasons for such conclusion are reflected in the impugned notifications. Thus, unless the condition precedent for exercise of powers is satisfied, the authority does not acquire jurisdiction to take the action and such an action would be null and void. In support of the aforesaid contention, learned counsel appearing for the petitioners have placed reliance upon the following decisions:

(1) In Commissioner of Sales Tax, U.P. v/s. Bhagwan Industries (P) Ltd., reported in (1973) 3 SCC 265.

(2) In Aslam Mohammed Merchant v/s. Competent Authority, reported in (2008) 14 SCC 186.

(3) In Sheonath Singh v/s. Appellate Assistant Commissioner of Income Tax, reported in (1972) 3 SCC 234.

(4) In Arunkumar and Ors. v/s. Union of India, reported in (2007) 1 SCC 732.

6.6. Learned counsel appearing for the petitioners thereafter contended that the provisions of MPID Act to the extent they are sought to be invoked against the properties of the petitioners would be violative of Article 245 of the Constitution of India, as both the petitioners and their properties are situated outside the territories of State of Maharashtra. It is submitted that no territorial nexus is established between the petitioners and their properties sought to be attached and the action taken under Section 4 of the MPID Act by the respondent No.1 as the conditions of the said section are not established. Learned counsel would contend that it is well settled that State Legislatures power to enact laws are limited to the territories of the State by virtue of Article 245 of the Constitution of India and the State has no power to enact law which has extra-territorial operation or application. In support of this contention, learned counsel would place reliance upon the decisions rendered by the Honble Supreme Court in the following cases:

1. In R.S.D.V.Finance Co. Ltd. v/s. Shri Vallabh Glass Works Ltd., reported in (1993) 2 SCC 130

2. In Nautam Prakash DSGVC, Vadtal and Ors. v/s. K.K.Thakkar and Ors., reported in (2006) 5 SCC 330

3. In State Bank of India v/s. Jaipur Udyog and Ors., reported in AIR 1986 Del. 357

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4. In State of Bombay v/s. R.M.D. Chamarbaugwala, reported in AIR 1957 SC 699

5. In State of Bihar and Ors. v/s. Charusila Dasi, reported in AIR 1959 SC 1002

7. On the other hand, learned Senior Counsel Mr. P. K. Jani appearing for respondent Nos. 1, 2 and 3 raised preliminary objection with regard to the maintainability of the petitions before this Court and alternatively submitted that on the principle of forum conveniens, this Court may not exercise the jurisdiction under Article 226 of the Constitution of India. It is submitted that this Court has no jurisdiction to entertain the petitions under Article 226 of the Constitution of India as no cause of action has arisen within the jurisdiction of this Court. It is submitted that the Head Office and Registered Office of NSEL is located in Mumbai. As per the agreed terms between the group of companies of the petitioners, agreed place of adjudication of dispute is Mumbai. Similarly, the State of Maharashtra has passed the impugned notifications/orders while exercising the powers under the MPID Act. The competent authority appointed by the State of Maharashtra is in Mumbai. Similarly, the designated Court at Mumbai itself is in charge of the subject matter and is appointed by the High Court of Bombay and the State of Maharashtra. Similarly the FIR is filed at Mumbai and same is investigated by the concerned investigating agency situated at Mumbai. Charge-sheet is also filed in the Court situated at Mumbai. The accused of the said FIR were arrested by the investigating agency and thereafter they are enlarged on bail by the concerned Court situated at Mumbai. Thus, it is submitted that the entire cause of action has arisen within the State of Maharashtra and therefore the present petitions are not maintainable before this Court.

7.1. Learned counsel would submit that the competent authority appointed under the MPID Act has already moved an application before the Designated Court at Mumbai showing the list of properties which are attached. The Designated Court has issued notice to the owners. Petitioners are also served with such notices. At this stage, it is pointed out by learned counsel that in view of the provisions contained under the MPID Act, the Designated Court has power to lift, modify or confirm the order of attachment. Thus, the grievance of the petitioners can be addressed and adjudicated by the Designated Court at Mumbai before which the proceedings are pending and therefore, the writ petitions under Article 226 of the Constitution of India may not be entertained by this Court. In support of the aforesaid contentions, learned counsel has placed reliance upon the order dated 24.01.2014 passed by the High Court of Andhra Pradesh in Writ Petition No.37056 of 2013 in case of Melkore Alloys & Industries Limited v. Union of India.

7.2. At this stage, it has been pointed out by learned counsel Mr. Jani that as per the provisions contained in MPID Act, the order of attachment has to be brought within the judicial scrutiny of Court of learned District and Sessions Judge, Mumbai, which is Designated Court. The life of the order of attachment is 30 days and thereafter it becomes subject to judicial proceedings wherein order of attachment may be confirmed or modified or vacated. Even statutory remedy is provided for filing an appeal against the order passed by the Designated Court. Thus, it is submitted that MPID Act is a self- contained Code where appropriate safeguards are made. Thus, it is submitted that this Court may not exercise extraordinary writ jurisdiction under Article 226 of the Constitution of India as there is an equally efficacious remedy available with the petitioners.

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7.3. Learned counsel alternatively contended that this Court may not entertain these petitions on the principle of forum conveniens. It is submitted that the properties which are attached by way of the impugned notifications which are of exclusive ownership of the petitioners can be examined by the Designated Court at Mumbai. It is pointed out at this stage that the State of Maharashtra has attached properties of 25 different parties who are major defaulters of NSEL. A huge amount of Rs.5600 crores of number of depositors is siphoned off. Such depositors as well as the defaulters are situated in different cities and different places of the country. They are located in Maharashtra, Andhra Pradesh, Rajasthan, Delhi, Punjab, Haryana and other states. Thus, on the basis of the principle of forum conveniens the entire dispute in relation to the subject matter of the petitions could be heard and adjudicated by the Court situated in the State of Maharashtra. It is submitted that if the different proceedings are allowed to be proceeded in different States, there are all possibilities of inconsistent orders being passed by different Courts and inconvenience to all the parties is likely to be caused if the petitions are heard in different High Courts. Thus, it is submitted that on the principle of forum conveniens these petitions may not be entertained by this Court. In support of the aforesaid contentions, learned counsel Mr. Jani has placed reliance upon the following decisions:

(1) In the case of Kusum Ingots & Alloys Ltd. v/s. Union of India and Another, reported in (2004) 6 SCC 254.

(2) In the case of Ambica Industries v/s. Commissioner of Central Excise, reported in (2007) 6 SCC 769.

(3) In the case of Alchemist Ltd. and Anr. v/s. State Bank of Sikkim and Ors., reported in (2007) 11 SCC 335.

(4) In the case of M/s. Sterling Agro Industries Ltd. v/s. Union of India and Ors., reported in AIR 2011 Delhi 174.

7.4. Learned counsel has thereafter submitted that the petitions be dismissed on the ground of suppression of material facts by the petitioners. It is submitted that petitioners are family members of one family and they represent one group. Petitioners have formed companies to carry out particular activities and such companies are closely held companies. It is submitted that petitioner No.1 - Ashita Nilesh Patel is the wife of Shri Nilesh Patel and she is daughter of Shri Shankarlal Guru. Said Shri Shankarlal Guru was the Chairman of NSEL for years. Shri Nilesh Patel is Chairman of N.K.Group of companies. It is contended that all family members of the petitioners and their group companies through Shri Nilesh Patel and Shri Nimesh Patel have used the platform of NSEL to misappropriate an amount of approximately Rs.937 crores of depositors. Thus, the petitioners have not disclosed the aforesaid important aspects in the petitions and therefore only on this ground the petitions be dismissed.

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7.5. On merits, learned counsel Mr. Jani would contend that under Section 4 of MPID Act, the State Government is empowered to attach the properties which are attached so as to meet the liability of the financial establishment vis-a- vis the depositors. It is submitted that validity of the MPID Act was challenged. However, the Honble Supreme Court in the case of K.K.Baskaran v/s. State Represented by its Secretary, Tamil Nadu and Ors., reported in (2011) 3 SCC 793, upheld the constitutional validity of the MPID Act.

7.6. At this stage, learned counsel Mr. Jani referred to Rule 13 of Maharashtra Government Rules of Business which provides that every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary or such other Officers as may be specially empowered in that behalf and such signature shall be deemed to be proper authentication of such order or instrument. It is submitted that the said Rules of Business are framed by the Government of Maharashtra under Article 166(2) and (3) of the Constitution of India. Thus, it is contended that the Deputy Secretary who has signed the impugned notifications was authorized to sign such notifications and issue the same. He, therefore, submitted that the submissions canvassed by the learned counsel appearing for the petitioners on this aspect are misconceived.

7.7. Learned Senior Counsel Mr. Jani further submitted that the State Legislation can have extra territorial operation, if the cause of action has arisen in that State or when there is sufficient territorial nexus in that State. In support of the said contention, learned counsel has placed reliance upon the following decisions:

(1) In the case of R.M.D. Chamarbaugwala (supra).

(2) In the case of Charusila Dasi (supra).

7.8. Learned counsel thereafter submitted that the provisions of MPID Act are attracted as NSEL is a financial establishment within the meaning of the MPID Act. That the group of companies of the petitioners are also financial establishments and they are within the parameters of definition of Financial Establishment. These companies satisfy the test of Financial Establishment. Promises and assurances were given to the depositors of fixed return and therefore the MPID Act is rightly applied in the facts of the case. When the State Government came to know that huge amount of depositors are misappropriated by the petitioners and their group of companies, the State Government after considering overall facts and circumstances and after perusing the record, exercised the powers conferred under Section 4 of the MPID Act and that too after following due procedure of law. There is satisfaction and sufficient record available at the time of passing of the notifications/orders under Sections 4 and 5 of the MPID Act and therefore it is not correct on the part of the petitioners to contend that the impugned notifications are passed without application of

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mind and without any authority of law. In support of the aforesaid contentions, learned counsel has placed reliance upon the following decisions:

(1) In the case of Brizo Reality Company Pvt. Limited v/s. Aditya Birla Finance Ltd. reported in 2014(5) Bom.CR 572

(2) In the case of Gautam Khaitan and Ors. v/s. Union of India and Ors. reported in 2015(Cri.LJ) 2112

7.9. In view of the aforesaid submissions, learned counsel submitted that the petitions challenging the impugned notifications are required to be dismissed. At this stage, he further submitted that the learned Single Judge has passed common order dated 24.02.2015 in Special Civil Application No.4689 of 2014 and allied matters dismissing the petitions on the ground of forum conveniens. Hence, the learned Single Judge has not committed any error and therefore the appeals challenging the said order may also be dismissed.

8. Learned Senior Counsel Mr. Kamal Trivedi appearing for respondent No.10 at the outset contended that this Court may not entertain these petitions on the principle of forum conveniens, inasmuch as the multiple proceedings initiated at the behest of the petitioners and other similarly situated persons challenging various aspects including the validity of the proceedings before the Designated Court, inter alia, on the ground of non-applicability of MPID Act, are pending before the Bombay High Court and the Court situated at Mumbai. Learned counsel referred to the various proceedings filed by the petitioners or filed against the petitioners in the Court situated at Mumbai and submitted that while considering the principle of forum conveniens, the convenience of the investors whose monies are lost, is also required to be seen. Now, the investors have to recover from all 25 defaulters located in different parts of the country as per the terms of the contracts. Therefore, it is not convenient for the investors to file various proceedings in various parts of the country and hence this Court may not entertain the present petitions and the petitioners be relegated to Bombay High Court or the Court situated in Mumbai. In support of this contention, learned counsel has placed reliance upon the following decisions:

(1) In the case of Kartar Singh v/s. State of Punjab, reported in (1994)3 SCC 569

(2) In the case of Kusum Ingots and Alloys Ltd. (supra)

(3) In M/s. Sterling Agro Industries Ltd. (supra)

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8.1. Learned counsel Mr. Trivedi has submitted that respondent No.9 - NSEL is located in Mumbai. T+2 and T+25 contracts were executed in Mumbai between investors/brokers and NSEL as well as between NSEL and members like NKPL. The investors got their monies deposited in the account of NSEL in Mumbai, where monies got deposited in the accounts of defaulters in Mumbai. The First Information Report is filed by the victim at Mumbai and therefore investigation of the said FIR is being carried out by the Mumbai police. Similarly, Designated Court for inquiring into such matters is in Mumbai. Attachment order issued by the concerned authority is situated at Mumbai. After referring to the documents produced on record, it is pointed out by learned counsel Mr. Trivedi that bye-laws of NSEL limit and confine the jurisdiction of the Courts in Mumbai in exclusivity with respect to any issue arising between the parties. At this stage, it is further submitted that all the defaulters who are located in various parts of the country are before the Designated Court at Mumbai and multiple proceedings with reference to the similar matters are pending before the Bombay High Court and lastly it is submitted that proceedings under the MPID Act are also pending before the Designated Court at Mumbai.

8.2. Learned counsel thereafter would submit that the petitioners have an efficacious alternative remedy under Sections 6 and 7 of the MPID Act. Learned counsel referred to the provisions contained in Section 6 which confers exclusive jurisdiction in favour of the Designated Court. Thereafter, he referred to Section 11 of the MPID Act which provides for an appeal before the Bombay High Court against an order passed by the Designated Court. At this stage, it is pointed out that at present the attachment is symbolic in nature and is yet to become absolute and defaulters are enjoying the properties. In view of the aforesaid submission, it is contended that this Court may not entertain the present petitions.

8.3. On merits, learned counsel submitted that from the Statement of Object and Reasons for invoking the MPID Act read with the observations made by the Honble Supreme Court in the case of K.K. Baskaran (supra), it is clear that MPID Act has been enacted to protect the interest of the innocent depositors and though the said Act is a State Legislation, it has got territorial nexus with reference to the action of attachment of the properties of fraudulent establishment located outside the State of Maharashtra. Thus, it is submitted that the Investigating Authority has territorial jurisdiction to attach the property outside the State of Maharashtra during the course of investigation. In support of the said contention, learned counsel has relied upon the following decisions:

(1) In GVK Industries Ltd. and Anr. v/s. Income Tax Officer and Anr. reported in (2011) 4 SCC 36

(2) In the case of Satvinder Kaur v/s. State (Govt. of N.C.T. Of Delhi) and Anr. reported in AIR 1999 SC 3596

(3) Judgment dated 24.1.2014 of Honble Andhra Pradesh High Court in case of Metkore Alloys (supra)

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8.4. Learned counsel Mr. Trivedi further submitted that during the period between 31.07.2013 to 12.03.2015, the dates on which the impugned notifications have been issued, various developments have taken place. Learned counsel referred to the important events which have taken place during the said period and thereafter submitted that the respondent authority which has issued the impugned notifications has followed due procedure and while reading the notice dated 09.11.2013 issued by the Economic Offence Wing, Mumbai with the impugned notifications, it can be said that sufficient compliance as regard the requirement of recording the reasons in writing has been made. In support of the said contention, learned counsel has placed reliance upon the following decisions:

(1) In the case of Commissioner of Sales Tax, U.P. (supra)

(2) In the case of Assistant Commissioner of Income Tax v/s. Rajesh Jhaveri Stock Brokers Private Ltd. reported in (2008) 14 SCC 208.

(3) In the case of Biswanath Bhattacharya v/s. Union of India and Ors. reported in (2014) 4 SCC 392.

8.5. Learned counsel Mr. Trivedi thereafter would submit that entering into of the paired transactions/contracts of T+2 and T+25 was nothing but a scheme or an arrangement which was operated upon in NSEL and NKPL and its related parties concerned were receiving money under the said scheme or arrangement from NSEL and hence they are financial establishments within the meaning of Section 2(d) of the MPID Act. It is clarified that though the said financial establishments were, in fact, not dealing in sale and purchase of commodities, but under the pretext of trading in commodities, they fraudulently defaulted repayment of deposits of investors. NKPL and its group have admitted that transactions over NSEL were merely financial transactions and not that of purchase and sale by issuing letter to one of the investors with whom such money-trade had taken place.

8.6. At this stage, learned counsel has referred to the provisions contained in Section 4(1)(ii) of the MPID Act and highlighted the words "such other properties of.............member of the said Financial Establishment". After referring to the same, it is contended that the said provision provides wider scope so as to take into consideration other properties even of the shareholder of the company for attachment, though the same may not have been purchased from out of monies collected from the investors, so as to facilitate the repayment of the deposits to the investors like respondent No.10. It is submitted that Mr. Nilesh Patel has also confessed of having diverted funds for personal use and to acquire properties through sister concerns like NK Industries Ltd.

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8.7. Lastly learned counsel Mr. Trivedi submitted that the impugned notifications cannot be invalidated only on the ground of being worded unhappily. It is stated that what is to be seen is the substance and not the form. By referring to the term Financial Establishment in the said notifications, the authority had in mind NKPL as otherwise, its properties could not have been attached. In support of the aforesaid contention, learned counsel has placed reliance upon the decision rendered by the Honble Supreme Court in the case of H.S.Vankani and Ors. v/s. State of Gujarat and Ors., reported in (2010) 4 SCC 301.

8.8. In view of the aforesaid, learned counsel Mr. Trivedi submitted that present petitions are devoid of any merits and therefore the same be dismissed and the order dated 24.02.2015 passed by the learned Single Judge in Special Civil Application No.4689 of 2014 and allied matters may not be interfered with and therefore the appeals filed against the said order may also be dismissed.

9. Learned Senior Counsel Mr. Mihir Thakore appearing for respondent No.9 - NSEL has supported the submissions canvassed on behalf of learned counsel Mr. P.K.Jani as well as learned counsel Mr. Kamal Trivedi appearing for the concerned respondents. It is submitted that MPID Act is a Special Act which provides for a complete mechanism for redressal of grievance of any aggrieved party by providing an appeal under Section 5 of the said Act before the Designated Court. Further, an appeal is also provided under Section 11 of the said Act and aggrieved party can file such appeal before the High Court. Thus, it is contended that if the petitioners are aggrieved by any action of the respondent authority, remedy is provided under the said Act and therefore the present petitions may not be entertained by this Court on the ground that an efficacious alternative remedy is available with the petitioners.

9.1. Learned counsel thereafter submitted that bye-laws of NSEL shall be applicable to all the members of the Exchange and therefore the jurisdiction is with the Courts situated at Mumbai. It is submitted that the respondent is located in Mumbai and proceedings under the MPID Act were initiated by the respondent authorities at Mumbai. FIR is filed against the concerned accused and during the course of the investigation the concerned authority thought it fit to invoke the provisions of MPID Act and necessary orders/notifications were issued. Therefore, the petitioners can challenge the said action by filing appropriate proceedings before the appropriate Court situated in the State of Maharashtra and therefore this Court may not entertain these petitions.

9.2. Learned counsel would further submit that various proceedings, civil as well as criminal, are pending before the Courts in Mumbai, Bombay High Court, Committee constituted by the Bombay High Court and before the Economic Offence Wing under MPID Act which is being tried by Designated Special Court. Thus, the petitioners have wrongly invoked the jurisdiction of this Court by filing present proceedings with a view to create an unwanted hindrance in the proceedings which are pending before the Court in the State of Maharashtra and therefore on the principle of forum conveniens, this Court may not entertain the present petitions. In support of the aforesaid submission, learned counsel Mr. Thakore has placed reliance upon the decision rendered by the Honble Supreme Court in the case of M/s. Kusum Ingots (supra) and the decision rendered by the larger Bench of Delhi High Court in the case of M/s. Sterling Agro Industries Ltd. (supra).

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9.3. Learned counsel Mr. Thakore submitted that learned Single Judge in Special Civil Application Nos. 4689 of 2014 and allied matters has rightly dismissed the petitions without going into the merits of the case and on the principle of forum conveniens, liberty is given to the petitioners to file appropriate proceedings before the appropriate Court in Mumbai. Thus, this Court may also dismiss the Letters Patent Appeals filed by the concerned Appellants.

10. Learned Senior Counsel Mr. K.S.Nanavati and learned Senior Counsel Mr. Mihir Joshi appearing for the concerned petitioners and appellants, in the rejoinder submitted that the Designated Court cannot examine the issue of validity and legality of the impugned orders/notifications. It is submitted that the Designated Court also cannot examine the issue of extra-territorial operation of the provisions of the MPID Act and its validity on that ground. Thus, when the Designated Court suffers from initial lack of jurisdiction, the petitioners cannot be subjected to submit themselves before a Court which lacks jurisdiction. Learned counsel would contend that the Designated Court derives its jurisdiction from the notifications/orders issued under Section 4 of the MPID Act and therefore when the order passed under Section 4 itself is bad in law and without fulfilling the conditions precedent for issuance of such an order under Section 4 of the MPID Act, the same can be said to be without jurisdiction and therefore Designated Court cannot exercise any jurisdiction for any matter whatsoever subsequent to the issuance of order under Section 4 of the MPID Act. In support of the said contentions, learned counsels have placed reliance upon the following decisions:

1. In Sheonath Singh (supra)

2. In the case of M/s. Ganga Saran and Sons Pvt. Ltd. v/s. Income Tax Officer, reported in (1981) 3 SCC 143

3. In Arunkumar and Ors (supra).

10.1. Learned counsel appearing for the petitioners further contended that alternative remedy is no bar when the order complained of is either wholly without jurisdiction or when there is breach of principles of natural justice or for enforcement of fundamental rights. In support of said contention, reliance is placed upon the decision rendered by the Honble Supreme Court in the case of SJS Business Enterprises Pvt. Ltd. v. State of Bihar, reported in (2004) 7 SCC 166.

10.2. Learned counsel for the petitioners thereafter submitted that this Court has jurisdiction by virtue of Article 226(2) of the Constitution of India, inasmuch as substantial part of the cause of action has arisen within the territorial limits of this High Court because the properties of the petitioners attached by the impugned orders/notifications are situated in the State of Gujarat. The

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effect, implementation and execution of the impugned orders/notifications by way of attachment are to be made in the State of Gujarat. The petitioners are residents of Ahmedabad and therefore fundamental as well as constitutional rights are prejudiciously affected in Gujarat.

10.3. Learned counsel for the petitioners lastly submitted that the objections for forum non-conveniens are raised by respondent Nos. 9 and 10 as well as respondent No.2. However, respondent Nos. 9 and 10 are neither necessary nor proper party to the present proceedings and no reliefs are prayed against them. The said respondents have on their own volition applied for and joined as respondents in the present proceedings. Therefore, it is not open for the said respondents to contend that this Court is not convenient to them and the petitioners should be relegated to the Bombay High Court. At this stage, it is submitted that respondent Nos. 1 and 2 are State Authorities and therefore in view of Article 226(2) of the Constitution of India it is not open for the State to raise the objection of forum non-conveniens. It is submitted that there is no petition pending in Bombay High Court wherein the notifications/orders impugned in the present petition are challenged by anybody. Only one civil suit filed by NSEL against the NKPL and others including the petitioners is pending for recovery of outstanding dues. One appeal filed by NKPL before the Division Bench of Bombay High Court. One quashing petition is filed by Mr. Nilesh Patel and Mr. Nimesh Patel in Bombay High Court for quashing of the FIR qua them. It is therefore submitted that merely because the said proceedings are pending before the Courts situated in Mumbai, the principle of forum non- conveniens cannot be applied in the facts of the present case.

10.4. Learned counsel for the petitioners have submitted that decision rendered by the Larger Bench of Delhi High Court in the case of M/s. Sterling Agro Industries Ltd. (supra) would not be applicable to the facts of the case and the learned counsel have tried to distinguish the facts of the present case. It is submitted that the doctrine of forum non-conveniens cannot be applied when almost entire part of the cause of action or when substantially large part of the cause of action arises within the Court whose writ jurisdiction has been invoked by the petitioners.

10.5. At this stage, learned counsel appearing for the petitioners pointed out that the respondent Nos. 1 and 2 filed a petition under Article 139A(2) of the Constitution of India before the Honble Supreme Court for transfer of cases before the Court situated at Mumbai. However, the said petition has been dismissed by the Honble Supreme Court and therefore it is not open for the respondent State to rely upon the principle of forum conveniens

10.6. Learned counsel submitted that the petitioners have not suppressed any material fact as alleged by the respondents. It is submitted that the submission of respondent Nos. 1 and 2 that this Court may not exercise the equitable discretionary jurisdiction in favour of the petitioners as the serious allegations of fraud are levelled against the group of the petitioners and family members. However, the said argument is misconceived because the equity follows the law. Therefore, if the law is clear, no notions of equity can substitute the law and therefore petitioners cannot be denied the relief when on the face of the order impugned in the petitions, it is de hors the provisions of Section 4 of the MPID Act and the Rules framed thereunder only on the grounds of equity.

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10.7. Learned counsel therefore submitted that present petitions be allowed and the reliefs prayed for in the petitions be granted as well as the order dated 24.02.2015 passed by the learned Single Judge in Special Civil Application Nos. 4689 of 2014 and allied matters be set aside.

11. We have heard the learned counsel appearing for the parties. We have also perused the material produced on record and the decisions upon which reliance is placed by the learned counsel appearing for the parties.

12. Learned counsel appearing for the respondents have raised preliminary objections and therefore before dealing with the other submissions, the submissions made with regard to the preliminary objections are required to be considered and decided. If the respondents are right in raising the objection about the maintainability of the present proceedings before this Court, it is not necessary for us to go into the merits of the case in detail. Therefore, we would like to first examine such preliminary objections taken by the learned counsel appearing for the respondents.

13. The respondents have taken the following preliminary objections:

(i) This Court has no territorial jurisdiction under Article 226 of the Constitution of India;

(ii) The petitioners are having alternative efficacious remedy under the MPID Act and therefore these petitions may not be entertained and the petitioners be relegated to appropriate Court at Mumbai to avail such alternative remedy; and

(iii) On the principle of forum conveniens these petitions may not be entertained and the petitioners be relegated to file the proceedings before the forum convenience in the State of Maharashtra.

14. First preliminary objection is about territorial jurisdiction of this Court. Notice dated 09.11.2013 issued by the respondent No.2 shows that the properties of NKPL and other petitioners, details of which are given in the said notice, are situated within the territorial jurisdiction of this Court. The impugned notifications dated 12.03.2015 and 22.06.2015 issued under Sections 4 and 5 of MPID Act whereby the properties of the petitioners have been ordered to be attached and also letter dated 05.09.2015 addressed by the respondent No.2, suggest that the properties sought to be attached are situated in the State of Gujarat. Thus, when the properties situated in the State of Gujarat are sought to be attached, we are of the view that part of cause of action has arisen within the territorial jurisdiction of this Court and therefore we are not convinced with the submission as canvassed by learned counsel appearing for the respondents that this Court does not have territorial

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jurisdiction. In the decision rendered by the Andhra Pradesh High Court in Writ Petition No.37056 of 2013 upon which reliance is placed by learned counsel appearing for the respondents, the facts are such that a petition was filed for quashing of the FIR which is registered at Mumbai. Hence, the Andhra Pradesh High Court has not entertained such petition on the ground that the said Court has no territorial jurisdiction to entertain such petition. Hence, the said decision would not render any assistance to the respondents.

15. The next preliminary objection is with regard to availability of efficacious alternative statutory remedy with the petitioners. The petitioners have contended that though efficacious alternative statutory remedy is available, the petitioners can approach before this Court by filing a petition under Article 226 of the Constitution of India for enforcement of any of the fundamental rights or when there is violation of principle of natural justice or when the order or proceedings are wholly without jurisdiction. It is contended that the respondent No.1 has no authority of law to issue the impugned notifications and therefore the present petitions are maintainable before this Court. In support of the said contention, learned counsel for the petitioners relied on the decision of the Honble Supreme Court in Whirlpool Corporation v Registrar of Trademarks, Mumbai, reported in (1998) 8 SCC 1, wherein the Honble Supreme Court has observed in para 14, 15 and 21 as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

xxx xxx xxx

21.That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".

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16. In SJS Business Enterprises Pvt. Ltd. (supra), the Honble Supreme Court has observed in para 14 and 15 as under:

"14. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable, the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 2265. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If however a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the Court to entertain the writ petition. The Rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another Court. But this Court has also held in C.B. Gosain Bhan v. State of Orissa, 14 STC 766 : 1963 (2) SCR 879 that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 326. Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 2267. Therefore the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits.

15. In this case, admittedly the appellant has withdrawn the suit two weeks after the suit had been filed. In other words the appellant elected to pursue its remedies only under Article 226. The pleadings were also complete before the High Court. No doubt, the interim order which was passed by the High Court was obtained when the suit was pending. But by the time the writ petition was heard the suit had already been withdrawn a year earlier. Although the appellant could not, on the High Courts reasoning, take advantage of the interim order, it was not correct in rejecting the writ petition itself when the suit had admittedly been withdrawn, especially when the matter was ripe for hearing and all the facts necessary for determining the writ petition on merits were before the Court, and when the Court was not of the view that the writ petition was otherwise not maintainable."

17. In Ram And Shyam Company v. State of Haryana And Others, reported in (1985) 3 SCC 267, the Honble Supreme Court has observed in para 9 as under:

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"9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries rejected the writ petition observing that the petitioner who invokes the extraordinary jurisdiction of the court under Art. 226 of the Constitution must have exhausted the normal statutory remedies available to him. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of Uttar Pradesh v. Mohammad Nooh it is observed that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the in stance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister ? The clutch of appeal from Ceasar to Ceasar wife can only be bettered by appeal from ones own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground 551 that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer aud that by itself without anything more would be sufficient to set aside the judgment of the High Court."

18. There is no dispute with regard to the aforesaid proposition of law laid down by the Honble Supreme Court. However, in the present case the competent authority appointed under the MPID Act has already moved an application before the Designated Court at Mumbai showing the list of properties which are attached. The Designated Court has issued notice to the owners. Petitioners are also served with such notice. In view of the provisions contained in the MPID Act, the Designated Court has power to lift, modify or confirm the order of attachment. Thus, the grievance of the petitioners can be addressed and adjudicated by the Designated Court at Mumbai before which the proceedings are pending. At this stage, it is also required to be noted that the life of the order of attachment is 30 days and thereafter it becomes subject to judicial proceedings wherein the order of attachment may be confirmed or modified or vacated as observed hereinabove. Sections 6 and 7 of the MPID Act provide as under:

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

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

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

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

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

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

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

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be

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required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

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

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

19. If any person is aggrieved by the order passed by the Designated Court, he can file an appeal to the High Court within a stipulated time limit under Section 11 of the MPID Act. Section 11 of the MPID Act reads as under:

"11.Any person including the Competent Authority, if aggrieved by an order of the Designated Court, may appeal to the High Court within sixty days from the date of the order."

20. Thus, in view of the aforesaid efficacious alternative statutory remedy provided under the MPID Act, we are of the view that the present petitions are not required to be entertained on this ground.

21. The third and important preliminary objection taken by the respondents is with regard to applicability of forum conveniens. The respondents have contended that on the principle of forum conveniens, the present petitions may not be entertained by this Court and the petitioners be permitted to raise all the contentions on merits before the appropriate Court at Mumbai or before the Bombay High Court.

22. We would like to examine the said contentions in detail. If the facts of the present case are closely examined, it is revealed that the respondent No.9 - NSEL is located in Mumbai. T+2 and T+25 contracts were executed in Mumbai between investors/brokers and NSEL as well as between NSEL and members like NKPL. Further, the investors got their monies deposited in the account of NSEL in Mumbai, where monies got deposited in the accounts of defaulters including NKPL and petitioners in Mumbai. It is not disputed that the First Information Report is filed by the victim at Mumbai. The investigation of the said FIR has been carried out by the Mumbai police. Similarly, Designated Court for inquiring into such matters is in Mumbai. Attachment order issued by the

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concerned authority is situated at Mumbai. It is also relevant to note that bye-laws of the NSEL confine the jurisdiction of the Courts in Mumbai in exclusivity with respect to any issue arising between the parties. It is not in dispute that all the defaulters are located in various parts of the country who are tried before the Designated Court at Mumbai.

23. Petitioners themselves have stated in the petition with regard to the various proceedings pending before the various Courts at Mumbai i.e. FIR being No.216 of 2013 for the offences punishable under Sections 409, 465, 467, 468, 471, 474, 477A and 120B of Indian Penal Code and Sections 3 and 4 of the MPID Act is registered at Mumbai. The arbitration proceedings initiated by NSEL against the NKPL was also initiated at Mumbai. The bail application filed by Mr. Nilesh Patel and Mr. Nimesh Patel were also filed before the Bombay High Court. It is also not in dispute that NSEL has filed a suit being Suit No.432 of 2015 for recovery of outstanding amount of Rs.969.89 crores against NKPL and 50 others including the petitioners before the Bombay High Court. It is not disputed that NSEL had filed a Writ Petition No.1403 of 2015 challenging the addition of the provisions of the MPID Act in the FIR filed against the accused before the Bombay High Court. Yet another petition being Writ Petition (Criminal) No.3342 of 2014 is filed Mr. Nilesh Patel and Mr. Nimesh Patel under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure before the Bombay High Court seeking quashment of the FIR qua the said petitioners and the said petition is pending. Petitioners have admitted in their petition that one Modern India filed a representative suit being Suit No.173 of 2014 against NSEL, Future Technologies India Limited and other sister concerns including their promoter for recovery of around Rs.5600 crores. In the said suit third party notices were issued to several entities under the procedure laid down by the Bombay High Court Rules. The concerned plaintiffs and defendants together came into consensus by way of a Minutes of Order, to form a 3 Member Committee to implement the settlements arrived between the third party Noticees and NSEL, which was tendered before the learned Single Judge of the Bombay High Court. The Ld. Single Judge of Bombay High Court passed an order on 02.09.2014 appointing a 3 Member Committee. The NKPL challenged the said order before the Division Bench of Bombay High Court by filing an Appeal(L) 741 of 2014 along with Notice of Motion (L) 2744 of 2014. The said appeal is still pending before the Bombay High Court.

24. In view of the aforesaid proceedings which are pending or filed before the Courts situated at Mumbai including the Designated Court and the Bombay High Court, if the contention of the learned counsel appearing for the parties are examined, it is the say of the respondents that the Designated Court situated at Mumbai or the Bombay High Court is the more convenient forum for the parties as the substantial part of the cause of action has arisen in the State of Maharashtra. It is also to be kept in mind that the depositors who have lost their monies worth Rs.5600 crores as well as the defaulters are based in different cities and different places of the country. Learned counsel Mr. P.K.Jani appearing for the respondent Nos. 1 and 2 has specifically pointed out that they are located in Maharashtra, Andhra Pradesh, Punjab, Haryana, Delhi, Rajasthan and in other States also. Thus, it was contended that the entire dispute in relation to the subject matter of the petition should be heard and adjudicated by the Court situated in the State of Maharashtra. It was also contended that the dispute should be adjudicated by one Court only i.e. the Court at Maharashtra. Otherwise there is a possibility of inconsistent orders being passed by different Courts which will cause inconvenience to all the parties. We find force in the arguments advanced by the learned counsel appearing for the respondents.

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25. The principle of forum conveniens has been explained by the Honble Supreme Court in various decisions and the larger Bench of Delhi High Court has also examined the said issue. Therefore, we would like to refer the said decisions.

26. In Kartar Singh (supra), the Honble Supreme Court has observed in para 368(17), 426 and 428 as under:

"368. The above are to maintain the higher rhythms of pulsating democratic life in a constitutional order.

TO SUM UP

(1) XXX XXX XXX XXX XXX

(17) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters;

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426. From the scheme of the Act therefore it is clear that the offenses created thereunder are exclusively triable by the Designated Court and conviction made or orders passed, whether final or interlocutory orders pending trial are regulated under the provisions of the Act. Right of appeal thereon has been provided by Section 19 to this Court. Under the Code the Court of Session and the High Court play major role in the administration of criminal justice, from the stage of arrest of an accused or suspect till the trial is concluded or conviction became final. The High Court has jurisdiction and control over the Court of Session or the Magistrate, but under the scheme of the Act there is a wall of separation and complete exclusion of the jurisdiction of the High Court is total. The Designated Court is neither subordinate to the High Court, nor the High Court has any control or supervisory jurisdiction under Article 227.

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428. The decision or order or a writ issued by the High Court under Article 226 is subject to judicial review by an appeal to this Court under Article 136 whose sweep is wide and untrammeled. The question, therefore, is whether the High Court would be proper to exercise its power under Article 226 over the proceedings or the offenses, or the other offenses committed in the course of the same transaction, covered under the Act. The jurisdiction of the High Court though was not expressly excluded under the Act, by necessary implication it gets eclipsed not so much that it lacked constituent power but by doctrine of concomitance.

27. In Kusum Ingots & Alloys Ltd. (supra), the Honble Supreme Court has observed in para 30 as under:

"Forum Conveniens

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagar Singh Bagga v. Dewan Jagbir Sawhany, Mandal Jalan v. Madanlal, Bharat Coking Coal Limited v. M/s Jharia Talkies & Cold Storage Pvt. Ltd., S.S.Jain & Co. & Anr. v. Union of India & Ors., M/s. New Horizon Ltd. v. Union of India)."

28. In Ambica Industries (supra), the Honble Supreme Court has observed in para 3, 4, 14 and 41 as under:

"3. Appellant herein carries on business at Lucknow. It was assessed at the said place. The matter, however, ultimately came up before Central Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi in Appeal No.E/2792/02-NBC. The said Tribunal exercises jurisdiction in respect of cases arising within the territorial limits of the State of Uttar Pradesh, National Capital Territory of Delhi and the State of Maharashtra.

4. Having regard to the situs of the Tribunal, an appeal in terms of Section 35G of the Central Excise Act, 1944 was filed before the Delhi High Court. A Division Bench of the said Court relying on or on the basis of an earlier Division Bench judgment in Bombay Snuff Pvt. Ltd. Vs. Union of India 2006 (194) ELT 264 opined that it had no territorial jurisdiction in the matter.

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14. Furthermore, when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal.

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41. Keeping in view the expression "cause of action" used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered."

29. In M/s. Sterling Agro Industries Ltd. (supra), Delhi High Court observed and held in para 31 and 32 as under:

"31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf W.P.(C) No.6570/2010 with connected matters Page 30 of 34 Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

30. Keeping in mind the aforesaid decisions rendered by the Honble Supreme Court as well as larger Bench of Delhi High Court, if the facts discussed hereinabove are examined, we are of the view that the convenience of the parties are required to be considered. The convenience would

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include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The place of convenience is also required to be taken into consideration.

31. In view of the aforesaid discussions and considering the material produced on record, we are of the view that it would be appropriate on the part of this Court to relegate the petitioners to appropriate Court at Maharashtra including the Court designated under the MPID Act, as may be advised, on the principle of forum conveniens without entering into the merits of the contentions raised in these petitions. However, liberty is reserved to the petitioners to raise all such contentions before such Court. For the aforesaid reasons, all these petitions are not entertained. Letters Patent Appeals are also disposed of by modifying the order dated 24.02.2015 passed by the learned Single Judge in Special Civil Application No.4689 of 2014 and allied matters to the extent of reserving liberty to the petitioners to move an appropriate Court at Maharashtra including the court designated under the MPID Act, as may be advised. However, it is clarified that though the contentions of the parties are recorded in this judgment, no opinion is expressed on merits thereof since it may affect any of the parties before any other forum.

Accordingly, all petitions are dismissed, whereas Letters Patent Appeals are disposed of. Notice discharged. Ad-interim relief granted earlier is vacated.

(R. SUBHASH REDDY, CJ)

(VIPUL M. PANCHOLI, J.)

After the pronouncement of the judgment, learned Senior Counsel Mr. K. S. Nanavati for the petitioners has requested to extend the interim relief granted earlier by this Court so as to enable their clients to approach the higher forum.

As this Court has confirmed the Ad-interim relief granted earlier by way of order dated 10.04.2015 in Civil Application Nos.3369 of 2015 and allied matters and as the same is continued till today, we deem it appropriate to extend the interim relief granted vide order dated 10.04.2015 passed in Civil Application Nos. 3369 of 2015 and allied matters for a further period of three weeks.

Appeal dismissed

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