IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3228 OF 2019

1. **Mr.Ashish Mahendrakar**
having address at :
102, Mayekar Park,
Near Jain Society,
Santoshi Mata Road,
Kalyan (W), Thane : 421 301 **...Petitioner**

Versus

1. **State of Maharashtra**
(through Economic Offences Wing,
Unit VII, GB CB CID,
Mumbai.
2. **Shri Rajwardhan Sinha**,
Jt. Commissioner of Police,
EOW
3. **Mr.Parag Manere**,
D.C.P., E.O.W.,
Mumbai.
4. **P.I.**, **... Respondents**
E.O.W.
Mumbai

ALONG WITH
CRIMINAL APPLICATION NO. 385 OF 2019
IN
CRIMINAL WRIT PETITION NO.3228 OF 2019

1. **Ajaykant Ruia & Anr.**
Age : 62 Years, Occu. Business
Having office at 901, Maker Chamber V
Nariman Point, Mumbai – 400 021.

2. **Ramesh Mittal** **..Applicants/ Interveners (Original Depositors)**
Through Power of Attorney of Ashwin Mittal
Aged : 69 Years, Occu : Business,
Residing at 171-B, Mittal Towers,
Nariman Point, Mumbai – 400 021.

In the matter between :

Mr.Ashish Mahendrakar
having address at :
102, Mayekar Park,
Near Jain Society,
Santoshi Mata Road, **..Petitioner**
Kalyan (W), Thane : 421 301.

Versus

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   (through Economic Offences Wing,
   Unit VII, GB CB CID,
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3. **Mr.Parag Manere,**
   D.C.P., E.O.W.,
   Mumbai.
4. **P.I.**, **… Respondents**
   E.O.W.
   Mumbai

Mr.Kevic Setalvad, Senior Advocate a/w. Mr.Ayaz Khan, Mr.Sunny Punamia, Ms.Sneha Prabu i/by M/s. SSP Legal and Co. for Petitioner in W.P.No.3228/2019.

Mr.Sandeep Karnik a/w.Mr. Shivali Khade i/by Ms. Sangita Mistry for Applicants/Intervenors in APPW/No.385/2019.

Mr.Prakash J. Salsingekar – Spl.P.P. for respondent No.1-State.

CORAM: RANJIT MORE &
N. J. JAMADAR, JJ.
RESERVED ON : 20th AUGUST, 2019
PRONOUNCED ON : 13th SEPTEMBER, 2019

JUDGMENT (PER N.J. JAMADAR)

1. A question of seminal importance is raised in this petition under

Article 226 of Constitution of India and section 482 of the Code of Criminal Procedure, 1973, namely, whether the inter-corporate deposit/loan, i.e., a loan advanced / deposit made by a company with another company registered under the provisions of the Companies Act, 1956 would amount to a “deposit“ within the meaning and for the purpose of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (Act No.XVI, 2000) (hereinafter referred to as 'the MPID Act').

2. The aforesaid question crops up for consideration in the backdrop of the following facts and the challenge raised in the petition :-

(a) Birla Power Solutions Ltd. is a public listed company, registered under the Companies Act, 1956. It was initially registered as 'Birla Yamaha Ltd.'. During the period 2009 to 2013, the company had accepted the deposits; including a deposit of Rs.1 crore from Shri Hajarimal Somani Memorial Trust, on 9th March 2012 to be repaid along with interest @ 10.75 % per annum. The date of maturity was 8th March 2013. The Company committed default in repayment of the said amount along with interest. It is alleged that the Company had accepted deposits from thousands of investors, including the companies. Hence, Shri Bhagwan Suryakant Seth lodged a first information report against the Company and its Chairman,

Managing Director and other Directors for the offences punishable under sections 409, 420, 477(A), 120(B) of Indian Penal Code, 1860 and section 3 of MPID Act. The petitioner is arraigned as accused No.11 therein. The investigation came to be transferred to Economic Offences Wing, Unit 4 and the crime was registered as C.R. No.168 of 2013. After completion of investigation, the charge-sheet came to be lodged on 29th March 2014, followed by a supplementary charge-sheet on 21st December 2016. MPID Special Case No.4 of 2014 is pending before the Special Court.

(b) In the meanwhile, two attachment orders dated 19th March 2016 and 24th November 2016 have been issued by the State in exercise of the powers under sections 4, 8 and 12 of the MPID Act and various properties of the said company and other related and unrelated companies have been attached. Pursuant to the orders of the Court, forensic audit in relation to money and/or amount accepted by the said company has been conducted. The forensic audit report came to be submitted on 14th December 2017. The said report, *inter-alia,* contains the executive summary of the outstanding dues of the said company as under :-

Summary of outstanding ICDs as on Dec.12, 2017

Company	Outstanding Amount (Rs.in crore)
Birla Power Solutions Ltd. (BPSL) (Refer pg.no.8)	89.86
Zenith Birla (India) Ltd. (Zenith)	0.00
Birla Shloka Edutech Ltd. (Shloka Edutech)	0.00
Birla Cotsyn (India) (Cotsyn)	0.00
	89.86

(c) In the light of the aforesaid facts, the petitioner asserts that the inter-corporate deposit/loan, indicated above, do not fall within the scope and ambit of MPID Act. The said challenge rests on the premise that inter-corporate deposits or loans are essentially loans procured by the one corporate entity from another corporate entity registered under the Companies Act in the nature of short-term finance.

(d) The petitioner contends that the inter-corporate deposits are governed by and regulated under the provisions of the Companies Act and the Rules framed thereunder. On the one hand, the definition of 'deposit' under section 2(c) of the MPID Act, if properly construed, in the light of the avowed object of the MPID Act excludes from its purview the inter-corporate deposits. On the other hand, the definition of 'deposit' provided in Rule 2(1)(c)(vi) of the Companies (Acceptance of Deposits) Rules, 2014 explicitly excludes any

amount received by the Company from any other Company from the term “deposit”. As the inter-corporate deposits are specifically excluded from the term “deposit” under the provisions of the Companies Act and Rules framed thereunder, the provisions of MPID Act cannot be made applicable to such deposits. The petitioner asserts that the inclusion of the inter-corporate deposits in the outstanding amount and the consequent issuance of the attachment orders in respect of various properties, by taking into account the said outstanding amount, is legally impermissible. Thus, the petitioner seeks a declaration that the inter-corporate deposits do not come under the purview of the definition of 'deposit' under section 2(c) of the MPID Act and a consequential direction to delete and/or quash the names of the inter-corporate deposit holders/lenders from the list of the depositors in MPID Case No.4 of 2014.

SUBMISSIONS :

3. In the light of the aforesaid challenge, we have heard Shri Setalvad, the learned Senior Counsel for the petitioner and Shri Prakash Salsingekar, Special P.P. for the respondent No.1-State at a considerable length. With the assistance of the learned counsels for the parties, we have also perused

the material on record especially the charge-sheet and the forensic audit report.

4. Shri Setalvad, the learned Senior Counsel for the petitioner mounted a multi-pronged attack to inclusion of the inter-corporate deposits as the deposits, in the repayment of which, the petitioner committed default fraudulently, within the mischief of section 3 of the MPID Act. First and foremost, the learned Senior Counsel drew our attention to the object of enactment of MPID Act. It was strenuously urged that the stated object of the Act was to address the mischief of swindling the deposits collected from public, mostly middle-class and poor people, on the promise of unprecedented higher rates of interest or rewards. The MPID Act, according to the learned Senior Counsel, was never intended to govern the inter-corporate debts or transactions, which form a class apart by themselves. Secondly, it was submitted that the said area of inter-corporate transactions has not been left unregulated. There are efficacious and adequate provisions in the Companies Act, 2013 ('Act 2013'). Chapter V of the Act, 2013 subsumes provisions to regulate the acceptance of deposits from public under the title “acceptance of deposits by Companies”. Even provisions for damages for fraud and punishment for contravention of the regulatory provisions have been made therein. Under the Companies Act, 1956 also, provisions were made in section 58A, 58AA and 58AAA to

address the issue of acceptance of deposits by the Corporate entities. Moreover, in exercise of the powers conferred by section 73 and 76 read with section 469 of the Companies Act, 2013, the Central Government has framed Rules namely, Companies (Acceptance of Deposits) Rules, 2014 to further regulate the acceptance of deposits. Shri Setalvad laid emphasis on the definition of 'deposit' in Rule 2(1)(c) of the said rules which expressly excludes any amount received by the company from another company from its purview, to draw-home the point that inter-corporate deposits do not fall within the tentacles of the provisions of MPID Act. Thirdly, it was submitted that the provisions of the MPID Act cannot be so construed as to override the provisions of the Companies Act, Rules framed thereunder, and other Central legislations, in view of the object with which the MPID Act was enacted by the State Legislature. According to Shri Setalvad, inclusion of inter-corporate debts/deposits within the purview of the MPID would run counter to the clear and unambiguous intent of the legislature.

5. In opposition to this, the learned Special PP stoutly submitted that the challenge raised by the petitioner is devoid of substance. Firstly, since no property of the petitioner has been attached, the petitioner cannot be said to have any locus to challenge the inclusion of the inter-corporate deposits in the repayment of which the company has committed default fraudulently. Secondly, the amounts which do not fall within the purview

of the term 'deposit' under clause (c) of section 2 of the MPID Act have been specifically enumerated therein in sub-clauses (i) to (vii). Thus, according to the learned Special P.P., legislature has taken care to exclude the amounts which do not come within the purview of term, 'deposit' for the purpose of the MPID Act. It cannot be said that the legislature was not aware of the transactions in the nature of inter-corporate deposits. Thus, the Court cannot supplant the exclusion clause by adding an item which has not been specifically included by the legislature in clause (c) of section 2 of MPID Act. The learned Special P.P. further submitted that the very purpose of the MPID Act was to provide an effective mechanism to ameliorate the plight of hapless investors who are duped by the financial establishments. A distinction between the depositors as corporate depositors or otherwise cannot be made as it would defeat the purpose of the enactment of MPID Act, urged the learned Special P.P.

6. We have given our anxious consideration to the rival submissions canvassed across the bar. To begin with, we are not persuaded to throw the challenge overboard on the count of locus of the petitioner, raised by the learned Special P.P. Indisputably, the petitioner has been arraigned as an accused in Special MPID case No.4 of 2014.

7. In the charge-sheet, copy of which is annexed to the petition, it is alleged that the petitioner Ashish Mahendrakar was an authorized

signatory, in the accused Financial Establishments namely Birla Power Solutions Ltd., Birla Shloka Edutech Ltd., Zenith Birla (India) Ltd., and Birla Cotsyn (India) Ltd. and has executed important documents of those companies in the said capacity. In this view of the matter, the locus of the petitioner to assail a part of indictment related to the offence punishable under section 3 of the MPID Act cannot be questioned. Even otherwise a legal issue of material significance has been raised in the instant petition. Thus, we propose to deal with the challenge on merits.

8. Before we advert to deal with the core challenge, we deem it appropriate to note the relevant provisions of the MPID Act especially the interpretation clause thereof. The clause (c) of section 2 of the MPID Act defines 'deposit' as under :

> *"(c) "Deposit" means the deposit of money either in one lump sum or by installments made with the Financial Establishment for a fixed period for interest or for return in any kind or for any service and includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of specified service with or without any benefit in the form of interest, bonus, profit, or in any other form, but does not include—*
>
> > *(i) amount raised by way of share capital or by any way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992) ;*
> > *(ii) amounts contributed as capital by partners of a film ;*
> > *(iii) amounts received from a Scheduled bank or*

Co-operative Bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
(iv) any amount received from—
(a) the Industrial Development Bank of India ;
(b) a State Financial Institution ;
(c) any financial institution specified in or under section 6-A of Industrial Development Bank of India Act, 1964 (18 of 1964) ; or
(d) any other institution that may be specified by the Government in this behalf ;
(v) amounts received in the ordinary course of business by way of —
(a) security deposit;
(b) dealership deposit; and
(c) earnest money;
(vi) any amount received from an individual or a firm or an association or individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State ; and
(vii) any amount received by way of subscriptions in receipt of a Chit.

Explanation I —
"Chit" has the meaning as assigned to in clause (b) of Section 2 of the Chit Funds Act, 1982 (40 of 1982);

Explanation II .—
"Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be a deposit for the purposes of this clause."

Whereas clause (d) of section 2 defines "Financial Establishment" as :

"(d) Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)."

9. The definitions of 'deposit' and 'financial establishments' are rather expansive. The inclusive definition of 'deposit' covers any receipt of money or acceptance of any valuable commodity, except those amounts which have been specifically excluded by sub-clauses (i) to (vii) thereof. Likewise, any person accepting deposits under any scheme or in any other manner satisfies the description of financial establishment except a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under the Banking Regulation Act.

10. It is nobody's case that the above-named four companies do not fall within the definition of “Financial Establishment”. The controversy revolves around the question as to whether the money accepted by the aforesaid companies in the form of inter-corporate deposits falls within the dragnet of “deposit”, within the meaning of MPID Act. The learned Special P.P. was within his rights in advancing the submission that, in the facts of the instant case, the inter-corporate deposit do not fall within any of the sub-clauses (i) to (vii) of clause (c) so as to exclude them from the ambit of the definition of deposit. However, the petitioner has asserted that the fact that the definition of 'deposit' under section 2(c) does not specifically exclude inter-corporate deposits from its purview does not conclusively determine the issue. The object behind the enactment of the MPID Act and the other

governing provisions of the Central legislation need to be borne in mind to determine as to whether the inter-corporate deposits fall within the ambit of the term 'deposit' under section 2(c).

11. In the aforesaid view of the matter, the pivotal question which wrenches to the fore is whether the definition of 'deposit' under section 2(c) of the MPID Act covers in its fold 'inter-corporate deposits' and can the MPID Act be said to have been enacted to protect the interest of the corporate depositors as well?

12. A brief historical reference to the regulation of acceptance of deposits by the Companies would be apposite at this juncture. By virtue of the Act, No. 41 of 1974, section 58A came to be inserted in the Companies Act, 1956. Sub-section (1) of section 58A empowered the Central Government to prescribe the limits up to, and the manner in, and the conditions subject to, which the deposits may be invited or accepted by a company either from the public or from its members. Sub-section (2) thereof provided the conditions subject to fulfillment of which a company could accept the deposits. Further provisions regulating the return of the deposits, renewal thereof, the consequences of failure to repay the deposits, acceptance of deposits in contravention of the provisions therein and the redressal mechanism were provided therein. For the purpose of section 58A, 'deposit' was defined to mean any deposit of money with, and

includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. By Act No.53 of 2000, Special Provisions were made to protect the interest of small depositors by inserting section 58AA. Section 58AAA was also introduced by the said Amendment Act to make the offences connected with or arising out of acceptance of deposits under section 58A or 58AA cognizable.

13. In exercise of the powers conferred by section 58A read with section 642 of the Companies Act, 1956, the Central Government had framed the Companies (Acceptance of Deposits) Rules, 1975. Rule 2(b) defined a 'deposit' to mean "any deposit of money with, and includes any amount borrowed by, a company but shall not include –

> ……..(iv) any amount received by a company from other company.
> ....."

14. Since the said Rules, 1975 regulated the acceptance of deposits by prescribing further conditions, including the condition as to maintenance of liquid assets in the form of deposit of a percentage of total amounts of deposits maturing during the year ending on the 31st day of March next following, the validity of Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975, and, incidentally, the constitutional validity of

section 58A of the Companies Act, 1956 came to be challenged before the Supreme Court.

15. In the case of ***Delhi Cloth & General Mills Co. Ltd. Vs. Union of India & Ors.***[1]***,*** a three Judge Bench of the Supreme Court upheld he validity of Rule 3A of the Rules, repelling the submission that the condition prescribed bears no relevance to the object or the purpose for which the power was conferred under section 58A on the Central Government. Moreover, while upholding the validity of section 58A of the Act, the Supreme Court observed as under :-

> *"30 .....Sec. 58-A amongst various other things was designed to introduce some measure of control over the non-banking companies inviting and accepting deposits in the ultimate interest of the depositors, and by compelling limited liquidity in resources, the society at large was sought to be protected from the ever haunting spectre of sickness in industry often conveniently resorted to by the private sector companies. Sec. 58A must receive its legitimate construction in the back-drop of this fact situation. Viewed from this angle, Sec. 58-A will enable the Central Government to prescribe conditions subject to which deposits can be accepted and one such condition would be how to readily make, a small portion of the deposit, available for repayment because while inviting and accepting deposits, it is implicit therein that repayment would be assured on the date of maturity."*
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> (emphasis supplied)

16. To make the narration as regards legislative prescription complete, it may be necessary to note that the Companies Act, 2013, under section 2(c), defines 'deposit' to include any receipt of money by way of deposit or

1 (1983) 4 SCC 166

loan or any other form by company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

17. The Companies Act, 2013, in section 73 proscribes invitation, acceptance or renewal of the deposits from the public except in the manner provide in Chapter V thereof. The prescription, however, does not apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify. Sub-section (2) of section 73 regulates the acceptance of deposits from the members of the company. Section 76 provides that an eligible Public Company may accept deposits from the persons other than its members subject to compliance with the requirements provided in sub-section (3) of section 73 and subject to such rules as the Central Government may in consultation with the Reserve Bank of India prescribe.

18. Section 76-A of the Companies Act, 2013 provides punishment for contravention of the provisions contained in section 73 or section 76 or Rules made thereunder and upon failure to repay the deposits or part thereof or any interest due thereon within the time specified or such other time as may be allowed by the Tribunal.

19. It would be advantageous to immediately notice, at this stage itself, that under the Companies (Acceptance of Deposits) Rules, 2014, also like the Rules 1975, 'deposit' does not include, *inter-alia,* any amount received by a Company from any other company. Thus, under the Old Companies Act as well as the Companies Act, 2013 and the Rules framed thereunder, the amounts received by one company from any other company were excluded from the term 'deposit' for the purpose of regulation of acceptance thereof.

20. In the backdrop of the aforesaid fasciculus of provisions, the submission on behalf of the petitioner, based on the object of the MPID Act is required to be appreciated. As indicated above, an endevour was made on behalf of the petitioner to drive home the point that in view of the aforesaid provisions contained in the Companies Act, 2013 and the Rules therein, the field so far as the inter-corporate deposits can be said to be occupied by the Central Legislation and the resort to the provisions of MPID Act, the object of which was to protect the interest of the small depositors, cannot be said to legally sustainable.

21. It is trite that though the statement of objects and reasons accompanying a statute cannot be used to determine the true meaning and effect of the substantive provisions of a statute, but it is permissible to

make a gainful reference to the statements of objects and reasons for the purpose of understanding the background of the legislation, the state of affairs that preceded the enactment, the attendant and surrounding circumstances in relation to the statute and the mischief which the statute sought to curb. Thus, it would be necessary to note the statements of objects and reasons of MPID Act. It gives insight into the then prevailing circumstances, which necessitated the enactment of MPID Act, the evil it sought to remedy, and the object it sought to achieve. It 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 promises 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.*
>
> *As both the Houses of the State Legislature are not in Session and the Governor of Maharashtra is satisfied that the circumstances exist which render it necessary for him to take immediate action to make a law, for the purposes aforesaid, this Ordinance is promulgated."*

22. The constitutional validity of the MPID Act was challenged before this Court. A Full Bench of this Court in the case of ***State of Maharashtra Vs. Vijay C. Puljal & Ors.*** [2] held that the provisions of MPID Act were *ultra*

2 (2012) 10 SCC 599

vires for want of legislative competence of the State Legislature.

23. The constitutional validity of a similar enactment, namely, Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (The Tamil Nadu Act) fell for consideration before the Full Bench of the Madras High Court in Writ Petition No.26108 of 2005. By a judgment dated 2nd March 2007, the Full Bench of the Madras High Court declared the Tamil Nadu Act to be constitutional.

24. In ***K.K. Baskaran Vs. State represented by its Secretary, Tamil Nadu and Ors.***[3]***,*** the aforesaid judgment of the Full Bench was assailed. Arguments were advanced before the Supreme Court based on the Full Bench judgment of this Court in the case of ***Vijay C. Puljal Vs. State of Maharashtra***[4]**.** The Supreme Court, however, upheld the constitutional validity of the Tamil Nadu Act. The Supreme Court observed that it disagrees with the view taken by the Bombay High Court. It was further observed that though there are some differences between the Tamil Nadu Act and the Maharashtra Act, they are minor differences, and hence the view which the Supreme Court was taking therein will also apply in relation to the Maharashtra Act. Eventually, in the case of ***Sonal Hemant***

3 (2011) 3 SCC 793
4 (2005) 4 CTC 705 (Bom.)

Joshi & Ors. Vs. State of Maharashtra & Ors.[5], following the said judgment in the case of ***K.K. Baskaran*** (Supra), the Supreme Court upheld the constitutional validity of the MPID Act.

25. The observations of the Supreme Court in the case of ***K.K. Baskaran*** (Supra) in paragraphs 24, 25, 26, 31, 32, and 33 expound the object behind the enactment of the Tamil Nadu Act and underscore the necessity of the legislative measure. They read as under :-

> *"24. The Tamil Nadu Act was enacted to find out a solution for the problem of the depositors who were deceived on a large scale by the fraudulent activities of certain financial establishments. There was a disastrous consequence both in the economic as well as social life of such depositors who were exploited by false promise of high return of interest. These financial institutions/establishments did not come either under the Reserve Bank of India Act or the Banking Regulation act, and hence they escaped from public control. By the impugned Act the State not only proposed to attach the properties of such fraudulent establishments and the mala fide transferees, but also provided for the sale of such properties and for distribution of the sale proceeds amongst the innocent depositors. Hence, in our opinion, the doctrine of occupied field or repugnancy, has no application in the present case.*
>
> *25 The object of the Tamil Nadu Act was to give a speedy remedy to the innocent depositors who were vulnerable to the temptation of earning high rates of interest and were victimized by the financial establishments fraudulently. As regards Section 58A of the Companies Act, this prescribes the conditions under which the deposits may be invited or accepted by the companies. On the other hand, the aim and object of the Tamil Nadu Act is totally different.*
>
> *26 The Tamil Nadu Act was enacted to ameliorate the conditions of thousands of depositors who had fallen into the clutches of fraudulent financial establishments who had raised hopes of high*

5 (2012) 10 SCC 601

rate of interest and thus duped the depositors. Thus the Tamil Nadu Act is not focused on the transaction of banking or the acceptance of deposit, but is focused on remedying the situation of the depositors who were deceived by the fraudulent financial establishments. The impugned Tamil Nadu Act was intended to deal with neither the banks which do the business or banking and are governed by the Reserve Bank of India Act and Banking Regulation Act, nor the non-banking financial companies enacted under the Companies Act, 1956.

.....

31 We fail to see how there is any violation of Article 14, 19(1)(g) or 21 of the Constitution. The Act is a salutary measure to remedy a great social evil. A systematic conspiracy was effected by certain fraudulent financial establishments which not only committed fraud on the depositor, but also siphoned off or diverted the depositor's funds mala fide. We are of the opinion that the act of the financers in exploiting the depositors is a notorious abuse of faith of the depositors who innocently deposited their money with the former for higher rate of interest. These depositors were often given a small pass book as a token of acknowledgment of their deposit, which they considered as a passport of their children for higher education or wedding of their daughters or as a policy of medical insurance in the case of most of the aged depositors, but in reality in all cases it was an unsecured promise executed on a waste paper. The senior citizens above 80 years, senior citizens between 60 and 80 years, widows, handicapped, driven out by wards, retired government servants and pensioners, and persons living below the poverty line constituted the bulk of the depositors. Without the aid of the impugned Act, it would have been impossible to recover their deposits and interest thereon.

32 *The conventional legal proceedings incurring huge expenses of court fees, advocates' fees, apart from other inconveniences involved and the long delay in disposal of cases due to docket explosion in Courts, would not have made it possible for the depositors to recover their money, leave alone the interest thereon. Hence, in our opinion the impugned Act has rightly been enacted to enable the depositors to recover their money speedily by taking strong steps in this connection.*

33 The State being the custodian of the welfare of the citizens as parens patriae cannot be a silent spectator without finding a solution for this malady. The financial swindlers, who

> *are nothing but cheats and charlatans having no social responsibility, but only a lust for easy money by making false promise of attractive returns for the gullible investors, had to be dealt with strongly.*
>
> *33 The small amounts collected from a substantial number of individual depositors culminated into huge amounts of money. These collections were diverted in the name of third parties and finally one day the fraudulent financers closed their financial establishments leaving the innocent depositors in the lurch".*
>
> (emphasis supplied)

26. A profitable reference can also be made to the judgment of the Supreme Court in the case of ***New Horizon Sugar Mills Limited Vs. Government of Pondicherry through Additional Secretary & Anr.*** [6]**,** wherein the validity of the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 came up for consideration. The Supreme Court dealt with the issues of the objects behind the enactment of, and the legislative competence to enact, the three Acts, namely, the Tamil Nadu Act, Maharashtra Act and the Pondicherry Act and enunciated the same in the following terms :-

> *"49 The Entries relating to the State List referred to above, and in particular Entry 30, appear to be a more appropriate source of legislative authority of the State Assembly for enacting laws in furtherance of such Entry. The power to enact the Pondicherry Act, the Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involves the business of unincorporated trading and money-lending which falls within the ambit of Entries 1, 30 and 32 of the State List.*
>
> *50 In addition to the above, it has also to be noticed that the objects for which the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act were enacted, are identical, namely, to protect*

6 (2012) 10 SCC 575

the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust.

……

52 The three enactments referred to hereinabove, were framed by the respective legislatures to safeguard the interests of the common citizens against exploitation by unscrupulous financial establishments mushrooming all over the country. That is, in fact, the main object indicated in the Statement of Objects and Reasons of the three different enactments.

……

59 The decision in K.K. Baskaran's case (supra) so far as it relates to protection of interests of depositors, cannot be ignored. In our view the decision rendered by the Madras High Court in K.K. Baskaran's case (supra) would be equally applicable to the facts of this case. We have to bear in mind that the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld by the Madras High Court and this Court. The objects of the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act being the same and/or similar in nature, and since the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld, the decision of the Madras High Court in upholding the validity of the Pondicherry Act also be affirmed. We have to keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated. More often than not, the investors end up losing their entire deposits. We cannot help but observe that in the instant case although an attempt has been made on behalf of the Appellant to state that it was not the Appellant Company which had accepted the deposits, but M/s PNL Nidhi Ltd., which had changed its name five times, such an argument is one of desperation and cannot prima facie be accepted. This appears to be one of such cases where funds have been collected from the gullible public to invest in projects other than those indicated by the front company. It is in fact the specific case of the Respondents that the funds collected by way of deposits were diverted to create the assets of the Appellant Mill."

27. The validity of certain provisions of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 arose for consideration

before the Supreme Court in the case of ***Soma Suresh Kumar Vs. Government of Andhra Pradesh & Ors.***[7]**.** After referring to the previous pronouncements, including ***K.K. Baskaran*** (Supra), the Supreme Court repelled the challenge to the Andhra Pradesh Act observing as under :-

> *"16 We notice in New Horizon Sugar Mills Ltd.'s case (supra), this Court held that the objects of the Tamil Nadue Act, Maharashtra Act and the Pondicherry Act are the same and/or of similar nature. In our view, the object and purpose as well as the provisions of the Andhra Act are pari materia with that of Tamil Nadu, Maharashtra and Pondicherry Acts, the constitutional validity of those legislation has already been upheld. We also fully concur with the views expressed by this Court in those Judgments and uphold the constitutional validity of the Andhra Act."*

28. The position which, thus, emerges is that the MPID Act and the enactments passed by the other State Legislatures were with the avowed object of protecting the interest of the depositors. The Legislatures had noticed a pattern of collecting money or deposits from unsuspecting investors after painting a rosy picture of return. The Legislature, thus, provided a special mechanism of attachment of properties and unearthing the money which was swindled so as to ensure that the investors are not left in the lurch by such unscrupulous persons and financial establishments.

29. The Supreme Court has negatived the challenge based on the premise that the provisions contained in the Companies Act, 1956, contained adequate measures, including penal, to deal with the said

7 (2013) 10 SCC 677

problems. It the case of ***K.K. Baskaran*** (Supra), it was observed in clear terms that section 58-A of the Companies Act (1956) prescribes the conditions under which the deposits may be invited or accepted by the Companies. Whereas the main aim and object of the Tamil Nadu Act is totally different. It was enacted to ameliorate the conditions of thousands of depositors who had fallen into the clutches of fraudulent financial establishments who had raised hopes of high rate of interest and thus duped the depositors. The Tamil Nadu Act is not focused on the transaction of banking or the acceptance of deposit, but is focused on remedying the situation of the depositors who were deceived by the fraudulent financial establishments.

30. The objects of the aforesaid enactments, including the MPID Act, were expounded with more clarity, and in unequivocal words, in the case of ***New Horizon Sugar Mills Limited*** (Supra). The Supreme Court observed that the object of the three enactments were identical, namely, to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life's savings to unscrupulous and fraudulent persons. It was further observed that those enactments were framed to safeguard the interests of the common citizens against exploitation by unscrupulous financial establishments mushrooming all over the country. That was stated to be the main object indicated in the

Statement of Objects and Reasons of the three different enactments. The Supreme Court went on to observe that the beneficial nature of the three legislations which is to protect interests of small depositors, who invest their life's savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated, needs to be kept in mind while testing the *vires* the provisions of the said enactments.

31. Can it be said that the aforesaid object of MPID Act equally professes to protect the interest of corporate depositors?

32. For an answer, in our view, the legislative prescription, needs to be carefully appreciated in the backdrop of the object of the MPID Act. Indubitably, the MPID Act does not make a distinction between the corporate and ordinary deposit. In fact, the MPID Act only defines 'deposit'. It does not define 'depositor'. Albiet, section 4 of the Act provides for issuance of an order of attachment of the properties on default in return of deposits upon complaints received from the depositors or otherwise. It would be contextually relevant to note that clause (d) of Rule 2(1) of the Companies (Acceptance and Deposits) Rules, 2014 defines a 'depositor' to mean (i) any member of the company who has made the deposit with the company in accordance with the provisions of sub-section (3) of the Act; or (ii) any person who has made a deposit with the public company in

accordance with the provisions of section 76 of the Act. It bears repetition to record that under the Rules 1975 framed under the Act, 1956 and Rules 2014 framed under the Companies Act, any money received by one company from another company is specifically excluded from the term 'deposit'.

33. A conjoint reading of the provisions of the Companies Act, and the Rules framed thereunder leads to a legitimate inference that the Parliament did not deem it necessary to regulate the aspect of receipt of any amount by a company from another company, by classifying as a deposit, for the acceptance of which the specific provisions were made under the Companies Act, 1956 and are made in the Companies Act, 2013. The receipt of a money by one company from other company is, however, clubbed with the items of exclusions provided in the Rules, which define 'deposit'.

34. At this juncture, the nature and structure of a company registered under the Companies Act assumes significance. Can a Company registered under the Companies Act be attributed with the same amount of credulity, innocence and unsuspecting animus which an ordinary person may exhibit in the face of an irresistible offer of financial benefit. The nature and structure of the corporate governance suggests otherwise. The decision making process of a corporate entity is expected to be of a more formal and

informed nature. A corporate entity is supposed to have the feel of the financial market. While making a business decision, the company is expected to weigh in a number of factors, including creditworthiness of another company with which it enters into a transaction, the viability of the business model of the later, the overall financial position and the corporate structure and governance of such company, and, ultimately, whether the said company would have the wherewithal to honour the financial commitment.

35. With key personnel, like directors and professional managers, a company is not expected to be easily lured by a mere promise of a higher percentage of return on investments, unlike an unsuspecting small time depositor. Th nature, structure and personnel equip a company to take an informed decision whether to enter into a business transaction, be it in the nature of advancement of a loan or making a deposit with another company. In our view, the exclusion of the receipt of money by one company from another company from the purview of the "deposit" needs to be appreciated in the aforesaid perspective, and that seems to be the rationale behind excluding the said transactions from regulation, under the provisions of the Companies Act and the Rules thereunder.

36. To put it in other words, in our view, the persuasive compulsion of

an irresistible offer does not lead to a blindfold investment by one company in another company. Nor a company is afflicted by the same degree of lack of information which an individual depositor may have to suffer. The company, which operates in a fiercely competitive financial market, is supposed to be equipped to make a prudent business decision. Viewed through this prism, and in the backdrop of the object of the enactments, including the MPID Act, to which we have extensively referred above, it does not appear that the object of the MPID Act was to protect the interest of the corporate depositors with the same zeal as that of the common citizens, unsuspecting investors and small depositors.

37. We are mindful of the fact that the constitutional validity of the MPID Act has been upheld, including the legislative competence of the State legislature to enact MPID Act. We are also conscious of the fact that it is neither permissible, nor do we propose, to delve into the said aspect of the matter. However, we deem it apposite to note that in the case of ***New Horizon Sugar Mills*** **Limited** (Supra), the Supreme Court has, in terms, observed that the power to enact the Pondicherry Act, the Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involves the business of unincorporated trading and money-lending which falls within the ambit of Entries 1, 30 and 32 of the State

List. In our view, the intendment of the State legislature was not to regulate the business transactions between the two companies, even when the transaction has the flavour of deposit.

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.

39. In our considered opinion, obliterating the distinction between the corporate depositor and ordinary depositor would render the provisions of the other enactments, like Companies Act, redundant, which provide various remedies for the enforcement of the rights of the corporate depositors, ranging from a petition for winding up to a suit for recovery of

the amount, and the corporate depositor may not be required to exhaust the remedies provided in the other enactments. The summary remedy provided in the MPID Act does not seem to have been conceived by the State legislature as the remedy for enforcement of the rights of one corporate entity against another. A corporate entity cannot claim to suffer from the vagaries which a small time depositor would encounter in realising the amount, in an ordinary manner, and for whom the summary remedy is provided.

40. In the aforesaid view of the matter, we are impelled to hold that the the inter-corporate deposit/loan, i.e., a loan advanced / deposit made by a company with another company registered under the provisions of the Companies Act would not amount to a “deposit“ within the meaning and for the purpose of the MPID Act.

41. Reverting to the facts of the case, it would be necessary to note that it was submitted on behalf of the petitioner that an amount of Rs.24 crores has already been secured by the Competent Authority and it has been kept in an interest bearing fixed deposit. It was further submitted that the company is ready to deposit further amount to meet the outstanding liability of FD holders, i.e., Rs. 36,28,79,797/- shown in the summary as on December 12, 2017. It was, thus, submitted that the company would

deposit the balance amount of about Rs.12 crores to meet the said liability.

42. We note the aforesaid offer on behalf of the petitioner. In our view, it would in the interest of the depositors to direct the financial establishments to first deposit the balance amount, (in addition to the amount of Rs.24 crores secured by the competent authority) towards the liability of the individual/non-corporate depositors, before the financial establishments can be permitted to work out their remedies before the Special Court as regards the notifications of attachment of the properties, which have been issued taking into account the amount of inter-corporate deposits. We clarify that we have not examined the question of the exact liability of the financial establishments towards the deposit holders excluding the corporate deposits. It would be for the Special Court to consider the said aspect and pass appropriate orders in the event the financial establishments make applications regarding the attachment orders, which have been issued taking into account the amount of inter-corporate deposits. We, however, make it clear that the financial establishments will have to deposit the entire balance amount towards the liability of the depositors, excluding the inter-corporate deposits, and then only the prayer of the financial establishments in respect of the attachment orders can be considered.

43. As regards, Criminal Application No. 385 of 2019 preferred by the intervenors, who claimed to be holders of bills of exchange, we record that the learned counsel for the petitioner restricted the challenge only to the extent of inter-corporate deposits and, therefore, we have not examined the question as to whether the amounts covered by the bills of exchange would not qualify as 'deposit' within the meaning of MPID Act. Thus, this order will have no bearing on the claims of the holders of bills of exchange. Criminal Application No. 385 of 2019, thus, stands disposed of accordingly.

44. The conspectus of aforesaid consideration is that we are persuaded to allow the petition in the following terms :-

(i) The petition stands allowed.

(ii) It is hereby declared that the inter-corporate deposit/loan, i.e., a loan advanced/deposit made by a company with another company registered under the provisions of the Companies Act, 1956/2013 would not amount to a “deposit“ within the meaning and for the purpose of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

(iii) It is further declared that the inter-corporate deposits made with the financial establishments in the instant proceedings leading to MPID Special Case No.4 of 2014 shall

not be taken into consideration for the purpose of the prosecution and proceedings under the MPID Act.

(iv) Subject to the observations in paragraph 43, Criminal Application No. 385 of 2019 stands disposed off.

45. Rule made absolute in the aforesaid terms. No costs.

[N.J. JAMADAR, J.] **[RANJIT MORE]**

Shraddha Talekar PS