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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR'S REPORT NO.126 OF 2013  
WITH  
COMPANY APPLICATION NO.630 OF 2015  
IN  
COMPANY PETITION NO.182 OF 2012

WITH  
OFFICIAL LIQUIDATOR'S REPORT NO.252 OF 2015  
IN  
COMPANY PETITION NO.278 OF 2014

In the matter of Companies Act I of 1956

And

In the matter of M/s.Aryarup Tourism Club Resorts  
Private Limited (In Liquidation)

WITH  
OFFICIAL LIQUIDATOR'S REPORT NO.264 OF 2015  
IN  
COMPANY APPLICATION NO.234 OF 2010  
IN  
COMPANY PETITION NO.326 OF 2010

In the matter of Companies Act, I of1956.

And

- 1) In the matter of M/s. City Limouzines (India)  
Ltd. (in liquidation)
- 2) In the matter of M/s. City Realcom Ltd. (in  
liquidation)

1) Prasad Mhatre  
2) M/s.Sure Shot Advertising ...Petitioners

Mrs.Uma S. Palsule-Desai for the Economic Offence Wing in OLR No.126 of 2013.

Mr.G.W. Matoos, A.G.P. for the State – Respondent in OLR No.252 of 2015.

Mr.Prathamesh Kamat for the Official Liquidator in OLR No.126 of 2013.

Mr.Naushad Engineer for the Official Liquidator in OLR No.252 of 2015.

Ms.Yogini D. Chauhan, Deputy Official Liquidator present.

Mr.Subramanyam BKV for the Applicant in C.A. No.630 of 2015.

**CORAM** : **R.D. DHANUKA, J.**  
**RESERVED ON** : **10TH MARCH, 2017**  
**PRONOUNCED ON** : **9TH JUNE, 2017**

**JUDGMENT :-**

1. By consent of parties, the aforesaid proceedings were heard together and are being disposed of by a common order.

2. The Official Liquidator's Report No.126 of 2013 is filed *inter-alia* praying for an order and direction against Economic Offences Wing, Mumbai to handover the records/Books of Accounts of M/s. City Limouzines (India) Ltd. (in liquidation), if any, in their possession. The learned Official Liquidator also seeks an order against the Enforcement Directorate, Economic Offences Wing, Mumbai to handover the possession of the properties of the Companies (in liquidation) i.e. M/s.City Limouzines (India) Ltd. (in liquidation) and M/s. City Realcom Ltd. (in liquidation) to the Official Liquidator and to handover the details of the bank accounts of the

aforesaid two Companies in liquidation to the Official Liquidator with a direction to the banks described in paragraph 7 of the Report to handover the money lying in the said accounts to the Official Liquidator along with interest accrued, if any. The Official Liquidator also seeks permission to invite the claims of the workers/creditors of the aforesaid two Companies by giving an advertisement in the newspapers and to make payment to M/s. Admire Publicity Private Limited, an advertisement agency towards the advertisement charges to invite the workers/creditors.

3. Insofar as the Official Liquidator Report No. 264 of 2015 is concerned, only prayer (d) by which the Official Liquidator seeks an order against the Special MPID Court of Session, Greater Bombay to transfer/release bail amount of Rs.60,00,000/- / movable and immovable assets of the aforesaid two Companies in liquidation to the Official Liquidator is pending. Rest of the prayers in the said Report are already granted.

4. Insofar as Official Liquidator Report No. 252 of 2015 is concerned, the Official Liquidator has filed this Report in Company Petition No. 278 of 2014 which is filed against M/s. Aryarup Tourism Club Resorts Pvt.Ltd. (in liquidation) *inter alia* praying for an order and direction against the Police Inspector, State Crime Investigation Department, Mumbai and/or appropriate authorities to handover properties and money standing in the name of the said Company in liquidation under provisions of 468 of the Companies Act, 1956 read with Rule 234 of Companies (Court) Rules, 1959.

5. By Company Application No. 630 of 2015 the City Group

Investments Welfare Association has prayed for an order and direction to the Official Liquidator to release the payment to the members of the Applicants Association whose claims have been admitted vide notice of admission of proof by various orders and also seeks an order to call for status report in respect of the claims of other members of the Applicant Association. The said Application is filed in the Company Petition No. 182 of 2012, filed against M/s. City Realcom Ltd. (in liquidation).

6. Some of the relevant facts for the purpose of deciding these matters are as under :-

By an order dated 1st October 2010 passed in Company Petition No. 234 of 2010, the Official Liquidator has been appointed as a provisional liquidator of M/s. City Limouzines (India) Ltd. (in liquidation). By an order dated 3rd December 2010, the said M/s. City Limouzines (India) Ltd. (in liquidation) has been ordered to be wound up. By an order dated 9th March 2012 M/s. City Realcom Ltd. (in liquidation) was ordered to be wound up. By the said order, this Court appointed Official Liquidator as the Liquidator of the aforesaid Companies with usual powers under provisions of Companies Act, 1956.

7. By an order dated 28th October 2010, this Court directed the Official Liquidator to take possession of the registered office of M/s. City Limouzines (India) Ltd. (in liquidation) situated at 102, B Wing, Mittal Towers, Nariman Point, Mumbai – 400 021. The Official Liquidator, however, could not take possession of the said registered office of the said Company M/s. City Limouzines (India) Ltd. (in

liquidation), as the same was already sealed by the Economic Offences Wing, Crime Branch, Mumbai.

8. The Official Liquidator thereafter, hold a meeting on 5th January 2011 with the representatives of M/s. City Limouzines (India) Ltd. (in liquidation) & others. In the said meeting, the Assistant Director, Enforcement Directorate informed the Official Liquidator that his Department had already attached the properties of the said M/s. City Limouzines (India) Ltd. (in liquidation) and of all its Promoters to the extent of more than Rs. 10.00 Crores. The Senior Inspector of Police of Economic Offences Wing, Crime Branch, Mumbai also informed the Official Liquidator that the Economic Offences Wing, Crime Branch, Mumbai also had attached the property of more than 10 Crores of the said M/s. City Limouzines (India) Ltd. (in liquidation).

9. On 4th July 2011 the Economic Offences Wing, Crime Branch, Mumbai forwarded the details of the properties i.e. movable and immovable to the Official Liquidator which properties were attached by the said Economic Offences Wing, Crime Branch, Mumbai in the areas in around Mumbai and Pune including the bank accounts which were in the name of the said M/s. City Limouzines (India) Ltd. (in liquidation). The bank accounts of the sister concern/Companies in various banks namely ABN Amro Bank, DBS, Kotak Mahindra, Standard Chartered, Syndicate Bank, IDBI, Canara Bank, Dena Bank, ICICI Bank, Maharashtra State Co-op Bank, Bombay Mercantile Co-op Bank, State Bank of Patiala and Bank of Baroda who are also seized.

10. It is the case of the Official Liquidator that the Serious Fraud Investigation Office (in short "**SFIO**") addressed a letter to the

Official Liquidator and annexed copy of Investigation Report in respect of the said M/s. City Limouzines (India) Ltd. (in liquidation). The Official Liquidator was informed that the Central Government vide order dated 7th October 2010 had appointed an Inspector to investigate into the affairs of M/s. City Limouzines (India) Ltd. (in liquidation) and accordingly, the said authority had conducted detailed enquiry into the affairs of the said Company in liquidation and its sister concern/Companies. During the course of the investigation, the said Inspector came to know as to how those Companies have flouted various laws.

11. On 16th April 2012, the Official Liquidator fixed a meeting in respect of the M/s. City Realcom Ltd. (in liquidation) with all the concerned for ascertaining the details of the Company in liquidation and to decide the modality of taking possession thereof. None of the parties concern, however, attended the said meeting in the office of the Official Liquidator. The Official Liquidator decided to take the possession of the registered office of the said Company M/s. City Realcom Ltd. (in liquidation) situated at 96, 9th Floor, B Wing, Mittal Towers, Nariman Point, Mumbai – 400 021 on 18th May 2012 but could not take possession thereof, as the said office was not registered in the name of the said Company, M/s. City Realcom Ltd. (in liquidation), but was registered in the name of M/s. City Limouzines (India) Ltd. (in liquidation), which was already sealed by the Economic Offences Wing, Crime Branch, Mumbai.

12. The Official Liquidator by his letters dated 4th May 2012 and 7th August 2012 requested the Assistant Commissioner, Police, Economic Offences Wing, Crime Branch, Mumbai to handover the records/Books of Accounts of the Companies (in liquidation), if any,

handover possession of the registered office of the Company in liquidation i.e. M/s. City Limouzines (India) Ltd. (in liquidation) situated at Mittal Towers, Nariman Point, Mumbai – 400 021, which had been sealed by them. There was however, no reply from the Assistant Commissioner, Police, Economic Offences Wing, Crime Branch, Mumbai in response to the two letters i.e. 4th May 2012 and 7th August 2012.

13. This Court passed an order on 21st June 2012 in Company Application No. 203 of 2012 in Company Petition No. 234 of 2010 filed by Union of India against M/s. City Limouzines (India) Ltd. (in liquidation) and permitted the Union of India, SFIO to carry out investigation under Section 235 of the Companies Act, 1956 into the affairs of the said M/s. City Limouzines (India) Ltd. (in liquidation) and to pass consequential order in that regard.

14. Sometime in the year 2012, Company Application (L) No. 600 of 2012 in Company Petition No. 234 of 2010 came to be filed against the M/s. City Limouzines (India) Ltd. (in liquidation) and Company Application No. 583 of 2012 in Company Petition No. 182 of 2012 against the M/s. City Realcom Ltd. (in liquidation), *inter alia* praying for an order and direction to the Enforcement Directorate, the Official Liquidator and Economic Offences Wing, Crime Branch, Mumbai to file a status report and to direct the Enforcement Directorate to handover the properties of those Companies in liquidation to the Official Liquidator to satisfy the claimants and also to release the payment of the claimants with a fixed frame of time. This Court passed an order on 13th February 2013 in those two Company Applications directing the Official Liquidator to adjudicate the claims of the members of the said Applicant Association within a

period of four months from the date of the said order and also permitted the Official Liquidator to appoint a Chartered Accountant for adjudicating upon those claims. This Court directed the Official Liquidator to place a report before this Court within a period of two weeks from the date of the said order in respect of the properties of these Companies (in liquidation) which were in possession of the Enforcement Directorate in Company Petition No. 182 of 2012.

15. On 18<sup>th</sup> March, 2013, the Official Liquidator filed Official Liquidator's Report No.126 of 2013 before this Court *inter-alia* praying for an order and direction against The Economic Offence Wing, Mumbai to hand over records / books of the account of the company in liquidation, to hand over possession of the properties of the company in liquidation i.e. City Limouzines (India) Limited and City Realcom Limited (in liquidation) to the Official Liquidator etc. seeking permission to invite claims of the workers / creditors of the aforesaid two companies. By an order dated 21<sup>st</sup> March, 2013, this Court allowed prayer clause (d) of the Official Liquidator's Report No.126 of 2013 *inter-alia* praying for permission to invite claims of the creditors of the company in liquidation. On 30<sup>th</sup> March, 2013, the Official Liquidator invited the claims from the creditors of the City Limouzines (India) Limited and City Realcom Limited (in liquidation).

16. On 2<sup>nd</sup> May, 2013 Police Inspector, Economic Offence Wing, Criminal Branch, Mumbai filed an affidavit in reply to the Official Liquidator's Report No.126 of 2013 and stated that during the course of investigation, the investigating agency had attached 25 immoveable properties and has frozen approximately 55 bank accounts of City Group of Companies, estimated value whereof is more than Rs.180.00 crores.

17. In paragraph 18 of the said affidavit it is stated that the said department did not have any objection if this court directs the said office to remit the money to the Official Liquidator with a condition that the claims of duped investors of the company i.e. E.O.W. CR No.74 of 2007 (City Limouzines Case) to be settled on priority basis. Insofar as the records / books of account of the company in liquidation in possession of the said office is concerned, it is stated that the same being voluminous, the Official Liquidator may take photo copy of the original record.

18. On 24th July, 2013, this Court passed an order in the Company Application No.600 of 2012 for appointment of four more Chartered Accountants for getting the claims adjudicated on payment of Rs.250/- per claim plus service tax. This Court made it clear that it would be open to the Official Liquidator to adjudicate the claim on the basis of the photo copies of the documents. The Economic Offence Wing has made a statement in the said affidavit dated 2nd May, 2013 that the said department has no objection to hand over possession of the property and remittance of the entire money lying in the said bank accounts to the Official Liquidator if so directed by this Court on the condition that the claims of the duped investors of this case i.e. (City Limouzines case) be settled on priority basis and also gave no objection for the same. This Court recorded a statement made by the learned Assistant Government Pleader that more than 60,000 to 70,000 complaints from the depositors had been received and 40,000 complaints had been so far adjudicated upon. This Court directed that those complaints will be forwarded to the office of the Official Liquidator who would consider those complaints as well as the claims received by the Official Liquidator and

adjudicate / ascertain the same. It was further directed that if the Official Liquidator needs the services from the Chartered Accountants for that purpose, a report may be placed on record.

19. It was directed that no distribution of money so deposited may be made without the leave of the Court. If any other authorities, depositors or creditors would raise a claim with the Economic Offence Wing, the said Economic Offence Wing will forward the same to the Official Liquidator after carrying out a preliminary enquiry. This Court directed that the Ministry of Commerce may consider if any funds could be made available to the Official Liquidator for the purpose of incurring the expenses on adjudicating upon the claims by the Official Liquidator or for replenishment of the common fund which is to be exhausted due to this matter.

20. On 29th October, 2013, this Court recorded the statement made by the Assistant Government Pleader that the transfer of amount will take some time and sought eight weeks time. Insofar as the amount lying deposited in the Metropolitan Magistrate's Court is concerned, the learned Assistant Government Pleader made a statement that the Economic Offence Wing was not directly concerned with the same and would assist the Official Liquidator in respect of the withdrawal of the said amount. As far as the remaining amount is concerned, the Economic Offence Wing was directed to transfer the amount within eight weeks from the date of the said order. The learned Assistant Government Pleader sought eight weeks time for forwarding the complaints which had been received from various investors. This Court directed the Official Liquidator to consider those complaints as the claims made by the investors.

21. It is the case of the Official Liquidator that the said office has received approximately 40,000 claims from the investors and the secured creditors of the aforesaid two Companies in liquidation till the date of filing the Report on 18th March 2013 even before inviting claims of the Official Liquidator in respect of those two Companies. The Official Liquidator has given names of 28 newspapers in which the Official Liquidator proposed to release an advertisement for inviting the claims of the workers/creditors of the Companies in liquidation and to pay the advertisement charges which is estimated around Rs. 50,00,000/- when the Official Liquidator Report No.126 of 2013 was filed.

22. By a letter dated 1st November 2013, the Economic Offences Wing, Crime Branch, Mumbai forwarded a copy of their Application dated 21st October, 2011 submitted in the Court of learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai requesting to establish a 'lien' on the said amount of Rs. 60,00,000/-. Office of the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai informed the Official Liquidator that the said CC/109/PW/2010 had been committed/transferred to the Special MPID Court of Session, Greater Bombay on 20th August 2013 and all the records in respect of the said matter have been transferred to the said Court. The Official Liquidator thereafter, made an Application in the said CC/109/PW/2010 before the Special MPID Court of Session, Greater Bombay. It is the case of the Official Liquidator that the Special MPID Court of Session, Greater Bombay in the said Application orally directed that mere appointment of Official Liquidator would not be sufficient to transfer the assets, etc. and that there has to be a

specific order of this Court. The Official Liquidator accordingly, filed Official Liquidator Report No.126 of 2013 dated 18th March 2013 for recovery of movable and immovable assets of the one of the aforesaid Company in liquidation from the Economic Offences Wing, Crime Branch, Mumbai.

23. On 26<sup>th</sup> November, 2013, this Court recorded that the Economic Offence Wing had scrutinized 41,894 applications of the investors and the said data regarding scrutiny had been stored in Excel format.

24. On 22<sup>nd</sup> December, 2015, this Court passed an order on Company application No.630 of 2015 in Company Petition No.182 of 2012 filed by City Group Investors Welfare Association, Hyderabad thereby directing the Official Liquidator to write a letter to the Economic Offence Wing, Crime Branch, Mumbai for releasing of property which they had attached so that the assets could be sold to pay off the creditors.

25. On 22<sup>nd</sup> January, 2016, the Official Liquidator sent a letter to the Economic Offence Wing, Crime Branch, Mumbai attaching the order dated 22<sup>nd</sup> December, 2015 passed by this Court and requested the Economic Offence Wing to release the properties of the company – City Realcom (Limited) in liquidation attached by Economic Offence Wing so that those assets could be paid to the company in liquidation.

26. On 9<sup>th</sup> March, 2016, a Senior Inspector of Police, attached to the Economic Offence Wing, Crime Branch, Mumbai, filed an affidavit in Official Liquidator's Report No.126 of 2013. In the said

affidavit, it was stated that the said office had secured 27 properties of the company and its directors and had frozen total 57 bank accounts of the company and its directors worth Rs.12,01,27,222/-. It is further stated that as per the order dated 23<sup>rd</sup> September, 2013, passed by this Court, an amount of Rs.43,76,434/- has been transferred to the Official Liquidator and an amount of Rs.96,34,809/- has been transferred to the competent authority of Chennai pursuant to an order of the Court of Special Judge under TNPID Act, Chennai. The amount of Rs.9,32,72,735/- lying in the account of the Standard Chartered Bank, Mumbai and the Maharashtra State Co-operative Bank has been transferred to the Deputy Director of Enforcement, Mumbai. It is mentioned that at present the total amount attached with various banks aggregates to Rs.1,34,13,058/-.

27. In paragraph 5 of the said affidavit, it is stated that the total value of the property (movable and immovable) is worth approximately Rs.191.00 crores which has been seized and secured under M.P.I.D. Act. The Government of Maharashtra has designated a competent authority to dispose of the said seized properties and to settle the claims of the investors. On 9<sup>th</sup> September, 2015, the District Collector at Mumbai City appointed the Resident Deputy Collector, Mumbai City as the competent authority in this matter. It is stated that out of 27 immovable properties, four immovable properties are in the name of those two companies, whereas rest of the 23 properties are in the personal names of the directors of the said companies. The list of such properties is annexed to the said affidavit.

28. Out of total 57 bank accounts, only 11 bank accounts are in the name of City Limouzines (India) Limited and 10 bank accounts

are in the name of City Realcom Limited (in liquidation). In paragraph 11 of the said affidavit, it is contended that the Official Liquidator can deal with only the properties of the companies, whereas the competent authority designated under MPID Act can deal with all the properties secured by the police and the investors and settled the claims of the investors.

29. On 14<sup>th</sup> September, 2016, the Supreme Court passed an order in Special Leave to Appeal (Cri) No.1912 of 2015, which was filed by the City Group Investors Association against the promoters of the respondent. One of the promoter Mr.Sayyed Masood made a statement before the Supreme Court that the attached properties belonging to him should be put to sell by the High Court based on the priority list which shall be furnished by him to the High Court within one week from the date of the said order. He also agreed that the sale proceeds shall be used for justifying the liabilities towards the investors. The Supreme Court accordingly directed this Court to supervise the sale of the attached properties by overseeing the auction proceedings held by the Official Liquidator. It was made clear that the sale of the properties made by the High Court shall be final and binding on the parties. The Supreme Court made it clear that as and when substantial amount payable to the investors is refunded, it shall be open to the said promoter to file appropriate application for bail before the High Court.

30. Pursuant to the said order passed by the Supreme Court, the said promoter Mr.Sayyed Masood, through his advocate addressed a letter on 8<sup>th</sup> February, 2017 to the Official Liquidator and to the Registrar of this Court and furnished the details of four

properties. In the said letter, it was mentioned that the said promoter did not have objection for the purpose of sale of those properties. In the said letter, the said promoter requested the Official Liquidator to supervise the sale of those properties at the earliest and to apply for sale proceeds towards making payment to the investors. It was alleged that the said promoter Mr.Sayyed Masood did not have any other properties standing in his name for which he could give NOC for sale thereof.

31. On 12<sup>th</sup> May, 2016, the State Government issued two notifications under sections 4(1), 5(1) and 8 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and appointed the Sub Divisional Officer, Latur to be the competent authority to exercise the control over the properties of the Aryarup Tourism and Club Resort Private Limited, Latur District described in the said notifications. It was also notified that the Government of Maharashtra had attached the properties of the said company and in the name of its directors and their relatives as per the schedule appended to the said notification. The second notification was in respect of the two properties, one situated at Sanganer, Jaipur, Rajasthan and another situated at Balegaon, Murbad, Thane, Maharashtra.

32. On March, 2016, the State Government issued another notification in respect of the said company and attached some more properties thereby and appointed the Sub Divisional Officer, Solapur-1 to be the competent authority.

33. On 17<sup>th</sup> June, 2016 17<sup>th</sup> June, 2016, the State Government issued a notification thereby attaching some of the properties of City Limouzines (India) Limited and in the name of its Chairman / Directors.

34. Mr.Engineer, learned counsel appearing for the Official Liquidator in the matter of Aryarup Tourism and Club Resort Private Limited in the Official Liquidator's Report No.252 of 2015/Legal/II invited my attention to the correspondence annexed to various reports and also to various orders passed by this Court from time to time. He submits that the Official Liquidator is only seeking directions against the properties belonging to the company in liquidation at this stage. He placed reliance on section 456 of the Companies Act and submits that on the winding up of the company, the Official Liquidator is empowered to take into his custody or under his control, all the properties, effect and assets of company the effects of the company or appears to be entitled to.

35. Learned counsel placed reliance on section 468 of the Companies Act and submits that the Court has very wide powers under the said provision to require any contributory, trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers etc. from any party to which company is *prima-facie* entitled, after making winding up order. He submits that it is the duty of the Official Liquidator to collect all the assets, properties and moneys of the company in liquidation.

36. Learned counsel for the Official Liquidator submits that the Official Liquidator has to invite the claims of all the creditors whether they are secured or unsecured, trade creditors or depositors, has to realize the properties of the company in liquidation and to sell those properties and are to be paid over to creditors in accordance with the provisions of sections 529, 529(A) and 530 of the Companies Act, 1956. He submits that the claims of the workmen and secured creditors rank *pari-pasu* and are treated as over-riding preferential creditors whose debts shall be paid in priority to all other debts. He submits that only after the debts due to the secured creditors and the workmen are paid then preferential payments as set out in section 530 are paid. The preferential payments are statutory dues, taxes, cesses etc. as also the amount payable to non-workmen employees. Thereafter unsecured creditors shall be entitled to receive the amount that may be found due and payable.

37. It is submitted by the learned counsel that all types of the creditors can lodge their claim before the Official Liquidator, including the investors under the provisions of the M.P.I.D. Act. He submits that in case of B.K. Paper Mills in Company Application No.268 of 2010, claims of over 1000 depositors, who had filed the claims before the Economic Offence Wing at Mumbai and who had also filed their claims before the Official Liquidator. Those claims have been adjudicated by the Official Liquidator.

38. Learned counsel for the Official Liquidator invited my attention to section 2(c)(d), 3, 4 and 7 of the M.P.I.D. Act and Rule 5 of the MPID Rules. It is submitted by the learned counsel that the

attachment of the properties under section 4 of the MPID Act is for protecting the interest of the investors. He submits that under section 7 of the said Act, payment can be made only to the depositors as defined under the said Act. The MPID Act does not consider or contemplate a situation where the financial establishment may be wound up or provides for consequences of winding up.

39. It is submitted by the learned counsel that the competent authority appointed under the MPID Act do not supersede or prevail upon the Companies Act. The MPID Act is totally silent on aspects relating to winding up and therefore if the financial establishment is in winding up then the provisions of the Companies Act, 1956 would apply.

40. Learned counsel for the Official Liquidator placed reliance on the judgment of this Court in case of **Prabhakar Dattatraya Gune & Ors. vs. Vishnukant Bapurao Urankar & Ors. 2014(1) Bom.C.R. (Cri.) 262** and would submit that MPID Act and the Companies Act operate in separate fields. When the company is facing winding up proceedings, nothing can be done in relation to the properties of the company by MPID Court or by an authority under MPID Act. He relied upon paragraph 38 to 55 of the said judgment and would submit that the Companies Act and MPID Act have been held not to be repugnant to each other and to be in pith and substance operating in separate fields. The MPID Act cannot take away the powers under the Companies Act. It is submitted that the MPID Act and Companies Act have to be construed harmoniously which can only be done by holding that on winding up of a company, assets would vest in the Official Liquidator and all the creditors including the depositors /

investors could lodge their claim before the Official Liquidator. The distribution of money in accordance with the settled principles of law is contemplated under the Companies Act.

41. It is submitted that once the Company is wound up, the provisions of sections 529, 529(A) and 530 of the Companies Act would be attracted and the claims of the secured creditors, workmen, preferential claim of the statutory dues will have to be considered first and thus the claims of the depositors / investors under MPID Act cannot be paid first. The MPID Act does not cover a situation of winding up and moneys that are realized from the sale of the assets are only to be paid over to the depositors. It is submitted that the other creditors cannot apply for distribution of any amount of their claims before MPID Court whereas before the Official Liquidator, all the creditors including the depositors / investors can lodge their claims for adjudication and payment. It is submitted that MPID Court thus cannot pass any orders with regard to the property of the company in liquidation, once such company is wound up.

42. Learned counsel for the Official Liquidator placed reliance on the judgment of the Supreme Court in case of **Bank of Maharashtra vs. Pandurang Keshav Gorwardkar & Ors., (2013) 7 SCC 754** and in particular paragraphs 62, 63, 66 and 67. He submits that the Supreme Court has held that once the company is in winding up, the only competent authority to determine the workmen's dues and quantify the workmen's portion is the Official Liquidator. The Official Liquidator is responsible and competent to determine the workmen's dues where the debtor company is in liquidation. The Debt Recovery Tribunal followed the mandatory provisions of section

529A by making distribution in equal proportion to secured creditors and the workmen of the debt company in winding up.

43. Learned counsel for the Official Liquidator placed reliance on the judgment of the Supreme Court in case of **M. Karunanidhi vs. Union of India & Anr. (1979) 3 SCC 431** and in particular paragraph 35 thereof in support of his submission that in order to decide the question of repugnancy, it must be shown that the two enactments contain inconsistent and irreconcilable provisions, and that they cannot stand together or operate in the same field. Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results. It is submitted that the Companies Act, 1956 and MPID Act operate in two different fields and there is no question of any repugnancy. He submits that since the respondent companies are already wound up, MPID Court has no jurisdiction to pass any order against the properties of those companies. He submits that section 14 of the MPID Act would not be attracted since there is no inconsistency between the Companies Act and MPID Act. Since MPID Act is totally silent on the aspect relating to the winding up and therefore if any financial establishment is in winding up, then the provisions of the Companies Act, 1956 would apply.

44. It is submitted by the learned counsel for the Official Liquidator that the interpretation sought to be placed by the authority under the MPID Act would result in great mischief. If the authorities under the MPID Act are allowed to take control and charge of the assets of the company, all the companies who are in winding up and

if are allowed to distribute the same only to the depositors, it would result in a situation that the rights of the secured creditors, workmen and statutory creditors would be defeated.

45. It is submitted by the learned counsel for the Official Liquidator that the Economic Offence Wing has already made submission before this Court that the immovable properties and movables standing in the name of the companies in liquidation would be handed over to the Official Liquidator. He submits that the authorities have also attached several personal properties of the directors by exercising their powers under the provisions of MPID Act. He submits that the Official Liquidator has no claim as on date against the alleged personal properties of the directors and of the other agents of the companies in liquidation attached by the authorities under the MPID Act.

46. Learned counsel for the Official Liquidator invited my attention to some of the contentions raised by the authorities in various affidavits filed before this Court. He submits that there is no answer to the submissions made by the Official Liquidator that on winding up of the company, all the assets of such company vests in the Official Liquidator and the custody thereof has to be taken by the Official Liquidator from the company in liquidation and from any third parties found in possession of such properties.

47. It is submitted that the Central Government though, the learned Additional Solicitor General had taken time to consider whether any amounts can be paid to the Official Liquidator for making adjudication of all the claims of the investors / depositors, but till date

no additional amount is sanctioned by the Government. Whatever amounts have been received by the Official Liquidator, substantial part of the said amount is already spent on the claims adjudicated so far by the Official Liquidator. He submits that the Official Liquidator will invite the claims within such time as this Court may direct from other secured and unsecured creditors of the company in liquidation.

48. Insofar as the company City Limouzines (India) Limited (In liquidation) is concerned, it is submitted that the Official Liquidator has received the claims of around 75,000 investors out of which the claims of 32,000 investors have been already adjudicated upon by the Official Liquidator till date. The costs incurred for adjudicating 32,000 claims is Rs.80,00,000/- till date. Approximately the costs involved for adjudication of the claims received so far is Rs.1,87,00,000/-. He submits that these claims are required to be adjudicated by the Chartered Accountants from the panel of the Official Liquidator which costs does not include the other administrative expenses such as litigation costs, costs involved in dispatching the adjudicated claims to the parties and other administrative expenses. The total expenditure excluding litigation costs comes to more than Rs.2,00,00,000/-.

49. The Official Liquidator has till date ascertained only four properties belonging to the company in liquidation, which are worth approximately Rs.7.00 crores. The Official Liquidator is bound to distribute the liquidated sum in accordance with sections 529, 529(A) and 530 of the Companies Act, 1956. The Official Liquidator has received a claim from the Income Tax Department at approximately Rs.3,66,00,000/- and from the Sales Tax Department against the

company City Limouzines (India) Limited (In liquidation) in the sum of Rs.40.00 crores. He submits that the Economic Offence Wing, Crime Branch, C.I.D., Bombay has attached 27 properties out of which only four properties are in the name of the company in liquidation and remaining 23 are in the name of its directors. It is submitted that in view of sections 529, 529(A), and 530 of the Companies Act, 1956, the claims of the investors can be considered for payment only if any assets are left in surplus after payment of the preferential creditors under sections 529, 529(A) and 530 of the Companies Act, 1956 are made.

50. Mr.Matoos, learned AGP appearing for the State Government submits that about 48 criminal cases have been filed against M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) in the State of Maharashtra inter-alia its Ex-directors and agents of the said company under the provisions of Indian Penal Code, 1860 read with Section 3 of the MPID Act which cases are transferred to the State CID and the investigations were carried out and/or are being carried out by the said CID. Chargesheets have been filed in 19 criminal cases whereas the rest of the cases are still under investigation.

51. Learned counsel invited my attention to various provisions of the MPID Act and submits that the MPID Act has been enacted by the State Government with an object to curb the unscrupulous activities of such financial establishments in the State of Maharashtra who have grabbed money received as deposits from large number of public mostly from middle class and poor on the promises of unprecedented high attractive interest rates of rewards and without

any obligation to refund such deposits to the investors on maturity. It is submitted by the learned counsel that the said MPID Act is a Special Act.

52. Learned counsel placed reliance on Section 14 of the said Act and would submit that the said Act shall override any other laws notwithstanding anything inconsistent therewith contained in the other law for the time being in force. He submits that though this Court had struck down the said MPID Act, Supreme Court in another matter in the case of **K.K. Bhaskaran vs. State, (2011) 3 SCC 793** has upheld the full bench judgment of the Madras High Court and disagreed with the view taken by this Court. The constitutional validity of the two Acts including the MPID Act has been upheld by the Supreme Court in the said judgment.

53. It is submitted that the competent authority appointed under the MPID Act has power to deal with all the properties of the financial establishments i.e. the company in liquidation in these matters under the provisions of the said MPID Act and to distribute the sale proceeds thereof amongst the investors/depositors. He submits that the Government has already issued an order on 31<sup>st</sup> December 2014 appointing the competent authority to exercise control over the monies and properties attached by the Government under Section 4 of the MPID Act of the company in liquidation. He invited my attention to the said Government Order dated 31<sup>st</sup> December 2014 on record.

54. It is submitted by the learned counsel that on reconciliation and on re-verification of the records, the properties of

M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) is found to the tune of Rs.12,15,62,802/-. He submits that the said properties vest with the competent authority appointed under the said MPID Act. He submits that under Section 4(1)(ii) of the said MPID Act, the Government has already attached the money or the property believed to have been acquired by the said M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation), either in its own name or in the name of any other person from out of deposits, collected by the said company. Upon such an order passed under Section 4(2) of the said Act, all the properties and assets of the said company and the persons mentioned in the said order shall vest in the competent authority appointed by the Government.

55. It is submitted that only such competent authority is empowered to administer the monies and properties in the interest of the depositors under Rule 5(1) of the said Rules framed by the Government under the said MPID Act. He invited my attention to the notification dated 12<sup>th</sup> May 2016 issued by the State Government by exercising powers conferred upon the State Government under Section 4(1) of the MPID Act thereby attaching the properties and assets of the said company.

56. Learned AGP placed reliance on Section 6(1) of the MPID Act and submits that no Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of the said MPID Act apply. He submits that an elaborate procedure is prescribed under the provisions of the said MPID Act in respect of settling of claims and/or interest in the property of the financial institutions attached by the competent authority. It is

submitted that the MPID Court is already seized of the matter and thus the official liquidator cannot seek any direction in respect of the properties attached by the competent authority as prayed in the reports filed by him. He submits that notifications issued under Section 4 of the MPID Act by the State Government are not challenged by the official liquidator or by any party and thus are binding not only on the companies in liquidation, its Ex-directors and its agents but also the official liquidator.

57. It is submitted by the learned counsel that the Companies Act, 1956 is referable to *inter-alia* under Entry 43 and 44 of List I (Union List) of the Seventh Schedule to the Constitution of India. The MPID Act passed by the State Legislature is referable to Entries 1, 30 and 31 of List II (the State List) of the Seventh Schedule to the Constitution of India. He submits that these two enactments operate in two different fields. The source of power of the Companies Act, 1956 comes under Article 245 of the Constitution of India whereas the source of the power in respect of the said MPID Act comes under Article 246 of the Constitution.

58. Learned AGP placed reliance on the judgment in the case of **Central Bank of India Vs. State of Kerala and others, (2009) 4 SCC 94** and would submit that the Companies Act, 1956 and the said MPID Act are referable to two separate lists and when there is no conflict between the Central and State legislation, the Central Act and the State Act and while working in its sphere of operation do not conflict with one another, the State Act would have primacy in its field of legislation. He submits that the question of the Companies Act, 1956 overriding the State Statute cannot and does

not arise at all.

59. It is submitted by the learned AGP that the Economic Offence Wing (EOW) of the State of Maharashtra has enough infrastructure to handle the claims of various investors. He submits that large number of claims are received by the authority under the said Act and substantial parts of it have already been adjudicated upon by the authority. He submits that the EOW, Mumbai has attached various properties of the said company of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation).

60. My attention is invited to the affidavit dated 24<sup>th</sup> November, 2016 filed by Mr.Shashikant Nivrutti Khot, Deputy Superintendent of Police, State C.I.D., Solapur Unit, to show the details of the properties attached by the authority so far. He also invited my attention to the order passed by the Special Judge MPID and Additional Sessions Judge on 20<sup>th</sup> February, 2016 and would submit that 20 bank accounts of the said company have been attached and the amount of Rs.12,51,74,498/- have been seized by the authority. He submits that the 4 bank accounts out of 20 bank accounts belong to the said company and the amount in the said accounts in the sum of Rs.12,14,15,802.94 belong to it. Other 16 accounts belong to the Ex-directors and agents of the company in liquidation. He submits that pursuant to the order passed by the Special MPID authority has already deposited a sum of Rs.12,14,15,802.94 in Fixed Deposits. Learned counsel placed reliance on the judgment of the Supreme Court in the case of **Central Bank of India Vs. State of Kerala & Ors., (2009) 4 SCC 94.**

61. It is submitted by the learned counsel that the State Government has already exercised powers under Sections 4(1), 5, 8 and 12 of the MPID Act and has already issued a notification thereby attaching the properties of the company M/s.City Limouzines (India) Ltd. and M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation). He submits that the notifications issued by the State Government are not set aside by the appropriate Court till date. The official liquidator has not challenged those notifications and the same are also binding on the official liquidator. He submits that this Court thus cannot direct the authority under the provisions of the said MPID Act to return the immovable properties of the companies in liquidation to the official liquidator in the teeth of the said notifications issued by the State Government thereby attaching those immovable and movable properties standing in the name of the company in liquidation.

62. Ms.Palsule-Desai, learned AGP appearing for the State of Maharashtra in the Company Petition (L) Nos.234 of 2010 and 182 of 2012 and in Official Liquidator's Report No.126 of 2013 filed in the matter of M/s.City Limouzines (India) Ltd. supports the case of the State Government in the Company Petition No.278 of 2014 and the Official Liquidator's Report No.252 of 2015 filed against M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation). She invited my attention to the averments made in the affidavit-in-reply filed by Mr.D.Shanmugham, Assistant Director, Directorate of Enforcement, Mumbai dated 4<sup>th</sup> July, 2013 and submits that an order of confiscation of the properties has already been made under Section 8(5) of the MPID Act and thus all the rights and title in such

properties shall vest absolutely in the Central Government free from all encumbrances.

63. It is submitted that large number of FIRs have been registered against the companies viz. M/s.City Limouzines (India) Ltd. and M/s.City Realcom Ltd. and its Directors. It is submitted that the said two companies appear to have cheated the investors by not honouring the agreements and siphoning off the funds received from them and diverted them elsewhere. She invited my attention to paragraph 11 of the said affidavit and would submit that several properties of the aforesaid two companies have already been attached under various orders passed by the authorities from time to time. It is submitted that the adjudicating authorities in their orders have held that those properties were involved in Money Laundering and have confirmed the attachment of the properties.

64. The Directorate of Enforcement has filed a complaint bearing No.PMLA Case No.01/2013 before the Special Judge (PMLA), Mumbai on 11<sup>th</sup> February 2013 against Sayyed Mohamed Masood, Chairman of M/s.City Limouzines (India) Ltd. and other City Group of Companies. She submits that in view of Section 71 of the said Prevention of Money Laundering Act, 2002 (PMLA), the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. She submits that the said Act will thus prevail over the provisions of the Companies Act, 1956. She also placed reliance on Section 9 of the said PMLA and would submit that in view of the order of confiscation in respect of various properties of the aforesaid two companies and their Board of

Directors, all rights and title in such properties shall vest absolutely in the Central Government free from all encumbrances.

65. Learned counsel for the City Group Investors Welfare Association, Hyderabad who has filed a company application in this matter has invited my attention to various orders passed by this Court in Company Application No.583 of 2012 and the Company Application (L) No.600 of 2012 and various orders passed in Official Liquidator's Report No.126 of 2013. He submits that the members of the Association have lodged their claims and complaints before the authority under the provisions of the said MPID Act. He submits that as per Section 456 of the Companies Act, 1956, the official liquidator is the custodian of the properties belonging to the companies in liquidation.

66. It is submitted that the EOW, Crime Branch, Mumbai in the matter of M/s.City Limouzines (India) Ltd. and M/s.City Realcom India Ltd. (in liquidation) had given no objection for transferring of properties approximately more than Rs.180 crores by way of an affidavit dated 2<sup>nd</sup> May, 2013 in Company Petition No.234 of 2010 and Company Petition No.326 of 2010. He submits that in compliance to the said directions, the properties of the companies in liquidation are to be handed over to the official liquidator for satisfaction of claims. He also placed reliance on certain paragraphs of affidavit dated 9<sup>th</sup> March 2016 filed by Mr.Prabhakar Loke, Senior Inspector stating that the official liquidator can deal with only the properties of the companies whereas the competent authority designated by the Government of Maharashtra under the MPID Act can deal with all the properties

secured by police and the investors and settle the claims of investors.

67. It is submitted that if the properties of the companies are not handed over to the official liquidator, the rights of the creditors will be deprived of. He submits that the creditors cannot be directed to prosecute a suit and wait till the outcome of the suit. He submits that the official liquidator has already adjudicated the claims of the applicant association and has already spent about Rs.2 crores on the process of adjudication and thus transfer of the claims of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) to MPID jurisdiction will deprive the rights of the creditors.

68. It is submitted that this Court shall direct that the properties confiscated by the EOW belonging to the companies in liquidation shall be handed over to the official liquidator for satisfaction of the claims of the creditors and to comply with the directions of this Court issued vide order dated 23<sup>rd</sup> September, 2013. He submits that this Court also issued a direction to the official liquidator to release the claim notices for the rest of the creditors of the applicant Association and to submit a status report before this Court and shall release monies as per the notices of admission of proof of debt.

69. Mr.Engineer and Mr.Kamat, learned counsel appearing for the official liquidator submits that admittedly the claims of the creditors other than the investors cannot be adjudicated upon by the authority under the MPID Act. It is submitted that the claims, however, of the investors/depositors can be adjudicated upon by

the official liquidator. It is submitted by the learned counsel that the official liquidator is duty bound to take into his custody all the properties of the company in liquidation. The properties of the companies are in custody of the Court and the official liquidator acts under the supervision of the Court. It is submitted that the liquidator acts under the directions of the Court for the benefit of all persons interested in winding up in due course of administration. It is submitted that once the company is wound up, the assets and properties of the company come into the custody of the Court under Section 456 read with Rule 233 of the Companies (Court) Rules, 1959. Nobody other than the official liquidator has the right to represent the company.

70. It is submitted by the learned counsel that in so far as the attachment of properties of the Directors and Agents under the MPID Act are concerned, at present the official liquidator has not raised any claim in respect of those properties. If it is ultimately found that those properties belonged to the companies in liquidation or that the same are purchased out of the funds of the companies in liquidation by the Directors or by any third party, the official liquidator will make a claim in respect of those properties also by filing an appropriate report before this Court.

71. It is submitted that the official liquidator is ready and willing to invite claims which are not invited so far in respect of the creditors of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation). It is submitted that merely because the petitioner in the said Company Petition No.278 of 2014 had filed the said company petition merely on the ground of default committed by the company

in liquidation in repayment of sum of approximately Rs.1 lakh, this Court cannot refuse to protect the properties of the company in liquidation on that ground. It is submitted that it is not the case of the State Government that the said company petition was not at all maintainable. Even unsecured creditors could file such petition for winding up of the company under various provisions of the Companies Act, 1956 and ones having satisfied those conditions is entitled to maintain such winding up petition.

72. It is submitted by the learned counsel that though the matter has been adjourned on various dates to enable the Central Government to make a statement whether any further funds would be transferred to the official liquidator towards expenditure on adjudication of claims made by the depositors/investors, no such amount has been transferred to the official liquidator by the Central Government and no other steps are taken to provide other assistance so as to enable the official liquidator to adjudicate upon large number of claims expeditiously. It is submitted that still the official liquidator has been able to adjudicate upon the large number of claims made by such depositors/investors and has already spent more than Rs.2 crores on such adjudication of such claims.

**REASONS AND CONCLUSIONS :-**

73. Before I deal with the rival contentions of the parties, it would be appropriate to refer to some of the provisions of the Companies Act, 1956 which define 'Company,' 'Existing Company,' 'Private Company' and 'Public Company' which are governed by the provisions of the said Companies Act, 1956. Section 433 provides

the circumstances in which company may be wound up by Court. Section 434 provides as to when a company shall be deemed to be unable to pay its debts. Under Section 439, an application to the Court for the winding up of a company shall be presented by a petition which can be filed by a company or by any creditor or creditors, or by any contributory or contributories; or several others. Section 441 provides as to when the winding up proceedings are commenced. Under Section 441(2), the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

74. Section 446 provides that when a winding up order is made and the Official Liquidator is appointed as provisional liquidator, no suit or other legal proceeding shall be commenced. or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose. The words 'Court' has now been substituted by the word "Tribunal" i.e. National Company Law Tribunal (NCLT). Under Section 447, an order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory. Section 448 provides for appointment of the official liquidator relating to the winding up of companies by the Court and now tribunal.

75. Under Section 449, on a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, becomes the liquidator of the company. Section 450 provides for appointment and powers of provisional liquidator. Under Section

451, the liquidator has to conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose. The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Under Section 453, a receiver shall not be appointed of assets in the hands of a liquidator except by or with the leave of the Tribunal. Under Section 455, the official liquidator is empowered to submit a report before the Tribunal for obtaining various directions.

76. Section 456 (1) of the Companies Act provides that where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator shall take into his custody or under his control, all the properties, effects and actionable claims to which the company is or appears to be entitled. Under Section 456 (1A), the liquidator or the provisional liquidator also may apply to the Chief Presidency Magistrate or the District Magistrate to take possession of the properties within whose jurisdiction such properties, effects or actionable claims or any books of account or other documents of the company may be found. Section 456 (2) clearly provides that all the properties and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding up of the company.

77. Section 457 provides for powers of the liquidator to do various acts for winding up of the company in liquidation including the power to sell the immovable and movable properties etc. and also to do all acts and execute in the name and on behalf of the company, all deeds, receipts, and other documents, and for that

purpose to use, when necessary, the seal of the company. Under Section 468, the Court has power to pass an order after making a winding up order thereby requiring any contributory, any trustee, receiver, banker, agent of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is *prima facie* entitled.

78. Under Section 477, the Tribunal has power to issue summons upon the person suspected having in his possession any property of the company etc. The Tribunal has also power to order public examination of promoters, directors, etc. under Section 478. Under Section 482, any order made by a Court for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

79. Under Section 491, on the appointment of a liquidator, all the powers of the Board of directors and of the managing shall cease, except for the purpose of giving notice of such appointment to the Registrar in pursuance of section 493 or in so far as the company in general meeting or the liquidator may sanction the continuance thereof. Under Section 497, the official liquidator has to make up an account of the winding up as soon as the affairs of the company are fully wound up subject to the provisions of Section 498.

80. Under Section 511 of the Companies Act, 1956, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed amongst the members according to their rights and interests in the company subject to the provisions of the Companies Act as to preferential payments.

81. Chapter V provides for proof and ranking of claims. All claims shall be admissible to proof against the company as per the provisions of Section 528. Insolvency Rules applies in winding-up of insolvent companies. Section 529A provides for overriding preferential payment. Section 530 provides for preferential payment i.e. priority to certain payments. Section 542 provides for liability of the persons who were carrying on business of the company with intent to defraud creditors of the company or any other persons and are held personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

82. Section 543 provides for powers of the Court to assess damages against delinquent directors, etc. Under Section 543 (1) (b). The Tribunal is empowered to pass an appropriate order against the persons, directors, managing agents, secretaries and treasurers, managers, liquidators or officers aforesaid, and compel them to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks fit, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the

Tribunal thinks fit.

83. Under Section 543 (2), an application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer. Under Section 544, the delinquent officer and the members of the company can be even prosecuted if having been found guilty of offence in relation to the company. Under Section 546 of the Companies Act, 1956, the liquidator is empowered to exercise certain powers to pay any class of creditors and to do various acts subject to sanction of the Tribunal.

84. On the other hand the said MPID Act has been enacted in the public interest to curb the unscrupulous activities of the financial activities of the State of Maharashtra which are established with an object of grabbing money and have received as deposits from public, mostly from middle class and poor on the promises of unprecedented high attractive interest rates or rewards and without any obligation to refund such deposits to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. The said Act has come into force on 29<sup>th</sup> April, 1999. The competent authority has been defined under section 2(a) which provides that competent authority means the competent authority appointed under section 5. 'Designated Court' is defined under section 2(b). 'Financial Establishment' is defined under section 2(d) as under :-

“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).”

85. Section 4 of the MPID Act reads thus :-

“4. Attachment of properties on default of return of deposits :-

(1) Notwithstanding anything contained in any other law for the time being in force -

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed , -

(a) to return the deposit after maturity or on demand by the depositor; or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any Financial Establishment is acting in the calculated manner detrimental to the interests of the depositors with an intention to defraud them; and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interest or depositors of such Financial Establishment,

after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or the property believed to have been acquired by such Financial Establishment, either in its own name or in the name of any other person from out of deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property or the said Financial Establishment or the promotor, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

(2) On the publication of the order under Sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the government, pending further orders from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.”

86. Section 7 of the said MPID Act empowers the designated court to issue a notice accompanied by an application and affidavits evidence, if any, upon receipt of an application under section 5 to the financial establishment and calling upon the said establishment or the said person to show cause on the date to be specified in the notice, why the order of attachment should not be made absolute. The designated court is empowered to pass an order making order of attachment absolute and issue direction for realisation of the assets attached and for equal distribution amongst the depositors of the

money realised from out of the property attached.

87. Under section 10 of the said MPID Act, the designated court is empowered to pass an order for administration of the attached property. Under section 11 of the said Act, an appeal lies to the High Court against the order passed by the competent authority under the said Act. Section 14 provides that save as otherwise provided in the said Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law. The State of Maharashtra has framed the rules viz., the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Rules, 1999. It is not in dispute that the State of Maharashtra has already constituted designated court in this State by exercising powers under section 6 of the MPID Act. The State Government has also appointed the competent authority under section 5 of the said MPID Act.

88. A perusal of the definition of 'Financial Establishment' under section 2(d) of the said MPID Act, indicates that even an individual who accepts deposit under any scheme or arrangement or in any other manner is included in the definition of financial establishment. The definition of financial establishment however excludes a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company.

89. Full Bench of this court in case of **Vijay Puljal vs. State of Maharashtra and others, (2005) 5 Bom.C.R.481** had declared the

said Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 as ultra vires on various grounds. Supreme Court in case of **K.K. Baskaran vs. State, represented by It's Secretary, Tamil Nadu and others, (2011) 3 SCC 793** has also dealt with the judgment delivered by the Full Bench of this court in case of **Vijay Puljal** (supra) and disagreed with the views taken by the Full Bench of this court in the said judgment. It is held by the Supreme Court that though there are some differences between the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 and MPID Act, they are minor differences, and hence the view the Supreme Court has taken would also apply in relation to the MPID Act. The Supreme Court in the said judgment upheld the constitutional validity of the Tamil Nadu Act and also the MPID Act.

90. Supreme Court in case of **Central Bank of India** (supra) has considered non obstante clause under various Acts. Supreme Court in case of **Bank of Maharashtra vs. Pandurang Keshav Gorwardkar & Ors.,** (supra) has considered an issue as to whether the claims of the workmen who claimed to be entitlement of the payment *pari passu* have to be considered by the Official Liquidator or whether their claims have to be adjudicated upon by the Debts Recovery Tribunal. The Supreme Court adverted to its earlier judgment in case of **Rajasthan State Financial Corporation vs. Official Liquidator, (2005) 8 SCC 190** in which it was held by the Supreme Court that once a winding up proceedings has commenced and the Official Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the banks or financial institutions

coming under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or of financial corporations coming under the State Financial Corporations Act, 1951 can only be with the association of the Official Liquidator and under the supervision of the Company Court.

91. It is held that whether the assets are realized by a secured creditor even if it be by proceeding under 1993 Act or the 1951 Act, the distribution of assets would only be in terms of Section 529-A of the Companies Act and by recognizing the right of the Liquidator to calculate the workmen's dues and collected for distribution among them *pari passu* with the secured creditors. Supreme Court also considered section 529-A of the Companies Act and held that security of the every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion. It is held that where a company is in liquidation, a statutory charge is created in favour of workmen in respect of their dues over the security of every secured creditor and the said charge is *pari passu* with that of the secured creditor. It is held that the workmen of the company in winding up acquire the standing of secured creditors on and from the date of the winding up order or where provisional liquidator is appointed, from the date of such appointment and they become entitled to distribution of sale proceeds in the ratio as explained in the illustration appended to section 529(3)(c) of the Companies Act. It is held that once the company is in wound up, the only competent authority to determine the workmen's dues and quantify workmen's portion is the liquidator. The liquidator has the responsibility and competence to determine the workmen's dues where the debtor company is in liquidation.

92. The Division Bench of this court in case of **Prabhakar Dattatraya Gune & Ors.** (supra) has construed the provisions of the Companies Act, 1956 and also the provisions of the said MPID Act and the rules and has held that the custody of company's property, post order of winding up is a matter dealt with by section 456 of the Companies Act. It is held that the proceedings under MPID Act would continue, if initiated, or even can be initiated and wherever an order of attachment or custody of property of the depositor is being made, the designated court will have to bear in mind the consequences flowing from the winding up order against a company in winding up which is covered by the definition of the term "financial establishment".

93. It is held that for the field to be occupied there has to be a specific provision in both the Acts referred to above by which the interest of depositors is protected and to the extent provided in the MPID Act, 1999. It is held that neither the Reserve Bank of India Act, 1934 nor the Indian Companies Act, 1956 would be covering the entire field occupied by the MPID Act, 1999. It is held that nothing should be done in relation to the property of a company accepting deposits if that company is facing winding up proceedings. The orders under the MPID Act, 1999 would necessarily then depend upon the pendency or otherwise of the proceedings in relation to winding up a company incorporated and registered under the Indian Companies Act, 1956. The Division Bench of this court in case of **Prabhakar Dattatraya Gune & Ors.** (supra) applies to the facts of this case.

94. It is not in dispute that the order of winding up was passed

in Company Petition No.278 of 2014 in case of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) 26<sup>th</sup> September, 2014. This court had appointed the provisional liquidator of M/s.City Limouzines (India) Ltd. (in liquidation) on 1<sup>st</sup> October,2010. By an order dated 3<sup>rd</sup> December, 2010, the said M/s.City Limouzines (India) Ltd. (in liquidation) has been ordered to be wound up. By an order dated 9<sup>th</sup> March,2012, M/s.City Realcom Ltd. (in liquidation) was ordered to be wound up. By an order dated 28<sup>th</sup> October, 2010, this court had directed the Official Liquidator to take possession of the registered office of M/s.City Limouzines (India) Ltd. (in liquidation).

95. On 4<sup>th</sup> July, 2001, the Economic Offences Wing, Crime Branch, Mumbai forwarded the details of the properties i.e. moveable and immovable to the Official Liquidator which properties were attached by the Economic Offences Wing, Crime Branch, Mumbai in respect of M/s.City Limouzines (India) Ltd. (in liquidation). It is thus clear beyond reasonable doubt that all three companies referred to aforesaid are already wound up by a separate orders passed by this court and the Official Liquidator is already appointed in respect of the aforesaid three companies. The MPID Court appointed under section 6 of the MPID Act or the competent authority appointed under section 5 of the MPID Act, thus cannot pass any orders dealing with the properties of the aforesaid three companies in liquidation which are in custody and control of this court.

96. Under section 456 of the Companies Act, where the winding up order has been made or where a provisional liquidator has been appointed the liquidator or the provisional liquidator, as the case may be, he shall take into his custody or under his control, all the

property, effects and actionable claims to which the company is or appears to be entitled. All the properties and effects of the company shall be deemed to be in custody of the court or the NCLT as the case may be as from the date of the order and the winding up of the company.

97. Under section 468 of the Companies Act, 1956, the court or the tribunal as the case may be may at any time after making a winding up order require any contributories, trustee, receiver, banker, agent or officer or employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the tribunal directs, to the liquidator, any money, property or books and papers to which the company *prima facie* is entitled. It is the duty of the Official Liquidator to call for the claims for all the creditors whether secured or unsecured or trade creditors or depositors.

98. Supreme Court in case of **Rajasthan State Financial Corporation** (supra) has held that once a winding up proceedings has commenced and the Official Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the banks or financial institutions coming under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or of financial corporations coming under the State Financial Corporations Act, 1951 can only be with the association of the Official Liquidator and under the supervision of the Company Court. It is held that the distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of section 529-A read with section 529 of the Companies Act. It is held that after all, the liquidator represents the

entire body of creditors and also holds a right on behalf of the workers to have a distribution *pari passu* with the secured creditors and has duty for further distribution of the proceeds on the basis of the preferences contained in section 530 of the Companies Act under the directions of the company court. It is held that the distribution of the sale proceeds under the direction of the company court is responsibility of the Official Liquidator.

99. Supreme Court in case of **A.Talukdar and Company (Fertilizer) Private Limited vs. Official Liquidator, High Court of Calcutta and others, (2016) 14 SCC 289** has held that once the company was ordered to be wound up, the assets of the company came to be in custody of the company court and no arrangement, after winding up order, without permission of the company court could be recognized in respect of assets of the company.

100. Under section 447 of the Companies Act, 1956, an order of winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory. The liquidator or the provisional liquidator as the case may be is bound to take into his custody or under his control all the properties effect or executable claim to which the company is or appears to be entitled. It is not in dispute that the competent authority has attached some of the properties not only of the company in liquidation but also of their directors and agents.

101. Insofar as the submission of the learned A.G.P. that in view of the notification dated 1<sup>st</sup> March,2016 issued by the State

Government exercising powers conferred under section 4(1), 5(1) and section 8 of the MPID Act, thereby attaching the properties of the M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) and in case of M/s.City Limouzines (India) Ltd. (in liquidation) and the said notification not having been challenged by the Official Liquidator or by the petitioner, the same have binding effect on the Official Liquidator as well as the petitioners is concerned, a perusal of the section 4 of the MPID Act indicates that the State Government is empowered to attach the money or the properties believed to have been acquired by the financial establishment as defined under section 2(b) of the MPID Act either in its own name or in the name of any other person from out of deposits, collected by the financial establishment or in various other situations set out in section 4 of the MPID Act. Section 4(2) of the said Act provides that on publication of the order under sub-section (1) of section (4), all the properties and assets of the financial establishment and the persons mentioned therein shall forthwith vest in the competent authority appointed by the government, pending further orders from the designated court.

102. Section 4(3) provides that the the Collector of the District shall be competent to receive the complaint from his district and shall forward the same together with his report to the Government and shall send a copy of the complaint of the concerned District Police Superintendent or Commissioner of Police as the case may be for investigation. It is not in dispute that the Government of Maharashtra has issued notification thereby attaching the properties of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. and its directors and also the properties of M/s.City Limouzines (India) Ltd. (in liquidation) only in the month of March 2016. On the other hand, the

said two companies are already ordered to be wound up much earlier and thus in view of the provisions of section 456(2) of the Companies Act, 1956, all the properties and effect of the company shall be deemed to be in the custody of the court as from the date from the order or winding up of the company. In my view since all the properties and effects of those companies already stood vested in the company court on the date of the order for the winding up of those companies, the subsequent orders passed by the State of Maharashtra by exercising power under section 4(1) of the MPID Act or other provisions of the said Act in the year 2016 without obtaining leave of the Company Court would be of no consequence insofar as this court and the Official Liquidator is concerned. In my view, there is thus no merit in the submission of the learned A.G.P. that since those notifications are not challenged by the Official Liquidator or by the petitioner, the same would continue to be binding on the Official Liquidator or upon the petitioner and thus no such properties which are attached by the State Government under those two notifications can be ordered to be dealt with by the company court.

103. In my view since all the three companies are already wound up by this court under the provisions of Companies Act, 1956, the Official Liquidator only can deal with those properties under directions of this court and has to realize the monies by sale of those assets of the companies in liquidation and then to pay over the proceeds under the provisions of section 529, 529-A and 530 and other provisions of the Companies Act, 1956. Under the provisions of the Companies Act, 1956, the unsecured creditors would be entitled to receive the amounts that may be found due and payable only after preferential payment to secured creditors as set out in aforesaid

provisions of the Companies Act, 1956 are made.

104. A perusal of the provisions of the said MPID Act clearly indicates that the competent authority or the MPID Court as the case may be cannot adjudicate upon the claims if any, made by the secured or other unsecured creditors, workmen or other preferential creditors referred in section 530 of the Companies Act, 1956. The provisions of the said MPID Act are meant for the benefit and protection of only the depositors who have deposited the amounts within the meaning of section 2(c) of the said MPID Act and not for the benefit and protection of other investors and creditors of the financial establishment defined under section 2(d) of the said MPID Act. On the other hand the company court is empowered to deal with the claims in respect of all the secured or unsecured creditors preferential creditors, contributories and also the depositors which would include the depositors who had made various deposits with the aforesaid companies in liquidation. It is a matter of record that a large number of such depositors have also lodged their claims with the Official Liquidator which are adjudicated upon by the Official Liquidator.

105. A perusal of section 7 of the MPID Act indicates that the designated court has to issue a notice to all the financial establishments or any other persons whose property is attached and vested in the competent authority and also to all other persons represented to it having or being likely to claim any interest or title in the properties of the financial establishment or the person to whom the notice is issued under sub-section (1) of section 7 and if any objections are received by the designated court, the designated court

has to pass an order on such objections. It is not in dispute that the Official Liquidator has already conveyed about the liquidation of the companies in question to the competent authority.

106. Supreme Court in case of **K.K. Baskaran** (supra) and this court in case of **Prabhakar Dattatraya Gune & Ors.** (supra) have come to the conclusion that the MPID Court and Companies Act, 1956 operate in separate field. This court has clearly held that if the company is wound up, the MPID Court shall not pass any order against the properties of the company. Both the parties through their respective counsel have made a common argument before this court that the Companies Act, 1956 and MPID Act operates in separate fields and there is no question of any repugnancy in the two Acts. In my view section 14 of the MPID Act thus would not be attracted in the facts of this case. The provisions of MPID Act thus cannot take away the powers under the Companies Act. If the properties of the company in liquidation are allowed to be sold and the sale proceeds are allowed to be distributed through the competent authority only amongst the depositors, the same would be in teeth of the provisions of the Companies Act, 1956 and the secured creditors and the workmen, preferential creditors having statutory dues would be totally deprived of their legitimate claims against the company in liquidation whereas the depositors under the provisions of the MPID Act would exclusively be benefited under the provisions of the said MPID Act which would result in great mischief. This court thus cannot accept the interpretation as sought to be placed by the competent authority under the provisions of the said MPID Act.

107. On the other hand the Official Liquidator has not made any

claim as on date in respect of the properties of the directors and agent of the company in liquidation which are attached by the State Government by issuing notification under section 4(1) of the MPID Act. The depositors who have lodged their claims with the authority under the MPID Act and also lodged their claims with the Official Liquidator, they may also receive some amount after payment of all the other secured and preferential creditors are made by the Official Liquidator under the provisions of the Companies Act, 1956. In my view, such depositors cannot be placed on higher pedestal over the secured and preferential creditors under the provisions of the Companies Act, 1956. This court thus cannot accept the interpretation of the learned A.G.P. that the company court has no power to pass any order in respect of those properties standing in the name of the companies in liquidation which are attached by the State Government by issuing notification under section 4(1) of the MPID Act or that the provisions of the MPID Act would have over-riding effect over the provisions of the Companies Act, 1956.

108. Insofar as submission of the learned A.G.P. that the petitioner in Company Petition No.278 of 2014 in the matter of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) had invested only a sum of Rs.1,00,000/- in the said company and thus at the instance of such a small creditor, this court could not have ordered winding up of the said company in liquidation and could not claim custody of the assets of the company in liquidation is concerned, in my view this submission of the learned A.G.P. is without any merit. Even an unsecured creditor having claim within the prescribed amount under the Companies Act, 1956 which the respondent company is unable to pay such debt, is entitled to file

winding up petition. This court having been satisfied that the said company in liquidation was unable to pay its debts had ordered winding up of the said company. The said winding up order has attained finality. Be that as it may, the competent authority cannot raise such objection about maintainability of the company petition at the instance of the said petitioner having invested only a sum of Rs.1,00,000/- in the said company in liquidation at this stage.

109. Insofar as various amounts standing in the name of the companies in liquidation are concerned, the competent authority has already given its no objection to transfer those amounts to the Official Liquidator.

110. The Office of the Official Liquidator had received approximately 40,000 claims from the investors and the secured creditors of the two companies in liquidation till the date of filing of the report on 18<sup>th</sup> March, 2013 even before inviting the claims by the Official Liquidator in respect of those two companies.

111. In my view the powers of competent authority appointed under the MPID Act and the MPID Court does not supersede or prevail upon the powers of the Official Liquidator or of the Company Court under the provisions of the Companies Act. MPID Act is totally silent on the aspect relating to the winding up and thus if the financial establishment as defined under the provisions of the MPID Act is in winding up, then the provisions of the Companies Act, 1956 would apply to such financial establishment. The MPID Act cannot take away the powers under the Companies Act. In my view the provisions of the MPID Act and the Companies Act will have to be

construed harmoniously by holding that on winding up of such companies which are financial establishment as defined under the provisions of the MPID Act, assets of such wound up companies would vest in the Official Liquidator and all the creditors including the depositors/investors can lodge their claims before the Official Liquidator. The MPID Act does not contemplate a situation of winding up of the financial establishment and for adjudication of the claims of other creditors and distribution of dividend to those creditors. The creditors other than depositors who only fall within the purview of the MPID Act cannot apply for any amount of their claims before the MPID Court or the competent authority as the case may be.

112. A perusal of the record indicates that though the learned Additional Solicitor General had taken time to consider whether any amount can be paid to the Official Liquidator towards reimbursement of the expenses for making adjudication of all the claims of the investors/depositors but till date, no additional amount is sanctioned or paid by the Government towards expenditure required to be incurred for adjudication of all the claims of the investors/depositors. The Official Liquidator has already spent substantial amount on the adjudication of large number of claims made by such investors/depositors.

113. A perusal of the affidavit dated 2<sup>nd</sup> May, 2013 filed by the Police Inspector, Economic Offence Wing, Crime Branch, Mumbai in OLR NO.126 of 2013 clearly indicates that the said Department has no objection if this court directs that office to remit the said money to the Official Liquidator however on a condition that the claims of duped investors of the company M/s.City Limouzines (India) Ltd. to be

settled on priority basis. In my view, no such condition could be imposed by the Economic Offence Wing while giving no objection to remit the money to the Official Liquidator if so directed by this court. The claims of all the creditors including secured creditors, preferential creditors and the investors/depositors against the companies in liquidation can be settled only in accordance with the provisions of the Companies Act, 1956. This court has already passed an order that no distribution of money so deposited with the Official Liquidator may be made without the leave of the court and if any other authority, depositors or creditors would raise the claim with the Economic Offence Wing, the said Economic Offence Wing will forward the same to the Official Liquidator after carrying out a preliminary enquiry.

114. During the course of the arguments, learned counsel for the Official Liquidator brought to the notice of this court that no further amounts are transferred to the Official Liquidator which are required for the purpose of incurring expenses for adjudication of the claims received from the investors/depositors. The competent authority under the MPID Act however on the other hand had attached some of the properties of the companies in liquidation and also of its directors or agents. In my view, in these circumstances it would be more appropriate if the claims which are received by the Official Liquidator from the investors/depositors so far and the claims which are already adjudicated upon the Official Liquidator out of such claims received from such investors/depositors, such claims with adjudication orders or without adjudication can be transmitted to the competent authority appointed under the provisions of MPID Act with a clarification that those claims which are adjudicated upon by the Official Liquidator need not be adjudicated upon again by the competent authority.

115. Insofar as remaining claims received from such investors/depositors which are not yet adjudicated upon by the Official Liquidator can be adjudicated upon by the competent authority under the MPID Act. The competent authority or MPID Court who is empowered to adjudicate upon such claims can be allowed to incur expenses required to be incurred if any, out of the amounts lying with such competent authority which are attached from the accounts of the directors and agents of the companies in liquidation.

116. Insofar as some of the immoveable properties of the directors attached by the competent authority is concerned, it is not in dispute that the Supreme Court has already passed an order on 14<sup>th</sup> September, 2016 in Special Leave to Appeal (Cri) No.1912 of 2015, filed by the City Group Investors Association versus Sayyed Masood and others. Mr.Sayyed Masood, one of the ex-director who was a party to the proceedings before the Supreme Court made a statement that the attached properties belong to him and could be put to sale by the High Court based on the priority list which shall be furnished to the High Court within one week from the date of the said order. He also agreed that the sale proceeds thereof shall be used for discharging the liabilities towards the investors. Supreme Court has already directed this court to supervise the sale of such attached properties standing in the name of the ex-directors by overseeing the auction proceedings to be held by the Official Liquidator. It is clarified by the Supreme Court that the sale of the properties made by the High Court shall be final and binding on the parties. It is further clarified that as and when a substantial amount payable to the

investors is refunded, it shall be open to the said ex-director Mr.Sayyed Masood to file an appropriate application for bail before the High Court.

117. Pursuant to the said order passed by this court, the said ex-director Mr.Sayyed Masood through its advocate's letter dated 8<sup>th</sup> February,2017 has furnished the details of four immoveable properties standing in his name and requested the Official Liquidator to supervise the sale of those properties at the earliest and to apply for sale proceeds towards making payment to the investors. He also clarified in the said letter that his client did not have any other properties standing in his name for which he could give NOC for sale thereof. In view of the specific order passed by the Supreme Court, the Official Liquidator can sell those four properties standing in the name of Mr.Sayyed Masood and can remit the sale proceeds of those properties to the MPID Court for distribution.

118. I am not inclined to accept the submission of the learned A.G.P. that the competent authority appointed under the MPID Act has power to deal with the properties of the financial establishment i.e. the companies in liquidation in these matters under the provisions of the said MPID Act and to distribute the sale proceeds of the companies in liquidation amongst the investors. There is no merit in the submission of the learned A.G.P. that the only such competent authority is empowered to administer the monies and properties in the interest of the depositors under Rule 5(1) of the said rules by attaching and selling the properties standing in the name of the companies in liquidation who were financial establishment under the provisions of the said MPID Act.

119. In my view, the Official Liquidator acts as trustee and custodian of all such properties and assets of companies in liquidation and is empowered to deal with such properties of the companies in liquidation for the purpose of distribution of the proceeds of those properties amongst the creditors in accordance with the provisions of the Companies Act, 1956 and under supervision of this court. There is no merit in the submission of the learned A.G.P. that in view of section 6(1) of the MPID Act, no other court than the designated court shall have jurisdiction in respect of the properties of the financial establishment though such financial establishment are already wound up under the provisions of the Companies Act, 1956 or that the Official Liquidator cannot seek any direction in respect of the properties attached by the competent authority as prayed in the report filed by the Official Liquidator.

120. In my view since there is no conflict between the Companies Act, 1956 and the MPID Act and both operates in different field, the Judgment of Supreme Court in case of Central Bank of India Vs. State of Kerala and others(supra) relied upon by the learned A.G.P. would not assist his case.

121. Insofar as the criminal complaints filed and FIRs having registered against the companies M/s.City Limouzines (India) Ltd. and M/s.City Realcom Ltd. and its directors referred to and relied upon by the learned A.G.P. appearing in Company Petition (L) No.234 of 2010 and Company Petition No.182 of 2012 and in Official Liquidator's Report No.126 of 2013 are concerned, those complaints are pending before criminal courts. In my view there is no

merit in the submission of the learned A.G.P. that in view of section 71 of the Prevention of Money Laundering Act, 2002, the provisions of the said Act shall have effect and would prevail over the provisions of the Companies Act, 1956.

122. Insofar as submission of the learned counsel for the City Group Investors Welfare Association, Hyderabad who has filed Company Application No.630 of 2015 is concerned, his clients are supporting the case of the Official Liquidator insofar as powers of the company court and the Official Liquidator under the provisions of the Companies Act, 1956 are concerned, the said Association seeks an order and direction against the Official Liquidator to release the payment to the members of the application association whose claims have been admitted vide notice of admission of proof of debts.

123. Insofar as submission of the learned counsel for the Official Liquidator that the Official Liquidator reserve his rights to make claim in future in respect of the properties of the directors and the agents in case, if it is ultimately found that those properties also actually belongs to the company in liquidation or that the same were purchased out of the funds of the company in liquidation by ex-directors or by a third party, the Official Liquidator shall be allowed to make a claim in respect of those properties also in future is concerned, admittedly no such claim is made by the Official Liquidator till date.

124. Insofar as the claims in respect of the creditors of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) not invited so far by the Official Liquidator is concerned, the Official

Liquidator is ready and willing to invite the claims in respect of the creditors of the said company within such time as may be granted by this court.

125. I shall now consider the prayers/directions sought by the Official Liquidator in various reports and also the prayers sought by the City Group Investors Welfare Association, Hyderabad.

126. Insofar as prayer clause (b) of the Company Application No.630 of 2015 is concerned, this court by an order dated 22<sup>nd</sup> December, 2015 recorded the statement of the Official Liquidator that he had not been able to raise funds by disposing of the assets because all the assets have been attached by the Economic Offence Wing. This court accordingly directed the Official Liquidator to write to the Economic Offence Wing to release the properties which they have attached, so that the assets can be sold to pay off the creditors. The said order passed by this court on 22<sup>nd</sup> December, 2015 has not been impugned by any aggrieved parties. In my view, the claims of such investors/depositors cannot be considered in isolation and cannot be given priority over the secured creditors, the dues of the workmen and preferential creditors contemplated under the provisions of the Companies Act, 1956.

127. However, in view of the order passed by the Supreme Court in Special Leave to Appeal (Cri) No.1912 of 2015, the amounts realized if any, by the Official Liquidator by sale of those four properties standing in the name of Mr.Sayyed Masood can be released in favour of the investors/depositors. If the adjudicated claims made by such investors/depositors are not fully satisfied, such

balance claims can be considered after all the properties of the companies in liquidation are realized by the Official Liquidator and the properties of the ex-directors and agents of the companies in liquidation are realized by the competent authority under the MPID Act in accordance with the provisions of Companies Act, 1956.

128. In my view for the purpose of considering the claims of the secured and unsecured creditors, the preferential creditors and also the claims of the investors/depositors etc., the properties which are admittedly standing in the name of the companies in liquidation attached by the competent authority under the provisions of the MPID Act are required to be handed over to the Official Liquidator for the purpose of sale and physical control thereof. The competent authority is thus required to be issued an order and direction to handover the physical possession, custody and control of all such properties standing in the name of the aforesaid companies in liquidation which are attached by the competent authority under the provisions of the MPID Act to the Official Liquidator expeditiously.

129. Insofar as the direction sought by the Official Liquidator in OLR No.126 of 2013 is concerned, if the records/books of accounts of M/s.City Limouzines (India) Ltd., company in liquidation are in possession of the Economic Offence Wing, Crime Branch, Mumbai, the same shall be handed over by the Economic Offence Wing, Crime Branch, Mumbai to the Official Liquidator within two weeks from the date of the communication of this order. The Economic Offences Wing, Crime Branch, Mumbai however would be entitled to retain photocopies thereof if they so require of such records/books of accounts.

130. The Enforcement Directorate and the Economic Offences Wing, Crime Branch, Mumbai shall also handover the details of the bank accounts of M/s.City Limouzines (India) Ltd., (in liquidation) to the Official Liquidator and shall also remit the entire money lying in the said accounts to the Official Liquidator with accrued interest if any, within two weeks from the date of the communication of this order passed by this court.

131. The Official Liquidator may invite the claims of investors/depositors of M/s.City Limouzines (India) Ltd., and M/s.City Realcom Ltd. (in liquidation) in terms of Rule 148 of the Company (Court) Rules, 1959 within four weeks from the date of this order, if not invited so far. The Official Liquidator is permitted to make payments to M/s. Admire Publicity Private Limited towards the advertisement charges for inviting claims for workers/creditors of the company in liquidation out of the common fund on the condition that the same will be reimbursed along with interest at the rate of 12% per annum as and when the sale proceeds are received upon the sale of the company in liquidation or from the funds of the company in liquidation available with the Official Liquidator.

132. Insofar as prayers in OLR No.264 of 2015 is concerned, in my view the Official Liquidator has made out a case for ratifying the action of the Official Liquidator in appointing Mr.J.R. Solanki, advocate to appear/prepare application on behalf of the Official Liquidator and has also made out a case for permission to make payment of Rs.3,400/- towards professional fees of the said advocate as prayed in prayer clause (b). He has also made out a case for relief

in terms of prayer clause (c) for payment required to be made in future to the said advocate. The Economic Offence Wing and the competent authority has already given no objection if the said amount of Rs.60 lacs deposited by one of the ex-directors before the Special MPID Court of Session, Greater Bombay is required to be handed over to the Official Liquidator. The Economic Offence Wing and MPID Court are directed to handover the said amount and all the assets of the company M/s.City Limouzines (India) Ltd. (in liquidation) to the Official Liquidator within two weeks from the date of communication of this order.

133. Insofar as OLR No.252 of 2015 is concerned, since this court is of the view that in view of M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) having been wound up, all the properties and monies standing in the name of the said company in liquidation vests in the company court and thus is required to be handed over to the Official Liquidator under the provisions of section 468 of the Companies Act, 1956 read with Rule 234 of Companies (Court) Rules, 1959, the Police Inspector, State Crime Investigation Department, Mumbai or the competent authority who is in possession of such properties of the said M/s.Aryarup Tourism Club Resorts Pvt. Ltd. (in liquidation) is required to hand over all such properties to the Official Liquidator within two weeks from the date of communication of this order.

134. It is made clear that MPID Court / competent authority who is in possession of the properties of the directors and/or agents of the said company M/s.Aryarup Tourism Club Resorts Private Limited (In Liquidation) would be entitled to deal with those properties, including

the sale thereof for the purpose of discharging the claims of the investors / depositors and are not required to hand over those properties to the Official Liquidator in view of the fact that no such claims are made by the Official Liquidator in respect of those properties till date.

135. For the reasons recorded aforesaid, I pass the following order :-

(a) OLR No.252 of 2015 is made absolute in terms of prayer clause (a). The properties and the monies standing in the name of the said company shall be handed over by the Police Inspector, State Crime Investigation Department, Mumbai or the competent authority appointed by the State Government who is in possession of the said properties to the Official Liquidator within two weeks from the date of communication of this order.

(b) OLR No.264 of 2015 is made absolute in terms of prayer clauses (a) to (d). The Special MPID Court of Session, Greater Bombay is directed to transfer the bail amount of Rs.60 lacs to the Official Liquidator within two weeks from the date of communication of this order.

(c) Insofar as moveable and immoveable assets of the company i.e. M/s.City Limouzines (India) Ltd. (in liquidation) are concerned, the

said Special MPID Court of Session, Greater Bombay or the competent authority whomsoever is in possession thereof are concerned, the same shall be handed over by them to the Official Liquidator within two weeks from the date of communication of this order.

(d) OLR No. 126 of 2013 is also made absolute in terms of prayer clauses (a) to (d). It is however made clear that the Economic Offence Wing, Mumbai will be entitled to keep the photocopies of the records/books of accounts of M/s.City Limouzines (India) Ltd. (in liquidation). The possession of the records/books of accounts as directed aforesaid shall be handed over within four weeks from the date of communication of this order. The possession of the properties of M/s.City Limouzines (India) Ltd. and M/s.City Realcom Ltd. (in liquidation) shall be handed over by the Enforcement Directorate and Economic Offence Wing, Mumbai or whomsoever is found in possession thereof to the Official Liquidator along with the details of the bank account of those companies to the Official Liquidator and the amounts lying in those accounts along with interest accrued if any, within two weeks from the date of the communication of this order.

(e) The Official Liquidator shall invite

claims of the workers and creditors of the aforesaid two companies within four weeks from today as prayed in terms of prayer clause (c) if not invited so far. The Official Liquidator shall make payment to M/s. Admire Publicity Private Limited within four weeks from the date of this order out of the common fund subject to the condition mentioned in prayer clause (d).

(f) The Official Liquidator shall take possession of the four properties disclosed by Mr.Sayyed Masood vide letter dated 8<sup>th</sup> February,2017 pursuant to the order dated 14<sup>th</sup> September, 2016 passed by the Supreme Court in Special Leave to Appeal (Cri) No.1912 of 2015 and shall take steps to sell those properties in accordance with the provisions of the Companies Act, 1956 expeditiously and not later than six months from the date of this order. The expenses if any, incurred on effecting sale of those properties can be recovered by the Official Liquidator from the sale proceeds of those four properties. The Official Liquidator shall thereafter handover the balance sale proceeds to the MPID Court for distribution of balance sale proceeds amongst the investors as contemplated in order dated 14<sup>th</sup> September,2016 passed by the Supreme Court.

(g) The MPID Court/the competent authority shall thereafter distribute the said amount amongst the investors whose claims are adjudicated upon on *pro-rata* basis. If the claims of all the investors/depositors whose claims are adjudicated upon are not fully satisfied, those claims can be conveyed to the Official Liquidator. The Official Liquidator shall submit a report for declaration of dividend to all the creditors in respect of the payment proposed to be made including the unpaid amount to investors/depositors in accordance with the provisions of the Companies Act, 1956. The priority of the claims shall be considered by the Official Liquidator as per provisions of sections 529, 529A and 530 of the Companies Act, 1956 and in accordance with the views expressed in this judgment. The MPID Court/competent authority would be at liberty to convey the balance claims of the investors/depositors left outstanding after distributing the amounts realised from sale of the four properties of the ex-directors pursuant to the order of the Supreme Court and the other properties of the ex-directors and the agents which are attached so far and may be attached in future. The Official Liquidator shall consider those balance claims while distributing dividend in accordance with provisions of law and as directed in this judgment.

(h) It is made clear that MPID Court / competent authority who is in possession of the properties of the directors and/or agents of the said company M/s.Aryarup Tourism Club Resorts Private Limited (In Liquidation) would be entitled to deal with those properties, including the sale thereof for the purpose of discharging the claims of the investors / depositors and are not required to hand over those properties to the Official Liquidator in view of the fact that no such claims are made by the Official Liquidator in respect of those properties till date.

(i) The Official Liquidator shall forward the order of adjudication passed on various claims of investors/depositors made so far in respect of the companies in liquidation which are subject matters of this proceedings before the MPID Court to MPID Court / competent authority. He shall also forward the balance claims which are yet to be adjudicated upon by the Official Liquidator to the MPID Court/competent authority for the purpose of adjudication. The claims which are already adjudicated upon by the Official Liquidator shall be treated as the adjudication of the claims by the MPID Court/competent authority and shall not be adjudicated upon again by the MPID Court for the purposes of making payment. The claims which would be received, in future

from the investors/depositors by the Official Liquidator shall be forwarded to the MPID Court/competent authority within two weeks from the date of receipt of such claims. The MPID Court/competent authority shall adjudicate upon those claims expeditiously. If the Official Liquidator has to recover any amounts incurred on adjudication of the claims of the investors/depositors, the same can be recovered by the Official Liquidator from the sale proceeds of those four properties standing in the name of Mr.Sayyed Masood.

(j) The members of the Applicant Association in Company Application No.630 of 2015 would be at liberty to make its claim if any, against the concerned companies in liquidation before the Official Liquidator if not made so far which can also be forwarded to MPID Court/competent authority for adjudication.

(k) The MPID Court, the competent authority and the other authorities who are directed to comply with the aforesaid order shall act on the authenticated copy of this order.

(l) OLR No.252 of 2015, OLR No.264 of 2015, OLR No.126 of 2013 and Company Application No.630 of 2015 are disposed of in the

aforesaid terms. There shall be no order as to costs.

**(R.D. DHANUKA, J.)**

