Case Citation: (2026) ibclaw.in 5931 HC

IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 39047 of 2026

KIM INFRASTRUCTURE AND DEVELOPERS LIMITED REGISTERED OFFICE 1311 A HEMKUNT HOUSE 6 RAJENDRA PLACCE NEW DELHI 110 008 THROUGH ITS AREA MANAGER MR. NEMICHAND NUNIA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Devesh Gupta - Advocate for petitioner.

Ms. Monica Mishra - Govt. Advocate for respondent/State.

Shri Sunil Jain - Additional Solicitor General with Shri Yashovardhan Singh - Advocate through VC and Shri Praveen Kumar Newaskar - Deputy Solicitor General for respondents No.3 and 4.

Reserved on : 22.09.2026

Pronounced on :29.09.2026

ORDER

The petitioner has preferred the present petition under Article 226 of the Constitution of India, seeking quashment of the attachment order dated 10.10.2024 passed by respondent No.4/Recovery Officer, Securities and Exchange Board of India (hereinafter referred to as “SEBI”), as well as the consequential sale notice dated 21.08.2026, whereby the agricultural land belonging to the petitioner, situated at Village Maharajpura and admeasuring 16.053 hectares, has been put to auction. As per the impugned sale notice, the reserve price of the aforesaid property has been fixed at

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Rs.13,72,50,000/- and the auction was scheduled to be held on 22.09.2026.

2. The principal grievance of the petitioner is that the very same property had already been attached by respondent No.2/Competent Authority under Section 4 of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (hereinafter referred to as "the Adhiniyam of 2000"), vide order dated 06.06.2011, and the proceedings initiated for making the said ad-interim attachment absolute are still pending before the learned Special Court under Section 5(3) of the Adhiniyam of 2000. According to the petitioner, once the property had been subjected to attachment under the aforesaid special enactment, the subsequent attachment and consequential auction proceedings initiated by respondent No.4 under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act") are without authority of law and liable to be quashed.

3. Learned counsel appearing for the petitioner submits that the Adhiniyam of 2000 is a special welfare legislation enacted with the avowed object of protecting the interests of depositors who have been deprived of their deposits by financial establishments. It is contended that the attachment made under the said enactment is not merely an administrative restraint upon alienation of property but forms an integral part of a special statutory mechanism intended to secure the interests of depositors and facilitate repayment of their deposits. Once the property has been attached under the said enactment and proceedings for confirmation of such attachment are pending before the learned Special Court, another statutory authority cannot be permitted to proceed against the same property in a manner which would

frustrate the object of the earlier attachment and render the proceedings before the learned Special Court infructuous.

4. Learned counsel further submits that the attachment order dated 06.06.2011 has neither been set aside nor modified by any competent court and continues to remain operative. It is pointed out that this Court, while deciding M.A. No.546/2014 vide order dated 02.03.2017, had remitted the matter to the learned Special Judge with a direction to consider the total value of the deposits required to be returned to the depositors, instead of proceeding merely on the basis of the value of the attached properties. The said exercise, according to learned counsel, has not yet attained finality, and the proceedings pursuant to the aforesaid order are still pending consideration before the learned Special Court.

5. It is further submitted that the petitioner had approached the learned Special Court on 15.06.2026 seeking determination of the amount required to be returned to the depositors. Thereafter, upon acquiring knowledge of the proposed auction of the property by SEBI, the petitioner again approached the learned Special Court by filing an application on 31.08.2026 seeking appropriate protection against the proposed auction. However, the said application came to be dismissed by the learned Special Court vide order dated 15.09.2026, principally on the ground that SEBI was not a party to the proceedings pending before it. It is contended that, in these circumstances, the petitioner has been left without an effective remedy to protect the property from being auctioned during the pendency of the proceedings under the Adhiniyam of 2000.

6. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in **National Spot Exchange Limited Vs. Union of India and Others, reported in (2025) 8 SCC 393.** It is submitted that in the said judgment the Hon'ble Supreme Court, while examining the interplay between the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as "the MPID Act") and other Central enactments, recognised the distinct character of proceedings initiated under a special depositor-protection legislation. The Hon'ble Supreme Court held that properties attached under Section 4 of the MPID Act vested in the Competent Authority, subject to the orders of the Designated Court, and that the statutory mechanism contemplated under the said enactment could not be defeated merely on account of competing claims arising under other statutory regimes.

7. Learned counsel submits that the principle enunciated in the aforesaid judgment squarely supports the petitioner's contention that property already subjected to attachment under a special depositor-protection legislation cannot be treated as an ordinary asset available for enforcement under another statutory enactment, disregarding the rights of depositors and the proceedings pending before the competent Special Court. It is contended that permitting respondent No.4 to proceed with the auction of the property would defeat the very purpose of the earlier attachment and render the pending proceedings under the Adhiniyam of 2000 nugatory. Accordingly, it is prayed that the present petition be allowed and the impugned attachment

order dated 10.10.2024, as well as the consequential sale notice dated 21.08.2026, be quashed.

8. *Per contra,* learned Additional Solicitor General of India appearing on behalf of respondents No.3 and 4 has vehemently opposed the petition and submitted that the petitioner cannot claim any indefeasible right merely on the strength of an earlier attachment order passed under the Adhiniyam of 2000. It is submitted that the recovery proceedings initiated by SEBI are founded upon an independent statutory power conferred under Section 28A of the SEBI Act, and the mere existence of an earlier attachment under another enactment cannot, by itself, extinguish or suspend the statutory authority of the Recovery Officer to proceed against the property in accordance with law.

9. Learned Additional Solicitor General further submits that the proceedings initiated under the Adhiniyam of 2000 have not yet culminated in any final adjudication, inasmuch as the application preferred by the Competent Authority seeking confirmation of the attachment is still pending before the learned Special Court. Neither has the learned Special Court declared the subsequent attachment made by SEBI to be invalid, nor has the petitioner demonstrated any jurisdictional infirmity in the exercise of powers by the Recovery Officer. It is, therefore, submitted that the petitioner cannot seek annulment of an otherwise lawful statutory recovery proceeding merely on the ground that the property had earlier been subjected to attachment under another enactment.

10. Placing reliance upon the judgment of the Hon'ble Supreme Court

in **Solidaire India Limited Vs. Fairgrowth Financial Services Limited and Others, reported in (2001) 3 SCC 71**, learned Additional Solicitor General submits that where two special enactments contain overriding provisions and operate in the same field, the question of their respective precedence has to be determined having regard to their legislative scheme, subject matter and chronology. It is contended that Section 28A(3) of the SEBI Act contains an express non-obstante clause conferring precedence upon recovery undertaken by the Recovery Officer in the circumstances specified therein. The said provision, being a subsequent and specific legislative mandate, cannot be rendered ineffective merely because an earlier attachment exists under the Adhiniyam of 2000. It is, therefore, prayed that the petition, being devoid of merit, deserves to be dismissed.

11. Heard learned counsel for the parties at length and perused the material available on record.

12. The controversy which falls for consideration before this Court is whether the earlier attachment of the property under the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 would operate as a bar against the subsequent attachment and recovery proceedings initiated by the Securities and Exchange Board of India under the Securities and Exchange Board of India Act, 1992.

13. For appreciating the controversy, it would be apposite to notice the statutory provision governing the recovery proceedings initiated by the Securities and Exchange Board of India. Sub-section (3) of Section 28A of the Securities and Exchange Board of India Act, 1992 provides as under:

"(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person."

14. The aforesaid provision was inserted in the statute book in the year 2013. Thus, the statutory scheme under Section 28A of the Securities and Exchange Board of India Act, 1992, including the specific declaration contained in sub-section (3), came to operate subsequent to the enactment of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000.

15. The Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 is an Act enacted to protect the deposits made by the public in Financial Establishments and for matters connected therewith or incidental thereto. The said enactment was published in the Madhya Pradesh Gazette (Extra-ordinary) dated 09.05.2001. The object of the enactment is undoubtedly to provide protection to the interests of depositors and to facilitate recovery of amounts due to them through the statutory mechanism prescribed therein.

16. However, the question before this Court is not with regard to the object or purpose of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000. The question is as to which statutory regime would prevail when the field of recovery is sought to be occupied by two special enactments and one of them contains a subsequent and specific non-obstante provision giving precedence to the recovery undertaken by the Recovery Officer.

17. In this regard, the judgment relied upon by learned Additional Solicitor General in Solidaire India Limited (supra) assumes significance. The Hon'ble Supreme Court, while considering the interplay between two special enactments containing non-obstante clauses, examined the legislative scheme, the subject matter and the chronology of the enactments and held that where two special statutes contain overriding provisions and operate in the same field, the later enactment would prevail over the earlier enactment to the extent of inconsistency.

18. Applying the aforesaid principle to the facts of the present case, it is evident that the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 came into existence prior to the insertion of sub-section (3) of Section 28A of the Securities and Exchange Board of India Act, 1992. Section 28A(3) of the Securities and Exchange Board of India Act, 1992 contains an express non-obstante clause and further provides that recovery of amounts by the Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under Section 11B, shall have precedence over any other claim against such person.

19. The expression “notwithstanding anything contained in any other law for the time being in force” used by the Legislature is of considerable significance. The Legislature has consciously accorded precedence to the recovery undertaken by the Recovery Officer. Such statutory mandate cannot be diluted merely because the property against which recovery proceedings are being undertaken had earlier been subjected to attachment under another enactment.

20. It is also relevant that the proceedings under the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 have not culminated in any final adjudication determining the rights of the parties in respect of the property in question. The application seeking confirmation of the attachment is still stated to be pending before the learned Special Court. The petitioner, therefore, cannot claim that the earlier attachment has resulted in an indefeasible or absolute right in favour of the petitioner so as to exclude the operation of the subsequent statutory recovery mechanism created by the Securities and Exchange Board of India Act, 1992.

21. The contention that the earlier attachment by itself operates as an absolute embargo upon the exercise of powers by the Recovery Officer under Section 28A of the Securities and Exchange Board of India Act, 1992 cannot be accepted in view of the express legislative mandate contained in Section 28A(3). Once the later statutory provision specifically declares that the recovery by the Recovery Officer shall have precedence over any other claim against the person concerned, the earlier attachment cannot, by itself, be treated as overriding or disabling the subsequent statutory recovery proceedings.

22. So far as the judgment relied upon by learned counsel for the petitioner **National Spot Exchange Limited (supra)** is concerned, in the said judgment, the Hon'ble Supreme Court, while considering the interplay between the MPID Act, SARFAESI Act, RDB Act, PMLA and IBC, did not proceed merely on the basis that one enactment was a Central enactment and another was a State enactment. The Court first examined the respective

objects, fields and statutory provisions of the competing enactments. In doing so, the Court noticed that the RDB Act had been enacted for expeditious adjudication and recovery of debts due to Banks and Financial Institutions, whereas the SARFAESI Act was enacted to regulate securitisation, reconstruction of financial assets and enforcement of security interests. The Court also noticed the overriding provisions contained in the respective statutes.

23. The Hon'ble Supreme Court thereafter examined the MPID Act and recorded that the said enactment was specifically enacted for protecting the interests of depositors of financial establishments. Thus, the Court undertook an examination of the pith and substance and the respective fields of operation of the enactments before determining the question of priority. The principle emerging from the decision is that the mere presence of a non-obstante clause in one enactment does not by itself conclude every question of statutory conflict. The Court must ascertain the legislative field, the object and purpose of the enactments and the nature of the right or claim sought to be enforced.

24. The constitutional aspect was also specifically considered by the Hon'ble Supreme Court. In paragraph 26 of the judgment, the Court noticed the distribution of legislative power under Article 246 read with the three Lists of the Seventh Schedule and emphasised the federal structure forming part of the basic structure of the Constitution. The Court observed that where legislative fields apparently overlap, it is the duty of the Court to ascertain the degree and extent of authority vested in each legislature and to define the

respective limits of those powers.

25. The principle was thereafter applied by the Hon'ble Supreme Court to the competing statutory enactments. In paragraph 40, the Court held, in the context of SARFAESI Act and RDB Act vis-à-vis the MPID Act, that the Central enactments could not be permitted to prevail merely because they had been enacted by Parliament, since the enactments operated in separate fields. The Court observed that permitting the Central enactments to override the MPID Act in such circumstances would amount to disregarding the federal structure and the legislative field occupied by the State enactment.

26. The significance of paragraphs 40, 43 and 44 of National Spot Exchange Limited (supra), however, has to be appreciated in the context in which those observations were made. The question before the Supreme Court was whether secured creditors claiming priority under SARFAESI Act and RDB Act could assert such priority over properties already attached under Section 4 of the MPID Act. The Court found that the properties attached under Section 4 of the MPID Act vested in the Competent Authority appointed by the State Government, pending further orders of the Designated Court. On that statutory foundation, the Court concluded that the secured creditors could not claim priority over such attached properties under Section 26E of the SARFAESI Act. The conclusion recorded in paragraph 44 was thus in relation to a claim of priority by secured creditors against properties already attached under the MPID Act.

27. The aforesaid reasoning does recognise an important legal consequence of an attachment under a special depositor-protection

legislation i.e. such attachment is not to be treated as a mere provisional restraint having no legal significance. Once the statute provides for vesting of the attached properties in the Competent Authority, subject to orders of the Designated Court, the property becomes subject to the statutory mechanism created for protection and distribution of the depositors' money. The observations in paragraph 43 of National Spot Exchange Limited (supra) are therefore of considerable relevance while determining the legal character of an attachment under a depositor-protection legislation.

28. However, the present controversy stands on a materially different footing. The question before this Court is not whether a secured creditor can claim priority under the SARFAESI Act or RDB Act over property attached under the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000. The question is whether the attachment under the State enactment constitutes an absolute statutory embargo against exercise of the subsequent recovery power specifically conferred upon the Recovery Officer under Section 28A of the Securities and Exchange Board of India Act, 1992.

29. The distinction is material. In National Spot Exchange Limited (supra), the Hon'ble Supreme Court was examining a claim of priority by secured creditors under Section 26E of the SARFAESI Act against property already vested in the Competent Authority under the MPID Act. The Court held that the money sought to be recovered by the depositors under the MPID Act could not be treated as a “debt” contemplated by Section 26E and, consequently, the secured creditors could not invoke that provision to claim priority against the properties attached under the MPID Act. The judgment,

therefore, cannot be read as laying down an absolute proposition that once property is attached under any depositor-protection legislation, every subsequent statutory recovery mechanism created by Parliament necessarily becomes unavailable against such property. Therefore, the ratio of National Spot Exchange Limited (supra) cannot be extended beyond the statutory conflict which was actually considered and decided therein so as to create an absolute prohibition against the operation of Section 28A of the Securities and Exchange Board of India Act, 1992.

30. The contention advanced on behalf of the petitioner that the attachment order dated 06.06.2011, by itself, completely divests the Recovery Officer of jurisdiction to proceed against the property cannot, therefore, be accepted. The earlier attachment may continue to remain operative in accordance with the Adhiniyam of 2000 and subject to the orders of the learned Special Court, but it does not automatically invalidate the subsequent recovery proceedings initiated under the SEBI Act.

31. As regards the submission that the petitioner had approached the learned Special Court by filing an application dated 31.08.2026, which came to be dismissed on 15.09.2026 on the ground that SEBI was not a party to the proceedings, this Court finds that the said circumstance does not furnish an independent ground for quashing the impugned attachment order or the consequential sale notice. The petitioner remains at liberty to avail such remedies as may otherwise be available in law before the appropriate forum. The dismissal of the application by the learned Special Court cannot, by itself, be treated as establishing any jurisdictional infirmity in the

proceedings initiated by the Recovery Officer.

32. It is also necessary to bear in mind that the jurisdiction conferred upon this Court under Article 226 of the Constitution of India, though wide and discretionary, is required to be exercised upon established principles of judicial review. Where the action complained of is referable to an express statutory power, interference would ordinarily be warranted upon demonstration of a jurisdictional error, violation of mandatory statutory provisions, breach of principles of natural justice or some other legally sustainable ground. The mere existence of an earlier attachment under a different enactment, without establishing that the subsequent statutory recovery proceedings are prohibited by law, does not furnish sufficient justification for exercising such extraordinary jurisdiction.

33. In the facts of the present case, the challenge to the impugned proceedings is founded principally upon the earlier attachment dated 06.06.2011 and the pendency of proceedings before the learned Special Court. The petitioner has not established that these circumstances, by themselves, render the subsequent attachment and recovery proceedings initiated by the Recovery Officer under the SEBI Act without jurisdiction.

34. In view of the foregoing discussion and having regard to the express statutory provision contained in Section 28A(3) of the SEBI Act, this Court is of the considered opinion that the earlier attachment of the property under the Adhiniyam of 2000 cannot be treated as an absolute bar against the subsequent exercise of statutory recovery powers by the Recovery Officer. The statutory precedence contemplated under Section 28A(3), wherever

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applicable, cannot be defeated merely on the ground that the property had previously been subjected to attachment under another special enactment.

35. Accordingly, this Court finds no sufficient ground to interfere with the attachment order dated 10.10.2024 passed by respondent No.4/Recovery Officer, SEBI, or the consequential sale notice dated 21.08.2026, on the grounds urged in the present petition.

36. Consequently, the petition, being devoid of merit, is hereby **dismissed.**

(MILIND RAMESH PHADKE)
JUDGE

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