



WP(C)NO. 45166 OF 2024 &
WP(C)NO.46514 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

WP(C) NO. 45166 OF 2024

PETITIONERS:

- 1 M/S. M.D. ESTHAPPAN,
REPRESENTED BY ITS SOLE PROPRIETOR, MR. M.D. ESTHAPPAN,
THROUGH POWER ATTORNEY HOLDER MR. BIJI STEPHEN, HAVING
ITS REGISTERED OFFICE ADDRESS AT: PLOT NO. 434, BARI
CO-OPERATIVE COLONY, BOKARO STEEL CITY, BOKARO, ALSO AT
144, RAILWAY STATION NAGAR, NEAR ST. JOSEPHS HIGH
SCHOOL, ANGAMALY, ERNAKULAM, PIN - 683572
- 2 MR. M.D. ESTHAPPAN,
AGED 88 YEARS
THROUGH POWER ATTORNEY HOLDER MR. BIJI STEPHEN,
S/O. DEVASSY, 14/306, MOOLAN HOUSE, NH 47,
NEAR ST. JOSEPH HIGH SCHOOL, ANGAMALY, ERNAKULAM,
PIN - 683572

BY ADVS.
MARIA NEDUMPARA
SHAMEEM FAYIZ V.P.

RESPONDENTS:

- 1 RESERVE BANK OF INDIA,
REPRESENTED BY ITS GOVERNOR, SHAHID BAGAT SINGH ROAD,
FORT MUMBAI, PIN - 400001
- 2 BOARD OF DIRECTORS OF DHANLAXMI BANK LTD.,
REPRESENTED BY ITS CEO & MANAGING DIRECTOR,
DHANALAKSHMI BUILDINGS, P.B. NO. 9, NAICKANAL,
THRISSUR, KERALA, PIN - 680001



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- 3 DHANLAXMI BANK LTD.,
REPRESENTED BY ITS CEO & MANAGING DIRECTOR,
DHANALAKSHMI BUILDINGS, P.B. NO. 9, NAICKANAL,
THRISSUR, KERALA, PIN - 680001
- 4 AUTHORISED OFFICER & CHIEF MANAGER,
DHANLAXMI BANK LTD., REGIONAL OFFICE, DHANALAKSHMI
BUILDINGS, 1ST FLOOR, MARINE DRIVE, KOCHI, KERALA,
PIN - 682031
- 5 THE CHAIRMAN,
EMPOWERED COMMITTEE ON MSMES, REPRESENTED BY THE
REGIONAL DIRECTORS OF THE RESERVE BANK OF INDIA, RBI
REGIONAL OFFICE, BAKERY JUNCTION, P.B. NO. 6507,
THIRUVANANTHAPURAM, PIN - 695033
- 6 CHAIRMAN,
STATE LEVEL INTER INSTITUTIONAL COMMITTEE, RBI REGIONAL
OFFICE, BAKERY JUNCTION, P.B. NO. 6507,
THIRUVANANTHAPURAM, PIN - 695033
- 7 CHAIRMAN,
PRIME MINISTER'S TASK FORCE ON MSMES, PRIME MINISTER'S
OFFICE, SOUTH BLOCK, NEW DELHI, PIN - 110001
- 8 CHAIRMAN,
WORKING GROUP ON REHABILITATION OF SICK MSMES, RESERVE
BANK OF INDIA, MUMBAI, PIN - 400001
- 9 BANKING CODES AND STANDARDS BOARD OF INDIA (BCSBI),
WORLD TRADE CENTRE COMPLEX, 6TH FLOOR, CENTRE 1
BUILDING, WORLD TRADE CENTRE COMPLEX, CUFF PARADE,
MUMBAI, PIN - 400005
- 10 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF MICRO SMALL &
MEDIUM ENTERPRISES, UDYOG BHAWAN, RAFI MARG, NEW DELHI,
PIN - 110001
- 11 SECRETARY,
DEPT. OF BANKING, MINISTRY OF FINANCIAL SERVICES,
GOVERNMENT OF INDIA, 3RD FLOOR, JEEVAN DEEP BUILDING,
SANSAD MARG, NEW DELHI, PIN - 110001
- 12 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT



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SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

- 13 GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, ERNAKULAM, PIN - 682030
- 14 GAIL (INDIA) LTD.,
REPRESENTED BY ITS GENERAL MANAGER, KINFRA HI- TECH
PARK, OFF - HMT ROAD, HMT COLONY P.O., KALAMASSERY,
ERNAKULAM, PIN - 683503
- 15 BHARAT PETROLEUM CORPORATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, KOCHI REFINERY,
AMBALAMUGAL, ERNAKULAM, PIN - 682302
- 16 COCHIN SMART MISSION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, 10TH FLOOR,
REVENUE TOWER, PARK AVENUE, ERNAKULAM, PIN - 682011
- 17 ADV. ROSHITHA A.U.,
ADVOCATE COMMISSIONER APPOINTED IN M.C. 203/2024 IN THE
FILES OF CJM, ERNAKULAM, DISTRICT BAR ASSOCIATION,
ERNAKULAM, PIN - 682011
- 18 STATION HOUSE OFFICER,
ANKAMALY POLICE STATION, NEAR KSRTC STAND, ANKAMALY
P.O., KOCHI, PIN - 683572
- 19 ANIL DHIRAJLAL AMBANI,
SEA WIND, CUFF PARADE, MUMBAI, PIN - 400005
- 20 THE CHAIRMAN,
STATE BANK OF INDIA, CORPORATE CENTER, 16TH FLOOR,
MADAM CAMA ROAD, NARIMAN POINT, MUMBAI, PIN - 400021

BY ADVS.

C.K.KARUNAKARAN
S.MOHAMMED AL RAFI
ABEL TOM BENNY
SHIFNA MUHAMMED SHUKKUR
LEKSHMI P. NAIR
KRISHNA SURESH
K.V.KRISHNAKUMAR
MEKHA MANOJ
D.PREM KAMATH
TOM THOMAS (KAKKUZHIYIL)



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AARON ZACHARIAS BENNY
CLINT JUDE LEWIS
BIJITHA B. BOSE
JYOTHIKA KRISHNA
ALAN J YOGYAVEEDU
BENNY P. THOMAS (SR.)

OTHER PRESENT:

SRI.P.S.APPU, GP, SRI. T.C.KRISHNA, SCGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.12.2024, AND HAVING BEEN FINALLY HEARD ON 10.3.2025 ALONG WITH
WP(C).46514/2024, THE COURT ON 11.03.2025 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

WP(C) NO. 46514 OF 2024

PETITIONERS:

- 1 M/S. M.D. ESTHAPPAN INFRASTRUCTURE PVT. LTD.,
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE, MR. BIJI
STEPHEN HAVING ITS REGISTERED ADDRESS AT 144, RAILWAY
STATION NAGAR, NEAR ST. JOSEPH HIGH SCHOOL, ANGAMALY,
ERNAKULAM, PIN - 683572
- 2 MR. M.D. ESTHAPPAN,
AGED 88 YEARS
MANAGING DIRECTOR OF M.S. M.D. ESTHAPPAN INFRASTRUCTURE
PVT. LTD., THROUGH POWER ATTORNEY HOLDER MR. BIJI
STEPHEN S/O. DEVASSY, 14/306, MOOLAN HOUSE, NH 47,
NEAR ST. JOSEPH HIGH SCHOOL, ANGAMALY, ERNAKULAM, PIN -
683572

BY ADVS.
MARIA NEDUMPARA
SHAMEEM FAYIZ V.P.

RESPONDENTS:

- 1 RESERVE BANK OF INDIA,
REPRESENTED BY ITS GOVERNOR, SHAHID BHAGAT SINGH ROAD,
FORT, MUMBAI, PIN - 400001
- 2 BOARD OF DIRECTORS OF DHANLAXMI BANK LTD.,
REPRESENTED BY ITS CEO & MANAGING DIRECTOR, REGISTERED
OFFICE, DHANALAKSHMI BUILDINGS, P.B NO. 9, NAICKANAL,
THRISSUR, KERALA, PIN - 680001



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WP(C)NO.46514 OF 2024

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- 3 DHANLAXMI BANK LTD. ,
REPRESENTED BY ITS CEO & MANAGING DHANALAKSHMI
BUILDINGS, P.B. NO. 9, NAICKANAL, THRISSUR, KERALA,
PIN - 680001
- 4 AUTHORISED OFFICER & CHIEF MANAGER,
DHANLAXMI BANK LTD. , REGIONAL OFFICE, DHANALAKSHMI
BUILDINGS, 1ST FLOOR, MARINE DRIVE, KOCHI, KERALA,
PIN - 682031
- 5 MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES,
REPRESENTED BY ITS SECRETARY, UDYOG BHAWAN, RAFI MARG,
NEW DELHI, PIN - 110001
- 6 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FINANCIAL
SERVICES, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP
BUILDING, SANSAD MARG, NEW DELHI, PIN - 110001
- 7 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 8 GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KAKKNADU, ERNAKULAM, PIN -
682030
- 9 CHAIRMAN,
EMPOWERED COMMITTEE ON MSMES, REGIONAL OFFICE, RESERVE
BANK OF INDIA, BAKERY JUNCTION, P.B. NO.6507,
THIRUVANANTHAPURAM, PIN - 695033
- 10 CHAIRMAN,
STATE LEVEL INTER-INSTITUTIONAL COMMITTEE, REGIONAL
OFFICE, RESERVE BANK OF INDIA, BAKERY JUNCTION, P.B.
NO. 6507, THIRUVANANTHAPURAM, PIN - 695033
- 11 GAIL (INDIA) LTD. ,
REPRESENTED BY ITS GENERAL MANAGER, KINFRA HI- TECH
PARK, OFF - HMT ROAD, HMT COLONY P.O. , KALAMASSERY,
ERNAKULAM, PIN - 680533
- 12 BHARAT PETROLEUM CORPORATION LTD. ,
REPRESENTED BY ITS MANAGING DIRECTOR, KOCHI REFINERY,
AMBALAMUGAL, ERNAKULAM, PIN - 682302



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13 COCHIN SMART VISION LTD. ,
REPRESENTED BY ITS MANAGING DIRECTOR, 10TH FLOOR,
REVENUE TOWER, PARK AVENUE, ERNAKULAM, PIN - 682011

BY ADVS.
C.K.KARUNAKARAN
S.MOHAMMED AL RAFI
ABEL TOM BENNY
K.V.KRISHNAKUMAR
LEKSHMI P. NAIR
SHIFNA MUHAMMED SHUKKUR
KRISHNA SURESH
MEKHA MANOJ
D.PREM KAMATH
TOM THOMAS (KAKKUZHIYIL)
AARON ZACHARIAS BENNY
CLINT JUDE LEWIS
BIJITHA B. BOSE
JYOTHIKA KRISHNA
ALAN J YOGYAVEEDU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.12.2024,AND HAVING BEEN FINALLY HEARD ON 10.03.2025 ALONG WITH
WP(C).45166/2024, THE COURT ON 11.03.2025 DELIVERED THE FOLLOWING:

**JUDGMENT****[WP(C) Nos.45166/2024 & 46514/2024]**

These writ petitions are filed raising identical contentions and can, therefore, be disposed of by common judgment. The 1st petitioner in W.P.(C)No.46514/2024 is a Private Limited Company and the 2nd petitioner in that writ petition is stated to be the Managing Director of the 1st petitioner Company. In the connected writ petition, namely, W.P.(C)No.45166/2024, the 1st petitioner is described as 'M/s. M.D. Esthappan' (a proprietary concern) and the 2nd petitioner (who is also the 2nd petitioner in W.P.(C)No.46514/2024) is stated to be the sole proprietor of the 1st petitioner. The petitioners in these cases have availed credit facilities from the Dhanlaxmi Bank Ltd. (hereinafter referred to as 'the Bank'). On default being committed, proceedings have been initiated against the petitioners under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act').

2. These writ petitions have been filed seeking various reliefs principally on the contention that the borrowers are 'Micro, Small or Medium Enterprises' (hereinafter referred to as 'the MSME') as the term is understood



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under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act') and notifications issued thereunder. It is contended that the proceedings initiated by the respondent Bank under the SARFAESI Act without following the procedure contemplated by the notification issued by the Ministry of Micro, Small and Medium Enterprises on 29.05.2015, in the exercise of the powers conferred by Section 9 of the MSMED Act, cannot be sustained in law. It is stated that the notification dated 29.05.2015 is binding on the Bank on account of guidelines dated 17.03.2016 issued by the Reserve Bank of India (hereinafter referred to as 'the RBI').

3. Sri. Mathews J. Nedumpara, the learned counsel appearing for the petitioners would submit that the borrowers are entitled to the benefits of the framework for revival and rehabilitation of Micro, Small and Medium Enterprises as contained in the notification produced as Ext.P.2 in W.P. (C)No.46514/2024 (The Exhibits referred to in this judgment are as they are marked in W.P.(C)No.46514/2024 unless specifically indicated otherwise). It is submitted that Ext.P2 is binding on the Bank in terms of Ext.P3 Circular dated 17.03.2016 issued by the the RBI. It is submitted that, when a unit is registered as MSME, Ext.P2 requires that the loan account shall be referred to a committee known as the Committee for Stressed Micro, Small and Medium Enterprises (hereinafter referred to as 'the Committee') for implementation of



a corrective action plan which may include rectification and restructuring and only when rectification or restructuring is not possible, can the Bank proceed for recovery. It is submitted that the framework contains detailed guidelines for restructuring/rectification and any action for recovery without considering the scope of rectification or restructuring would be contrary to the statutory framework and the guidelines issued by the the RBI.

4. It is submitted that the judgment of the Supreme Court in ***Pro Knits v. Canara Bank; (2024) 10 SCC 292*** deals with the situation where no claim was made by the unit in question that it was an MSME. It is submitted that where the Bank does not dispute that the borrower is an MSME, the question of identification upon a claim being raised by the borrower that the matter is to be referred to the Committee for a corrective action plan as noticed above does not arise. It is submitted that it is clear from the judgment in ***Pro Knits (supra)***, especially paragraph No.16 thereof that where there are materials already before the Bank which show that the borrower is to be classified as an MSME, the failure of the Bank to refer the issue for consideration of the Committee is clearly illegal and contrary to the circulars issued by the the RBI. It is submitted that the judgment of the Division Bench of this Court in ***P.K. Krishnakumar v. IndusInd Bank; 2024 SCC OnLine Ker 6888*** does not lay down the correct law and cannot be treated as a binding precedent. It is submitted that the judgment of the



Supreme Court in ***Zee Telefilms Ltd and another v. Union of India and others, (2005) 4 SCC 649*** is the authority for the proposition that no judgment should be read as a statute. It is submitted that the recent judgment of the Supreme Court in ***NBCC (India) Ltd. v. The State of West Bengal & Ors., (2025) SCC OnLine SC 73*** establishes that MSMEs are the backbone of the economy and provide employment to 62% of the country's workforce, contribute 30% to India's GDP and account for around 45% of India's total exports. It is submitted that it is in this background that the framework for revival and rehabilitation of MSMEs has been conceived and therefore the rights conferred on the borrowers under the provisions of the framework should not be denied to them. It is submitted that the petitioners are entitled to a direction that all proceedings under the SARFAESI Act shall remain suspended till action in terms of the Ext.P2 framework is taken by the respondent Bank. The learned counsel also refers to the reliefs sought in both the writ petitions and states that the matter should not be decided without issuing notice to the various authorities including the the RBI and the Union of India in the Ministry of Micro, Small and Medium Enterprises.

5. Sri. C.K. Karunakaran, the learned counsel appearing for the respondent Bank vehemently opposes the grant of any relief to the petitioners. It is submitted that the issue raised in these writ petitions is



squarably covered against the petitioners by the judgment of the Supreme Court in ***Pro Knits*** (*supra*) as also the judgment of the Division Bench of this Court in ***P.K. Krishnakumar*** (*supra*). It is submitted that a reading of the judgment of the Supreme Court in ***Pro Knits*** (*supra*) will indicate beyond doubt that a claim for restructuring etc. in terms of Ext.P2 framework will arise only if such claim is made by the borrower prior to the declaration of the account as 'Non-Performing Asset' (hereinafter referred to as 'the NPA'). It is submitted that, in the facts of the present case, no such claim was made by the borrowers. The learned counsel appearing for the respondent Bank referred to Ext.R2(a) communication dated 28.01.2025 produced along with the statement filed in W.P.(C)No.45166/2024 to contend that the Bank had actually communicated to the borrowers in these cases that they are in Special Mention Account (SMA) category and calling upon the borrowers to submit a detailed action plan in respect of the points mentioned in the communication. It is submitted that the borrowers failed to submit any action plan and therefore, the Bank was forced to initiate proceedings under the SARFAESI Act against the borrowers. It is submitted that, having failed to submit any action plan pursuant to the communication issued by the Bank before the account turned into a 'NPA' status, the borrowers cannot now contend that they are entitled to be considered in terms of Ext.P2. It is submitted that the borrowers in these cases had conducted previous litigations before this Court



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as is evident from Ext.P14 judgment in W.P.(C)No.38732/2023. It is submitted that the Managing Director of M/s. M.D. Esthappan Infrastructure Pvt. Ltd had filed W.P.(C)No.22424/2024 before this Court. It is submitted that the very same group has also filed W.P.(C)No.35456/2024 before the High Court of Bombay and has also approached the Debts Recovery Tribunal by invoking Section 17 of the SARFAESI Act. It is submitted that the borrowers had also initiated proceedings by filing a civil suit as S.T. No.18939/2024 before the High Court of Bombay. It is submitted that in the earlier round of litigations conducted before this Court, the borrowers had no case that they were entitled to the benefits of Exts.P2 and P3. It is submitted that in such circumstances, the issue is clearly covered against the petitioners by the judgment of the Division Bench of this Court in ***P.K. Krishnakumar (supra)***.

6. The learned counsel appearing for the respondent Bank also submits that the petitioners in W.P.(C)No.46514/2024 are also not entitled to the benefit of Exts.P2 and P3 as it is clear from a reading of Ext.P3 guidelines issued by the the RBI that where the loan exposure is above Rs.25 crores, the same will continue to be governed by the guidelines for Corporate Debt Restructuring (CDR)/Joint Lenders' Forum (JLF) mechanism and not by Ext.P2 framework. It is submitted that the liability of the petitioners in W.P.(C)No.46514/2024 is in excess of Rs.25 crores. The learned counsel for



the respondent Bank also placed reliance on the judgment of the Supreme Court in ***Celir LLP v. Sumati Prasad Bafna and Ors., (2024) SCC OnLine SC 3727*** to contend that the petitioners are not entitled to conduct piecemeal litigations where issues are deliberately fragmented across separate proceedings to gain an unfair advantage. It is submitted that the issues raised by the petitioners are also covered against the petitioners by the judgment of this Court in W.P.(C)NO.45285/2024 where the very same contentions had been considered and rejected following the law laid down in ***P.K. Krishnakumar (supra)***.

7. Having heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent Bank, I am of the view that the petitioners have not made out any case for grant of the reliefs sought for in these writ petitions.

8. I have considered an identical issue in my judgment in W.P.(C)No.45285/2024 where I have held as follows:-

*“6. Though the learned counsel appearing for the petitioner vehemently contends that the primary responsibility to refer a case to the committee for a corrective action was that of the bank, I cannot accept that contention, especially in the light of the law laid by the Supreme Court in **Pro Knits** (supra) which was followed by a Division Bench of this Court in **P.K. Krishnakumar** (supra). Paragraphs 16 and 17 of the judgment in **Pro Knits** (supra) reads thus:*

“16. As transpiring from the said Instructions/Directions, the entire exercise as contained in the “Framework for Revival and Rehabilitation of MSMEs” is required to be carried out by the banking companies before the accounts of MSMEs turn into



Non-Performing Asset. It is true that the security interest created in favour of any bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter III of the SARFAESI Act, and that as per Section 35 of the SARFAESI Act, the provisions of the said Act have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. However, pertinently the whole process of enforcement of security interest as contained in Chapter III of the SARFAESI Act, could be initiated only when the borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, in view of Section 13(2) of the said Act.

17. What is contemplated in the “Framework for Revival and Rehabilitation of MSMEs” contained in the Instructions/Directions stated hereinabove, is required to be followed prior to the classification of the borrower's account, (in the instant case MSMEs loan account), as non-performing assets. The said Instructions contained in the Notification dated 29-5-2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSMED Act, followed by the Directions issued by the RBI in exercise of the powers conferred under Sections 21 and 35-A of the Banking Regulation Act, the banking companies though may be “secured creditors” as per the definition contained in Section 2(zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.”

(emphasis is supplied)

*7. In the facts of the present case, it is not disputed that the account of the petitioner was classified as NPA on 27.09.2024. The claim that the borrower was entitled for consideration of a corrective action plan in terms of the guidelines was made for the first time after the bank issued a notice under section 13(4) of the SARFAESI Act taking symbolic possession of the secured assets. The Division Bench of this Court in **P.K Krishnakumar** (supra) held as follows:*

“14. The Hon’ble Supreme Court in the case of M/s. Pro Knits had examined the scheme of MSMED Act in conjunction with the SARFAESI Act and had accepted the contention of the MSMEs



that they could have a special status as regards recovery of loans. However, after concluding so, the Hon'ble Supreme Court observed thus:

“16. We may hasten to add that under the "Framework for Revival and Rehabilitation of MSMEs", the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non performing assets, by creating three sub-categories under the "Special Mention Account" Category, however, while creating such sub-categories, the Banks must have some authenticated and verifiable material with them as produced by the concerned MSME to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act. The said Framework also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorised person. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorisation under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage, and therefore it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable documents/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest.

17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the



SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/ Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework.”

(emphasis supplied)

The Hon'ble Supreme Court, therefore, has laid down the position of law that if, at the stage of classification of the loan account, the borrower does not bring to the notice of the Bank that it is an MSME and allow the entire process to go through, then it will be precluded from raising it at the belated stage. This dicta is very clear and is binding.

15. Furthermore, the Appellants are mixing up several issues which have different connotations, such as res judicata, estoppel, waiver and acquiescence. The waiver and acquiescence will stand on a completely different footing than an estoppel. If a party knowingly permits a certain state of affairs to go through, the concept of waiver and acquiescence also comes into play.

16. In this case, the Appellants permitted the state of affairs to prevail, including that of seeking repayment by installments, and therefore, clearly benefited from the delay, which has enured to their benefit, whereby the Appellants have been able to retain the amount instead of repaying the same.



17. *The observations of the Hon'ble Supreme Court in paragraph (17) in the case of M/s. Pro Knits lays down the principle that the borrowers have to be diligent, and if they knowingly permit the state of affairs to continue, they will be precluded from raising the challenge. The case is not only of estoppel as argued but acquiescence and waiver as well. The Appellants have sidestepped this aspect of the matter and have focused entirely on the principle of estoppel. Even otherwise, the clear dicta of the Hon'ble Supreme Court in the case of M/s. Pro Knits leaves no room to accept the contention raised by the Appellants.*

18. *In the earlier two writ petitions, there is not even a whisper of the Appellant Enterprise being MSME. The argument that the Appellants were not aware of the status of the Enterprise as MSME is too far-fetched to believe when they had filed two writ petitions through legal counsels. In this case, a lame explanation is given that the Appellants were unaware of their rights, which we find entirely unacceptable. It is nowhere stated that the Appellants are illiterate. Therefore, all we see before us is an attempt to raise repeated challenges in the Court to stall the repayment. The learned counsel for the Respondent Bank submitted that the Appellants paid not a single paisa, and the entire loan amount has been defalcated.*

19. *The Appellants' argument that the High Court must intervene, no matter how they conducted themselves, proceeds on a complete misunderstanding of the nature of writ jurisdiction. There are two separate issues. One, whether the Bank lacked the authority to proceed. Second, whether the Appellants' conduct disqualifies or disentitles them from invoking equity jurisdiction. In cases where a borrower who qualifies as MSME does not initially raise its status to challenge a bank's recovery proceedings under the SARFAESI Act but instead participates fully in the process without objection, cannot later use their MSME status to argue that the proceedings were without jurisdiction. The power of the High Court under Article 226 of the Constitution of India is discretionary based on the principles of fairness and justice, which include examining the conduct of the parties involved.*



When the Appellants, by their actions, accepted the Bank's authority without objection, the High Court will refuse to exercise its writ jurisdiction to assist such Appellants, even if there are questions about the jurisdiction of the Bank. This is because the Appellants' own conduct disqualifies them from claiming such relief. When the High Court declines to interfere in such circumstances, it does not mean that the Appellants' waiver vested the Bank with jurisdiction, assuming it is inherently lacking; it means that the borrower is not entitled to invoke writ jurisdiction irrespective of whether the Bank's actions are without jurisdiction or not. These two concepts are distinct, and the distinction is emphasized by the Hon'ble Supreme Court in the case of M/s. Pro Knit."

The Division Bench has thus clearly taken the view that unless the procedure for reference is sought prior to the account being declared as NPA, the claim for reference to the committee in terms of the framework, cannot be made. 8. Therefore, I am of the view that the points raised in this writ petition are covered against the petitioners by the judgment of the Supreme Court in Pro Knits (supra) as also the judgment of the Division Bench in P.K Krishnakumar (supra)."

It is not disputed before me that the claims presently raised have not been raised in any previous litigation and they have been raised for the first time only after the account was classified as 'NPA'. Therefore, in the light of the law laid down by the Supreme Court in **Pro Knits** (supra) and by the Division Bench of this Court in **P.K. Krishnakumar** (supra), the petitioners are not entitled to any relief.

9. The contention of Mr. Mathews J. Nedumpara that this Court must ignore the binding precedents and apply the provisions of Exts.P2 and P3 notifications cannot be accepted. The law laid down by the Supreme Court is



binding on this Court in terms of the provisions contained in Art.141 of the Constitution of India. The law laid down by the Division Bench of this Court in **P.K. Krishnakumar** (*supra*) is also binding on me and no high-sounding principle stated by Mr. Nedumpara compels me to hold otherwise. In **Raman Gopi v. Kunju Raman Uthaman, 2011 (4) KLT 458**, a Full Bench of this Court held:-

“61. Therefore, when confronted with a like situation wherein the decisions of coequal benches are of conflicting nature on a legal issue, the law laid down by the Full Bench in Joseph’s case (2001 (1) K.LT 958 (F.B.)) will have to be followed. The later decision will prevail. A decision of the Apex Court on a declaration of law is binding on all High Courts and subordinate courts, in the light of Art.141 of the Constitution. Of course, what is relevant is the ratio decidendi. The judgments of the Apex Court which have followed the binding decisions of the Constitution Bench or other Benches will thus be binding on other courts. The only exception pointed out is wherein a Bench of smaller strength did not follow an earlier binding decision, in a situation wherein the binding decisions of the earlier benches of the Apex Court are not brought to its notice. It is apparent that in such cases the decision of the Bench of smaller strength will be without the colour of a binding precedent under Art.141 of the Constitution. It may not be proper for the High Courts or subordinate courts to criticise and characterise a decision of the Apex Court which has laid down a point of law as per incuriam. Such is not the function of the High Court or subordinate courts. In the light of the decision of the Supreme Court in Bengal Immunity Co. Ltd.’s the law declared by the Supreme Court is binding in all courts in India except the Supreme Court. The decisions of the Apex Court in Raghbir Singh’s case and Central Board of Dawoodi Bohra Community’s case have laid down the circumstances wherein the decisions of larger Benches will have to be followed by Benches of lesser strength. Therefore, those guidelines will act as a pointer for the High Courts and subordinate courts while examining the binding nature of a decision of the Apex Court, under Art.141 of the Constitution whenever there are conflicting decisions.....”

10. The contention of the learned counsel for the respondent Bank that



the petitioners cannot have the luxury of conducting piecemeal litigation is only to be accepted on the authority of **Celir LLP v. Sumati Prasad Bafna** (*supra*). Paragraphs 149 to 152 of the said judgment read thus:-

“149. Piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law and would also fall foul of this principle. Merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues involved remains substantially similar to each other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to ‘relitigating’ and the Henderson Principle would be applicable.

150. Parties cannot be allowed to exploit procedural loopholes and different foras to revisit the same matters they had deliberately chosen not to pursue earlier. Thus, where a party deliberately withholds certain claims or issues in one proceeding with the intention to raise them in a subsequent litigation disguised as a distinct or separate remedy or proceeding from the initial one, such subsequent litigation will also fall foul of this principle.

151. Similarly, where a plea or issue was raised in earlier proceedings but later abandoned it is deemed waived and cannot be relitigated in subsequent. Allowing such pleas to be resurrected in later cases would not only undermine the finality of judgments but also incentivize strategic behaviour, where parties could withdraw claims in one case with the intention of reintroducing them later. proceedings. Abandonment signifies acquiescence, barring its reconsideration in subsequent litigation. This ensures that judicial processes are not misused for tactical advantage and that litigants are held accountable for their procedural choices. Parties must litigate diligently and in good faith, presenting their entire case at the earliest opportunity.

152. The Henderson principle operates on the broader contours of judicial propriety and fairness, ensuring that the judicial system remains an instrument of justice rather than a platform for procedural manipulation. Judicial propriety demands that courts maintain the finality and integrity of their decisions, preventing repeated challenges to settled matters. Once a matter has been adjudicated, it should not be



revisited unless exceptional circumstances warrant such reconsideration. Repeated litigation of the same issue not only wastes judicial resources but also subjects the opposing party to unnecessary expense and harassment. judicial processes are not merely technical mechanisms but are rooted in principles of equity and justice.”

The borrowers have pursued various proceedings before this Court, the Bombay High Court, and the Debts Recovery Tribunal. As already noted, the petitioners/borrowers do not appear to have raised any claim for the benefit of the Exts.P2 framework and Ext.P3 guidelines issued by the RBI at any earlier stage before this Court.

11. Ext.R2(a) communication dated 28.01.2025 produced along with the statement filed in W.P.(C)No.45166/2024 indicates that the Bank had actually informed the petitioners that their accounts are in SMA category and called upon them to submit proposals. However, no proposals were submitted by the petitioners. At least when the petitioners had received Ext.R2(a) they should have sought a reference to the committee constituted in terms of Ext.P2.

12. There is yet another aspect of the matter. This Court in ***Abdul Nazer v. Union Bank of India, 2023 (5) KHC 543*** held as follows:-

“19. Apart from the above, on a reading of clause 1 of the Framework issued under the MSME Act, it can be seen that it is only an optional framework available to the bank and the borrower. The said framework in the notification cannot prevail over the statutory provisions of the SARFAESI Act in the matter of recovery of loans. As per S.24 of the MSME Act, only the provisions of S.15 to 23 are given precedence over other laws. S.9 or the notifications issued thereunder



cannot prevail over the statutory provisions of the SARFAESI Act. In the decision in Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited and Others, it has been held that the SARFAESI Act will prevail over the MSME Act.”

Ext.P2 has been issued in the exercise of the power conferred by Section 9 of the MSMED Act. Therefore, I am in respectful agreement with the view expressed by the learned judge in **Abdul Nazer** (*supra*).

13. Further, Ext.P3 guidelines issued by the RBI (to the extent it is relevant) read thus:-

“Restructuring of loan accounts with exposure of above Rs.25 crore will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR) / Joint Lender’s Forum (JLF) mechanism”

It is not disputed that the liability in the loan account which is the subject matter of W.P.(C)No.46514/2024 is in excess of Rs.25 crore. Therefore, the petitioners in W.P.(C)No.46514/2024 are not entitled to the benefit of Exts. P2 & P3.

14. For all these reasons, I find that the petitioners are not entitled to any relief in these writ petitions. The question of issuing notice to the RBI and the Union of India in the Ministry of Micro, Small, and Medium Enterprises does not arise, as on the facts of these cases, the legal issue stands covered against the petitioners as already noticed above. These writ petitions fail, and they are accordingly dismissed.



15. Before parting with these cases, it is necessary to refer to an issue which concerns the proceedings in these cases before this Court. It has been brought to the notice of this Court that proceedings of this Court in these cases have been recorded and circulated in various WhatsApp groups including WhatsApp groups of borrowers, law officers of various banks etc.. When it was brought to the notice of Mr. Mathews J. Nedumpara, the learned counsel for the petitioners that there has been an unauthorised recording of the proceedings, Mr. Nedumpara submitted that it is his right to record the proceedings of this Court and circulate it in any manner that he deems fit. He states that transparency is absolutely essential in judicial proceedings and therefore he has a right to record and circulate the proceedings of this Court. The '***Electronic Video Linkage Rules for Courts (Kerala), 2021***', as also the '***Standard Operating Procedure (SOP) - Attending of Court Proceedings through Video Conferencing before the High Court of Kerala***' expressly prohibit the recording of the proceedings of the Court in any manner and therefore the fact that the Lawyers are permitted to enter the proceedings through video conferencing does not mean that the proceedings can be recorded and circulated. In ***Arundhati Roy, In Re; (2002) 3 SCC 343*** it was held:-

“3. The law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary



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and democratic set-up is likely to be eroded which, if not checked, is sure to be disastrous for the society itself.”

I am *prima facie* of the opinion that the recording of proceedings of this Court and circulating it in the manner indicated above constitute contempt of court as it amounts to interference with the administration of justice and lowers the dignity of this Court especially when the Rules of this Court prohibit recording of the proceedings of this Court. Therefore, I direct the Registry to place this judgment before Hon'ble the Chief Justice to consider whether this issue should be taken up on the judicial side by a Bench to be nominated by Hon'ble the Chief Justice.

Ordered accordingly.

sd/-
GOPINATH P.
JUDGE

acd



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APPENDIX OF WP(C) 45166/2024

PETITIONER EXHIBITS

- Exhibit P1 A COPY OF THE ACKNOWLEDGEMENT (PART-I) DATED 06.07.2010, ISSUED BY THE DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA,
- Exhibit P2 A COPY OF THE ACKNOWLEDGEMENT (PART-II) DATED 28.10.2010, ISSUED BY THE DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA
- Exhibit P3 A COPY OF THE UDYOG AADHAAR REGISTRATION CERTIFICATE NO. KL02B0005109, DATED 10.12.2016, ISSUED TO THE PETITIONER NO. 1 BY THE MSME MINISTRY, GOVERNMENT OF INDIA
- Exhibit P4 A COPY OF THE UDYAM REGISTRATION CERTIFICATE NO. UDYAM-JH-01-0006303 DATED 09.07.2021, ISSUED TO THE PETITIONER NO. 1 BY THE MSME MINISTRY, GOVERNMENT OF INDIA
- Exhibit P5 A COPY OF THE MSME NOTIFICATION NO. S.O.1432 (E) DATED 29.05.2015
- Exhibit P6 A COPY OF THE RBI NOTIFICATION NO. RBI NOTIFICATION NO. FIDD.MSME & NFS.BC.NO. 21/06.02.31 /2015-16, DATED 17.03.2016
- Exhibit P7 A TRUE COPY OF THE DEMAND NOTICE DATED 16.08.2023 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS
- Exhibit P8 A TRUE COPY OF THE OBJECTION DATED 11.10.2023 ISSUED BY THE PETITIONERS TO THE 4TH RESPONDENT,
- Exhibit P9 A TRUE COPY OF THE REPLY DATED 18.10.2023, ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS
- Exhibit P10 A TRUE COPY OF THE LETTER DATED 25.10.2023 ISSUED BY THE PETITIONERS TO THE 4TH RESPONDENT



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- Exhibit P11 A TRUE COPY OF THE POSSESSION NOTICE DATED 31.10.2023 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS
- Exhibit P12 A TRUE COPY OF THE LETTER DATED 02.11.2023 ISSUED BY THE PETITIONERS TO THE 4TH RESPONDENT
- Exhibit P13 A TRUE COPY OF THE LETTER DATED 03.11.2023 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS,
- Exhibit P14 A TRUE COPY OF THE SALE-NOTICE DATED 25.06.2024 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS,
- Exhibit P15 A TRUE COPY OF M.C. NO. 203/2024 BEFORE THE CHIEF JUDICIAL MAGISTRATE'S COURT, ERNAKULAM FILED BY THE 4TH RESPONDENT
- Exhibit P16 A TRUE COPY OF THE ORDER IN M.C. NO. 203/2024 DATED 27.06.2024 PASSED BY THE LD. CJM, ERNAKULAM
- Exhibit P17 A TRUE COPY OF THE ADVOCATE COURT COMMISSIONER'S NOTICE DATED 15.07.2024 ISSUED TO THE PETITIONERS
- Exhibit P18 A COPY OF THE NOTIFICATION NO. S.O 2119 (E) DATED 26.6.2020 ISSUED BY THE GOVERNMENT OF INDIA
- Exhibit P19 A TRUE COPY OF ORDER DATED 19.12.2023 IN I.A NO. 2429 OF 2021 IN CP(IB) NO. 3025/2019 OF THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH- I,
- Exhibit P20 A COPY OF THE ORDER DATED 17.10.2024 IN I.A NO. 1773/2024 IN CP(IB)/916(MB)/2020 OF THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-I
- Exhibit P21 True copy of the RBI by circulars dated 4.6.2021
- Exhibit P22 True copy of the order dated 15/05/2023 in



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Honourable Supreme Court

RESPONDENT EXHIBITS

- Exhibit R2 a colly The true copies of e-mails issued by the bank
to the Petitioner on
14.06.2023,16.06.2023,26.06.2023,15.07.2023,2
6.07.2023
- Exhibit R2 (b) A true copy of the Respondent's letter dated
27.08.2024
- Exhibit R2 c A true copy of the Petitioner's letter dated
26.08.2024
- Exhibit R2 d A true copy of the Respondent's letter dated
02.09.2024

PETITIONER EXHIBITS

- Exhibit P23 TRUE COPY OF THE SANCTION NOTE DATED
14.03.2023 WOULD SHOW THAT THE LOAN WAS
SANCTIONED AS A LOAN TO AN MSME
- Exhibit P24 A COPY OF THE ORDER DATED 22.01.2025 IN MC
1319/2024 OF THE ADDITIONAL CHIEF JUDICIAL
MAGISTRATE COURT, ERNAKULAM
- Exhibit P25 A COPY OF THE NOTICE DATED 20.2.2025 ISSUED
BY THE ADVOCATE COMMISSIONER



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APPENDIX OF WP(C) 46514/2024

PETITIONER EXHIBITS

- Exhibit P1 A COPY OF THE UDYAM REGISTRATION CERTIFICATE
NO. UDYAM-KL-02-0015023 DATED 27.03.2021,
ISSUED TO THE PETITIONER NO. 1 BY THE MSME
MINISTRY, GOVERNMENT OF INDIA
- Exhibit P2 A COPY OF THE MSME NOTIFICATION NO. S.O.1432
(E) DATED 29.05.2015
- Exhibit P3 A COPY OF THE RBI NOTIFICATION NO. RBI
NOTIFICATION NO. FIDD.MSME & NFS.BC.NO.
21/06.02.31 /2015-16, DATED 17.03.2016
- Exhibit P4 A TRUE COPY OF THE DEMAND NOTICE DATED
16.08.2023 ISSUED BY THE 4TH RESPONDENT TO THE
PETITIONERS
- Exhibit P5 A TRUE COPY OF THE OBJECTION DATED 11.10.2023
ISSUED BY THE PETITIONERS TO THE 4TH RESPONDENT
- Exhibit P6 A TRUE COPY OF THE REPLY DATED 18.10.2023,
ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS
- Exhibit P7 A TRUE COPY OF THE LETTER DATED 25.10.2023
ISSUED BY THE PETITIONERS TO THE 4TH RESPONDENT
- Exhibit P8 A TRUE COPY OF THE POSSESSION NOTICE DATED
31.10.2023 ISSUED BY THE 4TH RESPONDENT TO THE
PETITIONERS,
- Exhibit P9 A TRUE COPY OF THE LETTER DATED 02.11.2023
ISSUED BY THE PETITIONERS TO THE 4TH RESPONDENT
- Exhibit P10 A TRUE COPY OF THE LETTER DATED 03.11.2023
ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS
- Exhibit P11 A TRUE COPY OF THE SALE-NOTICE DATED 25.06.2024
ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS
- Exhibit P12 A TRUE COPY OF THE LAWYER'S NOTICE DATED
29.08.2024 ISSUED TO THE PETITIONERS,



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- Exhibit P13 A TRUE COPY OF THE REPLY DATED 06.09.2024
ISSUED BY THE PETITIONERS' LAWYER
- Exhibit P14 A TRUE COPY OF THE JUDGEMENT DATED 27.11.2023
IN W.P. (C) NO. 38732/2023 BY THE HON'BLE HIGH
COURT OF KERALA
- Exhibit P15 A COPY OF THE NOTIFICATION NO. S.O 2119 (E)
DATED 26.6.2020 ISSUED BY THE GOVERNMENT OF
INDIA
- Exhibit P16 A COPY OF CHART OF THE PROCEEDINGS THAT THE
PETITIONER HAS INSTITUTED BEFORE VARIOUS COURTS
- Exhibit P17 A COPY OF THE ORDER DATED 11TH OF DECEMBER 2024
OF THE BOMBAY HIGH COURT IN WRIT PETITION (L)
NO. 35456 OF 2024
- Exhibit P18 A TRUE COPY OF ORDER DATED 19.12.2023 IN I.A
NO. 2429 OF 2021 IN CP(IB) NO. 3025/2019 OF THE
NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH- I,
- Exhibit P19 A COPY OF THE ORDER DATED 12.06.2024 IN I.A NO.
807/2024 IN CP(IB)/917(MB)/2020 OF THE NATIONAL
COMPANY LAW TRIBUNAL, MUMBAI BENCH- I,
- Exhibit P20 A COPY OF THE CIRCULAR NO. RBI/2021-22/47 DOR.
STR. REC. 21/21.04.048/2021-22 DATED 04.06.2021
ISSUED BY THE RESERVE BANK OF INDIA,
- Exhibit P21 True copy of the order order of High Court of
Bombay in Commercial suit (st) no.38195/2024
dated 31/01/2025
- Exhibit P22 True Copy of the order of Civils and Sessions
Court of Bombay in Suit st. no. 18939/2024
dated 04/02/2025
- Exhibit P23 TRUE COPY OF THE THE SANCTION NOTE DATED
30.12.2022



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Exhibit P24

A COPY OF THE ORDER DATED 22.01.2025 IN MC
1319/2024 OF THE ADDITIONAL CHIEF JUDICIAL
MAGISTRATE COURT, ERNAKULAM

Exhibit P25

A COPY OF THE NOTICE DATED 20.2.2025 ISSUED BY
THE ADVOCATE COMMISSIONER



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WP(C)NO.46514 OF 2024