



Ingale

914-WPL-31676-24.odt

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

WRIT PETITION (L) NO. 31676 OF 2024

Manoj Lalwani,
Director of Ritu Automobiles Pvt. Ltd. ... Petitioner
Versus
Reserve Bank of India and ors. Respondents

Mr. Mathews Nedumpara a/w. Ms. Hemali Kurne, Ms. Maira Nedumpara, Ms.Shameen Fayiz, Mr.Akhilesh, Satsang, Ms.Sweta, i/b. Nedumpara & Nedumpara, for Applicant in IAL/31676/2024.

Mr. Y.R.Mishra a/w Mr.Upendra Lokegaonkar, Mr.Sachidanand T. Singh for Respondent No.3 UOI in WPL/31676/2024.

Ms. P.H.Kantharia, GP a/w. Mr. Vikrant Parshurami, AGP for State R.12.

Ms. Bijal Gogri i/b. Mr.O.M.Gujar Law Chambers for Respondent No.6.

Mr. Dhaval Patil i/b. K.Ashar & Co. For Respondent No.1.

Mr. Kevic Setalwad, Senior Advocate a/w. Mr. Narpat Singh, Ms. Malvika Sachin i/b. India Law LLP for Respondent No.4 HDFC

Mr. Amir Arsiwala for Res. No.13

CORAM : M.S.KARNIK AND
N.R.BORKAR, JJ.

DATE : 20th JUNE, 2025

ORDER (PER M.S. KARNIK, J.) :

1. Mr. Nedumpara, learned counsel for the petitioner moved the petition for urgent hearing as E-auction of the sale of the immovable property is scheduled on 21/06/2025.

2. By this petition, the petitioner seeks the following reliefs :-

“a. To declare that the failure on the part of the Central Government/RBI to implement the MSMED notification dated 29.05.2015, in particular, to ensure that the Board of Directors of the Banks/financial institutions in this country, including the Respondent Bank, constitutes a committee for 'stressed micro, small and medium enterprise' and further to prevent the Banks and NBFCs from classifying the account of an MSME as NPA and resorting to recovery under the SARFAESI, RDB Act, IBC, NI Act, etc. in violation of the prohibition to do so as contained in Paragraph 1 and 5(4)(iii) of the said notification, amounts to gross failure on their part to comply with the statutory duty cast upon them under Sections 35, 35A, 35AA, 36, 36AA of the Banking Regulation Act and Sections 45-IE of the Reserve Bank of India Act, and Sections 9 and 10 of the MSMED Act further to direct the RBI and the Central Government to discharge their statutory duties in terms of the aforesaid provisions;

b. to issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Central Government and the RBI to enforce the notification dated 29.05.2015 in its true letter and spirit and further to direct the Central Government and the RBI to ensure that recovery action initiated against the Petitioners in violation of the mandate of the notification is recalled, the clock is put back, the injustice which the Petitioners is made to suffer is redressed and that the Petitioners is compensated in full measure;

c. declare that the MSMED Act in so far as it has not created a special forum/tribunal to enforce the inter-se rights and obligations/remedies, which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is

impossible to oust the jurisdiction of the Civil Court without providing for an alternative forum/tribunal to adjudicate the inter se disputes between parties who are governed by the Act, and further as a corollary thereof, the DRTs created under the RDB Act 1993 and the NCLTs created under the Companies Act 2013 are invested of no jurisdiction to adjudicate a dispute arising out of/involving the MSMED Act, 2006;

d. declare that the entire recovery steps initiated by Respondent Bank under the SARFAESI Act or any other law, is without jurisdiction, illegal and void in as much as the Respondent are not entitled to take recourse to any form of recovery of the amounts they claim to be due to them from the Petitioner except in the manner permitted by the 'Committee for Corrective Action Plan' contemplated in notification S.O. 1432(E) dated 29.05.2015, and quash and set aside the action taken by the Respondent Bank under Section 13(2), 13(4) and 14 of the SARFAESI Act/Section 19 of the RDB Act;

e. to issue a writ in the nature of certiorari or any other appropriate order or direction calling for the entire records and proceedings leading to the classification of the Petitioner's account as NPA, initiation of the proceedings under Section 13(2), 13(4) and 14 of the SARFAESI Act and the security enforcement rules culminating in the sale of the secured assets and to quash and set aside the same as illegal and void ab initio;

f. to issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent bank to constitute a committee for the resolution of the stress in the unit of the Petitioners Company, an MSME, as contemplated in paragraph 2 of the notification dated 29.05.2015 issued under the MSMED Act, and further to direct the Committee to resolve the stress in accordance with the said notification and such other relevant notifications/regulations framed by the RBI;

g. declare that the Petitioners are entitled to be compensated from the Respondents No. 4 Bank for the loss and injury, which it has suffered on account of the gross breach of contract and trust, culpable negligence, and malicious and tortious action at the hands of the Bank, financial institution and its officers, which loss and injury far exceeds the very

claim of the Bank as against the Petitioners and therefore, no amount is due to the Respondents by the Petitioner and further that the Respondents have no enforceable rights as against the Petitioner,

h. declare that the guidelines and notifications issued by the Reserve Bank of India from time to time empowering the bank and financial institutions to declare a borrower as a willful defaulter is without the authority of law, for such a declaration amounts to civil death and further that the Petitioners, nay, a borrower is not liable to be declared as a willful defaulter except by the authority of an Act of Parliament or statutory instrument having the force of law and further to prohibit the bank from initiating or continuing any action to declare the Petitioners as willful defaulters;

i. To declare that the Section 13 of the SARFAESI Act, and Section 19 of the RDB Act, Sections 7, 9, 10 and 95 of the IBC are unconstitutional, ultra vires and void and are liable to be so declared, inasmuch as the said enactments are wholly one-sided, drafted on the grossly erroneous premise that the right to relief, nay, remedies, arise only at the hands of a banker as against the borrower and that the enquiry to be conducted is wholly one-sided, or in the alternative to declare that the borrower's right to be an actor/petitioner for the enforcement of his remedies has to be read into the said Acts;

j. To declare that Section 34 of the RDB Act, and Section 34 of the SARFEASI Act and Section 63 of the IBC which bar the jurisdiction of the Civil Court to entertain and adjudicate the Petitioner's/borrower's plea against the Respondent Bank nay, bank/financial institution, is unconstitutional and void inasmuch as the Petitioners, victims of the gross breach of contract, culpable negligence, malicious and tortious action, so too, violation of the express statutory provisions at the hands of the Respondent Bank, are entitled to institute an action/suit as against the Respondent Bank for the enforcement of the Petitioners' right as against them;

k. to issue a writ in the nature in the nature of prohibition restraining and prohibiting Respondent Bank/Financial Institution, their agents, servants, officers, representatives from taking any action for recovery under the SARFAESI Act, IBC, Arbitration and Conciliation Act, Recovery of Debts and Bankruptcy Act, Negotiable Instruments Acts or any other

law in respect of the amounts they falsely claim to be due from the Petitioners;

l. to issue a writ in the nature of mandamus or any other appropriate writ or order or direction, directing Respondents to put the clock back in respect of the entire action initiated under the SARFAESI Act, in particular, cancel the classification of the petitioners' loan accounts as NPA and the Section 13(2) Demand notice dated 16.01.2020 and further to make attempts to revive the Petitioners' business as mandated by the notification dated 29.05.2015;

m. declare that the 1st Petitioner being an MSME within the meaning of Sections 7 and 8 of the MSMED Act of 2006, it is entitled to the benefits of the said Act and, in particular, the notification S.O. 1432(E) dated 29.05.2015 issued by the Central Government under Section 9 of the Act which provides for a mechanism of resolution of stress of MSMEs, as also, the circulars and guidelines issued by the Reserve Bank of India under Section 10 of the MSMED Act and further that no proceedings for recovery of the amounts due by the MSMEs to banks/financial institutions, nay, even operational creditors, shall lie against the Petitioner under the SARFARSI Act, RDB Act, IBC, Negotiable Instruments Act or any other law, for recovery of the amounts allegedly due, in as much as the MSMED Act being a special law/later law in relation to the aforesaid enactments, the MSMED Act will prevail over them and recovery can be made only in accordance with article 5 (4) (iii) of the aforesaid notification dated 29.5.2015

n. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction, calling for the entire records and proceedings leading to the action at the hands of the HDFC Bank under Section 13(4) and 14 of the SARFAESI Act and Section 19 of the RDB Act so too, the entire records and proceedings before the NCLT-IV, Mumbai, in Company Petition No.924 (MB) of 2021 under Section 7 of IBC at the hands of the HDFC Bank, so too, to quash and set aside the same, being unconstitutional and void,

o. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction restraining and prohibiting the NCLT-IV, Mumbai, from proceeding any further in furtherance of Company Petition No.924 (MB) of 2021, which the Respondent HDFC has instituted against the

Petitioner's Company,

p. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction restraining and prohibiting the HDFC Bank in proceeding any further in furtherance of Section 13(2),13(4) & 14 of SARFAESI Act, Section 9 of the RDB Act, Section 7 of IBC, Section 138 of the Negotiable Instruments Act, 1881 on under any other law,

q. To declare and hold that the order of the NCLT. Mumbai Bench IV dated 03.10.2024 admitting Company Petition CP/924/2021 under Section 7 of the IBC 2016 is void ab-initio, still born and never existed in the eyes of the law;

3. Mr. Nedumpara invited our attention to the various provisions of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act", for short). It is submitted that the action of the respondent-Bank is completely contrary to the object for which the MSMED Act was enacted. It is submitted that the whole object of the Act is to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Relying on the provisions of the said Act, it is submitted that it is the duty of the Central Government to initiate various measures for promotion and development of micro, small and medium enterprises in view of the provisions of Chapter IV of the MSMED Act. Learned counsel relied upon the framework for revival and rehabilitation of micro,

small and medium enterprises and notification dated 29/05/2015 to submit that the procedure contemplated thereunder for identification by bank before the loan account of MSME is declared into a Non-Performing Asset (“NPA”, for short) has not been followed in the present case. It is submitted that the said notification provides for detailed corrective action plan by the committee and the entire endeavour is to resolve the stress in the account and not jeopardize the MSME. It is submitted that the Act provides for restructuring by committee and in terms of clause 15, in case the Committee decides that recovery action is to be initiated against an enterprise, such enterprise may request for a review of the decision by the Committee. It is therefore submitted that before the action of recovery is initiated in terms of clause 5 of the notification, the options under the corrective action plan ought to have been explored by the Committee which are not followed in the present case.

4. Learned counsel relied upon the decision of the Supreme Court in **NBCC (India) Limited Vs. State of West Bengal and others**¹ which has in so many words observed that rights, incentives and remedies provisioned under the Act are the

¹ Decision of the Supreme Court in Civil Appeal No.3705 of 2024 dated 10/01/2025.

backbone of our economy. It is submitted that MSMEs provided 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 statutory scheme of MSME Act is discussed by the Hon'ble Supreme Court and it is for these reasons that the action on the part of the respondent Bank in declaring the account of the petitioner as NPA defeats the object and purpose for which MSME Act was enacted. It is further submitted that the provisions of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act ("SARFAESI Act", for short), Section 19 of the Recovery Of Debts And Bankruptcy Act ("RDB Act", for short), Section 7, 9, 10 and 95 of the Insolvency and Bankruptcy Code 2016 ("IBC", for short) are unconstitutional and ultra vires and that the said enactments are wholly one-sided providing right only to the bankers as against the borrowers to the detriment of the borrowers. It is further submitted that Section 34 of the RDB Act, Section 34 of the SARFAESI Act, Section 63 of the IBC which bar the jurisdiction of the Civil Court to entertain and adjudicate the petitioner's/borrower's plea against the respondent bank is

unconstitutional. Learned counsel submitted that the first petitioner being MSME within the meaning of Sections 7 and 8 of the MSMED Act, is entitled to the benefits of the said Act and in particular, the notification dated 29/05/2015 issued by the Central Government under Section 9 of the said Act. Learned counsel for the petitioner further submitted that Reserve Bank of India's Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises circular dated 17/03/2016 is illegal as it provides for restructuring for loan accounts with exposure of above Rs.25 crores will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR) / Joint Lender's Forum (JLF) mechanism.

5. Learned counsel for the petitioner relied on the decision of the Supreme Court in **Canara Bank vs. N. G. Subbaraya Setty and another**² in support of his submission that this Court can entertain the present petition and the principles of res-judicata will have no application in the present facts.

6. We have heard learned counsel appearing for the respondents. Our attention is invited to the affidavits-in-reply filed on behalf of the respondents. At the outset it is pertinent to note

² (2018) 16 SCC 228

that the petitioner's account was classified as NPA on 21/10/2019 and the SARFAESI proceedings were initiated by issuing 13(2) demand notice dated 16/01/2020. Mr. Kevic Setalwad, learned Senior Advocate has raised an objection to the maintainability of this petition and lack of locus standi on the part of the petitioner in filing the present petition. We find that the present Petition is filed by the Petitioner in his capacity as a Director of Ritu Automobiles Pvt. Ltd. The National Company Law Tribunal (NCLT) by order dated 03/10/2022 has admitted the company to the Corporate Insolvency Resolution Process (CIRP) under the IBC. The Adjudicating Authority on 10/10/2024 approved the liquidation of the corporate debtor. Under Section 17 of the IBC, upon commencement of CIRP and Liquidation, the powers of the board of directors, including the petitioner, stand suspended and the management of the company vests exclusively with the Insolvency Resolution Professional (IRP) and Liquidator.

7. Under Section 25(2)(b) of the IBC, the Resolution Professional has the authority to represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration

proceedings. Section 34(2) of the IBC provides that on the appointment of liquidator under this section, all powers of board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

8. We do find substance in the objection of learned Senior Advocate for the bank that the Petitioner has no statutory authority to institute or pursue this Petition. Learned Senior Advocate relied upon the decisions of the Supreme Court in **Innoventive Industries Ltd. vs. ICICI Bank**³ and **Arcelor Mittal India Pvt. Ltd. vs. Satish Kumar Gupta**⁴ in support of his submission.

9. Nonetheless, we proceed to examine the issues related to MSME framework compliance. The bank has denied the petitioner's claim that it has failed in its mandatory duty to rescue the MSME borrower during incipient stress or sickness. The classification of the account as NPA and subsequent proceedings under the SARFAESI Act, according to the respondent-bank was conducted strictly in accordance with applicable laws, regulations and guidelines issued by the Reserve Bank of India (RBI). The

3 (2018) 1 SCC 407

4 (2019) 2 SCC 1

Supreme Court in **Pro Knits vs. Canara Bank and others**⁵ has clarified that the burden to initiate proceedings for relief under the MSME framework primarily rests upon the borrower. Even as per the MSME notification dated 29/05/2015 and the corresponding RBI guidelines, it is incumbent upon the borrower to proactively approach the lender to avail the benefits of revival or restructuring. It is the submission of learned counsel for the Petitioner that before declaring the account as NPA, it is the responsibility of the bank to ensure that the MSME gets all the benefits of revival or restructuring. However, the petition falls short of demonstrating the steps taken to avail benefits under the MSME framework before the account was classified as NPA on 21/10/2019. There is nothing on record to indicate that the MSME borrower notified the bank of stress and request assistance for resolution or that the petitioner approached the bank for assistance under the MSME notification or that he sought a corrective action plan at the relevant time.

10. The respondent-bank has stated in its reply that the classification of NPA was done as per RBI's prudential norms and after providing adequate opportunities to the petitioner for

⁵ 2024 LiveLaw (SC) 548

repayment. The demand notice under Section 13(2) of the SARFAESI Act was issued on 16/01/2020. The Supreme Court in **Satie Engineering Pvt. Ltd. vs. Axis Bank and others**⁶ has reiterated that the MSME framework is not a substitute for statutory recovery mechanisms under SARFAESI or IBC.

11. Learned counsel for the respondent-bank submitted that the outstanding dues of the petitioner-company are more than Rs.30 crores. Learned counsel for the RBI submitted that the reliance placed by the petitioner on the 2015 notification is misplaced as the circular dated 17/03/2016 which provides for framework for revival and rehabilitation of micro, small and medium enterprises clearly provides that restructuring of loan accounts with exposure of above Rs.25 crores will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR) / Joint Lenders' Forum (JLF) mechanism. Further the eligibility provided in respect of these provisions make it clear that this framework shall be applicable to MSMEs having loan limits up to Rs.25 crores. Learned counsel therefore submitted that the notification of 2015 on which the petitioner placed heavy reliance is not at all applicable to the petitioner. Learned counsel for the petitioner has

⁶ Civil Appeal No.10498 of 2024

challenged the validity of 17/03/2016 circular. We find substance in the submission of learned counsel for the RBI that the provisions of the MSME Act empowered the RBI to provide for a framework for revival and rehabilitation of MSMEs as it is provided that restructuring of loan accounts with exposure of above Rs.25 crores will be governed by the guidelines on CDR / JLF mechanism.

12. Suffice it to observe that the petitioner has alternate remedies which the petitioner has availed of and the petitioner even has remedy under the Securitisation Act against the measures initiated.

13. It is pertinent to note that the respondent No.4-bank has filed Company Petition under Section 7 of the IBC. Section 7 empowers a financial creditor to initiate insolvency proceedings before the NCLT when a default has occurred and the debtor has failed to repay the outstanding amount. The account of the petitioner has been classified as NPA. The petitioner has in fact preferred a Company Appeal before the National Company Law Appellate Tribunal (NCLAT). In fact the NCLAT by an order dated 12/09/2023 vacated the interim order earlier granted in favour of

the petitioner. It is pertinent to note that all the contentions raised in this petition are subject matter of an interlocutory application made before the NCLT under Section 60(5)C of IBC, 2016 in an application for recall of the order dated 03/10/2021 passed in CP(IB) No.924/MB-IV/2021. We are thus of the opinion that the present petition is only an attempt on the part of the petitioner to stall the auction of the immovable properties.

14. As indicated earlier the auction is scheduled for tomorrow i.e. 21/06/2025. During the course of today's hearing, an Interim Application (L) No.18302 of 2025 is pressed by learned counsel for the petitioner, seeking amendment of the petition on various grounds mentioned therein. The date of the filing of the application is 20/06/2025 i.e. today. We are satisfied that this petition and the application is only an attempt to stall the recovery proceedings. The petitioner has already availed of alternate statutory remedies and the petitioner has adequate remedies in law to challenge the action of the bank. We are therefore not inclined to entertain the present writ petition.

15. We make it clear that the observations made in this order are prima facie as we do not want the statutory authority/Tribunal to

be influenced by our observations before whom the challenge to the measures initiated by the bank are pending.

16. The writ petition is dismissed with no order as to costs.

(N.R.BORKAR, J.)

(M.S.KARNIK, J.)