



WP No.3608 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.3608 of 2024
and WMP Nos.3895 and 3897 of 2024

1. M/s CIGMA ESSENCE INDIA PVT.LTD.
Represented by its Managing Director,
Registered Office at;
910/1 Thimmampalayam
Karamadai (PO), Coimbatore – 641 104.
 2. Mr.S.R.Varadharajan .. Petitioners
- VS-
1. Board of Directors of Indian Bank,
Represented by its Managing Director & CEO,
Corporate Office at; PB No.5555, 254-260,
Avvai Shanmugam Salai, Royapettah, Chennai-600 014.
 2. The Authorised Officer,
Indian Bank, Stressed Assets Management Branch,
First Floor, Near Carmel Garden MHS School,
Puliakulam Main Road, Coimbatore-641045.
 3. The Authorised Officer,
Indian Bank,
P.B.No.587-A, Main Road Karamadai,
Coimbatore, TN 641 104.



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4. Ministry of Micro Small and Medium Enterprises,
Rep. by Secretary, Udyog Bhawan,
Rafi Marg, New Delhi, Delhi – 110 001.
5. Union of India,
Rep. by the Secretary, Department of
Financial Services, Ministry of Finance,
3rd Floor, Jeevan Deep Building, Sansad Marg,
New Delhi- 110 001.
6. Board of Directors of Reserve Bank of India,
Represented by its Executive Director,
Shahid Bhagat Singh Road, Fort, Mumbai – 400 001.
7. State of Tamil Nadu,
Represented by its Financial Secretary,
Department of Micro, Small and Medium
Enterprises (MSME),
Fort St.George, Chennai-600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of the following reliefs: (a) to declare that the petitioner is an MSME within the meaning of the MSMED Act of 2006 and notification dated 29.05.2015 issued by the Central Government under Section 9 thereof, as also the Circulars and guidelines issued by the Reserve Bank of India under Section 10 thereof, which provides for a mechanism of resolution of stress and that no proceedings for recovery under the SARFAESI Act, RDB Act or the IBC will lie, in as much as the MSMED Act being a special law qua the aforesaid Acts, and a later law in relation to the RDB Act and the SARFAESI Act, its provisions will prevail over the aforesaid documents; (b) to declare that the MSME Act insofar as it has not created a special forum/tribunals 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; (c) to declare that Sections 5 and 6 of



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the SARFAESI Act of 2002 is unconstitutional and void in as much as it permits alienation of the properties of a secured debtor/borrower without notice him, nay, entirely behind his back, thus impinging Articles 14, 19 and 21 of the Constitution; (d) to declare that the entire proceedings at the hands of the Respondent Nos.2 and 3, Authorised Officers of the Indian Bank, the Chief Judicial Magistrate, Coimbatore under Sections 13(2), 13(4) and 14 of the SARFAESI Act, Security Interest (Enforcement) Rules, are illegal and void and to grant a consequential writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside the same; (e) to issue a writ in the nature of certiorari or any other appropriate writ or order or direction calling for the entire records and proceedings notice dated 11.01.2024 and 05.02.2024 at the hands of the Authorised Officers u/s 13(2), 13(4) and 14 of the SARFAESI Act and to quash the same as being without jurisdiction, in violation of fundamental principles of judicial procedure and most importantly, being in violation of Articles 14, 19 and 21 of the Constitution; (f) to issue a writ in the nature of certiorarified Mandamus or any other appropriate writ or order directing Respondent No.1, Board of Directors of the Indian Bank to constitute a committee for the resolution of the stress of the unit of the instant Petitioner Company, an MSME as contemplated in paragraph 2 of the Notification dated 29.5.2015 issued under the MSMED Act and quash the same 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; and (g) in furtherance to the reliefs above, to issue a writ in the nature of prohibition restraining and prohibiting the Respondent Bank from initiating or continuing any measures for recovery under any law, in particular, Sections 5.5, 6. 13 and 14 of SARFAESI Act/RDBA/IBC and the rules made thereunder, and in particular the sale scheduled for 11.03.2024 in furtherance of Sale Notice.

For the Petitioners : Mr.Mathews J.Nedumpara
for Maria Nedumpara

For the Respondents : Mr.Jayesh B Dolia
for Mrs.Rita Chandrasekaran
M/s Aiyar and Dolia for RR 1 to 3



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: Mr.Rajesh Vivekananthan
Deputy Solicitor General for RR 4 and 5
:
Mr.C.Mohan
for M/s King and Partridge for R-6
:
Mr.C.Kathiravan
Special Government Pleader for R-7

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ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.Mathews J.Nedumpara, learned counsel for the petitioners, Mr.Jayesh B.Dolia, learned senior counsel for respondent Nos.1 to 3, Mr.Rajesh Vivekanandan, learned Deputy Solicitor General for respondent Nos.4 and 5, Mr.C.Mohan, learned counsel for respondent No.6 and Mr.C.Kathiravan, learned Special Government Pleader, for respondent No.7.

2. The learned counsel for the bank submits that the OTS proposal of the petitioners is sanctioned and the petitioners have deposited the upfront amount of Rs.4.00 crore on 07.03.2024. The balance amount of Rs.2.76 crore is to be paid within 90 days from the date of issuance of the letter, i.e., 19.03.2024.



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3. In view of the aforesaid, as the OTS proposal is already accepted, nothing would survive for adjudication in the present writ petition.

The writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(D.B.C., J.)

27.03.2024

Index : Yes/No

Neutral Citation : Yes/No

sra

To

1. The Managing Director & CEO,
Board of Directors of Indian Bank,
Corporate Office at; PB No.5555, 254-260,
Avvai Shanmugam Salai, Royapettah, Chennai-600 014.
2. The Authorised Officer,
Indian Bank, Stressed Assets Management Branch,
First Floor, Near Carmel Garden MHS School,
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sra)

4. The Secretary,
Ministry of Micro Small and Medium Enterprises,
Udyog Bhawan, Rafi Marg, New Delhi, Delhi – 110 001.
5. The Secretary to Govt. of India,
Department of Financial Services,
Ministry of Finance, 3rd Floor, Jeevan Deep
Building, Sansad Marg, New Delhi- 110 001.
6. The Executive Director,
Board of Directors of Reserve Bank of India,
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