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W.P.No.21553 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2024

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**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**W.P.No.21553 of 2022 and**  
**W.M.P.Nos.20574 & 20576 of 2022**

JM Financial Asset Reconstruction Co.Ltd.,  
Having its registered office situated at  
7th Floor, Cnergy,  
Appasaheb Marathe Marg,  
Prabhadevi, Mumbai 400 025  
also having its branch office situated at  
4th Floor, Basappa Complex,  
Lavellie Road, Bangalore - 560 001.

... Petitioner

Vs.

1.Regional PF Commissioner - II & Recovery Officer,  
Employees' Provident Fund Organisation,  
Regional Office,  
Dr.Balasundaram Road,  
Coimbatore 641 018.

2.The Official Liquidator,  
As the liquidator of  
M/s.VTX Industries Ltd (in liquidation),  
High Court of Madras,  
High Court Buildings,  
Chennai 600 104.

... Respondents



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**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to proceedings dated 25.05.2022 bearing No.CB/CBE/78388, 1097 & 78220 and quash the same and consequently, set aside the order dated 27.05.2022 bearing No.TN/RO-CBE/RECOVERY/CC-25/1097/Pilchi\_Thottia Village/2022 of the first respondent and forbear the first respondent herein and its subordinates or officers from interfering with the petitioner's rights to enforce the secured assets under SARFAESI Act 2002.

For Petitioner : Mr.Srinath Sridevan,  
Senior Counsel for  
Mr.T.K.Bhaskar

For Respondents : Mr.C.Kulanthaivel for R1

### **ORDER**

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to proceedings dated 25.05.2022 bearing No.CB/CBE/78388, 1097 & 78220 and quash the same and consequently, set aside the order dated 27.05.2022 bearing No.TN/RO-CBE/RECOVERY/CC-25/1097/Pilchi\_Thottia Village/2022 of the first respondent and forbear



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the first respondent herein and its subordinates or officers from interfering with the petitioner's rights to enforce the secured assets under SARFAESI Act 2002.

2. Heard Mr.Srinath Sridevan, learned Senior Counsel for the petitioner, Mr.C.Kulanthaivel, learned counsel for the first respondent and perused the materials available on record.

3. As against the petitioner Company, the first respondent has issued a proceedings dated 25.05.2022 in respect of the provident fund dues payable by the Company for its employees. In the above said order, the first respondent has also stated that the interest of the workers should be protected in case the assets of the employer are disposed by secured creditors under SARFAESI Act 2002. The dues payable by the M/s.VTX Industries and M/s.Vijayeswari Textiles which went on liquidation and the winding up orders have been given in respect of the above Companies on 21.06.2014.



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4. Since the Companies had gone into liquidation, the first respondent who is the regional Provident Fund Commissioner and Recovery Officer has issued the impugned proceedings dated 25.05.2022 to recover the provident fund dues payable by the Company. The petitioner is an asset recovery agent the assignee of the Company's creditors viz., Bankers. Since the assets of the Company has been attached in pursuant to the orders of the first respondent, the petitioner has filed this Writ Petition claiming that once the Company is wound up, it is for the official liquidator to take further action with regard to all the dues payable by the Company including provident fund dues.

5. Mr.C.Kulanthaivel, learned Standing Counsel for the first respondent submitted that the petitioner has already filed a Company Applications in C.A.Nos.469 & 193 of 2023 in C.P.No.151 of 2013 for seeking direction against the Official Liquidator to remit to the provident fund authorities a sum of Rs.138.96 lakhs paid by the petitioner to the official liquidator on 21.01.2020 as well as any other sum that the Liquidator is liable to pay to provident fund authorities. In the said



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applications, this Court has passed an order holding that the contribution made by the employer and the employees towards provident fund will have the first charge which is inclusive of damages and interest and will have other charges levied as per law. However, the said charges of damages or interest would be upto the date of winding up of the Company. In fact, the first respondent cannot have any quarrel on the order so passed by this Court in the above Company Applications.

6. Now, the limited prayer sought for by the petitioner is that in view of the above order, the responsibility is now given to the Official Liquidator who is the second respondent herein. Hence, the orders of the first respondent dated 25.05.2022 and the consequential order dated 27.05.2022 can be set aside.

7. In the impugned order dated 25.05.2022, it is clarified that the order of attachment is effected only for the time being, till the time, the matter is not seized by this Court in the Company Applications. It is further clarified that the attachment is not intended to put any hurdles in



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the liquidation process and that the attachment will cease to exist as soon as the matter is seized off by this Court in the Company Application and the Official Liquidator takes charge to pay the dues or gives assurance to clear the provident fund dues in full, whichever is earlier. Now that this Court has seized off the matter and an order allowing winding up has been passed.

8. In fact, the first respondent's interest has also been saved by giving a specific direction to the Official Liquidator to initiate action in this regard. In fact, the learned Standing Counsel for the first respondent submitted that the first respondent has submitted a claim to the second respondent, the Official Liquidator herein and the second respondent is required to take a call on that and pass appropriate orders by determining the dues to be paid to the first respondent. In that case, the orders passed by the first respondent dated 25.05.2022 and any other consequential order of attachment on the assets of the Company would be just superfluous and the issue can be better dealt by the Official Liquidator himself.



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9. In view of the same, this Writ Petition is disposed by setting aside the impugned orders dated 25.05.2022 and 27.05.2022 with a direction to the second respondent to redo the exercise in his capacity as Official Liquidator by way of fulfilling the direction given by this Court for settling the dues of the first respondent. The first respondent need not have any apprehension that his claim be defeated because he is having priority over the other charges and the Official Liquidator has got the responsibility of settling the dues of the first respondent by giving preference over the other charges payable by the Company. Even in the event of the petitioner happens to initiate any action towards recovering the dues to the Bank, it is needless to state that all such proceedings will be subject to the dues of the first respondent payable by the Company. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes /No  
Speaking / Non-speaking  
Neutral Citation : Yes / No  
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**R.N.MANJULA, J.**

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To

- 1.Regional PF Commissioner - II & Recovery Officer,  
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