



W.P.Nos.22232 and 22253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.Nos.22232 and 22253 of 2024
and W.M.P.Nos.24213, 24210, 24212, 24244,
24245 and 24247 of 2024

1. M/s.Aswathi Exports
A Partnership Firm, Rep. by
Managing Partner, C.Chandrasekaran,
Having office at No.9/244-B, Ramana
Industrial Garden, 15, Velampalayam
Ring Road, Tiruppur 641 652.

2. C.Chandrasekaran

.. Petitioners in both WPs.

-VS-

1. The Board of Directors of Indian Bank,
Rep. by its Managing Director,
Corporate Office, PB No.5555,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai 600 014.
2. Indian Bank,
Rep. by its Managing Director,
Corporate Office, PB No.5555,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai 600 014.



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3. Authorised Officer,
Indian Bank, 83, Court Street,
Tiruppur 641 601.
4. Ministry of Micro Small and Medium
Enterprises, Rep. by its Secretary,
Udyog Bhawan, Rafi Marg, New Delhi,
Delhi 110 001.
5. Union of India,
Rep. by its Secretary, Department of
Financial Services, Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi 110 001.
6. Reserve Bank of India,
Rep. by its Governor,
Shahid Bhagat Singh Road,
Fort, Mumbai 400 001.
7. Export Credit Guarantee Corporation,
Chennai Branch, Overseas Towers,
3rd Floor, L-756-Anna Salai,
Chennai 600 002.
8. Export Credit Guarantee Corporation,
Coimbatore Branch, Cheran Plaza,
2nd Floor, 1090, Trichy Road,
Coimbatore 641 018.
9. The Board of Directors of Export
Credit Guarantee Corporation,
Coimbatore Branch, Cheran Plaza,
2nd Floor, 1090, Trichy Road,
Coimbatore 641 018.



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10. State of Tamil Nadu,
Rep. by its Chief Secretary,
Secretariat, Chennai 600 009.

11. R.Ramesh Kumar

.. Respondents in both WPs.

Prayer: Petitions filed under Article 226 of the Constitution of India for issuance of (i) W.P.No.22232/2024 - Writ of Declaration (1) to declare that proviso 2 and 3 to Section 18 of the SARFAESI Act is unconstitutional and void; (2) To declare that the second proviso to Section 18 of the SARFAESI Act is only applicable in respect of any final order passed by the DRT in an application filed by a borrower under Section 17 of the Act and further that the words "not less than 25 percent of the debt" in the second proviso to Section 18, is unconstitutional inasmuch as it completely denudes the Chairperson of the DRAT of the discretion to exempt the borrower from making the pre-deposit even in deserving cases; 3) to declare that the MSME Act in so far as it has not created a special forum/tribunals to adjudicate 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; (4) to declare that Sections 5 and 6 of 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

(ii) W.P.No.22253/2024 - Writ of Declaration (1) To declare that the Petitioner being 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 no proceedings for recovery under the SARFAESI Act RDB Act, IBC, will lie except in the manner contemplated under the said



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notification in particular Paragraph 5(4)(iii) of the same; (2) Writ of Certiorari - call for the entire records and proceedings at the hands of the Authorized Officer u/s 13(2) 13(4) and the Magistrate under 14 of the SARFAESI Act and to quash and set aside the same 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; (3) Writ of Declaration to declare the entire proceedings at the hands of the Respondent Nos.3, Authorised Officers of the Indian Bank, the Chief Judicial Magistrate, Tiruppur, under Sections 5, 6, 13(2), 13(4) and 14 of the SARFAESI, Security Interest (Enforcement) Rules, are illegal and void; (4) Writ of Mandamus to direct respondent No.1, Board of Directors of the Indian Bank to the petitioner company, an MSME, as contemplated in paragraph 2 of the notification dated 29.5.2015 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; (5) Writ of Certiorari to quash the entire proceedings under the SARFAESI Act and restore possession of the properties, nay, put the clock back and restructure the account of the petitioner and compensate him to the fullest extent of the loss suffered.

For Petitioners
in both petitions

: Ms.Amul Rani
for Mr.Maria Nedumpara

For Respondents
in both petitions

: Ms.N.Varsha
for M/s.Aiyar and Dolia
for RR 1 to 3
: Mr.Prasad Vijayakumar
for RR4 and 5
: Mr.T.Poornam for R-6
: Mr.Surya Teja SS Nalla
for RR 7 to 9
: Mr.Karthik Jegannath
Govt. Advocate for R-10
: Not ready in notice reg. R-11



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COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Ms.Amul Rani states that the matter is settled and seeks leave to withdraw the writ petitions.

The writ petitions are, accordingly, dismissed as withdrawn. There shall be no order as to costs. W.M.P.Nos.24210 and 24244 of 2024, filed by petitioners seeking permission to join and file a single writ petition, stand allowed. Consequently, the other interim applications stand closed.

(K.R.SHRIRAM, C.J.) (SUNDERMOHAN,J.)
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Index : Yes/No

Neutral Citation : Yes/No

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The Hon'ble Chief Justice
and
Sunder Mohan, J.

(sra)

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