



WP Nos.805 and 809 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2025

CORAM

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

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

WP Nos.805 and 809 of 2025
and WMP No Nos.986, 987, 993 and 995 of 2025

M/s.Pro Knits
Rep. by its Partner, Mr.S.Ravikumar,
SF.No.460, A.B.Nagar, Gandhi Nagar Post,
Tirupur, Tamil Nadu 641 602.

.. Petitioner
in both WPs.

-VS-

1. The Board of Directors of Canara Bank,
Rep. by its Managing Director,
112, J C Road, Bangalore 560 002.
2. Canara Bank,
Rep. by its Managing Director/Chief Executive
Officer, 112, J C Road, Bangalore 560 002.
3. Authorised Officer,
Canara Bank, Mid Corporate Branch,
70/74, J G Nagar, 2nd Street,
60 Feet Road, Tiruppur 641 602.
4. Asset Recovery Management Branch,
Canara Bank, Coimbatore,
Gujarati Samaj Building, 661-1, Mettupalayam Road,
R.S.Puram, Coimbatore 641 002.



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5. Muthulakshmi
Advocate Commissioner Appointed in
Crl.M.P.No.9564/2023 in the files of CJM,
Tiruppur, TN District Collectorate Complex,
Tiruppur, Tamil Nadu 641 604.
6. Station House Officer,
15 Velampalayam Police Station,
A.Thirumuruganpoondi, Tiruppur,
Tamil Nadu 641 652.
7. Station House Officer,
Tiruppur North Police Station,
Kumaran Road, Kannipiran Colony,
Valipalayam, Tirupur, TN 641602.
8. Chief Manager,
Asset Recovery Management Branch,
Canara Bank, Coimbatore,
Gujarati Samaj Building, 661-1,
Mettupalayam Road, R.S.Puram,
Coimbatore 641002.
9. General Manager,
Asset Recovery Management Branch,
Canara Bank, Coimbatore,
Gujarati Samaj Building, 661-1,
Mettupalayam Road, R.S.Puram,
Coimbatore 641002.
10. Board of Directors of the ECGC Ltd.,
Rep. by its Managing Director,
Express Towers, 10th Floor,
Nariman Point, Mumbai 400021.
11. ECGC Limited,
Tirupur 641 601.



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12. Ministry of Micro Small and Medium Enterprises, Rep. by its Secretary,
Udyog Bhawan, Rafi Marg,
New Delhi, Delhi 110 001.

13. 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.

14. Reserve Bank of India,
Rep. by its Chief General Manager and
Secretary, Shahid Bhagat Singh Road,
Fort, Mumbai 400 001.

.. Respondents
in both WPs.

Prayer: Petitions filed under Article 226 of the Constitution of India for issuance of **(i) WP.No.805/2025** - Writ of Declaration to declare that 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; b. Writ of Declaration to declare that the entire recovery steps initiated by Respondents 1 to 4 Bank under the SARFAESI act or any other law is without jurisdiction, illegal and void in as much as the Respondents 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 29.5.2015; c. Writ of Declaration to declare that the petitioner is entitled to be compensated by Respondents 1-4 bank for the



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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 petitioner 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; d. Writ of Prohibition to prohibit Respondents 1-4 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 petitioner, in particular restraining Respondent no.3 , from dispossessing the petitioner from its properties; e. Writ of Mandamus to direct Respondent no.1 Board of Directors of the Canara Bank to constitute a committee for the resolution of the stress in the unit of 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; f. Writ of Declaration to declare that the petitioner being the insured in terms of the ECGC policy which the Respondents 1- 4 bank has taken to cover the risk arising from the default on the part of the overseas buyer in paying for the goods purchased from the petitioner, is entitled to the credit of Rs.18,64,04,549/- (Eighteen Crore Sixty Four lakhs Four Thousand Five Hundred Forty Nine) along with interest which the ECGC has paid to Canara bank, Mid Corporate Branch, Tirupur A/c Pro Knits, namely the Suspense Account which the Canara bank has created to credit the amount so received on the illegal and fraudulent understanding with the ECGC that the Bank will continue to proceed to recover against the petitioner through coercive means and upon such receipt the money will be repaid to the ECGC by debiting the Suspense Account and a consequential direction to set off/adjust the insurance money received from the ECGC together within inters as against the claim against the petitioner; and **(ii) WP.No.809 of 2025** - Writ of Declaration 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



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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; b. Writ of Mandamus to direct the 13th and 14th Respondents 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 petitioner in violation of the mandate of the notification is recalled, the clock is put back, the injustice which the petitioner is made to suffer is redressed and that the petitioner is compensated in full measure; c. Writ of Declaration to declare that the 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 institution, nay, even operational creditors, shall lie against the petitioner under the SARFAESI 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 29.05.2015; d. Writ of Declaration to 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, NCLTs created under the RDB Act 1993 and the



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Companies Act 2013 are invested of no jurisdiction to adjudicate a dispute arising out of / involving the MSMED Act; e. Writ of Declaration to 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 authority of law, for such a declaration amounts to a civil death and further that the petitioner, nay a borrower is not liable to the declared as a willful defaulter except by the authority of an Act of Parliament or statutory instrument having the force of law; f. Writ of Declaration to declare that the various writ petitions and other proceedings which the petitioner has instituted as detailed in the annexed chart (item No.32 in the paperbook) does not constitute a Cause of Action Estoppel, nay, estoppel per rem judicatam/res judicata, not even issue estoppel, inasmuch as there is no Estoppel against statute, nay estoppel per rem judicatam / res judicata, or even issue Estoppel inasmuch as the rights and remedies which the petitioner seeks to enforce in the instant is based on the notification dated 29.05.2015 and for the added reason that in the previous proceedings before this Hon'ble High Court and other forums there was never an adjudication on merits.

For Petitioner
in both WPs.

: Mr.A.Arockia Amul Rani

For Respondents
in both WPs.

: M/s.M.L.Ganesh
S.Arunkumar for RR 1 to 4, 8 and 9
: Mr.A.Gokulakrishnan
Addl. Public Prosecutor for RR 6 and 7
: Mr.A.Kumaraguru
Spl. Panel Counsel for RR 12 and 13

* * * * *

ORDER

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



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Counsel seeks leave to withdraw the writ petitions.

The writ petitions are, therefore, dismissed as withdrawn. There shall be no order as to costs. Consequently, the interim applications also stand dismissed.

(K.R.SHRIRAM, CJ.)

(MOHAMMED SHAFFIQ, J.)

17.03.2025

Index : Yes/No
Neutral Citation : Yes/No

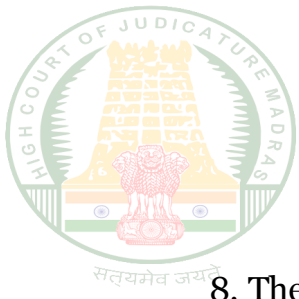
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Board of Directors of Canara Bank,
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2. The Managing Director/Chief Executive Officer
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8. The General Manager,
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9. The Secretary,
Ministry of Micro Small and Medium
Enterprises, Udyog Bhawan, Rafi Marg,
New Delhi, Delhi 110 001.
10. The Secretary,
Union of India,
Department of Financial Services,
Ministry of Finance, 3rd Floor,
Jeevan Deep Building, Sansad Marg,
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11. The Chief General Manager and
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Shahid Bhagat Singh Road,
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The Hon'ble Chief Justice
and
Mohammed Shaffiq, J.

(sra)

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