BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.05.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Writ Petition(MD)No.14439 of 2025
and
W.M.P(MD)Nos.10638, 10640 & 10642 of 2025

M/s Parthas Textiles,
A registered Partnership Firm,
No.40/12, P.W.D Road,
Nagercoil,
Represented by its Managing Partner,
Smt. V.Sujatha ..Petitioner

Vs

1.The Reserve Bank of India,
Regional Office,
16, Rajaji Road, Fort St. George,
Chennai – 600 001.

2.The Authorised Officer,
Karur Vvsya Bank Limited,
Asset Recovery Branch,
R.S.No.170/9, Uthankudi Village,
Near Mattuthavani Bus Stand,
Madurai – 625 107.

3.The Branch Manager,
Karur Vysya Bank Limited,
Door No.47, 1st Floor, Court Road,
Nagercoil,
Kanyakumari District – 629 001. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned E-Auction Sale Notice dated 09.05.2025 fixing the date of Sale on 31.05.2025 and quash the same and consequently direct the 2nd and 3rd respondents to implement the directions contained under the notification bearing No. S.O.E 1432 issued by the 1st respondent dated 29.05.2015 and further implement the same in accordance with law.

For Petitioner : Mr.S.Suresh
For Respondents : Mr.V.Sukumar (for RR2 & 3)

ORDER

(Order of the Court was made by **S.SRIMATHY, J**)

This writ petition is filed to quash the impugned E-Auction Sale Notice dated 09.05.2025 fixing the date of Sale on 31.05.2025 and direct the respondents 2 and 3 to implement the directions contained under the notification bearing No. S.O.E 1432 issued by the 1st respondent dated 29.05.2015 and further implement the same in accordance with law.

2. Mr.V.Sukumar, learned Standing Counsel takes notice for the respondents 2 and 3. By consent, this writ petition is taken up for final disposal at the admission stage itself. Since no adverse order is going to be passed as against the first respondent, notice to the first respondent is dispensed with.

3. The petitioner firm is registered under the MSME Act as an MSME unit, specifically coming under “Micro Unit”. During the year 2011, the petitioner took a loan for construction from the respondent bank. The petitioner was prompt in repayment, however due to the intervention of the Covid-19 pandemic and due to the adverse conditions of the markets, the petitioner could not generate sufficient money to repay the loan. Hence, the second respondent bank declared the account as NPA and initiated Sarfaesi proceedings. On 09.05.2025 the bank issued E.Auction Sale Notice fixing the date of sale on 31.05.2025. Challenging the same, the present writ petition.

4. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents 2 and 3.

5. The petitioner being a MSME unit is entitled to the benefits granted under Micro, Small and Medium Enterprises Development Act, 2006 and other notifications issued under said Act. The Ministry of Micro, Small and Medium Enterprises in exercise of its powers conferred in Section 9 of MSME Act had issued Notification dated 29.05.2015 in S.O.1432(E). Under the said notification the Central Government had notified the instructions for the "Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, 2015 dated 29.05.2015". Under the said Notification 2015 the respondent bank is mandated to constitute one or two committees by the Board of Directors to provide reasonable access to Micro, Small and Medium Enterprises which have availed credit facilities from such bank. The relevant portion is extracted hereunder:

"*2. Committees for Stressed Micro Small and Medium Enterprises: –*

(1) Subject to any regulations prescribed by the Reserve Bank of India for this Framework, ***all banks shall constitute one or more Committees at such locations as may be considered necessary by the board of directors of such bank to provide reasonable access to all eligible Micro Small and Medium Enterprises which have availed of credit facilities from such bank****.*

(2) Subject to inclusion in categories referred to in paragraph 1, stressed Micro Small and Medium Enterprises ***shall have access to the Committee*** *for stressed Micro Small and Medium Enterprises for deciding on a corrective action plan and determining the terms thereof in accordance with regulations prescribed in this Framework.*

Provided that where the Committee decides that recovery is to be made as part of the corrective action plan, the manner and method of recovery shall be in accordance with the existing policies approved by the Board of Directors of the bank which has extended credit facilities to the enterprise, subject to any regulations prescribed by the Reserve Bank of India

6. Even though the MSME Act came into effect from 2006 onwards and even though the revival scheme was formulated in the year 2015, the banks were taking a stand that the provisions of Sarfaesi Act is having overriding effect and the revival scheme is only directory, hence forming of committee is only optional. However, the said issue was settled by the Hon'ble Supreme Court in M/s. Pro Knits v. the Board of Directors of Canara Bank and others reported in (2024) 10 SCC 292 wherein it is held that the Notification, 2015 and as revised from time to time is having statutory force and the relevant portion is extracted hereunder:

> "*18. In that view of the matter, we are of the opinion that the findings recorded by the High Court in the impugned order that the Banks are not obliged to adopt the restructuring process on its own or that the Framework contained in the Notification dated 29.05.2015, as revised from time to time could not be said to be mandatory in nature, are highly erroneous and cannot be countenanced.* ***The Instructions/ Directions issued by the Central Government under Section 9 of the MSMED Act and by the RBI under Section 21 and Section 35A have statutory force and are binding to all the Banking companies****.*"

The above judgment of Hon'ble Supreme Court also held unless the third-party right is created, the banks are bound to form committee. Therefore, by citing sale notice, the respondents cannot evade from forming committee and by referring the issue to committee. It is pertinent to note that the Proviso to Clause (2) of the said Notification, 2015 provides for corrective action plan along with repayment of loan. When the bank can also formulate a scheme for recovery loan, then the banks will not be prejudiced by formulating a scheme for the survival of the MSME units. On the other hand, if no scheme is formulated then the MSME units would be seriously prejudiced. Therefore, this Court is of the considered opinion without exhausting the statutory duty under Notification 2015, the bank cannot proceed under Sarfaesi Act.

7. Therefore, the impugned E-Auction Sale Notice dated 09.05.2025 is set aside and the writ petition is allowed. The Bank shall form committee as envisaged in Notification, 2015 and revised from time to time within four weeks from the date of the receipt of the copy of the order. The petitioner is directed to submit an application under the said scheme within a period of four weeks from the date of receipt of the copy of the order to the bank and the bank shall place the same to the said committee. Thereafter, the bank shall consider the same as per the MSME Act and the Notification dated 29.05.2015 and revised from time to time and pass orders thereafter. The parties are directed to act as per the outcome of the committee's report. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.Y., J.] **[R.V., J.]**
21.05.2025

skn
NCC : Yes/No
Index : Yes / No
Internet : Yes

S.SRIMATHY, J.

and

R.VIJAYAKUMAR, J

skn

Writ Petition(MD)No.14439 of 2025

and

W.M.P(MD)Nos.10638, 10640 & 10642 of 2025

21.05.2025