BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.22136 of 2025
and
W.M.P.(MD)Nos.17213 & 17214 of 2025

M/s. Kirubha Exports,
Represented by its Proprietrix
Mrs.V.T. Kirubha,
W/o A.Vimal Kumar,
No.9-41b, Annai Bhavan,
Kuzhithurai, Vilavancode Taluk,
Kaniyakumari - 62 ... Petitioner

-vs-

1. The Reserve Bank of India,
   Department of Banking Regulation,
   13th Floor, Central Office Building,
   Mumbai - 400 001.

2. The General Manager,
   Credit Audit Monetary Department,
   Tamilnadu Mercantile Bank Limited,
   Head Office, 1st Floor,
   No. 57, V.E. Road,
   Thoothukudi 628 002.

3. The Assistant General Manager,
   Credit Audit Monetary Department,

Tamilnadu Mercantile Bank Limited,
Head Office, 1st Floor,
No. 57, V.E. Road,
Thoothukudi 628 002.

4. The Branch Head,
Tamilnadu Mercantile Bank Limited,
Thalakkulam Branch,
Monday Market,
Kaniyakumari - 629 802.

5. Authorised Officer,
Tamilnadu Mercantile Bank Limited,
Thalakkulam Branch,
Monday Market,
Kaniyakumari - 629 802. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, Certiorarified Mandamus, to call for the records of the impugned order dated 05.04.2025 passed by the 4th respondent classifying the petitioner and the Guarantor as frauds and quash the same and to direct the 2nd, 3rd and 4th respondents to comply with the Ministry of Micro, Small and Medium Enterprises Notification dated 29.05.2015 published in F.No.NCEUS Cell/4/2010-PT in the Extraordinary Gazette, by undertaking a transparent and time-bound rehabilitation exercise including loan restructuring or additional credit facilities to revive the petitioners MSME unit.

For Petitioner	:	Mr.J.V.Niranjan for M/s.Niranjan and Associates
For Respondents	:	Mr.N.Dilip Kumar Senior Standing Counsel for R2 to R5

ORDER

In this writ petition, the petitioner challenged the impugned communication of the fourth respondent dated 05.04.2025 wherein the account of the petitioner had been declared as fraudulent. Relevant portion of the said impugned communication of the fourth respondent is herein.

> *"Under the circumstances and in view of the above facts, it is deemed that the borrower concern has not satisfactory cause to submit against the Bank's grounds for classifying their account as fraudulent. Accordingly, by reiterating the RBI Master Direction and Hon'ble High Court of Madras order dated 19.12.2023, no proper reply submitted for the findings in the Forensic audit report even after providing the personal hearing, the Bank determines M/s.Kirubha Exports, its proprietrix Mrs.V.T.Kirubha and the guarantor Mr.A.Vimal Kumar as Frauds."*

2. The specific case of the petitioner is that the petitioner is engaged in cashew nut processing unit and that on account of various factors such as imposition of customs duty, demonetization of currencies in 2016 and global resistance had lead the petitioner's business to suffer loss and therefore, the petitioner was unable to service the loan taken from the respondents 2 to 5 herein. It is submitted that by the impugned communication, the respondents have classified the account of the petitioner as fraudulent and have proceeded to invoke the machinery under the SARFAESI Act, 2002. It is submitted that the declaration of the petitioner's account as NPA for invoking SARFAESI Act, 2002 was clearly contrary to MSME notification dated 29.05.2015 bearing reference S.O.1432(E) as per which a method has been prescribed for corrective action plan to be taken by a committee at the instance of the creditors including the bank. It is submitted that the procedure prescribed under the aforesaid notification was given a go by and steps were taken to securitize the assets given as security to the respondent bank while loans/various financial facilities were extended by the respondent bank.

3. The learned counsel for the petitioner submits that the issue was considered by the Hon'ble Supreme Court in its decision rendered on 1st August 2024 in the case of M/s.Pro Knits and in the case of Zuhair Mohamedali Merchant and Nilesh Shah, etc., in Spl.Leave Petition(C) Nos.7898/2024 & 3801/2024, etc. The specific reference is made to para 13 onwards from the said decision.

4. It is submitted that the assets of the petitioner were sought to be auctioned for the second time on 05.08.2025. However, there were no bidders and therefore a fresh auction may be held. However, it is submitted that since the procedure prescribed under the aforesaid MSME notification was not followed, the impugned communication of the fourth respondent declaring the petitioner's account as fraudulent is liable to be interfered with.

5. Opposing the prayer, the learned Standing Counsel for the respondents submits that the declaration of the petitioner's account and the guarantors account as fraudulent is in accordance with the RBI circular dated 15th July 2024 bearing reference RBI/DOS/2024-25/118 DOS.CO.FMG.SEC.No.5/23.04.001/2024-25.

It is submitted that since the petitioner is in arrears of over 18,65,95,374/- as on 01.07.2025 sale notice. The petitioner does not deserve any sympathy. That apart, it is submitted that the decision of the Supreme Court referred to supra by the learned counsel for the petitioner has been diluted by the Hon'ble Supreme Court by its subsequent decision on 28.07.2025 in the case of ***Sri Sri Swami Samarth Construction & Finance Solution & Another vs. the Board of Directors of NKGSB Co-op. Bank Ltd & Ors.*** Specifically a reference was made to para 6 wherein the Hon'ble Supreme court has said that once the proceedings have reached up to the issuance of the demand notice and if the borrower fails to give an application for rehabilitation under the frame work, the question of giving any further relief to the borrower would not arise. It is submitted that if the borrower in response to the demand notice under Section 13(3-A) of the SARFAESI Act asserts that it an MSME and claims the benefit of the FRAMEWORK citing reasons supported by an affidavit, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance; and, should the claim be found to be worthy of acceptance within the framework of the FRAMEWORK, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower. It is further submitted that the decision of the Supreme Court in the case of M/s.Pro Knits, etc has also been distinguished by the Hon'ble Supreme Court in para 8 wherein the Hon'ble Supreme Court has observed as under:

> *"8.**Pro-Knits:**(supra) is a decision of a coordinate Bench of this Court holding inter alla, that the Notification is binding on the lending banks/secured creditors. Finding to the contrary by the High Court of Bombay in the judgment and order under challenge in the appeal was, thus, quashed. Though while stressing that the terms of the FRAMEWORK need to be followed by the lending banks/secured creditors before the account of an MSME is classified as NPA, this decision also lays stress on the obligation of the MSMEs by holding that "it would be equally incumbent on the part of the MSMES concerned to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework". It was cautioned that "if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the bank/creditor concerned in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an*

MSME at a belated stage". This decision, however, left unsaid something which we have explained hereinabove while construing the terms consistently to prevent undermining of rights that one central enactment confers by another."

6. That apart the learned counsel for the respondent would submit that the account of the petitioner was declared as NPA under the provisions of SARFAESI Act read with relevant RBI Circular as early as 29.11.2022. It is submitted that after account is declared as NPA, the demand notice was issued to the petitioner under Section 13(2) of the Act on 08.12.2022. Thereafter, the possession notice was issued under Section 13(4) of the Act on 14.02.2023 followed by sale notice dated 12.07.2024 which proposed to auction the property of the petitioner on 16.08.2024 which however did not take place. It is submitted that subsequently the fresh auction notice was issued on first July 2025 proposing to auction the property on 5th August 2025 which also did not fructify. By way of rejoinder the learned counsel for the petitioner on the other hand, would submit that the petitioner was issued with the show cause notice dated 16.09.2023 to which the petitioner has replied on 15.11.2023. That apart it is submitted that the show cause notice itself was issued in the backdrop of the order dated 20.02.2023 by

the bank wherein there were indications that the petitioner was a MSME and therefore it was incumbent on the part of the respondent to have comply with the framework under S.O.1432 (E) dated 29.05.2015 of the Ministry of Micro, Small and Medium Enterprises. It is submitted that since the bank has failed to comply with the above stipulation in the aforesaid notification under S.O.1432(E) dated 29.05.2015 of the Ministry of Micro, Small and Medium Enterprises, the declaration of the petitioner's account as fraudulent was unwarranted. Consequently, it is submitted that the steps taken under the provisions of the SARFAESI Act, 2002, hitherto also to be declared as arbitrary.

7. The learned counsel for the petitioner submits that the petitioner is also entitled for such concessions as may be accorded under the framework.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

9. At best, the petitioner can expect the proposed auction to be held in future to be warded off provided the petitioner pays the admitted liability of

Rs.18,65,19,374.16/- as per the sale notice. As far as the declaration of the petitioner's account as fraudulent in terms of the impugned order which is in consonance with the RBI notification/circular dated 15.07.2024 bearing reference RBI/DOS/2024-25/118 DOS.CO.FMG.SEC.No.5/23.04.001/2024-25 is concerned, no remedy is available to the petitioner in view of the latest decision of the Hon'ble Supreme Court in ***Sri Sri Swami Samarth Construction & Finance Solution & Another vs. the Board of Directors of NKGSB Co-op. Bank Ltd & Ors.*** Either the petitioner pays the amount and seeks for such relief as may be necessary. In case the petitioner is aggrieved, it is for the petitioner to challenge the RBI circular independently. As long as the RBI circular dated 15th July 2024 is in force, the petitioner cannot have any case to question the declaration of the petitioner's account as fraudulent as the purpose for which the said circular has been issued was to provide a framework to the bank for prevention, early detection and timely reporting of incidents of fraud to Law Enforcement Agency (LEAs), Reserve Bank of India (RBI) and NABARD and dissemination of the information by RBI and the matter is connected therewith or incidental thereto as has been stated in para 1.3 of the RBI circular/instruction dated 15.07.2025 bearing reference RBI/DOS/2024-25/118

DOS.CO.FMG.SEC.No.5/23.04.001/2024-25.

> ***"1.3 Purpose***
> *These Directions are issued with a view to providing a framework to banks for prevention, early detection and timely reporting of incidents of fraud to Law Enforcement Agencies (LEAs), Reserve Bank of India (RBI) and NABARD and dissemination of information by RBI and matters connected therewith or incidental thereto."*

10. Therefore, I am not inclined to admit this writ petition. This writ petition is liable to be dismissed. However, liberty is given to the petitioner to pay amounts that may be to stave off any immediate proposal for re-auctioning the property and attempt to work out the remedy in the manner known to law. Accordingly, this Writ Petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

13.08.2025

NCC : Yes / No
Index : Yes / No
PJL

To

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C.SARAVANAN, J.

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