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W.P.(MD)No.23328, 21556,
22787, 22789 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
03.03.2025	03.06.2025

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS. JUSTICE S. SRIMATHY

W.P.(MD)Nos.23328, 21556, 22787 and 22789 of 2024
and
W.M.P.(MD)Nos.18220, 19309, 19306 and 19753 of 2024

W.P.(MD)No.23328 of 2024:

A.K.Karthikeyan

... Petitioner

Vs.

1. The Authorized Officer,
Canara Bank,
Asset Recovery Management Branch,
1st Floor, Regional Office Building,
Muthaiyah Towers –Williams Road,
Cantonment,
Trichy – 620 020.

2. The Branch Manager,
Canara Bank,
Thuvakudi Branch,
Thuvakudi,
Trichy – 620 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records relating to the impugned sale notice issued by the 1st respondent dated 06.09.2024 and direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme



W.P.(MD)No.23328, 21556,
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for the petitioner's Unit as per the MSME-Development Act,2006 and to quash the same.

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For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
For M/s.M.R.Sreenivasan
For Respondents : Mr.M.Ajmal Khan
Senior Counsel
For M/s.C.Deepak

W.P.(MD)No.21556 of 2024:

A.Ganesamurthy

... Petitioner

Vs.

1.The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch (ISARB) Branch,
Vinayaga Nagar Branch (Upstairs),
No.8, Ambedkar Road,
Madurai – 625 020.

2.The Branch Manager,
State Bank of India,
SME Branch,
Thuvakudi,
Trichy – 620 015.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records relating to the impugned sale notice issued by the 1st respondent dated 01.08.2024 and direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme for the petitioner's Unit as per the MSME-Development Act,2006 and to quash the same.



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W.P.(MD)No.23328, 21556,
22787, 22789 of 2024



For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
For M/s.M.R.Sreenivasan

For Respondents : Mr.B.Saravanan
Senior Counsel
For M/s.C.Deepak

W.P.(MD)No.22787 of 2024:

S.Ashok Sundaresan

... Petitioner

Vs.

1.The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch (ISARB) Branch,
Vinayaga Nagar Branch (Upstairs),
No.8, Ambedkar Road,
Madurai – 625 020.

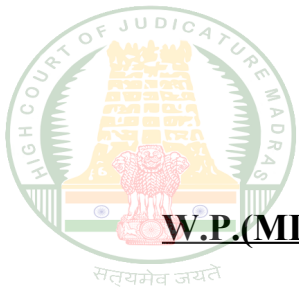
2.The Branch Manager,
State Bank of India,
Trichy Town Branch,
Sree Complex, Madurai Road,
Trichy.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records relating to the impugned sale notice issued by the 1st respondent dated 02.09.2024 and direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme for the petitioner's Unit as per the MSME-Development Act,2006 and to quash the same.

For Petitioner : Mr.M.R.Venkatesan
For M/s.M.R.Sreenivasan

For Respondents : Mr.B.Saravanan
Senior Counsel
For M/s.C.Deepak



W.P.(MD)No.23328, 21556,
22787, 22789 of 2024



W.P.(MD)No.22789 of 2024:

Rajappa Rajkumar

... Petitioner

Vs.

1.The Authorized Officer,
Canara Bank,
Assets Recovery Management Branch,
1st Floor, Regional Office Building,
Muthaiyah Towers –Williams Road,
Cantonment,
Trichy – 620 020.

2.The Branch Manager,
Canara Bank,
Thuvakudi Branch,
Thuvakudi,
Trichy – 620 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records relating to the impugned sale notice issued by the 1st respondent dated 05.09.2024 and direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme for the petitioner's Unit as per the MSME-Development Act,2006 and to quash the same.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
For M/s.M.R.Sreenivasan
For Respondents : Mr.B.Saravanan
Senior Counsel
For M/s.C.Deepak



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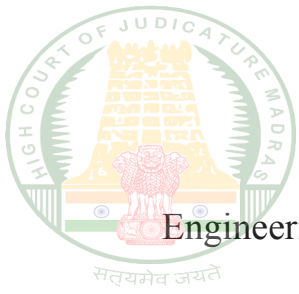
COMMON ORDER

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

All the four writ petitions have raised common issues and hence all the writ petitions were taken up for hearing and a common order is passed.

2. The W.P.(MD)No.23328 of 2024 was filed for Writ of Certiorarified Mandamus to quash the impugned sale notice dated 06.09.2024 issued by the 1st respondent as unconstitutional and consequently direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme for the petitioner unit as per the MSME-Development Act, 2006 within stipulated time.

3. The brief facts are that the petitioner is a Proprietor of M/s. KKM Engineering Industries, a MSME Enterprises having UDYOG Aadhaar No.TN-22-0016206. The concern is an ancillary unit engaged in the manufacturing of power and heavy electrical equipment to BHEL. The BHEL is a Public Sector Undertaking in Heavy Engineering established in the year 1967 and its main business for BHEL Trichy is Thermal Boilers - i.e., Electricity Generating Boilers using Coal as Feedstock. The petitioner units are mainly dependant on BHEL's business and all MSME vendors in and around the Trichy BHEL plant are benefitted by serving BHEL for the past four decades. The Ancillaries units are specializing in Engineering, Welding, Precision



Engineering. And Machining was groomed, molded and developed by BHEL through their Welding Research Institute to supply components and execute job work. The Ancillaries developed critical skills in various manufacturing process in Engineering and supplied Pressure Parts, Non-Pressure Parts, Valves, Electro Static Precipitators etc. Infact Trichy Campus of BHEL contributed highest Total Turnover amongst its many campuses and at one stage Ancillaries had supplied close to 4 Lakh tones to BHEL. The Ancillaries developed Drawing Skills, Electronic CAD, Manufacturing, Quality Control, Blasting by keeping delivery deadlines and also supplied for BHEL's export boilers too, where the standards were exacting and rigorous. The Manufacturing Ecosystem at Trichy is one of the best in the world. However, due to Climate Change, changing Government Policy about Green Planet, Global Warming, Pollution Standards and Environment concern most nations have taken policy decision to reduce Coal Fed Power Plants and move towards Green Energy like Wind, Solar and Nuclear. Government very rarely puts up Thermal Power Plants but was only maintaining the existing plants. Hence, the Thermal Boiler Business of BHEL has suffered a great setback due to movement towards Cleaner Energy and business has drastically fallen, the ancillary units like the petitioner's units had faced long recession and had become sick. Hence the financial assistances availed by the petitioner from the banking sectors were declared as Non-Performing Asset (NPA) on 01.04.2018



for Rs.1,98,75,935/- by the 2nd respondent. The 1st respondent issued Section 13(2) Demand Notice on 16.07.2018, on 06.09.2024 issued Section 13(4) symbolic possession notice.

4. In the meanwhile, Government of India came with the proposal of Indigenization of Defence and Aerospace by Domestic Manufacturing. Approximately Rs.50,000/- crores worth of defence imports were intended to be granted to Domestic Manufacturing thereby encouraging Indian Companies to produce the same. In consequence of such policy two Defence Corridors were announced in India, one in Tamil Nadu and another in Uttar Pradesh. Five Nodes were planned for Vital Manufacturing Points in this Defence Corridor in Tamil Nadu in cities namely Trichy, Coimbatore, Hosur, Salem and Chennai, which are good at Engineering. Thereafter, the Government of India has made 16 Defence Public Sector Undertakings to visit Trichy and interact with MSMEs. The Tank Factory at Avadi, Chennai has visited Trichy and given a presentation about the components they need. ISRO is already sourcing components for its Space Programs. Mazegaon Ship Yard and Cochin Ship Yard are giving orders for Naval Ships. HAL. Hindustan Aeronautics Ltd at Bangalore which makes Tejas Airforce aircrafts is interacting with Trichy Ancillaries. So many Tier-I and Tier-II Vendors are also building an Ancillary Ecosystem. The Government of India has also published Four Indigenization



Lists - December 2021, March 2022, August 2022 and May 2023 and the list mention what the Defence Department intends to purchase locally.

i.	First List	351 items (December 2021)
ii.	Second List	107 items (March 2022)
iii.	Third List	780 items (August 2022)
iv	Fourth List	928 items (May 2023)

The last list published in May 2023 contain 928 strategically important Line Replacement Units (LRUs), Sub Systems, Spares and Components with an approximate Import Substitution Value of Rs.715 crores. Simultaneously “Negative Lists” have been published about what the Defence Ministry will not import. The first two lists were announced and March 2020. In first ‘two lists’ were announced in August 2020 and March 2020, wherein 101 items were banned from importing, extended from December 2020 and December 2024. Likewise the second list of 108 items and third list of 101 items were banned from importing. Infact the petitioner failed to mention a fact that the Fifth List was also published on 04.10.2023, comprising 98 items consisting of highly complex systems, sensors, weapons and ammunitions.

5. The petitioner further stated that in preparing the lists, the Ministry of Defence, Service Head Quarters (SHQ), Department of Defence Production (DDP), Defence Research Development Organization (DRDO) are



involved. It is pertinent to state that India is also progressively exporting

Defence and Aerospace items, with current year Exports almost touching Rs.

19,000/- crores. To utilize the above opportunities, Tamil Nadu Boiler

Association has been interacting with Ministry of Finance and Ministry of

MSME for a Rehabilitation Program for the Engineering MSMEs at Trichy by

submitting various representation, which is being considered with the

consultations of RBI for the revival and rehabilitation. Infact the Deputy

Director of Finance vide letter dated 26.06.2023 addressed to Ministry of

MSME had stated that the units are eligible under CGSSD scheme. It is also

stated that a suitable Cluster Specific Revival and Rehabilitation Package can

be devised. When opportunities are available for Revival in Defence and

Aerospace Sectors, when the Government is willing to work out a

Rehabilitation Package by specifically mentioning these firms and likely

schemes available for Rehabilitation, any Auction by the Banks would make

the entire effort infructuous. The MSMEs are the back bone of the nation

giving 45% employment to people and is one of the identified sectors as Driver

of Growth and in this instance, the process is initialized with specific

communication by relevant Ministries. In such circumstances, the respondents

1 and 2 are bound to follow:

- i. The guidelines on restructuring of the account in terms with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called as the MSMED Act)



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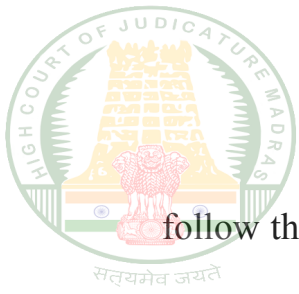


ii. The RBI guidelines and notification dated 17.03.2016
Framework for Revival and Rehabilitation of MSME

iii. Master Directions for MSME dated 24.07.2017

iv. Notification dated 07.02.2018 Relief for MSME borrowers
registered under the GST.

Hence the respondent banks are under an obligation to refer the petitioner's loan account to the Committee as per the RBI guidelines as there was no power with the bank to declare the loan account as NPA. On the one hand the Central Government is trying to revive and rehabilitate the MSME units, but on the other hand the Respondents are taking coercive action against the petitioner's like units. The 1st respondent has lastly issued Demand Notice dated 06.09.2024 for recovery of amount of Rs. 1,10,45,000/-. Further when the request for revival is under consideration, the petitioner had already filed W.P. (MD).No. 22437 of 2023 for a direction against bank not to proceed against the unit and properties till the revival process is completed and the same was dismissed on 05.10.2023, however liberty was granted to approach the authorities or to DRT and also held that the competent authorities are bound to follow the mandatory procedures as contemplated under the Act and Rules in force. But the respondents without following the due process as referred in the frame work for revival and rehabilitation of Micro, Small and Medium Enterprises (MSME) Sector, the 1st respondent issued the impugned sale notice dated 06.09.2024 and the sale would be conducted on 09.10.2024. Further the respondents failed to



follow the Hon'ble Supreme Court judgment in M/s. Pro Knits v. The Board of Directors of Canara Bank and others. Hence the present writ petition.

6. The respondents had filed counter affidavit in W.P.(MD)No.23328 of 2024 wherein it is stated that the petitioner had suppressed vital facts and approached the Court with unclean hands, thereby playing fraud on the Court. The writ petitioner failed to submit any reply for any of the statutory notices issued by the Bank including the demand notice issued under section 13(2) of Sarfaesi Act, but approached the Court as an afterthought. The petitioner in his individual capacity had filed another W.P.(MD)No.22437 of 2023 with similar prayer and the same was dismissed on 24.11.2023 with liberty to approach DRT. Some of the writ petitions with similar prayer was dismissed citing alternative remedy. The present writ petition is devoid of merits, filed solely to delay and obstruct the recovery proceedings, the petitioner is chronic defaulter. The loan account had become NPA on 16.07.2010. The outstanding amount of Rs.1.98 crores had increased due to accrued interest and charges to Rs.5.69 crores. The claim of the petitioner after NPA no interest could be levied is incorrect and the same is against the banking norms. The section 13(2) demand notice was issued on 16.07.2018, possession notice on 18.11.2021, thereafter sale notices by fixing auction date was issued as follows:



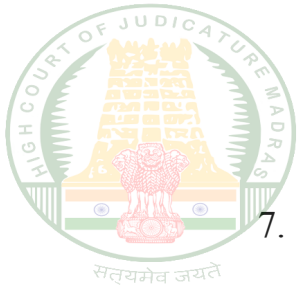
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Sale Notice	Auction Date
06.09.2024	09.10.2024
25.07.2024	28.08.2024
23.05.2024	26.06.2024
27.07.2023	31.08.2023
17.02.2022	23.03.2022
30.12.2021	04.02.2022
08.02.2019	12.03.2019

Infact W.P.(MD)No.26080 of 2024 was filed by one S.Muralidharan was dismissed as withdrawn on 30.10.2024 since the petitioner submitted he would approach the bank for one time settlement. The respondent further stated that when the section 13(2) notice was issued the petitioner did not bring it to the knowledge that the petitioner is MSME and entitled to benefits of notification dated **29.05.2015**. Infact the plea of the MSME and the applicability was raised for the first time in the present writ petition, hence the claim is belated one. Hence, the respondent bank proceeded with other notices and to conduct sale as per law. Further the MSME ought to be vigilant to follow the process laid down under the frame work and bring to the notice of the bank by producing authenticated and verifiable documents to show its eligibility to get the benefits of the frame work. If the MSME failed to produce such documents then it is not open to the said MSME to claim the benefit under the Notification dated 29.05.2015. Further the dismissal of earlier writ petitions would operate as resjudicata. The present writ petition is deliberate attempt to stall the Sarfaesi proceedings, hence prayed to dismiss the writ petitions.



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7. In W.P.(MD)No.21556 of 2024 was filed for Writ of Certiorarified Mandamus to quash the impugned sale notice dated 01.08.2024 issued by the 1st respondent as unconstitutional and consequently direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme for the petitioner unit as per the MSME-Development Act, 2006 within stipulated time. The petitioner is a Proprietor of M/s. Garuda Engineering, a MSME Enterprises having UDYOG Aadhaar No.TN-27A0018021. The petitioner account was declared as NPA on 16.03.2020 with an outstanding amount to the tune of Rs.1,22,66,512/-, then section 13(2) notice was issued on 13.03.2020 exorbitantly demanding Rs. 2,36,34,737/-, section 13(4) was issued on 28.12.2020. The petitioner filed W.P.(MD)No.24148 of 2023 and the same was dismissed on 05.10.2023 directing to approach DRT. In the meanwhile the respondents issued sale notice on 01.08.2024 indicating the auction sale would be conducted on 10.09.2024. Hence the writ petition challenging the sale notice. The respondents had filed counter stating that the sale notice was issued on 01.08.2024 by fixing the auction on 10.09.2024 and other averments are as stated in W.P.(MD)No.23328 of 2024.

8. In W.P.(MD)No.22787 of 2024 was filed for Writ of Certiorarified Mandamus to quash the impugned sale notice dated 02.09.2024 issued by the 1st respondent as unconstitutional and consequently direct the respondents 1



and 2 to formulate a revival and rehabilitation scheme for the petitioner unit as per the MSME-Development Act, 2006 within stipulated time. The petitioner is a Proprietor of M/s. Shree Chakra Industries, a MSME Enterprises having UDYOG Aadhaar No.TN-27A0011822. The petitioner account was declared as NPA on 04.07.2018 with an outstanding amount to the tune of Rs. 3,95,61,352/-, then section 13(2) notice was issued on 03.07.2018, section 13(4) was issued on 05.12.2018. The petitioner filed W.P.(MD)No.22420 of 2023 and the same was dismissed on 24.11.2023 directing to approach DRT. In the meanwhile the respondents issued sale notice on 02.09.2024 indicating the e-auction sale would be conducted on 07.10.2024. As per auction sale notice the outstanding amount is Rs.6.47 crores as on 28.12.2023. OTS proposal was sent by the petitioner after paying margin amount of Rs.50 lakhs and the OTS was accepted by the bank by offering Rs.4 crores and balance would be payable on or before April, but subsequently extended until September 30. But when the extension time was subsisting, the sale notice was issued on 02.09.2024. Pending Sarfaesi proceeding the petitioner had paid some amounts on various dates as detailed below:

After section 13(2) notice	Paid Rs.50 lakhs, then Rs.50 lakhs and another Rs.50 lakhs.
14.09.2018	Rs.15 lakhs
10.10.2018	Rs.5 lakhs
15.10.2018	Rs.10 lakhs
29.11.2019	Rs.4 lakhs
12.10.2020	Rs.5 lakhs



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05.04.2022	Rs.61 lakhs
01.02.2024	Rs.50 lakhs
Total	Rs.1.5 crores paid

Further stated that the mortgaged property is worth approximately Rs.9.32 crores and the bank is in advantageous position. Hence the writ petition challenging the sale notice. The respondents had filed counter stating that the sale notice was issued on 01.08.2024 by fixing the auction on 10.09.2024 but sale could not be concluded for want of buyers. Again another sale notice dated 02.09.2024 was issued indicating the auction would be conducted on 07.10.2024. But has not stated regarding the OTS and the payment of Rs.1.5 crores. The other averments are as stated in W.P.(MD)No.23328 of 2024.

9. In W.P.(MD)No.22789 of 2024 was filed for Writ of Certiorarified Mandamus to quash the impugned sale notice dated 05.09.2024 issued by the 1st respondent as unconstitutional and consequently direct the respondents 1 and 2 to formulate a revival and rehabilitation scheme for the petitioner unit as per the MSME-Development Act, 2006 within stipulated time. The petitioner is a Proprietor of M/s. Kumar Industries, a MSME Enterprises having UDYOG Aadhaar No.TN-27-0002772. The petitioner account was declared as NPA on 31.01.2016 with an outstanding amount to the tune of Rs.10,75,95,000/-, then section 13(2) notice was issued on 25.02.2016, section 13(4) was issued on



25.05.2016. The petitioner filed W.P.(MD)No.22415 of 2023 and the same was dismissed on 24.11.2023 directing to approach DRT. In the meanwhile the respondents issued sale notice on 05.09.2024 indicating the auction sale would be conducted on 25.09.2024. The petitioner contended that four demand notices were issued on 07.08.2023, 05.03.2024, 07.06.2024 and 05.09.2024 demanding Rs.35,76,99,570/-, Rs.39,38,46,565/-, Rs.40,49,43,744/- and Rs.42,12,84,916/- respectively and each contrary to each other, it is not known how the respondent issued the demand notice without any basis. Hence the writ petition challenging the sale notice. The respondents had filed counter stating that the sale notice was issued on 05.09.2024 by fixing the auction on 25.09.2024. The demand notices were issued as per the legal mandate and as per auction process specified in Sarfaesi Act. The outstanding amount of Rs.9.68 crores had increased due to accrued interest and charges to Rs.42.12 crores, hence there is no illegality. The other averments are as stated in W.P.(MD)No.23328 of 2024.

10. The primary contention raised by the petitioner is that the petitioner being MSME unit is entitled to “The frame work for revival and rehabilitation of Micro, Small and Medium Enterprises as per the MSME Act, 2006”. But the contention of the respondent is that when the section 13(2) notice was issued the petitioner did not bring it to the knowledge that the petitioner is MSME and entitled to benefits of notification dated 29.05.2015. The contention of the bank

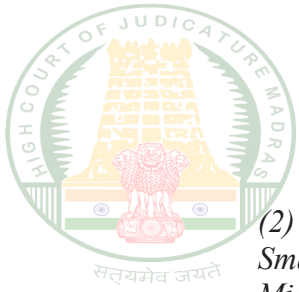


cannot be accepted, since at the time of processing the loan documents itself it would have declared the unit comes under MSME. It is pertinent to state when the MSME certificate is issued to the unit from the Central Government, in the column “Bank Name” it is mentioned as Canara Bank. Further at this digital era, when there is inter linking of data, such an argument from the bank cannot be entertained. Infact the petitioners had produced additional typed set wherein the sanction letters were produced, in the said sanction letter it has been specifically stated in serial number 7 under column “Classification” – “priority -SME – Small Enterprise -Mfg.”. Under serial 15 column “Credit Risk Rating” – SME 3 Normal Risk Grade IV (ABS 2013)”. Therefore the contention of the bank is absolute false.

11. Infact when a specific question was raised by the Bench, whether the Canara Bank has formed any committee which is mandated under Clause 2 of “The Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises” dated 29.05.2015, it was submitted no such committee was formed. The relevant portion of the clause 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.



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*(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

The above clause specifically states that the bank shall constitute one or more committees, but the bank failed to constitute such committee.

12. Further in the above clause 2 sub clause (ii) it is specifically stated that the “**stressed Micro Small and Medium Enterprises shall have access to the Committee**”. When no such committee was formed, then the stressed MSMEs like that of the petitioners were deprived of any such opportunity to approach the committee. The bank is contending that the petitioner has not raised the issue of benefits under MSME scheme at the earliest point of time. When there is no committee then such plea of the bank cannot be entertained. On this ground itself the petitioners are entitled to relief.

13. The bank had raised the plea that the present writ petition is hit by the principles of resjudicata. At the same time had also stated that the petitioner for the first time had raised the plea of benefits under 2015 notification. This Court is of the considered opinion that when the issue was not raised in the earlier



writ petitions and it is raised for the first time in the present writ petition, then there is no question of resjudicata at all. Further the earlier writ petitions were dismissed on the ground of alternative remedy and also to approach the bank for OTS since mandamus would not lie for considering OTS. And there is no discussion about the 2015 notification at all. Therefore the plea of resjudicata by the bank is rejected.

14. Further it is seen in all the cases the section 13(2) notice and other notices were issued after 2015 only, in such circumstances the petitioners are entitled to be considered under 2015 notification. The following table would indicates the dates of notices:

S.No	Name & W.P. (MD)No.	NPA	13(2)	13(4)	Sale notice
1	23328/2024 KKM	16.07.2018	16.07.2018	18.11.2021	08.02.2019 & 6 notices
2	21556/2024 Garuda	13.03.2020	13.10.2021 & 08.08.2023	18.03.2024	01.08.2024
3	22787/2024 Shree Chakra	03.07.2018	03.07.2018	10.09.2018	28.12.2023 & 2.7.2024
4	22789/2024 Kumar Industries	31.01.2016	25.02.2016	25.05.2016	05.10.2017 & 7 notices

From the above table it is evident that the accounts were declared NPA after 2015 only. And all other notices and proceedings under Sarfaesi were issued after 2015 only. In such circumstances, the bank is bound to consider the case



of the petitioners under 2015 notification, if not viable then only ought to have proceeded under Sarfaesi Act. It is pertinent to note under proviso in clause (2) of notification 2015, the bank is entitled to consider for corrective action plan along with repayment facility also. When a comprehensive and viable method is prescribed for the survival of the MSME and also for repayment to banks, without exhausting the same, the bank had proceeded under Sarfaesi Act only for repayment alone is against the 2015 notification.

15. The next contention of the bank is that the earlier writ petitions filed by the petitioner were similar in prayer and they were dismissed by the Courts. Therefore the present writ petitions cannot be entertained. It is seen in earlier writ petitions the prayer is to quash the sale notice and not to proceed until the revival and rehabilitation is completed. But the prayer in the present writ petition is to quash the sale notice and to direct the bank to formulate revival and rehabilitation scheme as per MSME Act, 2006. The only difference is the direction to the bank to formulate the scheme. It is seen that “The Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises” dated 29.05.2015 is issued by invoking section 9 of the MSME Act, 2006. Therefore, the Court is of the considered opinion that the Notification, 2015 is a statutory one and formulating the scheme under the Notification, 2015 is a statutory duty of the bank. The same issue is considered by the Hon’ble Supreme Court in the



case of Pro Kints v. 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

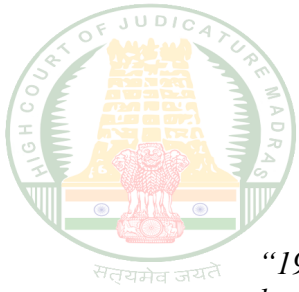
from time to time is having statutory force and the relevant portion is extracted

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 Hon'ble Supreme Court had held that the Notification dated 29.05.2015 and as revised from time to time are having statutory force and are binding to all banks. Therefore, the banks without discharging the statutory duty under Notification dated 29.05.2015 cannot proceed to recover under Sarfaesi Act. In the earlier writ petitions the said statutory duty under Notification 2015 was not raised, discussed and considered. Hence the same cannot be stated that the earlier writ petitions were filed for same prayer.

16. The Learned Senior Counsel appearing for the banks submitted that the Hon'ble Supreme Court in the same Pro Knits had refused to remand the case back to the High Court since the possession was already taken over in those cases and relied on the following portion of the judgment:



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“19. The impugned order therefore is set aside. Since, it has been submitted by the learned counsel for the respondent bank that in all the cases the proceedings under Sarfaesi Act have already been concluded and the possession of the respective premises of the petitioners has already been taken over, we do not propose to remand the matters to the High Court for deciding the Writ Petitions afresh. However, since the High Court has not dealt with the other issues based on the factual aspects of the writ petitions, we clarify that it would be open for the appellants to take recourse to any remedy as may be legally available to them for agitating the issues not decided by the High Court in the impugned order.”

Hence the contention of the bank is that in the present cases also possession was taken over by the bank, hence the bank ought to be permitted to proceed further under Sarfaesi Act. The said submission of the bank ought to be rejected since the Hon'ble Supreme Court had granted liberty to the petitioners to take recourse to any remedy available to them which was not decided by the High Court. In the present case the issue of statutory duty was not decided by the High Court and the petitioners are agitating exactly on the statutory duty cast on the bank, hence the argument of the bank cannot be accepted. Further this Court is of the considered opinion if the section 13(8) of Sarfaesi Act and Notification 2015 are having statutory effect, then the bank is bound to carry out both the statutory duty. The first duty is under Notification 2015 and then comes the statutory duty under Sarfaesi Act. Furthermore, this Court is of the considered opinion that as held supra the proviso in clause (2) of Notification 2015 provides for corrective action plan along with repayment of loan. When the bank can also formulate a scheme for recovery loan also then the banks will not be prejudiced to formulate 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.

17. The Learned Counsel further submitted as per the amended provision of section 13(8) of Sarfaesi Act, the borrower is having right to redeem until the notice for public auction under Rule 9(1) of the 2002 Rules is issued. Once notice is issued then the borrower is not having any right to redeem, hence the bank ought to be permitted to proceed further. The Learned Counsel had relied on the judgment of Hon'ble Supreme Court rendered in CELIR LLP v. Bafna Motors (Mumbai) (P) Limited reported in (2024) 2 SCC 1, wherein it is held as under:

“105. We summarise our final conclusion as under:

(i) The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

(ii) The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.

(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the



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*transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. **However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.***

(iv) The Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower.

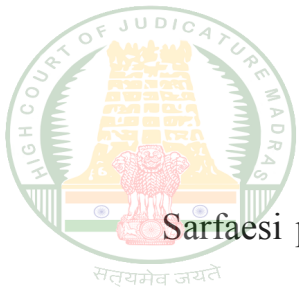
(v) The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the Sarfaesi Act.

(vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law.

(vii) The decision of the Andhra Pradesh High Court in Sri Sri Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.

106. In the result, both the appeals succeed and are hereby allowed.”

18. The contention of the bank is that when the public auction notice was issued in the present cases, then the petitioners are not having any right to redeem, consequently the petitioners are not having any right to stall the



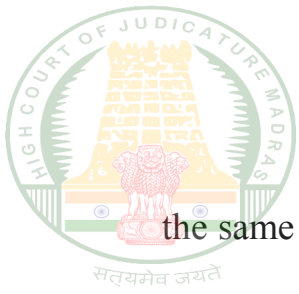
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Sarfaesi proceedings. The Learned Counsel appearing for the bank has totally misconstrued the judgment rendered in Bafna Motors, since the issue there was when the third party interest is involved, whether the third party / auction purchaser right can be curtailed by granting redeem right to the borrower. Hence the Court decided in favour of the auction purchaser. But in the present case the sale did not take place at all and there is no third parties right involved. Therefore the contention of the bank is totally erroneous.

19. Infact such a submission would clearly indicate the adamant attitude of the banks. Infact the counter filed by the bank would clearly indicate that all the banks were not inclined to follow the revival scheme at all, which is extracted hereunder:

*“...when the section 13(2) notice was issued the petitioner did not bring it to the knowledge that the petitioner is MSME and entitled to benefits of notification dated **29.05.2015**. Infact the plea of the MSME and the applicability was raised for the first time in the present writ petition, hence the claim is belated one. Hence, the respondent bank proceeded with other notices and to conduct sale as per law. Further the MSME ought to be vigilant to follow the process laid down under the frame work and bring to the notice of the bank by producing authenticated and verifiable documents to show its eligibility to get the benefits of the frame work. If the MSME failed to produce such documents then it is not open to the said MSME to claim the benefit under the Notification dated 29.05.2015.”*

It is pertinent to note until the judgment rendered in Pro Knits all the banks had taken a plea that the revival scheme to be formulated under 2015 notification is not having any statutory force at all, but the said notification was issued under section 9 of MSME Act, hence has statutory force. Infact the counter is also on



the same line that the scheme is not having statutory force, hence the counter is against Pro Knits judgment. This Court is of the considered opinion that the scheme has fixed a duty on the banks to constitute committee, a duty to formulate a scheme for revival and also shall incorporated clause for repayment of loan also. While the matter being so, blaming the MSME units that the claim is belated one etc. cannot be accepted.

20. The banks are back bone of India's economy and it is the duty of the banks not to kill the business units. The bank ought to recover the loans as well as allow the business units to thrive. At the same time, the business units also ought to understand that without banks they cannot do business and banks are their silent partners in the business and are bound to repay the loans, for the thriving of banking business also. Therefore, there is mutual support system for both the banks and the business units and it is for this mutual support system the Notification 2015 was issued. Before recovery the banks were granted power to work out the chance of reviving the business of MSME and also for repayment. Therefore, without exhausting the said benefits granted under Notification, 2015, the attitude of the bank to proceed for sale of the property is as good as killing the business units. The Court with heavy heart is recording the fact that the banks cannot act like "Shylock-pound of flesh".



21. The next contention that there is alternative remedy before DRT is outrightly rejected since the issue raised in the present writ petition is whether the bank can proceed under Sarfaesi Act without formulating revival scheme under notification 2015, which is a jurisdictional issue. Further the issue is not under Sarfaesi but under the section 9 of MSME Act read with Notification 2015. Therefore the other judgments relied on by the bank for maintainability of writ is not applicable to the present facts of the case. Consequently this Court is holding that the writ petition is maintainable.

22. The petitioner further submitted that their request to revive their units are also considered by the Central Government by the Department of Finance and the Department of MSME and they rely on the communication dated 26.06.2023 wherein it is specifically stated as

“4. The request regarding stopping the legal proceedings and regarding resolution of accounts has been examined and it is informed that enabling regulations for resolution of stressed accounts under the RBI's Prudential Frame work for Resolution of Stressed Assets dated June 7, 2019 and the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs) dated March 17, 2016 are available.”

As rightly pointed out in the aforesaid communication that the petitioners being MSMEs are entitled to be considered under the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises. Therefore, the banks are under mandatory obligation to consider the petitioner's loan account to the



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Committee as per the RBI guidelines. Before referring the loan account to the Committee, the banks are not empowered to take any proceedings under Sarfaesi Act for the recovery of loan amount alone.

23. For the reasons stated supra, this Court is of the considered opinion that the petitioner is entitled to relief, hence the writ petitions are allowed accordingly and the sale notices are set aside. The respondent bank is directed to formulate the revival and rehabilitation scheme to the petitioner's units under Notification, 2015 and as revised from time to time and the same shall be carried out as the per said Notification, 2015 and revised from time to time.

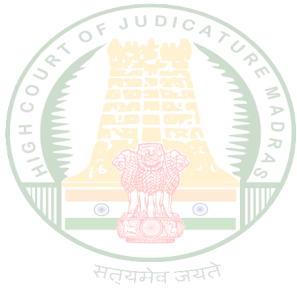
24. in the result the writ petitions are allowed by setting aside the sale notices. No costs. Connected Miscellaneous Petitions are closed.

[J.N.B., J.] [S.S.Y., J.]

03.06.2025

Index : Yes / No

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- To
- 1.The Authorized Officer,
Canara Bank,
Asset Recovery Management Branch,
1st Floor, Regional Office Building,
Muthaiyah Towers –Williams Road,
Cantonment,
Trichy – 620 020.
 - 2.The Branch Manager,
Canara Bank,
Thuvakudi Branch,
Thuvakudi,
Trichy – 620 001.



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J.NISHA BANU, J.

and

S.SRIMATHY, J.

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Pre-Delivery Common order made in
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03.06.2025