

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE TWENTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO: 24822 OF 2021

Between:

M/s. Metrochem API Private Limited, 302, Bhanu Enclave, Sunder Nagar,
Eerragadda, Hyderabad, 500038 Represented by its Authorized Signatory.

...PETITIONER

AND

1. Reserve Bank of India, Main Building, P.O.Box 901, ShahidBhagat Singh Road, Mumbai 400001, Represented by its Authorised Officer.
2. M/s. Canbank Factors Ltd., R/o. 67/, Kanakapura Main Road (Near Lalbagh West Gate), Bsavanagudi, Bengaluru- 560 004, Represented by its Authorised Officer.
3. Credit Information Bureau of India Ltd, One World Centre, Tower 2A, 19TH Floor, SenapatiBapat Marg, Elphinstone Road, Mumbai- 400 013.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Direction or Order, particularly one in the nature of Mandamus, declaring the action of the Respondent No.2 in initiating the wilful defaulter proceedings against the Petitioner Company as per RBI Master Circular dated 05.07.2015 as arbitrary, illegal and contrary to law as Respondent No. 2 lacks jurisdiction to initiate wilful default proceedings basing on RBI Master Circular dt.05/07/2015, and consequently set aside the Show cause Notices dated 19.12.2020, 19/02/2021, 03.04.2021, 05.04.2021 issued by the Respondent No.2 against the Petitioner Company and declare the same as being without jurisdiction, illegal and contrary to law.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of Show cause Notices dated 19.12.2020, 19/02/2021, 03.04.2021, 05.04.2021 issued by the Respondent No.2 against the Petitioner Company and

further direct the Respondent No.2 not to take any coercive measures against the Petitioner Company, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI VIMAL VARMA VASI REDDY

Counsel for the Respondent No.1: SRI V. NITESH

Counsel for the Respondent No.2: SRI B.N. SWAMIJI

Counsel for the Respondent No.3: - - - -

The Court made the following: ORDER

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**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

WRIT PETITION No. 24822 OF 2021

21.01.2026

Between:

M/s Metrochem API Private Limited,
Rep. by its Authorized Signatory

..... Petitioner

And

Reserve Bank of India,
Rep. by its Authorized Officer & others.

..... Respondents

ORDER:

The case of petitioner is that it is engaged in the manufacture of Active Pharmaceutical Ingredients and is operating from five manufacturing facilities, four of which are situated in the State of Telangana and one in the State of Andhra Pradesh, in addition to a Research and Development Centre. Its corporate office is located at Erragadda, Hyderabad, where more than 100 employees are working in departments such as purchase, finance, accounts and marketing, and that the total strength of employees of petitioner company exceeds 3000, whose livelihood is directly dependent upon the

uninterrupted operations and financial credibility of the petitioner company.

1.1. Petitioner contends that M/s P. Praful & Company Agency (India) Private Limited was supplying 2.3 LUTIDINE raw materials (chemicals) from its Hyderabad office godown locally to petitioner's manufacturing facilities and petitioner company duly cleared all valid and lawful purchase bills raised by the said entity up to 29.05.2019, leaving no amount due or payable thereafter. All such payments were made directly by way of post-dated cheques issued in favour of M/s P. Praful & Company Agency (India) Private Limited, indicating a specific bank account as per the request of the said supplier, and that no dispute whatsoever existed with respect to any invoice up to the said date.

1.2. Thereafter, petitioner received e mail from the office of the 2nd respondent at Ahmedabad claiming that certain invoices factored by M/s P. Praful & Company Agency (India) Private Limited were overdue and calling upon petitioner company to make arrangements for payment. The contents of said e mail came as a complete surprise to its Chief Financial Officer, as all invoices had already been settled and the outstanding balance was 'nil' as on that date. Petitioner

contends that no supplies were received by it after 07.02.2019, the last supply being under Invoice No. HY1800022 dated 06.02.2019, and that all invoices duly accounted for in the normal course of business were settled by 29.05.2019, with the ledger account reflecting a zero balance.

1.3. Petitioner contends that upon receipt of e mail, the Chief Financial Officer immediately informed the departments concerned within petitioner company and expressed that the invoices claimed to be overdue were fake, as no material had been received, bills were never forwarded to the accounts department, and the same were never accounted for at all. It is stated, petitioner had taken aback by the said communication and consequently conducted an internal audit and enquiry, which revealed that M/s P. Praful & Company Agency (India) Private Limited had raised five dubious invoices during the period from 28.05.2019 to 23.07.2019 amounting to Rs.6,24,92,800/- purportedly towards supply of raw materials, without any underlying transaction or supply of goods.

1.4. Petitioner contends that said fraud was committed by Shri Neel P. Bhalakia, Director of M/s P. Praful & Company Agency (India) Private Limited, in collusion with Mr. Yerra Sudhakar, who was working in the purchase department of

petitioner company and was entrusted with the duty of preparing purchase orders and forwarding them to the appropriate authorities for verification and approval. Upon enquiry, it was revealed that fraud was perpetrated by raising fake and nominal invoices without any supply of goods, supported by fabricated confirmations of receipt and fake, unauthorised undertakings and authorisations purportedly issued by Mr. Yerra Sudhakar, who was not authorised to represent or bind petitioner company in any manner.

1.5. Petitioner contends that upon discovery of the said fraud, it immediately lodged a complaint dated 19.10.2019 before the Cyber Crime Police, CCS, DD, Hyderabad, pursuant to which Crime No.231 of 2019 was registered for the offences punishable under Sections 406, 420, 463, 465, 468, 471 and 409 read with Section 34 of the Indian Penal Code. It is contended, after conducting a detailed investigation, police officials filed charge sheet dated 23.12.2020 in C.C. No.13010 of 2021 before the Court of the XII Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, holding that Shri Neel P. Bhalakia, Director of M/s. P. Praful & Company Agency (India) Private Limited, committed fraud by creating false tax invoices and factoring them with the 2nd respondent, which was

managed at the relevant time by Mr. M. Sohan Singh as Branch Head, Ahmedabad, in the capacity of Assistant Vice President, for an amount of Rs.6,24,92,800/- quoting Purchase Order No. RM182132 for 20,000 kgs of 2.3 LUTIDINE on payment terms of 120 days.

1.6. Petitioner contends that charge sheet further establishes that the alleged delivery challan and goods consignment note bearing L.R. No.039 dated 28.05.2019 were fabricated and the vehicle purported to have transported the goods was, in fact, transporting some other material on 27.05.2019 to other places and was out of Hyderabad city on 28.05.2019, and that the said transport agency never transported any material to petitioner company. The investigation further revealed that there was no generation of e-way bills and no payment of GST in respect of the five alleged invoices, despite such e-way bills being mandatorily required to be generated in the system, and that officers of the 2nd respondent failed to insist upon the necessary requirement of e-way bills. The ex-employee Mr. Yerra Sudhakar ensured that monthly outstanding statements sent by the 2nd respondent did not reach the accounts or finance departments of petitioner company and, without receipt of any goods, falsely sent e mails

confirming receipt of goods and stating that no e-way bills were required, pursuant to which the Head of the Ahmedabad Branch of the 2nd respondent processed the false invoices without verification and released the amounts to the account of M/s. P. Praful & Company Agency (India) Private Limited.

1.7. Petitioner contends that M/s P. Praful & Company Agency (India) Private Limited wrongfully gained by claiming uncanceled purchase orders and securing release of funds from M/s. Canbank Factors Limited, Ahmedabad, through forged tax invoices, thereby cheating petitioner company. It is contended that during investigation, police verified the alleged tax invoices and collected e-way bill details from the office of the Hyderabad GST Commissionerate and found that no e-way bills existed and that GST was not paid, rendering all five invoices false and fabricated. M/s. P. Praful & Company Agency (India) Private Limited had entered into a factoring agreement with the 2nd respondent pursuant to which invoices raised in petitioner company's name were factored. Petitioner contends that a factoring transaction involves three parties, namely the assignor, the assignee and the customer, and that there is no contract between the assignee and the customer, such

transactions being regulated by the Factoring Regulation Act, 2011.

1.8. Petitioner contends that acceptance letter dated 11.04.2018 and undertaking letter dated 24.04.2018 relied upon by the 2nd respondent were fabricated by M/s P. Praful & Company Agency (India) Private Limited in collusion with Mr. Yerra Sudhakar, who was actively involved in perpetuating the acts of raising fake invoices and who was not authorised to represent the petitioner company. The 2nd respondent issued a legal notice dated 21.10.2019 demanding payment of Rs.6,24,92,800/- by invoking the factoring agreement with the vendor and thereafter, issued show cause notices dated 19.12.2020, 19.02.2021, 03.04.2021 and 05.04.2021 proposing to declare petitioner company as a wilful defaulter. Petitioner replied *vide* letters dated 29.12.2020 and 29.04.2021 categorically asserting that the 2nd respondent is neither a lender nor a banker and has no locus or jurisdiction to initiate wilful defaulter proceedings against petitioner company.

1.9. Clause 2.1.1 of the RBI Master Circular dated 01.07.2015 defines the term 'lender' as banks or financial institutions to which any amount is due arising out of a banking transaction and that the 2nd respondent, being a

factoring company and a Non-Banking Financial Company, is not engaged in the business of lending and has not been vested with any power to initiate wilful defaulter proceedings. At best, the 2nd respondent may be construed as a lender vis-à-vis M/s P. Praful & Company Agency (India) Private Limited but can never be a lender vis-à-vis petitioner company and that petitioner does not owe any amount either to the vendor or to the 2nd respondent. Even assuming any liability, it would be operational in nature and not a financial debt.

1.10. Petitioner contends that fraud vitiates all proceedings and that any claim founded upon fabricated invoices cannot be sustained, particularly when the charge sheet names the officers of the 2nd respondent as Accused 4 and 5. The show cause notices issued without jurisdiction are *void ab initio* and liable to be interdicted under Article 226 of the Constitution. A perusal of show cause notices demonstrates that the 2nd respondent has already made up its mind, rendering the proceedings an empty formality, and that the 2nd respondent has also written to CIBIL and the lenders of petitioner company, thereby damaging petitioner's hard-earned creditworthiness and adversely impacting its ability to avail credit facilities from its bankers, including SBI. M/s. P. Praful &

Company Agency (India) Private Limited has since entered into CIRP proceedings under Section 7 of the Insolvency and Bankruptcy Code and that any hampering of petitioner's credit facilities would adversely affect the lives and livelihood of more than 3000 employees, particularly when petitioner is a profit-making company and its accounts for the financial year 2021 are to be finalised. Petitioner finally contends that the disputed amount was not paid as it represents fake invoices raised by the said company, as conclusively found during police investigation and reflected in the charge sheet filed against M/s P. Praful & Company Agency (India) Private Limited and its Director Shri Neel P. Bhalakia.

2. By order dated 04.10.2021, this Court granted interim suspension of the impugned show cause notice as the same was issued contrary to the master circular issued by the RBI.

3. Respondent No.2 filed counter contending that it is a notified financial institution within the meaning of the Reserve Bank of India Master Circular dated 01.07.2015 and is vested with jurisdiction and authority to initiate wilful defaulter proceedings against entities which deliberately avoid repayment of their dues. It has not violated any statutory provision or

constitutional guarantee, including Articles 19 and 21 of the Constitution of India, and that petitioner company is a wilful defaulter, though not for the reasons alleged by them. While it admits that petitioner company is engaged in manufacture of pharmaceutical ingredients, the number of employees or internal structure of petitioner company has no bearing on their liability to discharge its financial obligations. M/s. P. Praful & Company Agency (India) Private Limited was regularly supplying chemicals to petitioner company which was depositing bill amounts directly into the overdraft account of Canbank Factors Limited maintained with Canara Bank, Paldi Branch, Ahmedabad, bearing Account No. 0174261005272.

3.1. It is contended, petitioner company was making payments towards factored invoices by issuing post-dated cheques in favour of "Canbank Factors Ltd A/c P. Praful & Company Agency (India) Pvt. Ltd." and that such cheques were issued by the Managing Director and another Director of petitioner company. Petitioner company was also making payments directly through NEFT, RTGS and online transfers into the aforesaid account and that documentary proof of such payments has been placed on record. Petitioner company had issued an undertaking and authorisation letter dated

05.10.2015, executed through its General Manager (Finance), undertaking to make all payments directly to Canbank Factors Limited and agreeing to intimate Respondent No.2 regarding any discrepancy in invoices. Respondent No.2 further contends that a revised undertaking letter dated 24.04.2018 was executed by petitioner company through its Assistant Manager, Mr. Yerra Sudhakar, reiterating the obligation to make payments directly to Respondent No.2 on account of M/s P. Praful & Company Agency (India) Private Limited and to report any discrepancy in invoices.

3.2. Respondent No.2 contends that pursuant to the said undertakings, petitioner company had been regularly making payments against factored invoices and that assertion of petitioner that all dues were cleared by 29.05.2019 and that ledger balance was 'nil' is wholly false. If the account was settled on 29.05.2019, there was no explanation for petitioner company making payments of Rs. 1,01,95,423/- on 28.06.2019 and Rs.90,79,582/- on 10.07.2019, which payments are evidenced by bank statements dated 29.06.2019 and 11.07.2019. M/s P. Praful & Company Agency (India) Private Limited was its client and had availed factoring limits pursuant to a Factoring Agreement dated 20.01.2015, under which a limit of

Rs.5,00,00,000/- was sanctioned and subsequently enhanced to Rs.8,00,00,000/- by sanction letter dated 30.11.2015 followed by supplemental agreements and periodic renewals. In accordance with the factoring arrangement, it paid the bills raised against petitioner company to the supplier after deducting the agreed margin.

3.3. Respondent No.2 contends that the allegation that payments were released without verification is incorrect and that payments were released only after confirmation of receipt of goods and supporting documents, consistent with past transactions between petitioner company and the supplier. It had been sending monthly statements of outstanding debt to petitioner company through registered post which acknowledged receipt of the same on every occasion. Despite repeated communications, reminders and statements of outstanding debt, including e mails dated 01.10.2019, 10.10.2019 and 15.10.2019, petitioner company neither raised any dispute nor made payment, thereby demonstrating a deliberate intention to evade repayment. The due date of Invoice No. HY1900007 for Rs.2,10,51,200/- expired on 25.09.2019 and that follow-up communications were duly sent to the email address provided by petitioner company.

3.4. Respondent No.2 contends that the allegation of fake invoices and collusion was raised only after repeated demands for payment and that the criminal complaint lodged by the petitioner is false, fabricated and motivated solely to avoid repayment of legitimate dues. Petitioner company, along with the supplier, colluded to create a false narrative and falsely implicated its own employee to evade payment of Rs.6.24 crores along with interest. All consignments were duly confirmed by petitioner company as having been received in good condition and that the allegation regarding absence of e-way bills and verification is false. Respondent No.2 is not concerned with internal disputes between petitioner company and supplier and that it possesses all documents to establish the liability of petitioner company.

3.5. It is contended, charge sheet was filed only after issuance of show cause notice dated 19.12.2020 and that criminal proceedings were initiated to divert attention from petitioner's financial distress and wilful default. Petitioner company continued to make substantial payments even after 29.05.2019, which negates the plea of fraud and fabrication. It is stated, the audited financial statements of petitioner company for the financial year 2019-2020, filed with the Registrar of

Companies on 30.01.2021, contain disclosures which contradict petitioner's stand and amount to an implied admission of liability. Under Clause 2.1.1 of the RBI Master Circular dated 01.07.2015, guarantees and letters of credit are covered within the definition of 'lender' and that the undertaking issued by petitioner company constitutes a guarantee to pay the invoice amounts after the stipulated credit period of 90/120 days. Petitioner company wilfully defaulted despite such undertaking and is therefore, liable to be proceeded against as a wilful defaulter.

3.6. Respondent No.2 contends that it is empowered to initiate proceedings under Section 7 of the Insolvency and Bankruptcy Code and that there is no restriction on NBFCs, including factoring companies, from invoking insolvency proceedings. The insolvency petition filed before the National Company Law Tribunal, Hyderabad was supported by all relevant documents and proofs. The plea that fraud vitiates all proceedings is wholly misconceived, as delivery of goods and confirmations were acknowledged by petitioner company and that any internal irregularities cannot defeat Respondent No.2's right to recover its dues. Respondent No.2 has jurisdiction to issue show cause notices and the principles laid down by the

Hon'ble Supreme Court regarding lack of jurisdiction are not applicable to the present case.

3.7. Respondent No.2 contends that updating credit information agencies such as CIBIL is mandatory under RBI guidelines upon default and that any impact on petitioner's reputation is a statutory consequence of default and not an arbitrary act. Petitioner company has approached this Court only to protract proceedings and avoid repayment of substantial public funds. Mere filing of a charge sheet does not establish that invoices are fake and correctness of such allegations can only be determined after trial. Until such adjudication, petitioner cannot avoid its contractual and statutory obligations. The Executive Director of Canara Bank is not concerned with the present dispute and that issuance of notices to such authority by petitioner amounts to harassment, as the authorised officer for the purposes of the impugned proceedings is only the branch head of Respondent No.2.

4. Respondent No. 3 also filed counter stating that Writ Petition is not maintainable against them. This Court lacks territorial jurisdiction to entertain the writ petition insofar as Respondent No. 3 is concerned, as its registered office is admittedly situated at Mumbai. Petitioner is fully aware of the

address and location of Respondent No. 3 and yet chose to institute the Writ Petition before this Court, which constitutes an abuse of the process of law. Respondent No. 3 further contends that the disputes sought to be raised by petitioners are purely contractual in nature and do not involve any public law element, therefore, are not amenable to writ jurisdiction.

4.1. It is contended, banks and financial institutions are not amenable to writ jurisdiction in matters where rights and obligations arise purely out of contract, unless a statutory or public duty is shown to have been violated, which is absent in the present case. No fundamental or legal right of petitioner has been violated and that the alleged rights and obligations arise solely out of transactions relating to credit facilities involving Respondents 2 and 3. In the absence of any statutory duty or public duty being sought to be enforced, Writ Petition is not maintainable against it.

4.2. Respondent No. 3 contends that Writ Petition suffers from misjoinder of parties and absence of any cause of action. It is a company registered under the Credit Information Companies (Regulation) Act, 2005 and that its primary function is to collect, collate and disseminate credit information as reported to it by banks and financial institutions. Under the

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proviso to Section 21(3) of the said Act, it cannot make any correction, deletion or addition to credit information unless the same is certified as correct by the concerned credit institution. Respondent No. 3 has no authority to declare any person or entity as a wilful defaulter and that it merely disseminates information on non-suit filed and suit-filed accounts of wilful defaulters based on information reported to it by banks and financial institutions. It is contended, a perusal of the impugned communication demonstrates that State Bank of India has reported petitioners as wilful defaulters in several quarters and that Respondent No. 3's website merely reflects the information so reported, leaving no cause of action against them.

4.3. Respondent No. 3 contends that petitioners have wrongly impleaded it as a party, as it is not within its domain to decide whether a person or entity should be declared a wilful defaulter or whether such names should be published. Such declarations are made exclusively by banks and financial institutions and that Respondent No. 3 merely publishes the information in compliance with its statutory obligations under the Credit Information Companies (Regulation) Act, 2005 and the RBI Master Circular dated 01.07.2015. The Master Circular on Wilful Defaulters dated 01.07.2015 expressly provides that

credit information companies disseminate information as reported to them by banks and financial institutions and that responsibility for accuracy of facts and figures rests solely with such banks and financial institutions. There is no privity of contract between petitioners and Respondent No. 3 and therefore, no relief can be sought against it.

4.4. Respondent No. 3 contends that writ petition is also liable to be dismissed on the ground that petitioner had alternate and efficacious remedies and that it is a settled principle of law that writ jurisdiction ought not to be exercised where such remedies exist. Petitioners have not even pleaded as to why such remedies were not availed, rendering the Writ Petition an abuse of the process of law. Respondent No. 3 is a company incorporated under the Companies Act, 1956 and has been granted a certificate of registration by the Reserve Bank of India under the Credit Information Companies (Regulation) Act, 2005, and functions strictly in accordance with the provisions of the said Act, the rules and regulations framed thereunder. It does not collate information on its own and has no obligation except to disseminate information received from banks and financial institutions. Sections 14 and 17 of the 2005 Act govern its functions, which include collection, processing and

furnishing of credit information to specified users, and that it is statutorily prohibited from engaging in any activity beyond what is expressly permitted under the Act.

4.5. The RBI Master Circular dated 01.07.2015 mandates banks and financial institutions to submit lists of wilful defaulters to credit information companies on a periodic basis and further mandates credit information companies to disseminate such information on their respective websites. The Respondent No. 3 contends that it is bound to comply with such directions and has no discretion in the matter. Respondent No. 3 does not have the authority to correct, delete or modify any credit information unless the same is certified by the bank or financial institution concerned and that it cannot act unilaterally at the instance of petitioner. Upon receipt of papers in Writ Petition, it verified its suit-filed databases and found that petitioner's names was not reflecting either in the database pertaining to wilful defaulters of Rs.25 lakhs and above or in the database pertaining to defaulters of Rs.1 crore and above.

4.6. Respondent No. 3 contends that pursuant to the interim order dated 04.10.2021, it has neither reported petitioner's name in its databases nor received any update or instruction from Respondent No. 2 in respect of the petitioner's

account. In view of the aforesaid facts and statutory position, Writ Petition is not maintainable against it and no directions as prayed for by petitioner can be issued against them. They are also not aware of the underlying transactions between petitioner and Respondent No. 2 and under the Master Circulars issued by the Reserve Bank of India, banks and financial institutions alone are authorised and mandated to report the names of wilful defaulters, while Respondent No. 3 is statutorily-bound only to host and disseminate such information. From a plain reading of the Master Circular, it is evident that Respondent No. 3 has no role whatsoever in the declaration of a borrower as a wilful defaulter and that it has been unnecessarily impleaded in the present writ petition.

5. Heard Sri Raja Sripathi Rao, learned Senior Advocate on behalf of Sri Vimal Varma Vasireddy, learned counsel for petitioner, Sri B.N. Swamiji, learned counsel on behalf of Respondents 2 and 3.

6. On consideration of the material available on record, the admitted and incontrovertible factual position which emerges is that the 2nd Respondent is a factoring company and a Non-Banking Financial Company, and that the transactions forming the subject matter of the present proceedings arise out

of factoring arrangements entered into between the 2nd Respondent and the vendor company. It is not in dispute that Petitioner is not a borrower of any loan, advance or credit facility from the 2nd Respondent. The relationship between Petitioner and the 2nd Respondent, if any, is confined to the role of Petitioner as a 'customer' in a factoring transaction, as recognised and governed by the Factoring Regulation Act, 2011.

7. Under the statutory scheme of the Factoring Regulation Act, 2011, a factoring transaction involves three distinct parties, namely, the assignor of receivables, the assignee or factor, and the customer against whom invoices are raised. The Act does not contemplate any lending relationship between the factor and the customer, nor does it create any privity of contract in the nature of borrower and lender between them. The factor merely steps into the shoes of the assignor for the limited purpose of collection of receivables and risk management, subject to the statutory framework. Therefore, in law, the customer cannot be treated as a borrower or debtor of the factor in respect of any lending transaction.

8. A plain and unambiguous reading of Clause 2.1.1 of the Reserve Bank of India Master Circular on Wilful Defaulters dated 01.07.2015 defines the term 'lender' to mean banks and

financial institutions to which any amount is due arising out of a banking transaction, including off-balance-sheet transactions such as derivatives, guarantees and letters of credit. The *sine qua non* for invoking the said Circular is the existence of a banking transaction giving rise to a lending relationship. Factoring, by its very nature and by statutory recognition under the Factoring Regulation Act, 2011 does not constitute a banking transaction between the factor and the customer. At best, the factor may be a lender vis-à-vis the assignor of receivables, but it does not assume the character of a lender vis-à-vis the customer against whom the invoices are raised.

9. In the present case, the show cause notices issued by the 2nd Respondent proceed on the foundational assumption that Petitioner is a borrower and that the alleged non-payment constitutes a default in repayment of a lending transaction. This assumption is fundamentally flawed and contrary to the statutory framework governing factoring transactions as well as the express language of Clause 2.1.1 of the RBI Master Circular dated 01.07.2015. Jurisdiction to initiate wilful defaulter proceedings flows strictly from the statute and the Circular, and cannot be assumed on the basis of contractual arrangements or unilateral characterisation of the relationship. The record

further reveals that criminal proceedings arising out of the very same set of invoices are pending consideration before the competent criminal court and that a charge sheet has been filed alleging fabrication of invoices, transport documents and electronic records. The order passed in Criminal Petition No.2598 of 2021 demonstrates that the allegations of fraud are not speculative or illusory but are serious, triable and founded upon a detailed investigation. When the very substratum of the alleged liability is under criminal scrutiny on allegations of forgery and fraud, initiation and continuation of wilful defaulter proceedings against Petitioner, who claims to be the victim of such fraud, is legally-impermissible and unsustainable.

10. This Court also takes note of the fact that the criminal proceedings arising out of the very same set of invoices are pending consideration before the competent criminal Court and that, in Criminal Petition No.2598 of 2021, the Court, upon examination of the charge sheet and the material collected during investigation, has found the allegations relating to fabrication of invoices, transport documents and electronic records to be serious and triable in nature. This Court makes it clear that no finding is being recorded on the merits of the criminal case; however, existence of such proceedings

demonstrates that dispute is not a mere accounting disagreement but one involving allegations of fraud founded on detailed investigation. This circumstance lends further support to the conclusion that initiation of wilful defaulter proceedings against the Petitioner, at this stage, is legally untenable.

11. This Court is also mindful of the settled legal principle that fraud vitiates all proceedings. Any action founded upon documents or transactions which are alleged to be forged and fabricated, and which are the subject matter of a pending criminal prosecution, cannot form the foundation for initiating coercive civil consequences such as declaration as a wilful defaulter, particularly when such declaration carries serious civil, commercial and reputational ramifications. The wilful defaulter framework is intended to address deliberate and contumacious defaults by borrowers who have the capacity to pay but wilfully choose not to do so. It is not intended to be invoked in cases where existence, genuineness and enforceability of the very liability itself is under serious dispute and is the subject matter of criminal proceedings alleging fraud and forgery. It is also brought to the notice of this Court that the 2nd Respondent had filed Company Petition No. IB/86/2021 before the National Company Law Tribunal, seeking initiation of

Corporate Insolvency Resolution Process against Petitioner herein by invoking Section 7 of the Insolvency and Bankruptcy Code, 2016. The National Company Law Tribunal, upon elaborate consideration of the factual matrix, the provisions of the Factoring Regulation Act, 2011, the Reserve Bank of India Guidelines governing factoring transactions, and the definition of 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, dismissed the said Petition by holding that the factoring arrangement relied upon by the 2nd Respondent was admittedly 'with recourse' and that, in such cases, exposure and debt are to be reckoned only in the hands of the assignor, namely M/s. P. Praful & Company Agency (India) Private Limited, and not in the hands of the customer/debtor, namely Petitioner.

12. The Tribunal categorically held that there was no disbursal of funds by the 2nd Respondent to Petitioner; essential ingredients of 'financial debt', including disbursal against consideration for time value of money, were absent, and that there was no jural relationship of financial creditor and borrower between the 2nd Respondent and Petitioner. The Tribunal further held that the 2nd Respondent, at best, could pursue its remedies against the assignor and that it lacked

eligibility to maintain proceedings under Section 7 of the Code against the Petitioner. Accordingly, Company Petition No. IB/86/2021 was dismissed with liberty to the 2nd Respondent to seek remedies in accordance with law elsewhere. The relevant portion of the order passed by the National Company Law Tribunal is extracted hereunder:

" 23. The terms and conditions in the agreement between the Financial Creditor and M/s. P. Praful & Company Agency (India) Pvt. Ltd at pg 116 of instant Application clearly states about the Type of factoring Facilities which clearly shows 'Sale Bill Factoring Limit - With Recourse'.

24 Therefore, in view of the above discussion based on the provisions of the Factoring Regulation Act, 2011 and the RBI Guidelines, we are of the considered view that while the Applicant here may have recourse against the assignor namely M/s. P. Praful & Company Agency (India) Pvt. Ltd. u/s 7 of the Code, it certainly has no eligibility to file and maintain the instant Application against the respondent herein namely M/s Metrochem API Pvt Ltd. as a Financial Creditor

25. It is not out of place to mention here that according to the Applicant factor/financier itself, Corporate Insolvency Resolution Process has already been initiated against the client i.e. M/s P. Praful & Company Agency (India) Pvt. Ltd. vide order of NCLT Ahmedabad bench dated 03.07.2020 and the factor/Applicant had also filed a claim in Form-C' on 11.08.2020 before the RP of M/s. P. Praful & Company Agency (India) Private Limited.

26. On a consideration of all the facts and the legal position, we have no doubt in holding that in view of the explicit clause in the factoring agreement entered into between the Applicant/Assignee and the Client/ Assignor in relation to the purchase of debts ON RECOURSE basis, read with the RBI Guidelines discussed supra, there is no jural relationship of creditor and borrower between the Applicant and Respondent. Consequently, the Applicant herein cannot claim to be a

Financial Creditor qua the Respondent so as to maintain the instant Application filed w/s 7 of the Code against the Respondent.

27. Accordingly, instant Application is dismissed with liberty to the Applicant to seek remedy elsewhere in a manner known to Law.

28. With the above, Company Petition IB/86/2021 stands disposed. No Order as costs."

13. It is also placed on record that Respondent No. 2, along with its Vice President, also approached this Court by filing Criminal Petition No. 2598 of 2021 under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the proceedings in C.C. No. 13010 of 2020 on the file of the XII Additional Chief Metropolitan Magistrate, Hyderabad. This Court, upon a detailed consideration of the pleadings, the charge sheet, and the material collected during investigation, held that there were specific and serious allegations indicating conspiracy, forgery, fabrication of invoices and electronic records, and dishonest inducement, resulting in wrongful loss, and that such allegations were supported by prima facie material. This Court further held that the issues raised involved disputed questions of fact, which could not be adjudicated in proceedings under Section 482 Cr.P.C., and that the allegations required a full-fledged trial for proper determination. Consequently, this Court found no ground to exercise its

inherent jurisdiction to stifle the prosecution at the threshold and dismissed the criminal petition, while dispensing with the personal appearance of petitioners therein subject to conditions, and clarifying that all observations made were confined solely to the purpose of deciding the quash petition. The relevant portion of the order passed in Criminal Petition No. 2598 of 2021 is extracted hereunder:

" 28. It is already stated supra, there are specific allegations against the petitioners that petitioner No.1, who is working as a Branch Head at petitioner No.2 company, actively assisted accused Nos.1 to 3 to fraudulently get money out of petitioner No.2 company and accused Nos. 1 to 3 conspired with petitioner No.1 and perpetrated the fraud and forging of fake invoices and factoring them with petitioner No.2 company for a huge amount of Rs.6,24,92,800/-. Even though respondent No.2 company has not received the consignment of goods based upon the five invoices and e-way bills dated 28.05.2019, 27.06.2019 and 23.07.2019, which are forged and fabricated by accused Nos. 1 to 3 in collusion with petitioner No.1 and petitioner No.2 and released huge amount of Rs.6,24,92,800/- in favour of accused No.2, even without verification of the invoices and also due confirmation with respondent No.2 company. This Court is of the considered view that the above said allegations have to be adjudicated and decided by the trial Court after full-fledged trial only and the same cannot be gone into in this criminal petition, while exercising the powers conferred under Section 482 of the Cr.P.C.

29. It is very much relevant to mention that in *Sau. Kamala Shivaji Pokarnekar v. The State of Maharashtra & Ors.*, the Hon'ble Apex Court held that the inherent powers under Section 482 Cr.P.C. has to be exercised in exceptional cases sparingly, with caution, only to prevent abuse of process or to secure the ends of justice; and it cannot be invoked to weigh evidence or stifle a genuine prosecution, but may be applied where the allegations in the complaint, taken at face value, do

not disclose the basic ingredients of any offence. The case on hand is not the rarest of rare cases to exercise powers of this Court under Section 482 of Cr.P.C. to quash the proceedings in C.C.No. 13010 of 2020.

30. For the foregoing reasons, this Court does not find any ground to quash the proceedings in C.C.No.13010 of 2020 against the petitioners on the file of the XII Additional Metropolitan Magistrate, Nampally, Hyderabad.

31. In the result, the criminal petition is dismissed. However, taking into consideration the peculiar facts and circumstances of the case, the presence of the petitioners in C.C.No. 13010 of 2020 is dispensed with, unless their presence is specifically required subject to the condition that the petitioners shall represent through their counsel on each and every date of hearing. In case of non appearance of the petitioners on the specific date so fixed by the trial Court for their appearance, the trial Court is entitled to proceed with the matter, in accordance with law. It is made clear that any of the observations made in this order are confining for the purpose of deciding this case only'.

14. This Court is of the considered view that jurisdiction is a condition precedent for the valid exercise of power under the RBI Master Circular dated 01.07.2015. An authority which does not fall within the definition of 'lender' under Clause 2.1.1 of the Circular cannot assume jurisdiction to initiate wilful defaulter proceedings merely on the basis of contractual arrangements or undertakings. Jurisdiction cannot be conferred by consent, acquiescence or conduct of the parties, nor can it be created by an erroneous interpretation of the governing statutory provisions. The contention advanced on

behalf of the 2nd Respondent that it is a notified financial institution and therefore entitled to initiate wilful defaulter proceedings cannot be accepted in isolation, divorced from the statutory context. Even a notified financial institution must satisfy the jurisdictional requirement that the amount alleged to be due arises out of a banking transaction involving a lending relationship. In the absence of such a relationship between Petitioner and the 2nd Respondent, assumption of jurisdiction by the 2nd Respondent is clearly without authority of law.

15. The argument that undertakings or authorisations issued by Petitioner to make payments towards factored invoices convert the relationship into one of lender and borrower is equally untenable. Such undertakings, even if assumed to exist, do not alter the essential character of the transaction, which remains a factoring arrangement governed by the Factoring Regulation Act, 2011. A contractual obligation to make payment towards receivables does not metamorphose into a banking transaction so as to attract the rigours of the wilful defaulter regime. This Court also finds merit in the submission that the impugned show cause notices disclose a pre-determined approach on the part of the 2nd Respondent. The notices proceed on the premise that Petitioner is already a

defaulter and call upon Petitioner to show cause only as a formality. Such an approach strikes at the very root of fairness and due process, which are implicit in Article 21 of the Constitution and renders the proceedings vitiated.

16. It is well settled by a catena of decisions of the Hon'ble Supreme Court that where a show cause notice is issued by an authority lacking inherent jurisdiction, or where the proceedings are ex facie contrary to law, the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, is not required to relegate the aggrieved party to an alternative remedy. existence of an alternative remedy does not operate as a bar in cases where the action complained of is wholly without jurisdiction or is an abuse of process of law. In the present case, impugned show cause notices have been issued in clear disregard of the statutory scheme governing factoring transactions, the express provisions of the RBI Master Circular dated 01.07.2015, and the admitted factual position that Petitioner is not a borrower of the 2nd Respondent. Continuation of such proceedings would result in grave and irreversible prejudice to Petitioner, including impairment of its creditworthiness, disruption of its business operations and adverse impact on the livelihood of thousands of employees.

17. This Court is also conscious of the wider public law implications of permitting entities lacking jurisdiction to invoke wilful defaulter framework. Such an approach would dilute the sanctity of the regulatory mechanism devised by the Reserve Bank of India and would expose businesses to arbitrary and coercive action without authority of law, which cannot be countenanced in a constitutional democracy governed by the rule of law. For all the aforesaid reasons, this Court holds that the 2nd Respondent lacks jurisdiction to initiate wilful defaulter proceedings against Petitioner under the RBI Master Circular dated 01.07.2015, that the impugned show cause notices are vitiated by lack of jurisdiction and legal infirmity, and that initiation and continuation of such proceedings are unsustainable in law. Consequently, Writ Petition deserves to be allowed.

18. The impugned show cause notices dated 19.12.2020, 19.02.2021, 03.04.2021 and 05.04.2021 issued by the 2nd Respondent are hereby set aside. The 2nd Respondent is restrained from taking any further steps pursuant to the said notices or from initiating wilful defaulter proceedings against the Petitioner in respect of the transactions in question. The writ petition is accordingly allowed. No costs.

19. Consequently, the miscellaneous Applications, if any shall stand closed.

//TRUE COPY//

SD/-P. PONNA KRISHNA
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Authorised Officer, Reserve Bank of India, Main Building, P.O.Box 901, ShahidBhagat Singh Road, Mumbai 400001.
2. The Authorised Officer, M/s. Canbank Factors Ltd., R/o. 67/, Kanakapura Main Road (Near Lalbagh West Gate), Bsavanagudi, Bengaluru- 560 004.
3. Credit Information Bureau of India Ltd, One World Centre, Tower 2A, 19TH Floor, SenpatiBapat Marg, Elphinstone Road, Mumbai- 400 013.
4. One CC to SRI VIMAL VARMA VASI REDDY, Advocate [OPUC]
5. One CC to SRI V. NITESH, Advocate [OPUC]
6. One CC to SRI B.N. SWAMIJI, Advocate [OPUC]
7. Two CD Copies

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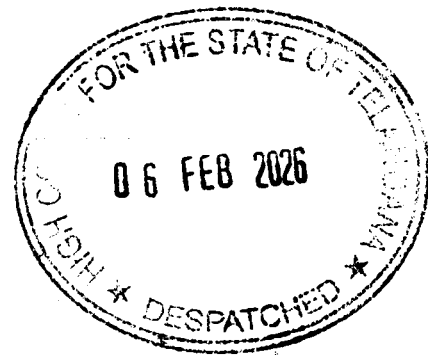
BS

HIGH COURT

DATED:21/01/2026

ORDER

WP.No.24822 of 2021



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

QMT
4/2/26