

# Zuhair Mohamedali Merchant Proprietor ... vs Idfc Bank Represented By Its Managing ... on 11 January, 2024

**Author: M.M. Sathaye**

**Bench: B. P. Colabawalla, M.M. Sathaye**

2024:BHC-OS:649-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 4620 OF 2022

1. M/s. A. Navinchandra Steels Pvt. Ltd., a company incorporated under Indian companies Act, 1956 and having its registered office at 704, "Ecstasy" Commercial Bldg., City of Joy Nirmal Life style, Mulund (W), Mumbai- 400 080.

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SHUBHAM  
ASHOKRAO  
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2. Alpesh Navinchandra Gosalia, Residing at Flat No. 201/202, "G" Wing Kukreja Palace, Garodia Nagar, Vallabh Baug Cross, Ghatkopar (E), Mumbai-400 077.

Versus

1. Union of India  
Secretary in the Department of Banking, Ministry of Finance, Government of India, Jeevandeep Building, Parliament Street, New Delhi-110 001.

2. Ministry of Micro, Small and Medium Enterprises, Government of India, Through Its Hon'ble Secretary, Udyog Bhawan, New Delhi-110001.

3. Governor, Reserve Bank of India, Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

4. State of Maharashtra  
Through its Hon'ble Principal Secretary to Government of Maharashtra Mantralaya, Madam Cama Road, Hutatma Rajguru Chowk, Nariman Point,

Mumbai 400032.

5. Abhyudaya Co-operative Bank Ltd.,  
Represented by Board of Directors through its  
Chairman K.K. Tower, G. D. Ambekar Marg, Parel  
Village, Parmanand Wadi, Parel, Mumbai,  
Maharashtra- 400012.

Also at

Unit No. 1 & 2, Silver Harmony, New Maneklal Estate,  
Ghatkopar (W), Mumbai-400 086.

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6. Authorized Officer Legal & Recovery Department,  
Abhyudaya Co-operative Bank Ltd., Shram Safalya  
Building, 63, G.D. Ambekar Marg, Parel Village,  
Mumbai- 400 012.

7. Shri. V.N. Lothey (Patil) Sole Arbitrator Appointed  
U/s. 84 of the Multi State Co-Operative Societies Act,  
2002 Having its office at C/o. Abhyudaya Co-op Bank  
Ltd., Regal Industrial Estate, Acharya Donde Marg,  
Sewri, Mumbai- 400 015.

8. Central Registrar Room No: 130 Department of  
Agriculture, Cooperative & Finance Welfare Ministry  
of agriculture & Farmers Welfare, Krishi Bhawan, New  
Delhi- 110 001.

9. Hon. Chief Metropolitan Magistrate, Mahapalika  
Marg, Near Dhobi Talao, Esplanade, Chhatrapati  
Shivaji Terminus Area, Fort, Mumbai,  
Maharashtra- 400001.

10. Hon'ble Collector & District Magistrate Court  
Naka, Ad Prabhakar Hegde Rd, Kharkar Alley, Thane  
West, Thane, Maharashtra-400 601.

...  
Respondents

WITH  
WRIT PETITION (L) NO. 23938 OF 2022

1. M/s. Shree Shantinath Steels, a Proprietorship firm  
incorporated under Indian Registration Act, 1908 and

having its registered office, at 706, "Ecstasy"  
Commercial Bldg., City of Joy Nirmal Life Style,  
Mulund (W), Mumbai- 400 080.

2. Mrs. Nilaben Rajesh Soni,  
Proprietor of Shree Shantinath Steels and having its  
registered office, at 706, "Ecstasy" Commercial Bldg.,  
City of Joy Nirmal Life Style, Mulund (W), Mumbai-  
400 080.

...Petitioners

Versus

1. Union of India

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Secretary in the Department of Banking, Ministry of  
Finance, Government of India, Jeevandeep Building,  
Parliament Street, New Delhi-110 001.

2. Ministry of Micro, Small and Medium Enterprises,  
Government of India, Through its Hon'ble Secretary,  
Udyog Bhawan, New Delhi-110001.

3. The Governor, Reserve Bank of India,  
Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

4. State of Maharashtra  
Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman Point,  
Mumbai 400032.

5. Abhyudaya Co-operative Bank Ltd.,  
Represented by Board of Directors through its  
Chairman K.K. Tower, G. D. Ambekar Marg, Parel  
Village, Parmanand Wadi, Parel, Mumbai,  
Maharashtra- 400012.  
Also at  
Unit No. 1 & 2, Silver Harmony, New Maneklal Estate,  
Ghatkopar (W), Mumbai-400 086.

6. Authorized Officer Legal & Recovery Department,  
Abhyudaya Co-operative Bank Ltd., Shram Safalya  
Building, 63, G.D. Ambekar Marg, Parel Village,

7. Shri. V.N. Lothey (Patil) Sole Arbitrator Appointed  
U/s. 84 of the Multi State Co-Operative Societies Act,  
2002 Having its office at C/o. Abhyudaya Co-op Bank  
Ltd., Regal Industrial Estate, Acharya Donde Marg,  
Sewri, Mumbai- 400 015.

8. Central Registrar Room No: 130 Department of  
Agriculture, Cooperative & Finance Welfare Ministry  
of agriculture & Farmers Welfare, Krishi Bhawan,  
New Delhi- 110 001.

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9. Chief Metropolitan Magistrate, Mahapalika Marg,  
Near Dhobi Talao, Esplanade, Chhatrapati Shivaji  
Terminus Area, Fort, Mumbai, Maharashtra- 400001.

10. Collector & District Magistrate, Thane. Court  
Naka, Ad Prabhakar Hegde Rd, Kharkar Alley, Thane  
West, Thane, Maharashtra-400 601.

...  
Respondents

WITH  
WRIT PETITION (L) NO. 30038 OF 2022

1. M/s. Cjex Biochem Pvt Ltd.  
415, Daulat Bhavan, 407 Kalbadevi Road,  
Mumbai, Maharashtra-400 002.

...Petitioner

Versus

1. Board Of Directors Of Piramal Capital And Housing  
Finance Ltd.(acquiring entity of yesteryears 'Dewan  
Housing Finance Limited') & Ors.  
601, 6th Floor, Amiti Building, Agastya Corporate Park,  
Kamani Junction, Opp. Fire Station, LBS Marg, Kurla  
(w) Mumbai-400 070.

2. Authorized Officer Piramal Capital & Housing  
Finance Ltd. 601, 6th Floor, Amiti Building, Agastya  
Corporate Park, Kamani Junction, Opp. Fire Station,  
LBS Marg, Kurla (w) Mumbai-400 070.

3. Union of India Ministry of Micro Small and Medium Enterprises  
Represented by its Secretary, Udyog Bhawan, Rafi Marg, New Delhi, 110001.

4. Union of India  
Represented by the Secretary in the Department of Financial Services, Government of India, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

5. Board of Directors of the Reserve Bank of India  
Represented by its Governor Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

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6. State of Maharashtra  
Through its Hon'ble Principal Secretary to Government of Maharashtra Mantralaya, Madam Cama Road, Hutatma Rajguru Chowk, Nariman Point, Mumbai 400032

7. Chief Metropolitan Magistrate  
Esplanade Court, Mahapalika Marg, Mumbai 400 001.

8. Court Commissioner  
Assistant Registrar at (Cash Section) at Esplanade, Fort, Mumbai 400 001.

9. Senior Police Inspector  
Gamdevi Police Station Gamdevi, Mumbai 400 007.

...  
Respondents

WITH  
WRIT PETITION (L) NO. 32617 OF 2022

Hemlata Vijaykumar Thakur  
Director & Guarantor of M/s. Samarth Arcade Private Limited 203, Kshitij Co-Operative Housing Society Limited, Plot No. 34, Near HDFC Bank, Juhu Varsova Link Road, Andheri (West), Mumbai- 400053.

...Petitioner

Versus

1. Board Of Directors Of Kalyan Janta Co-Op  
Bank Limited Represented by its Chairman & ... Respondents  
Ors. Head Office: Kalyanamastu, Om  
Vijaykrushna Apartment, Adharwadi Road,  
Kalyan (West), District Thane.

2. Mr. Vijay Vishwanath Gaikwad, Authorized  
Officer Kalyan Janta Co-Op Bank Limited  
Head Office-Kalyanamastu, Om Vijaykrushna  
Apartment, Adharwadi Road, Kalyan (West),  
District Thane.

3. Additional District Collector Nashik Office

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of Additional District Collector Old Agra  
Road, Nashik District Maharashtra 422 002.

4. Board of Directors of Reserve Bank of India  
Represented by its Chairman Main Building,  
P.O. Box 901, Shahid Bhagat Singh Road,  
Mumbai- 400 001.

5. Secretary in the Department of Banking  
Ministry of Finance Government of India  
Jeevandeep Building, Parliament Street, New  
Delhi.

6. Commissioner of Police Office of the  
Commissioner of Police Nashik, Gangapur  
Road, Nashik

7. Tahsildar Nasik  
Tahsildar Nashik Office, Nashik, Maharashtra  
- 422 001

8. Senior Police Inspector Ambad Police  
Station Pelian Park Road, Cidco, Nasik  
Maharashtra 422 009.

9. Senior Police Inspector Sarkarwada Police

Zuhair Mohamedali Merchant Proprietor ... vs Idfc Bank Represented By Its Managing ... on 11 January, 2024  
Station, Gangapur Road, Opposite to KTHM  
College Nashik 433 002.

10. Senior Police Inspector Gangapur Road  
Police Station Gangapur Rd, Nashik  
Maharashtra 422 005.

11. Senior Police Inspector Indira Nagar Police  
Station Mumbai- Agra Road, Indira Nagar,  
Rajiv Nagar, Nashik Maharashtra- 4222009

12. State of Maharashtra Through  
Government Pleader Bombay High Court,  
Mumbai - 400 032.

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WITH  
WRIT PETITION (L) NO. 35792 OF 2022

1. Perfect Infra Engineers Ltd. Represented  
by Promoter & Guarantor Mrs. Manisha  
Nimesh Mehta Plot No. R-637, T.T.C.  
Industrial Area, Thane Belapur Road,  
MIDC Rabale, Navi Mumbai-400 701.

2. Manisha Nimesh Mehta Promoter &  
Gurantor of Perfect Infra Engineers LTD.  
Plot No. R-637, T.T.C. Industrial Area,  
Thane Belapur Road, MIDC Rabale, Navi  
Mumbai- 400701.

...Petitioners/Applicants

Versus

1. ICICI Bank Ltd Through Board Of  
Directors Of Icici Bank Represented by  
Chairman & Managing Director of ICICI  
Bank ICICI Bank Head Office ICICI Bank  
Towers, Bandra Kurla Complex, Mumbai-  
400 051.

2. Shri. BenoyIdiculla Head of the ICICI  
Branch ICICI Bank Head Office ICICI Bank

Towers, Bandra Kurla Complex, Mumbai-400 051.

3. Ms. Ritu Maheshwari Relationship Manager ICICI Bank Head Office ICICI Bank Towers, Bandra Kurla Complex, Mumbai- 400 051.

4. Shri. Jignesh Shelani Authorized Officer, ICICI Bank Ltd., Old Padra Road, Near Chakli Circle, Vadodara-390001.

5. Technology Development Board Represented by its Chairperson Vishwa Karma Bhawan, Ground Floor, A-Wing, Shaheed Jeet Singh Marg, New Delhi, Delhi-110016.

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6. Board of Directors of the Reserve Bank of India,  
Represented by its Governor, Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

7. Ministry of Micro, Small and Medium Enterprises,  
Represented by its Secretary, Udyog Bhawan, Rafi Marg, New Delhi, Delhi 110001.

8. The Union of India  
Represented by its Secretary in the Department of Banking, Ministry of Finance, 3rd Floor, Jeevandeep Building, Sansad Marg, New Delhi-110 001.

9. State of Maharashtra  
Represented by its Chief Secretary Mantralaya, Mumbai 400032.

10. Collector & District Magistrate, New



Collector Office Building, Station Rd,  
opposite Sasoon Hospital, Pune  
Maharashtra-411 001.

11. Senior Inspector of Police Ghatkopar  
Police Station, Garodia Nagar, Mumbai

12. TransUnion CIBIL Limited (Formerly:  
Credit information Bureau (india) Limited)  
Represented by its Managing Director &  
Chief Executive Officer One Indiabulls, 19th  
Floor, Tower 2A- 2-B, Senapati Bapat  
Marg, Elphinstone Road, Mumbai-400  
013.

13. Jayalakshmi Neelkantan Aged 63 years,  
R/o. Flat No. 803, 8th Floor, Neelkanth  
Tower Co-operative Housing Society Ltd.,

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Plot No. 206, Garodia Nagar, Ghatkopar  
(East), Mumbai- 400 077.

14. Mr. P.G. Neelkantan Age-66 years  
R/o. Flat No. 803, 8th Floor, Neelkanth  
Tower Co-operative Housing Society Ltd.,  
Plot No. 206, Garodia Nagar, Ghatkopar  
(East), Mumbai- 400 077.

...Respondents

WITH  
WRIT PETITION (L) NO. 36240 OF 2022

A. Navinchandra Steels Pvt Ltd, Company  
incorporate under section Indian Companies Act,  
1956, represented by its Director, Alpesh  
Navinchandra Gosalia, Having Address at 704,  
"ECSTAY", Commercial Building, City of Joy Nirmal  
Lifestyle, Mulund (West), Mumbai - 400 080

...Petitioner

Versus

1. Union of India  
Represented by the Secretary in the Department of  
Financial Services, Ministry of Finance, Government

Zuhair Mohamedali Merchant Proprietor ... vs Idfc Bank Represented By Its Managing ... on 11 January, 2024  
of India, Jeevandeep Building, Parliament Street,  
New Delhi-110 001.

2. The Chairperson, Debt Recovery Appellate  
Tribunal, 1st Floor, Telephone Bhawan, Stand Cinema  
Road, Colaba Causeway, colaba Mumbai-400005.

3. The Presiding Officer, Debt Recovery Tribunal-2,  
3rd Floor, Telephone Bhawan, Stand Cinema Road,  
Colaba Causeway, Colaba Mumbai-400005.

4. The Presiding Officer, Debt Recovery Tribunal-3,  
MTNL Building 1st Floor, Next to Raghuleela Mall,  
Sector 30A, Vashi, Navi Mumbai-400 703.

5. The Board of Directors of Abhyudaya Co-Operative  
Bank Ltd, registered under the Multi-State Co-  
operative societies Act, 2002 having office at : K.K.  
Tower, G.D. Ambekar Marg, Parel Village,

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Parmanand Wadi, Parel, Mumbai-400 012.

6. The Authorized Officer - Legal & Recovery  
Department, Abhyudaya Co-Operative Bank Ltd.,  
Sharam Safalya Building, 63, G.D. Ambekar Marg,  
parel Village, Parmanand Wadi, Parel, Mumbai-400  
012.

7. State of Maharashtra  
Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman  
Point, Mumbai 400032.

8. Additional Chief Metropolitan Magistrate, 3rd  
Court, Office of the Chief Metropolitan Magistrate,  
Esplanade, Chatrapati Shivaji Terminus Area,  
Mumbai-400 001.

9. The Senior Inspector of Police, Purushottam  
Kheraj Bhawan, Netaji Subhash road, Mulund (W),  
Mumbai-400080.

10. The Senior Inspect of Police, Swami Samarth ...Respondents  
Nagar, Pant Nagar Police Station, Ghatkopar (E),  
Mumbai 400075.

WITH

WRIT PETITION (L) NO. 10862 OF 2023  
Cjex Biochem Pvt. Ltd. Represented By Chetan  
Prabhashankar Joshi, The Director of M/s. CJEX ...Petitioner  
Biochem Pvt. Ltd. 415, Daulat Bhavan, 407 Kalbadevi  
Road, Mumbai, Maharashtra-400 002.

Versus

1. Board Of Director Of Pegasus Assets  
Reconstruction Private Limited Represented by Mr. ...Respondents  
Kishore Srinivasan Managing Director & CEO  
Registered Address: 507, Dalamal House, Jamanlal  
Bajaj Marg, Nariman Point, Mumbai-400021.

2. Authorized Officer

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Pegasus Assets Reconstruction Private Limited 507,  
Dalamal House, Jamanlal Bajaj Marg, Nariman  
Point, Mumbai-400021.

3. Board of Directors of Ratnakar Bank Limited The  
Original Lender Represented by R.  
Subramaniakumar Managing Director & CEO 1st  
Lane, Shahupuri, Kolhapur-416001.

4. Authorized Officer Ratnakar Bank Limited  
9th Floor, Techniplex-I, Off Veer Savarkar flyover,  
Goregaon West, Mumbai- 400 062.

5. Senior Police Inspector, In charge of Gamdevi  
Police Station, Gamdevi, Nana Chowk, Mahalakshmi,  
Mumbai- 400026.

6. Union of India  
Represented by the Secretary to the Department of  
Financial Services, Ministry of Finance, Government  
of India, Jeevandeep Building, Parliament Street,

7. Ministry of Micro, Small and Medium Enterprises,  
Represented by its Secretary, Udyog Bhawan, Rafi  
Marg, New Delhi, Delhi 110001.

8. Board of Directors, Reserve Bank of India,  
Represented by its Governor, Shahid Bhagat Singh  
Road, Fort, Mumbai-400 001.

9. State of Maharashtra  
Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman  
Point, Mumbai 400032.

10. Chief Metropolitan Magistrate Court, Mahapalika  
Marg, Near Dhobi Talao, Esplanade, Chhatrapati  
Shivaji Terminus Area, Fort, Mumbai,  
Maharashtra- 400001.

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WITH  
WRIT PETITION (L) NO. 11035 OF 2023  
Mrs. Premlata Shikharchand Jain ...Petitioner/  
(Joint-borrower with proprietary firm M/s. Shree Applicant.  
Vimal Silk Mills) Aged 73 years, having residential  
address at Flat Nos. 8A & 8B, Building No. 2 CHSL,  
25/31, Dr. Atmaram Merchant Road, Bhuleshwar,  
Mumbai-400 002.

Versus

1. The Board Of Directors Of The Bharat Co-  
Operative Bank (Mumbai )Ltd. Represented by its  
Managing Director Having its registered office at  
Mohan Terrace, 64/72, Mody Street, Fort, Mumbai-  
400001. Central Office at 'Maruti', Plot No. 13/9 A,  
Sonawala Road, Goregaon (East), Mumbai-400063.

2. Mr. Gopal Kotian Authorised Officer  
Bharat Co-operative Bank(Mumbai) Ltd., Having its

registered office at Mohan Terrace, 64/72, Mody Street, Fort, Mumbai- 400001. Central Office at 'Maruti', Plot No. 13/9 A, Sonawala Road, Goregaon (East), Mumbai-400063.

3. Mr. Abhishek S. More Court Commissioner R/o. 20/72, B.I.T. Chawl, R.B. Chandorkar Marg, Aripada, Mumbai-400011. Mob-8652033172.

4. Station House Officer  
In charge of L.T. Marg Road Police Station, 27, R Champs Rd, Tak Wadi, Lohar Chawl, Kalbadevi Mumbai, Maharashtra- 400002.

5. Deputy Commissioner of Police (Operations), 5th Floor, CP Office Compd. Dr. D.N. Rd, Mumbai- 400001.

6. Union of India  
Represented by its Secretary in Ministry of Finance, Department of Financial Services, Government of India, Jeevandeep Building, Parliament Street, New

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Delhi-110 001.

7. Ministry of Micro, Small and Medium Enterprises, Government of India, Represented by its Hon'ble Secretary, Udyog Bhawan, Rafi Marg, New Delhi, Delhi 110001.

8. The Governor, Reserve Bank of India, New Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

9. State of Maharashtra  
Through its Chief Secretary to Government of Maharashtra Mantralaya, Madam Cama Road, Hutatma Rajguru Chowk, Nariman Point, Mumbai 400032.

10. Mrs. Elina Varun Jain alias Ms. Elina Surendrakumar Jain Proprietress of M/s. Shree

Vimal Silk Mills Flat Nos. 8A & 8B, Building No. 2  
CHSL, 25/31, Dr. Atmaram Merchant Road,  
Bhuleshwar, Mumbai- 400002.

11. Mr. Shikharchand Mohanlal Jain/Paharia Flat ... Respondents  
Nos. 8A & 8B, Building No. 2 CHSL, 25/31, Dr.  
Atmaram Merchant Road, Bhuleshwar, Mumbai-  
400002.

WITH

WRIT PETITION (L) NO. 12079 OF 2023

1. Dinesh Keshawrao Atkare, ... Petitioner  
Managing Director of Santhoshi Barrier Film India  
Pvt. Ltd. Since removed by virtue of the order dated  
18.4.2023 of the NCLT, Mumbai Residing at;  
Muramba Village Taluka Murtizapur Po Kinkhed,  
Dist. Akola-444107

Versus

1. Board Of Directors of Tata Capital Finance  
Services Ltd. Represented by its Managing Director,  
11th Floor, Tower A, Peninsula Business Park,  
Ganpatrao Kadam Marg, Lower Parel, Mumbai-

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400013.

1A. Authorized Officer of Tata Capital Finance  
Services Ltd. Represented by its Managing Director,  
11th Floor, Tower A, Peninsula Business Park,  
Ganpatrao Kadam Marg, Lower Parel, Mumbai-  
400013.

2. Mr. Shivshankar  
Regional Head-Collection Tata Capital Financial  
Services Ltd Lodha I-think Techno Campus,  
Building "A" 4th floor, Near TCS Tantra Park, Off  
Pokran Road, No. 2, Thane, Maharashtra-400607.

3. Palak Swapnil Desai  
Insolvency Professional, Flat No. 901, 9th Floor, Park  
vishtas Opp Lalubai Park, Andheri West, Mumbai-  
400058.

4. Board of Directors, Bank of Baroda  
Represented by its Managing Director Baroda  
Corporate Centre, Plot No. c-26, Block G, Bandra  
Kurla Complex, Bandra(East), Mumbai-400051.

4A. Authorized Officer of Bank of Baroda  
Represented by its Managing Director Baroda  
Corporate Centre, Plot No. c-26, Block G, Bandra  
Kurla Complex, Bandra(East), Mumbai-400051.

5. Mr. Bholanath Tripathi  
Authorized officer, Bank of Baroda, ZOSARB  
Branch, 4th floor, Suraj Plaza, Sayaji Ganj Vadodra-  
390005.

6. Chandan Kumar Authorized Officer SSI Branch,  
Bank of Baroda Somnath, Daman-396210.

7. NCLT Mumbai Court-1,  
Represented by its Registrar, 44, GD Somani Rd,  
Opp. MTNL Exchange, Ganesh Murti Nagar, Cuffe  
Parade, Mumbai-400005.

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8. State of Maharashtra  
Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman  
Point, Mumbai 400032.

9. Station House Officer, Wada Police station Near  
State Bank of India, Agari Ali, Wada, Maharashtra-  
421 303.

10. Station House Officer, Butibori MIDC Police  
Station, Near Vaishnvi Hotel and MIDC Chowk,  
Nagpur, Maharashtra-441122.

11. Union of India  
Represented by the Secretary to the Department of  
Banking & Financial Services, Ministry of Finance,

Government of India, JeevanDeep Building,  
Parliament Street, New Delhi-110 001.

12. The Secretary, Ministry of Micro, Small and  
Medium Enterprises, Udyog Bhawan, Rafi Marg,  
New Delhi, 110001.

13. The Reserve Bank of India,  
Represented by its governor, New Central Office  
Building, Shahid Bhagat Singh Rd, Fort, Mumbai-  
400 001.

...Respondents

WITH  
WRIT PETITION (L) NO. 12379 OF 2023

Bharti Pankaj Mehta C/405, Krushl Tower,  
Ghatkopar Mahul Road, Mumbai-400 089.

...Petitioner

Versus

1. The Board Of Directors Of ASREC (India) Limited  
Represented by its Chairman and Managing  
Director, Solitaire Corporate Park, Building No. 2,  
Unit No. 201-202 A & 200-202 B, Gr. Floor, Andheri  
Ghatkopar Link Rd, Chakala, Andheri (E), Mumbai-  
400093.

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2. ASREC (India) Limited  
Represented by its Chairman and Managing  
Director, Solitaire Corporate Park, Building No. 2,  
Unit No. 201-202 A & 200-202 B, Gr. Floor, Andheri  
Ghatkopar Link Rd, Chakala, Andheri (E), Mumbai-  
400093.

3. Bharat Co-operative Bank Limited.  
Represented by Board of Directors Through its  
Chairman & Managing Director, Mohan Terrace,  
64/72, Mody Street, Fort Mumbai-400 001.

4. Authorized Officer, Bharat Co-operative Bank  
Limited. Mohan Terrace, 64/72, Mody Street, Fort  
Mumbai-400 001.



5. The Chief Metropolitan Magistrate  
Esplanade, Nagar Chowk, Mumbai-400 001.

6. Adv. Nishigandha S. Kadam  
Advocate Court Commissioner, Nutun Bhimjyot  
Krida Mandal, Bhim Nagar, Ghatkopar (W)  
Mumbai-400 086.

7. Senior Police Inspector, Powai Police Station, Dp  
Road Number 9, Rambaug, Chandivali, Powai  
Mumbai- 400076.

8. Union of India  
Represented by the Secretary Ministry of Finance,  
Department of Financial Services, Government of  
India, Jeevandeep Building, Parliament Street, New  
Delhi-110 001.

9. Ministry of Micro, Small and Medium Enterprises,  
Represented by its Secretary, Udyog Bhawan, Rafi  
Marg, New Delhi, Delhi 110001.

10. State of Maharashtra  
Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam

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Cama Road, Hutatma Rajguru Chowk, Nariman  
Point, Mumbai 400032.

11. The Governor, Reserve Bank of India,  
New Central Office Building, Shahid Bhagat Singh  
Road, Fort, Mumbai-400 001.

12. Garden Silk Mills Ltd.  
Represented by its Managing Director First Floor,  
Tulsikripa Arcade Near Aai Mata Chowk Puna  
Kumbharia Road Dumbhal, Surat - 395 010.

13. Mr. Lalitkumar Vithaldas Raithatha  
Interim Resolution Professional A-14/15, Earth  
Artica, Vasna Bhayli Road Above HDFC Bank, Opp-

Nilamber Bunglows, Vadodara-390 007.  
(calalit@srico.in).

14. Maitri C. Mehta  
701, Shilpa Building, Jagdusha Nagar Ghatkopar,  
West Mumbai.

15. Karan. P. Mehta  
S/o. Bharti Pankaj Mehta C-405, Kurshal Tower  
G.M. Road, Amar Mahal Chembur - West, Mumbai-  
400 089.

16. Rashmi Yarns Ltd. Registered office at 405,  
Metro Tower, Ring Road, Surat 395 010 Admin  
Office at 407, Sal Infotech, R.B. Mehta Road, Patel  
Chowk, Ghatkopar (E), Mumbai- 400 077.

...Respondents

WITH  
WRIT PETITION (L) NO. 13410 OF 2023

Mr. Zuhair Mohamedali Merchant, Adair  
Electrical Motors Stamping Unit No.3,  
Ground Floor, Indo Saigon Industrial  
Estate, M.V. Road, Marol Naka, Andheri  
East, Mumbai- 400 059.

...Petitioner

Versus

1. IDFC Bank represented by its Managing

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Director of IDFC Bank Ltd. Having  
Corporate office at Naman Chambers, C-  
32, G-Block, Bandra Kurla Complex,  
Bandra (East, Mumbai- 400 051.

2. The Board of Directors of the IDFC First  
Bank Ltd. Naman Chambers, C-32, G-  
Block, Bandra Kurla Complex, Bandra  
(East, Mumbai- 400 051.

3. Authorised Officer, IDFC First Bank  
Ltd. Having Office at: 37th Floor, A Wing,  
Ahser IT Park, Wagle Estate Thane  
(West)- 400 604.

4. The Chairperson, Stressed MSME Committee, Constituted under Notification of Framework for revival and rehabilitation of Stressed MSMEs., Naman Chambers, C-32, G-Block, Bandra Kurla Complex, Bandra (East, Mumbai- 400 051.

5. Narendra P. Shukla, Advocate Court Commissioner, 20, Shailesh Bhavan, Chimatpada, Marol Naka, Andheri (East), Mumbai - 400 059.

6. Deputy Commissioner of Police / Station House Officer In charge of MIDC Police Station, Marol Pipeline, Marol Andheri East, Mumbai- 400 059.

7. Union of India  
Represented by the Secretary Ministry of Finance, Department of Financial Services, Government of India, Jeevandeep Building, Parliament Street, New Delhi- 110 001.

8. Ministry of Micro, Small and Medium Enterprises, Government of India,  
Represented by Hon'ble Secretary, Udyog

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Bhawan, Rafi Marg, New Delhi, Delhi 110001.

9. State of Maharashtra  
Represented by Chief Secretary to Government of Maharashtra Mantralaya, Madam Cama Road, Hutatma Rajguru Chowk, Nariman Point, Mumbai 400032.

10. The Governor, Reserve Bank of India, New Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

...Respondents

WITH

WRIT PETITION (L) NO. 14710 OF 2023

1. M/s. Four Men Textile International  
Represented by Shri. Sandeep Subhash Agarwal  
155/6 Mittal Industrial Estate M.V. Road Marol  
Naka, Andheri East, Mumbai-400 059.

2. Shri. Sandeep Subhash Agarwal 701, Dev Prayag  
CHS Sadanand Park, Old MHB Colony, Near  
Borivail Post Office, Borivali West Mumbai-400 091.

...Petitioners

Versus

1. Board Of Directors Canara Bank Represented by  
its Managing Director & Chief Executive Officer  
Having Its head office at Bangalore, Karnataka, And  
one of its Branch Offices.

2. Shri. Chetan Pethunavar Authorized Officer  
Canara Bank PrathanaSamaj Building, Raja Ram  
Mohan Rai Road, Girgaon, Mumbai- 400 004.

3. Nishigandha S. Kadam, Advocate Court  
Commissioner R/o. Nutun Bhimjyotkrida Mandal,  
Bhim Nagar, Ghatkopar (W), Mumbai-400 086.

4. Station House Officer,  
Sahar Airport Police Station Sahar Indian Oil Road,  
CPWD Colony, Sahar Village, Andheri East,

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Mumbai-400 102.

5. Ministry of Micro, Small and Medium Enterprises,  
Represented by its Secretary, Udyog Bhawan, Rafi  
Marg, New Delhi, Delhi 110001.

6. Union of India  
Represented by the Secretary to the Department of  
Financial Services, Ministry of Finance, Government  
of India, Jeevandeep Building, Parliament Street,  
New Delhi-110 001.

7. State of Maharashtra

Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman  
Point, Mumbai 400032.

8. The Governor, Reserve Bank of India,  
New Central Office Building, Shahid Bhagat Singh  
Road, Fort, Mumbai-400 001.

9. Mrs. Nishi Sandeep Agarwal Proprietor of M/s.  
Four Men Textile International 701, Dev Prayag CHS  
Sadanand Park, Old MHB Colony Near Borivali Post  
Office, Borivali West Mumbai 400 091.

10. M/s. Vibhvanya Mercantile India Pvt. Ltd. ...Respondents  
st  
155/6. 1 Floor, Udit Mittal Industries Premises CSL,  
Sanjay Building, Mittal Industrial Estate, Andheri  
Kurla Road, Marol, Andheri (East), Mumbai-400  
059.

WITH

WRIT PETITION (L) NO. 14807 OF 2023

1. M/s. Apex Consumer Appliances Pvt. Ltd.  
Represented By Kinjal Dhaval Shah a Whole Time ...Petitioner  
Director Plot No. 29-P, Off Kanjur Village Road,  
Opp. Crescent Industrial Estate, Kanjur Marg East,  
Mumbai-400042.

Versus

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1. The Board Of Directors Of Bank Of Baroda  
Represented By Its Chairman And Managing  
Director Baroda House, Mandvi, Baroda-390001.

2. Authorized Officer Bank of Baroda Ground Floor,  
Trans Avenue Building, SVP Nagar, Mhada, Andheri  
West, Mumbai-400053.

3. The Zonal/Regional Manager Chairman of  
Committee Appointed under MSME Notification No.

S.O. 1432 (E) dated 29.05.2015. Under MSME Act,  
Issued by Ministry of MSME, Govt of India, Bank of  
Baroda, Mumbai Zone, Ground Floor 3, Walchand  
Hirachand Marg, Ballard Pier, Mumbai-400001.

4. Board of Directors of the Reserve Bank of India  
Represented by its Governor Shahid Bhagat Singh  
Road, Fort, Mumbai-400 001.

5. Ministry of Micro Small and Medium Enterprises,  
Represented by its Secretary, Udyog Bhawan, Rafi  
Marg, New Delhi, Delhi 110001.

6. The Union of India Represented by its Secretary in  
the Department of Banking Ministry of Finance 3rd  
floor, Jeevan Deep Building Sansad Marg, New  
Delhi- 110 001.

7. State of Maharashtra  
Represented by its Chief Secretary Mantralaya,  
Mumbai.

8. Hon. Chief Metropolitan Magistrate Mahapalika  
Marg, Near Dhobi Talao, Esplanade, Chhatrapati  
Shivaji Terminus Area, Fort, Mumbai.

9. Collector & District Magistrate Court Naka, Ad  
Prabhakar Hegde Rd, Kharkar Alley, Thane West,  
Thane, Maharashtra-400 601.

10. Police Station Incharge Senior Inspector of Police  
Bhiwandi Taluka Police Station Near Tahsildar

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Office, Bhiwandi, Taluka Bhiwandi.

11. Police Station Incharge Senior Inspector of Police  
Ghatkopar Police Station Swami Samarth Marg,  
Pant Nagar Ghatkopar East, Savitribai Phule  
Junction, Near Ghatkopar Bus Depot, Mumbai-  
400075.

12. Police Station Incharge Senior Inspector of Police

Kanjurmarg Police Station, Veer Savarkar Road,  
Kanjurmarg East, Mumbai-400042 Mirashi Nagar.

13. Shri. Amish Mehta Managing Director and CEO  
of Crisil Crisil House, Central Avenue Hiranandani  
Business Park, Powai, Mumbai-400076.

14. Shri. Mohd. Wasim Qureshi Court  
Commissioner, R/o. 24/1/3, Kanchwala Building,  
Nizam Street, Bazar, Mumbai 400003.

...Respondents

WITH  
WRIT PETITION (L) NO. 15369 OF 2023

1. Bjn Hospitality Private Limited  
Represented by its Authorized Officer Kishor Balram  
Nichani Having address at 12-a, First Nichani Kutir'  
Juhu Tara Road, Juhu Mumbai- 400049,  
Maharashtra.

...Petitioner

Versus

1. The Board of Trustee of India Resurgence ARC  
Trust IV represented by its Managing Trustee 3rd  
Floor, Unit 304, Piramal Tower, Peninsula Corporate  
Park, Lower Parel, Mumbai-400013.

2. India Resurgence ARC Private Limited  
Represented by its Managing Director, 3rd Floor, Unit  
304, Piramal Tower, Peninsula Corporate Park,  
Lower Parel, Mumbai-400013.

3. Authorized Officer India Resurgence ARC Trust IV  
Represented by its Managing Trustee, 3rd Floor, Unit  
304, Piramal Tower, Peninsula Corporate Park,

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Lower Parel, Mumbai-400013.

4. Authorized Officer India Resurgence ARC  
PVT.LTD. Represented by its Managing Trustee, 3rd  
Floor, Unit 304, Piramal Tower, Peninsula Corporate  
Park, Lower Parel, Mumbai-400013.

5. Hero Fincorp Represented by Jt. Managing

Director & CEO,  
34, Community Centre, Basant Lok. Vasant Vihar,  
New Delhi-110057.

6. Authorized officer Hero Fincorp  
34, Community Centre, Basant Lok. Vasant Vihar,  
New Delhi-110057.

7. Elexa Resolution Advisor LLP  
601, 6th Floor, Time Tower, Sector 28, Mehrauli  
Gurgaon Road, Gurgram 122002.

8. The Assistant Registrar/Court Commissioner  
Bandra Centre of Courts, Mumbai.

9. Union of India Ministry of Micro Small and  
Medium Enterprises  
Represented by its Secretary, Udyog Bhawan, Rafi  
Marg, New Delhi, 110001.

10. Union of India  
Represented by the Secretary in the Department of  
Financial Services, Government of India, Jeevan  
Deep Building, Parliament Street, New Delhi-110  
001.

11. Board of Directors of the Reserve Bank of India  
Represented by its Governor Shahid Bhagat Singh  
Road, Fort, Mumbai-400 001.

12. State of Maharashtra  
Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman

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Point, Mumbai 400032

13. TransUnion CIBIL Limited (Formerly: Credit  
information Bureau (india) Limited)  
Represented by its Regional Director, One world  
Centre, Tower 2A, 19th Floor, Senapati Bapat Marg,  
Elphinstone Road, Mumbai-400 013.



14. Deputy Commissioner of Police  
(Operations), Zone IX, Hill Road, Bandra West,  
Mumbai, Maharashtra, 400050.

15. The Senior Inspector of Police Santacruz Police  
Station Opposite Lions Juhu Garden, Santacruz  
West, Mumbai-400050.

16. Chief Metropolitan Magistrate ... Respondents  
Court, Mahapalika Marg, Mumbai 400 001.

WITH  
WRIT PETITION (L) NO. 15492 OF 2023

Lifestyle Accessories (India) Pvt. Ltd. ... Petitioner  
Represented by its Executive Director, Arpana  
Yashwant Pagnis Having address at Ground Floor,  
Abhinav Apartments CHS Shradhanand Road, Vile  
Parle (East), Mumbai, Maharashtra- 400 057.

Versus

1. Cholamandalam Investment And Finance  
Company Ltd. Represented by its Managing Director,  
Having Address Dare House, 2, N.S.C. Bose Road,  
Parrys, Chennai-600 001.

2. Authorized Officer Cholamandalam Investment  
And Finance Company Ltd. Dare House, 2, N.S.C.  
Bose Road, Parrys, Chennai-600 001.

3. Union of India  
Represented by Secretary, Department of Banking,  
Ministry of Finance, 3rd Floor, Jeevandeep Building,  
Sansad Marg, New Delhi-110 001.

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4. Ministry of Micro, Small and Medium Enterprises,  
Government of India, Represented by Secretary,  
Udyog Bhawan, Rafi Marg, New Delhi, Delhi 110001.

5. State of Maharashtra

Represented by Chief Secretary, Mantralaya,  
Mumbai 400032.

6. Reserve Bank of India,  
Represented by its Governor, Central Office  
Building, Shahid Bhagat Singh Road, Fort, Mumbai-  
400 001.

...Respondents

WITH  
WRIT PETITION (L) NO. 17488 OF 2023

1. M/s. Vbera Technologies Pvt. Ltd.  
Represented by Mr. Sumit Acharya (Director) A  
wing, Eureka tower, 5th Floor, Near Toyota  
Showroom, Mindspace, Malad (WEST), Mumbai-  
400064.

...Petitioner

Versus

1. Board Of Directors Of Bank Of Baroda (Earlier  
Dena Bank) Having its Registered Office at Malad  
(West) Branch, Esrstwhile Dena Bank, Abhishek  
Commercial Complex CHS Ltd., S.V. Road, Malad  
(West), Mumbai-400064.

...Respondents

2. Mousumi Karmakar Authorized Officer Bank of  
Baroda Having Its Registered office at Malad (West)  
Branch, Esrstwhile Dena Bank, Abhishek  
Commercial Complex CHS Ltd., S.V. Road, Malad  
(West), Mumbai-400064.

3. Tahsildar Shahapur Court Commissioner Tahsil  
Office, Shahapur, Dist. Thane.

4. Mandal Adhikari (Circle Officer) Office of Mandal  
Adhikari Kasar Aali, Tal. Shahapur Dist. Thane.

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5. Hon'ble District Magistrate Thane Court Naka, Ad  
Prabhakar Hegde Rd, Kharkar Alley, Thane west,  
Thane, Maharashtra-400601.

6. State of Maharashtra

Through its Hon'ble Principal Secretary to  
Government of Maharashtra Mantralaya, Madam  
Cama Road, Hutatma Rajguru Chowk, Nariman  
Point, Mumbai 400032.

7. Senior Inspector of Police Shahapur Police Station  
Near Shahapur Market Tehsil Karyalay, Shahapur,  
Thane, Maharashtra-421601.

8. Union of India  
Represented by the Secretary to the Department of  
Banking and Financial Services, Ministry of Finance,  
Government of India, Jeevandeep Building,  
Parliament Street, New Delhi-110 001.

9. The Secretary, Ministry of Micro Small and  
Medium Enterprises, Udyog Bhawan, Rafi Marg,  
New Delhi, Delhi-110001.

10. The Reserve Bank of India,  
Represented by its Governor, New Central Office  
Building, Shahid Bhagat Singh Rd, Fort, Mumbai-  
400 001.

WITH  
WRIT PETITION (L) NO. 18563 OF 2023

M/s. Vbera Technologies Pvt Ltd.  
Unit No. 14-15, Shree Kamdhenu Industrial Estate,  
Off Link Road, Tangent Lane, Chincholi Bunder  
Road, Malad West, Mumbai-400064. Represented  
by Authorised Director Shri. Sumit Acharya.

...Petitioner

Versus

1. Board Of Directors Of Ratnakar Bank Limited,  
Represented by its Managing Director & CEO

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Ratnakar Bank Limited Mr. Subramaniam  
Rajagopalan, 1st Lane, Shahupuri, Kolhapur- 416001.  
Maharashtra State, India.

2. Authorized Officer, Ratnakar Bank Limited, 1st Lane, Shahupuri, Kolhapur- 416001. Maharashtra State, India.

3. Board of Directors of Pegasus Asset Reconstruction Pvt. Ltd., Represented by its Managing Director 55-56, 5th Floor, Free Press House, Nariman Point, Mumbai- 400021.

4. Authorized Officer Pegasus Asset Reconstruction Pvt. Ltd., Represented by its Managing Director 55-56, 5th Floor, Free Press House, Nariman Point, Mumbai- 400021.

5. Board of Directors of Reserve Bank of India, Represented by its Governor, Shahid Bhagat Singh Road, Fort, Mumbai-400 001.

6. The Union of India  
Department of Financial Services, Ministry of Finance, Represented by the Secretary Department of Financial Services, Ministry of Finance, 3rd Floor, Jeevandeep Building, Sansad marg, New Delhi-110 001.

7. State of Maharashtra  
Represented by its Chief Secretary, Mantralaya, Mumbai 400032.

8. Ministry of Micro, Small and Medium Enterprises, Represented by Secretary, Udyog Bhawan, Rafi Marg, New Delhi, Delhi 110001.

9. Hon. Chief Metropolitan Magistrate, Mahapalika Marg, Near Dhobi Talao, Esplanade, Chhatrapati Shivaji Terminus Area, Fort, Mumbai, Maharashtra- 400001.

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10. In-charge of Police Station Malad Police Station  
Nanabhai Bhuleshwar Marg, Malad, Chincholi  
Bunder, Malad West, Mumbai- 400064.

...Respondents

WITH  
WRIT PETITION (L) NO. 20414 OF 2023

1. Vibhavanya Mercantile India Pvt. Ltd.  
Represented by its Director Shri. Agarwal 155/6. 1st  
Floor, Udit Mittal Industries Premises CSL, Sanjay  
Building, Mittal Industrial Estate, Andheri Kurla  
Road, Marol, Andheri (East), Mumbai- 400 059.

2. Shri. Sandeep Subhash Agarwal Sole Proprietor of ...Petitioners  
M/s. Four Men Textile International 155/6 Mittal  
Industrial Estate M.V. Road Marol Naka, Andheri  
East, Mumbai- 400 059.

Versus

1. Board Of Directros Canara Bank  
Represented by its Managing Director & Chief  
Executive Officer Having its Head Office at  
Bangalore, Karnataka, And one of its Branch offices'.

2. Authorised Officer Canara Bank  
Prarthanasamaj Building, Raja Ram Mohan Rai  
Road, Girgaon, Mumbai- 400 004.

3. Nishigandha S. Kadam,  
Advocate Court Commissioner R/o. Nutan Bhimjyoti  
Krida Mandal, Bhim Nagar, Ghatkopar (W),  
Mumbai- 400 086.

4. Station House Officer, Sahar Airport Police Station  
Sahar Indian Oil Road, CPWD Colony, Sahar Village,  
Andheri East, Mumbai- 400 102.

5. Ministry of Micro, Small and Medium Enterprises,  
Represented by its Secretary, Udyog Bhawan, Rafi  
Marg, New Delhi, Delhi 110001.

6. Union of India

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Represented by the Secretary, Ministry of Finance,  
Department of Financial Services, Government of

Zuhair Mohamedali Merchant Proprietor ... vs Idfc Bank Represented By Its Managing ... on 11 January, 2024  
India, Jeevan deep Building, Parliament Street, New  
Delhi-110 001.

7. State of Maharashtra  
Represented by its Chief Secretary, Mantralaya,  
Mumbai 400032.

8. The Governor, Reserve Bank of India,  
New Central Office Building, Shahid Bhagat Singh  
Road, Fort, Mumbai-400 001.

...Respondents

WITH  
WRIT PETITION (L) NO. 20100 OF 2023

M/s. Pro Knits  
Represented by its Partner, Mr. S.  
Ravikumar SF No. 460, A.B. Nagar,  
Gandhi Nagar Post, Tiruppur - 641 602.

...Petitioner/Applicant

Versus

1. The Board Of Directors Of Canara Bank  
Represented By Its Managing Director and  
Chief Executive Officer, 112, J C road  
Bangalore - 560 002.

2. CANARA BANK, Represented By Its  
Chairman & Managing Director, 112, J  
road Bangalore - 560 002.

3. AUTHORIZED OFFICER CANARA  
BANK Mid Corporate Branch, 70/74, JG  
Nagar, 2nd Street, 60 Feet Road, Tirruppur  
- 641 602

4. Ministry of Micro, Small and Medium  
Enterprises, Represented by its Secretary,  
Udyog Bhawan, Rafi Marg, New Delhi,  
Delhi 110001.

5. Union of India

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Represented by its Secretary, Department  
of Financial Services, Ministry of Finance,

Zuhair Mohamedali Merchant Proprietor ... vs Idfc Bank Represented By Its Managing ... on 11 January, 2024  
3rd Floor, Jeevandeep Building, Parliament  
Street, New Delhi-110 001.

6. Reserve Bank of India,  
Represented by its Governor, Shahid  
Bhagat Singh Road, Fort, Mumbai-400  
001.

7. Inspector of Police, 15 Velampalayam

8. State of Tamilnadu Represented by its  
Chief Secretary, Secretariat, Chennai-  
600009.

9. State of Maharashtra Represented by its ...Respondents  
Chief Secretary Mantralaya, Mumbai- 400  
032.

Mr. Mathews Nedumpara a/w Hemali Kurne, Maria  
Nedumpara, B. S. Munday and Shameem i/b Nedumpara  
& Nedumpara Advocates for Petitioner in all matters

Sanjiv Punalekar, i/b PRS Legal for Abhyudaya Co-Op. Bank  
and Bank of Baroda in WP/4620/2022

Advait Sethna, a/w Ashutosh Mishra & Rangan Majundar,  
for UOI in WP(L)/11035/2023,WP/4620/2022,WP(L)/36240/2022  
&WP(L)/35792/2022

Madhur Rai i/b PRS Legal for Abhyudaya Co-Op. Bank and  
Bank of Baroda in WP(L)/23938/2022, WP(L)/36240/2022  
&WP(L)/14807/2023

Sanjay Anabhawane, for Respondent no. 1 & 2 in  
WPL/30038/2022  
Girish T. i/b Meghnath Navlani, for Respondent no. 3 & 4 in  
WPL/30038/2022

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Harjot Singh Alang i/b Raval Shah & Co, for Respondent no. 1 to 4 in WP(L)/35792/2022

Karl Tamboli a/w Mayank Samuel i/b Sirius Legal, for Respondent no. 1 & 2 in WP(L)/10862/2023

Arkesh Ayyagari, for Respondent no. 3 & 4 in WP(L)/10862/2023

Aayush Kothari i/b Sanjana Ghogare, for Respondent no. 1 & 2 in WP(L)/11035/2023

Nimay Dave a/w Bharti Bhansali & Jyotika Raichandani, i/b FZB & Associates for Respondent no. 1, 1(A) and 2 in WP(L)/12079/2023

Mr. Anant Bamne i/b A. R. Bamne & Co, for Respondent no. 4 & 4A in WP(L)/12079/2023 & for Respondent No. 1 & 2 in WP(L)/17488/2023

M. S. Bharadwaj, for Respondent no. 7, 11 & 12 WP(L)/12079/2023

Pavitra Manesh i/b Vaishali Bhilare, for Respondent no.1 & 2 in WP(L)/12379/2023

Vaibhav Charalwar a/w Kaustubh Gupte & Poonam Ashar, for Respondent no. 1 to 3 in WP(L)/13410/2023

Jenish Jain, for UOI in WP(L)/13410/2023

Tanya Srivastava i/b MLS Vani & Associates, for Resp. no. 13 in WP(L)/15369/2023

Alok Mishra a/w Sejal Tambe, for Resp. no.1 WP(L)/15492/2023

Girish T. i/b Meghnath Mavhani, for Resp. no. 1 & 2 in WP(L)/18563/2023

Karl Tamboly i/b Mayank Samuel i/b Sirius Legal, for Resp. no. 3 & 4 in WP(L)/18563/2023

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O.A.Das a/w Pallavi Chori & Priya Nigwekar i/b O. A. Das,  
for Resp. no. 1 to 3 WP(L)/20100/2023

Uma Palsule-Desai, AGP for State WP(L)/20414/2023  
WP(L)/12379/2023

Abhay Patki, Addl. G. P. For Respondent State in WP/4620/2022

M. A. Sayyed, AGP for State in WP(L)/18563/2023  
WP(L)/15492/2023

P. H. Kantharia, GP for State in WP(L)/17488/2023

Himanshu Takke, AGP for State in WP(L)/15369/2023

Milind More, Addl. G. P. a/w Jyoti Chavan, AGP for State in  
WP(L)/14807/2023

Manish Upadhyay, AGP for State in WP(L)/13410/2023 &  
WP(L)/12079/2023

Jyoti Chavan, AGP for State in WP(L)/35792/2022  
WPL/30038/2022 WP(L)/14710/2023

Himanshu Takke, AGP for State in WP(L)/11035/2023

Kedar Dighe, AGP for State in WP(L)/32617/2022  
WP(L)/36240/2022

Amit Shastri, AGP for State in WP(L)/10862/2023

L. T. Satelkar, AGP for State in wpl/23938/2022

CORAM : B. P. COLABAWALLA &  
M.M. SATHAYE, JJ.

RESERVED DATE : AUGUST 9, 2023

PRONOUNCEMENT DATE : JANUARY 11, 2024

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JUDGMENT (PER : M.M. SATHAYE, J)

1. These group of Petitions raise a common issue involving a challenge to the action of Respondent Banks or Non-Banking Financial Companies, based on a Notification dated 29 th May, 2015 issued under Section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "MSMED Act"). This notification is hereinafter referred to as "the said Notification" for short.

2. It is specifically agreed between all the Petitioners and all the Respondent-Banks or Non-Banking Financial Companies (for short "NBFC") appearing through their respective advocates including Mr. Nedumpara for all Petitioners, that presently, without going into facts and merits of individual cases, only the ground based on said Notification will be considered and depending on the outcome on the said issue, further directions would be passed. In that view of the matter, this common order is being passed.

3. By these petitions filed under Article 226 of the Constitution of India, the Petitioners, who are stated to be duly registered under the MSMED Act, and who are borrowers who have taken loans or other financial assistance from the Respondent Banks/NBFCs, have challenged the very action of declaring them as JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc Non-Performing Assets (NPA) under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act, 2002"), without following the procedure of restructuring as contemplated under the said Notification. The basic challenge of all the Petitioner MSMEs, which is presently under consideration, is essentially that none of the Respondent Banks/NBFCs have followed the procedure as provided under the said Notification, for identifying the incipient stress undergone by the Petitioners and its consequent due classification in the Special Mention Account categories SMA-0, SMA-1 and SMA-2 before classifying them as Non-Performing Assets. The argument, in essence is that, if the said procedure is not followed, then the very action of Respondent-Banks/NBFCs of classifying the Petitioners as NPAs is illegal, and if that be so, no notices under Section 13(2) of the SARFAESI Act, 2002, could have been issued. It is further argued that if notices under Section 13(2) could not have been issued to the Petitioners, then all the further actions, which are currently pending at various stages under the SARFAESI Act, 2002, against the Petitioners, are void ab initio, since their foundation itself is illegal.

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4. For the purpose of clarity, the all encompassing prayers made by the Petitioner in the lead petition, which are stated to be more or less identical, in all the matters, are reproduced below :

a) to declare that the MSME Act in so far as it has not created a special forum/tribunal to enforce the rights and obligations/remedies which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Tribunal/Civil Court is not ousted;

b) to declare that the SARFAESI Act, 2002, is not applicable to the case of the Petitioner since the SARFAESI Act, 2002, is the earlier law qua the MSMED Act,

2006, which (MSMED Act) is a special Act to deal with the MSME and has exhaustively provides the mechanism to deal with stressed incipient account of MSME borrower in the view of objective of the MSMED Act i.e., to aim at providing nurture and care to MSME before initiating recovery;

c) to declare that the Petitioners are entitled to be compensated from the Respondent No. 1 for the loss and injury which it has suffered on account of the gross breach of trust, culpable negligence, and malicious and tortious action at the hands of DHFL and their officers, which loss and injury far exceeds the very claim of the Respondents as against the Petitioner;

d) to declare that the Respondent Nos. 1 & 2 are vested with no enforceable rights as against the Petitioner in as much as the loss, injury and damages suffered by the Petitioner on account of the gross breach of contract, malicious and tortious action of the DHFL, Respondent No. 1 & 2, far exceeds the claim of the Respondents as against the Petitioner.

e) to declare that the entire proceedings under Sections 13(2), 13(4) and 14 of the SARFAESI Act, 2002 and the Security Interest Enforcement Rules issued thereunder, the Arbitration and Conciliation Act, 1996 proceedings initiated to declare the Petitioner as willful defaulter are all rendered void ab initio;

f) without prejudice and in furtherance of relief (e) above to issue writ in the nature of Certiorari, quash and set aside the entire proceedings purportedly initiated at the hands of DHFL now Respondent No. 1 JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc under Section 13(2), 13(4) and at the CMM under Section 14 of the SARFAESI Act, 2002, and rules issued thereunder;

g) to declare Notification dated 5 th August, 2016, issued by Central Government Ministry of Finance including non-banking nay money lending institution as financial institution to recover loans and credit facilities under SARFAESI Act, 2002 is unconstitutional and void ab initio;

h) to call for the entire records, minutes and proceedings leading to the classification of the Petitioner's account as NPA, so too under Section 13(2), 13(3A) and 13(4) of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, so too of the applications and other proceedings instituted under Section 14 of the SARFAESI Act, 2002;

i) grant cost of the above petition and/or any other consequential relief.

Interim Reliefs Provided For:

a. to grant an ad interim injunction restraining and prohibiting the Respondent NBFC from proceeding any further in furtherance of the notices and orders under Section 13(2), and 14 of SARFAESI Act, 2002, or any other law;

b. to grant such other and further reliefs, Orders and directions which this Hon'ble Court may be pleased to ....

5. Perusal of the aforesaid prayers would show that the Petitioners are challenging almost all the actions permissible under the SARFAESI Act, 2002 by the Respondent Banks/NBFCs. When the above matters were taken up for hearing, learned Counsel Mr. Nedumpara, has categorically stated that de hors the facts of all the Petitions, which may vary on a case-to-case basis, he is restricting his present argument to the challenge as already set out hereinabove in JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc paragraph Nos. 2 and 3. Based on this categorical statement and understanding between the parties, we have heard the matter.

#### SUBMISSIONS OF THE PARTIES

6. Learned Counsel Mr. Nedumpara appearing for the Petitioners, has made following submissions:

6.a) It is submitted that MSMED Act is an Act of Parliament and the said Notification has received assent of both Houses of Parliament and is therefore an Act of Parliament for all the purposes. It casts a duty on the Board of Directors of the Bank or NBFC, as the case may be, to adopt a certain procedure as provided in the said Notification.

6.b) It is submitted that the said Notification covers not only banks but NBFCs also. It is submitted that the said Notification casts a duty to constitute a committee, primarily consisting of Bank officers and independent experts on MSME.

6.c) It is further submitted that the Banks/NBFCs are duty bound to make an application for effecting a corrective action plan and if such corrective action plan is not successful, only then it can adopt the recovery steps.

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6.d) It is further submitted that the decision of the committee is binding on all concerned and the committee can review its decision for initiating recovery.

6.e) It is submitted that till date none of the Respondent Banks/ NBFCs have ever constituted any such committee and therefore no recovery could have been initiated in violation of the said Notification.

6.f) It is further submitted that the MSMED Act casts certain rights and obligations but does not provide for any forum to decide those rights or obligations and therefore the jurisdiction of the Civil

Court is not barred. If this argument is accepted then, according to Mr. Nedumpara, the Petitioners are entitled to a Writ of Certiorari to quash and set aside all the proceedings initiated under SARFAESI Act, 2002, Recovery of Debts and Bankruptcy Act, 1993 (for short "RDB Act, 1993") and the Insolvency and Bankruptcy Code, 2016 (for short "IBC, 2016").

6.g) Drawing our attention to objects and reasons of the MSMED Act, 2006 and to Section 7, 8, 9, 10 and 29 thereof, it is submitted that the MSMED Act, 2006 is a piece of welfare legislation and has to be interpreted beneficially in favour of the Petitioners. It is specifically submitted by Mr. Nedumpara that it is not his argument on JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc behalf of the Petitioners that the provisions of the MSMED Act, 2006 overrides the provisions of SARFAESI Act, 2002.

7. Mr. Sethna, learned Counsel appearing for Union of India in Writ Petition (L) No. 35792 of 2022 and Writ Petition (L) No. 11035 of 2023, opposing the arguments of the Petitioners, submitted as follows :

7.a) It is submitted that the said Notification is issued under Section 9 of the MSMED Act, 2006 which provides for programs, guidelines and instructions to facilitate the promotion and development and enhancing competitiveness of MSMEs, as more particularly provided in Section 9 thereof. He submitted that it is in this context that the said Notification has to be interpreted and applied.

7.b) Mr. Sethna stressed on the word "Instructions" appearing in the opening paragraph of the said Notification and submitted that the very nature of the said Notification is either instructions or guidelines and therefore it cannot be interpreted to have a force of Law. He submitted that under Clause 1(2) of the said Notification, an option is given to the MSME to initiate proceedings under the framework provided. He further submitted that for such initiation, an application is required to be made which is mandated to be verified by an affidavit of JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc the authorized person and only on such specific initiation, it is submitted, that the account is supposed to be processed as SMA-o and the Committee is supposed to be formed immediately.

7.c) It is vehemently submitted that nothing of this kind, viz., application duly verified by an affidavit of the authorized person is ever made by any of the Petitioners for initiation of proceedings under the said Notification and therefore the Banks and NBFCs or Financial Institutions, as the case may be, are not under any obligation under Law to form a Committee and make an effort for restructuring the Petitioner MSMEs. In support of this submission, learned Counsel Mr. Sethna, relied upon the Judgment of this Court in the matter of M/s. Alexis Business Solutions Pvt. Ltd. Vs. The Board of Directors.

(Writ Petition (L) No. 34253 of 2022, Judgment dated 2 nd December, 2022.)

7.d) Drawing our attention to paragraphs 14, 15 & 16 of the said Judgment, it is submitted that the very same argument as canvassed before us was considered by this Court. It is submitted that in that case also the very same Notification dated 29th May, 2015 was relied upon. The very same argument that said Notification has a force of law, having binding effect on the Banks and Financial Institutions, was advanced. It is submitted that in that Judgment, it is already categorically held by a JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc co-ordinate Bench of this Court that it was open for the Petitioners to voluntarily initiate proceedings, when it apprehended that it cannot pay the loan (in other words, when the Petitioner/MSME was sensing incipient stress). It is pointed out that in that Judgment, it is already observed that without specific pleadings, as in the present case also, general and sweeping statements are made by the Petitioners. It is submitted that for a legal challenge to sustain, the Petitioners must demonstrate and the Court must be satisfied that the Petitioners were in fact interested in getting benefits under the said Notification.

7.e) Mr. Sethna, further relied upon the Judgment of Division Bench of the Andhra Pradesh High Court reported in M/s. Sri Vamsee Krishna Traders Vs. The Authorised Officer, Punjab National Bank and Ors. (Writ Petition No. 2064 of 2022, Judgment dated 31st January, 2022) and Judgment of Single Bench of Orissa High Court in the matter Mahal Industries Vs. Government of India and others (Writ Petition No. 16451 of 2017, Judgment dated 5th September, 2018).

7.f) It is further submitted that a plain reading of the said Notification would show that the MSME has to avail of the steps provided in the Notification, before its account is termed as NPA. For this reason also, the present Petitioners are not entitled to any relief JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc because they all have been already classified as a NPA. In support of these submissions, Mr. Sethna, relied upon the chart as provided in clause 1 of the said Notification which contemplates three categories of Special Mention Accounts based on its dues, falling within either first 30 days or between 31st to 60th day and 61st to 90th day.

7.g) It is further submitted that if the said Notification prescribes a thing to be done in particular way, then it has to be done in that way alone or not at all. In support of this submission Mr. Sethna has relied upon, Supertech Limited Vs. Emerald Court Owner Resident Welfare Association and Ors, [2021] 10 SCR 569 which specifically states that "It is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden."

7.h) Mr. Sethna, lastly relied upon the Judgment of Himachal Pradesh High Court in the matter of M/S Neelkanth Yarn vs. Punjab National Bank and Ors. (Civil Writ Petition No. 4538 of 2023, decided on 02.08.2023) in support of his submissions that when an alternate remedy is available to the Petitioners, writ under Constitutional jurisdiction should not be entertained. He submitted that all the Petitioners have alternate remedy available under Section 17 and JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc 18 of the SARFAESI Act, 2002, and therefore, this is not a fit case for exercise of extra ordinary Writ Jurisdiction by this Court.

8. Learned Counsel Mr. Bamne, appearing for Respondent Bank in Writ Petition (L) No. 12079 of 2023 and Writ Petition (L) No. 17488 of 2023 made following submissions opposing the case of the

Petitioners :

8.a) Drawing our attention to clause 14 of the said Notification, it is submitted that the very same Notification provides that while a restructuring proposal is under consideration by the Committee or Enterprise Debt Restructuring Cell, as the case may be, the usual asset classification norm shall continue to apply. It is submitted that clause 14(2) of the said Notification also provides that the process of classification of an asset shall not stop merely because restructuring proposal is under consideration. It is further submitted that clause 14 (3) of the said Notification provides that the special asset classification benefit on restructuring of accounts as per the existing instructions, shall be available for restructured accounts.

8.b) Pointing out these provisions, learned Counsel Mr. Bamne, submitted that said clauses are indicative of the fact that even the legislature did not intend to stop or halt the procedure of the JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc classification of assets of the Petitioners as NPA merely because a proposal of restructuring is under consideration. This indicates, according to Mr. Bamne, that the process of restructuring and classification of borrower or its account as NPA are two independent subjects and therefore it cannot be interpreted that unless the procedure under the said Notification for restructuring is adopted, the Petitioners accounts cannot be classified as NPAs and the procedure under SARFAESI Act, 2002 cannot follow.

8.c) The learned Counsel, seeking pardon for repeating the argument, submitted that in any event, there is no mandate in the said Notification on the Banks or NBFCs to constitute a committee, until the borrower approaches the Bank which is clearly provided in Clause 1(3) of the said Notification. He submitted that having not applied as provided in the said Notification, the Petitioners cannot be heard to find fault with the Banks in adopting legal process under the SARFAESI Act, 2002.

9. Mr. Charalwar, appearing for Respondent Banks in Writ Petition (L) No. 13410 of 2023 made following submissions, opposing the case of the Petitioners.

9.a) It is submitted that the table given in clause 1(1) of the said Notification provides for a sunset period of 90 days before an MSME JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc enters the darkness of NPA. He submitted that during this sunset period of 90 days, which is split into 3 parts (SMA-0, SMA-1 and SMA-2) the MSME is supposed to identify the stress on its financial conditions / its repayment capacity and must apply for constitution of committee for the restructuring efforts. He submitted that once the sunset period is over and an account has been classified as NPA, then from that darkness, there is no escape under the said Notification and the action under SARFAESI Act, 2002, post NPA classification, must follow.

9.b) It is submitted that the Petitioners cannot rely on the said Notification or any other Notification for restructuring, to thwart the entire process initiated under SARFAESI Act, 2002. He submitted that in the case of Oriental Bank of Commerce Vs. Sunder Lal Jain and Anr. (2008) 2 SCC 280, regarding guidelines issued by the RBI (about settlement), the Hon'ble Apex Court has already held that such guidelines are merely internal guidelines for the Banks which are executive instructions

and have no statutory force. It is already held that these guidelines do not create any rights in favour of the borrowers. Based on this Judgment, learned Counsel submitted that the present case is also squarely covered by the said Judgment in as much as the said Notification is in the nature of guidelines or instructions.

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9.c) It is submitted and being recorded at the cost of repetition, that in none of the matters the Petitioners/MSMEs have ever invoked any mechanism under the said Notification for restructuring of their loans. He submitted that on the contrary, in his case, the Petitioner/MSME has addressed letters admitting liability and requesting for more time to pay. He submitted that if the MSME apprehends failure of its business or inability to pay its debts, then it may voluntarily initiate the process under the framework and only after a request is received by the Bank, a committee is supposed to be formed. He also submitted that, while the restructuring is under consideration, usual asset classification norms shall apply as provided in the said Notification itself. He further submitted that the said Notification operates only before the declaration of accounts as NPA and once the period of default crossed 90 days, the rigors of the concerned RBI circular takes full force. He submitted that the said Notification is clearly directory and not mandatory in nature. He submitted that the said Notification cannot be relied upon beyond the period of 90 days. He finally submitted that the said Notification is a delegated legislation and cannot override or put a fetter on the operation of a statutory provision. He submitted that Section 9 of the MSME Act provides for power of the Central Government to issue Notification for programs, JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc guidelines or instructions for certain purposes as stated in the said Section, which in essence are for facilitating the promotion, development and enhancing competitiveness of the MSMEs.

9.d) He therefore submitted that the said Notification cannot be interpreted more than a guideline or instructions and cannot be given an effect as a statute to override or put fetters on the legal process followed by the Banks and NBFCs under SARFAESI Act, 2002.

10. Learned Counsel Mr. Dave, appearing for an NBFC in Writ Petition (L) No. 12079 of 2023 made following submissions, opposing the case of the Petitioners.

10.a) It is submitted that the said Notification or the circulars issued thereafter, do not apply to NBFCs especially about forming any committee for restructuring. He relied upon first and second Clause of the RBI Circular dated 17th March, 2016 and pointed out that by making specific reference to the said Notification under consideration (dated 29th May, 2015), it is provided that certain changes in the captioned framework have been carried in consultation with the Government of India, Ministry of MSME in order to make it compatible with the existing regulatory guidelines and accordingly a revised framework is furnished.

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10.b) He submitted that the revised framework would apply to only such MSMEs which are having loan limits up to Rs. 25 Crores. Relying on Section 238 of the Insolvency and Bankruptcy Code, 2016, he submitted that the provisions of the IBC, 2016, overrides all other laws. He submitted that so far as his case is concerned, there is no requirement of classification of an account of borrower as NPA and under section 7 of the IBC, an NBFC can file an application for initiating Corporate Insolvency Resolution Process against corporate debtor when a default has occurred. In short, he submitted that the whole argument of the Petitioners at this stage, that without following process under the said Notification, an account of MSME cannot be classified as NPA, will not apply in his case because his action is under the IBC, 2016.

11. Mr. Nedumpara, learned Counsel appearing for the Petitioners in the rejoinder made following submissions.

11.a) He once again clarified that it is not his argument that SARFAESI Act, 2002 or other Acts (such as RDB Act or IBC) are not applicable. He further clarified that he is not arguing that recovery proceedings are not allowed against the Petitioners. He submitted that MSME Act being a piece of beneficial legislation or remedial legislation, the Notification issued under provisions of the said Act must be given a beneficial interpretation.

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11.b) He submitted that the provisions in the said Notification must be given a liberal construction and it will not lead to any difficulties at all. He submitted that liberal construction of the said Notification is not going to prejudice the rights of Banks or NBFCs.

11.c) He submitted that the reference to the Committee for restructuring is mandatory under the said Notification. He submitted that if literal interpretation is adopted, there is no need for purposive interpretation. He submitted that the borrowers can also make a reference under the Notification but the Banks are also under a legal obligation to identify incipient stress and categorize the MSMEs in pre- NPA time.

11.d) He submitted that not a single Committee is constituted by any of the Banks before classifying the Petitioners as NPAs. So far as the argument about the said Notification being 'instructions' is concerned, Mr. Nedumpara submitted that in the scheme of the things, the word 'instruction' must be interpreted to give benefit to the MSME and would therefore obviously mean a 'mandate'.

## REASONS & CONCLUSIONS

12. Before testing the rival arguments in the light of subsequent Notification or circular issued by RBI modifying the said Notification, JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc we would like to deal with the basic argument about interpretation of the said Notification. We would like to test first, whether the Banks or NBFCs are bound under the said Notification to adopt the process of restructuring 'on its own' without their being an application by the MSME in that regard. If we find that application of the MSME is a sine qua non for the process of restructuring to start

before the committee, then it may not be necessary for us to deal with the arguments of the Banks and NBFCs about the effect of subsequent Notifications or circulars of the RBI on the subject matter dispute.

13. This brings us to the consideration of the core issue about application of the said Notification. From the perusal of the said Notification, it can be seen that the whole process as provided under the said Notification starts from identification of 'Incipient Stress' in the account of an MSME and thereafter classifying it in 3 sub-categories provided as per Clause 1(1) of the said Notification. None of the learned Counsels appearing for either the Petitioners or the Respondent Banks/NBFCs have submitted anything about this aspect of 'identification of incipient stress'. This Court has also on its own endeavored to find out guiding principles on this issue, so that it can be beneficially used. However, we have not found any such guidance. Faced with such a stonewall of non-availability of any precedent or earlier JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc views, we are left with only one choice and that is to go to the very concept of "incipient stress" as it might have been intended by the legislature. After all, it is one of the Court's fundamental functions to interpret what is provided by the legislature.

14. As per the Merriam-Webster dictionary, the word 'incipient' means "beginning to come into being or to become apparent". As per the Oxford Learners' Dictionary as well as the Cambridge Dictionary, the meaning of the word incipient is "just beginning". Keeping in mind this meaning and coupling the same with the word stress, it is obvious that Clause 1(1) of the said Notification provides that Banks or Creditors are required to identify the beginning of the stress felt by the MSME in their financial capacity to repay. Considering the fact that there are thousands and thousands of MSMEs, who have raised loans from the Banks or NBFCs, such identification is impossible unless the same is brought to the notice of the Bank by the MSME itself. After all, how a particular borrower is performing in its business and whether any such business is undergoing or beginning to feel stress on its financial capacity, is within the knowledge of the said borrower running its business. Unless such knowledge of incipient stress on the financial condition of MSME is brought to the notice of the Bank it is next to impossible, in our opinion, to be identified on its own by the Banks or NBFCs. The persons in JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc charge of the MSMEs are most likely to sense or understand the beginning of the stress on their financial capacity, simply because they are at the helm of the things so far as a particular MSME is concerned. It is perhaps for the same reason that the legislature has provided for Clause 1(3), whereunder an application for initiation of the proceedings under the framework is contemplated by an affidavit of an authorized person. This affidavit of the authorized person has to be of the person in charge of the MSME because he/she has to state on oath about facts necessitating an action to initiate the restructuring process. Therefore, on a conjoint reading of Clause 1(1) and Clause 1(3) of the said Notification, leads to an indisputable interpretation that the said Notification can be pressed into service only and only after the MSME [such as the Petitioners] approaches the Banks/NBFCs with an appropriate application supported by an affidavit of the authorized person placing on record the bundle of facts which lead to the conclusion of incipient stress and only after that, the Banks or NBFCs are required to categorize them as SMA-0, SMA-1 and SMA-2.

15. Similar conclusion, albeit on a different set of reasons, is already reached by a co-ordinate Bench of this Court in the case of Alexis Business Solutions Pvt. Ltd. Vs. The Board of Directors. (Writ Petition (L) No. 34253 OF 2022 order dated JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc 2nd December, 2022). We are in agreement with the view taken in the said Judgment. The relevant portion of this decision reads thus:-

"15. The Notification of 2015 deals with the framework of reviewing MSME. Clause-1 thereof has two components. Before the account turns into NPA, the bank or the creditors are required to identify three special categories, i.e. whether the principal or interest payment is overdue for 30 days, 31 to 60 days, and overdue between 61 to 90 days. The second part of this clause is that any micro or small enterprise may voluntarily initiate a proceeding when it apprehends its inability to pay the debt. A Committee, subject to regulations prescribed by the Reserve Bank of India for the banks, is constituted. Under Clause 4, any eligible MSME, a bank, or a creditor can apply to this Committee. Upon application, the Committee can explore the possibility of resolving stress rectification etc.

16. Under the Notification dated 29 May 2015, it was open to the Petitioners to voluntarily initiate proceedings when it is apprehended that it cannot pay the loan. There are no pleadings, nor is it argued that the Petitioners made any effort to apply under the Notification for the benefits thereof. Even today, it is not stated that the Petitioners intend to take benefits of the Notification of 2015. It was orally argued that there is no Committee, and in the past, no such relief was granted to anyone by the Committee. There are no pleadings to this effect, and general sweeping statements are made in oral arguments. For a legal challenge based on the Notification of 2015 having an overriding effect or binding on Respondents, the Petitioners must demonstrate, and the Court must be satisfied that the Petitioners are interested in getting benefits under the Notification of 2015. The Petitioners also have an independent right to avail of the benefits under the Notification, which they are not inclined to take. Therefore, we agree with the Respondents' submissions JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc that the argument based on the Notification dated 29 May 2015 is only an attempt to get the petition admitted to keep the proceedings pending."

(Emphasis Supplied)

16. The Kerala High Court, in the matter of N. P. Abdul Nazer Vs. Union Bank of India & Anr. (Order dated 22 nd August 2023 in O.P.(Crl) No. 288 of 2023) has considered the same arguments advanced by the same advocate (Mr. Nedumpara). In this case also the same said Notification was under consideration and just like the present matters, the actions of Banks/ NBFCs under SARFAESI Act 2002 were sought to be resisted on the basis of non compliance with the said Notification. The learned single Judge of the Kerala High Court, after considering the said Notification, has held that failure of the banks to abide by the terms of the framework provided under the said Notification cannot be considered fatal. It is further held that the said framework

does not have a mandatory character. The relevant portion of this decision reads thus:

"17. Obviously, the procedure stipulated in the notification applies only before declaring an account as an NPA and not after. The date of registration as an MSME assumes significance in this context. Concededly, there is no retrospective validation for the registration, and petitioner has not produced any other certificate of registration other than Ext.P7. As registration of M/s.Panakkad Agencies as an MSME was only on JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc 02.04.2023 i.e. after the filing of the original petition itself, the benefit, if any, under the Framework can be claimed, if at all eligible, only thereafter and not before.

18. The benefit, if at all any, that flows from the Framework provided under the notification of 2015 cannot, therefore, be applicable or claimed by the firm or by the petitioner since the account was declared as an NPA as early as 27-12-2019.

19. Apart from the above, on a reading of clause 1 of the Framework issued under the MSME Act, it can be seen that it is only an optional framework available to the bank and the borrower. The said framework in the notification cannot prevail over the statutory provisions of the SARFAESI Act in the matter of recovery of loans. As per Section 24 of the MSME Act, only the provisions of Sections 15 to 23 are given precedence over other laws. Section 9 or the notifications issued thereunder cannot prevail over the statutory provisions of the SARFAESI Act. In the decision in Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited and Others [(2023) 3 SCC 210], it has been held that the SARFAESI Act will prevail over the MSME Act.

20. Even if a harmonious construction is to be adopted, as argued finally by the learned counsel, failure to abide by the terms of the notification of 2015 cannot render the declaration of the account as NPA void or bad in law. The words in the notification do not provide for a mandatory procedural requirement. No consequence is provided for non-compliance with the Framework. The notification only gives an opportunity for the Bank to identify incipient stress accounts and provide means to MSME's also to apply before its inability to pay debts or the accumulated losses of the enterprise equals to half or more of its entire net worth. The Framework does not, under any circumstances whatsoever, give it a mandatory character. The nature of the Framework is all the more glaring since even the enterprises have been given an opportunity to voluntarily initiate the procedure under the Framework by applying for it. Hence the failure of JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc the Banks to abide by the terms of the Framework cannot be condemned as fatal. The terms of the Framework do not convey a meaning that it was intended to transform that procedure into a dominant desideratum.

(Emphasis Supplied)

17. In the aforesaid legal and factual position, since we have found that the Banks/NBFCs are not obliged to adopt the restructuring process on its own without there being any application by the Petitioners/MSMEs, it is not necessary to deal with the arguments of the Respondent Banks /NBFCs about the effects of the subsequent Notifications and Circulars. For the same reason it is not necessary to consider the judgments relied upon by them about interpretation of interplay between

the SARFAESI Act, 2002/, RDB Act, 1993/, IBC, 2016 and the MSME Act, 2006.

18. In that view of the matter, the limited argument of the Petitioners under consideration, fails. There is no merit in these petitions and the same are dismissed.

19. We however grant leave to the Petitioners to agitate the other issues in their petitions, which may vary on facts, on a case-to- case basis by adopting alternate remedies, as available under law. We clarify that we have not expressed any opinion on the other issues JANUARY 11, 2024 Shubham Talle WP-4620-2022-J.doc arising in the facts of each case. Contentions of both the sides on merits of such other issues, are expressly kept open, to be decided on a case-to- case basis.

20. We note that in some petitions, the Petitioners have pleaded ignorance about the beneficial provisions of the said Notification and based on such ignorance, it is pleaded that certain representation or application for restructuring is made recently, after action under SARFAESI Act, 2002, has reached various stages. We clarify that if any such applications of the petitioners are pending with the Respondent Banks or Financial Institutions or NBFCs, the concerned Respondent Banks or Financial Institutions or NBFCs are at liberty to decide those applications and inform the concerned MSME about this decision as expeditiously as possible.

21. In view of the disposal of the above Writ Petitions, nothing survives in any Interim Applications filed therein and the same are disposed of accordingly. If any stay was granted in any of the Interim Applications, the same are vacated forthwith.

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22. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

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23. At this stage, Mr. Nedumpara, the learned Counsel appearing on behalf of the Petitioners requested that any stay granted in any of the Interim Applications be continued for a period of 2 weeks from today.

24. Since according to Mr. Nedumpara, the issues involved in the above Writ Petitions are important issues and he would like to test the same before the Hon'ble Supreme Court, we direct that any Interim Orders passed in any Interim Applications in the above Writ Petitions shall continue for a period of two weeks from today after which they shall be automatically vacated, unless extended by the Hon'ble Supreme Court.

[ M.M. SATHAYE, J.]

[ B. P. COLABAWALLA, J.]

JANUARY 11, 2024

Shubham Talle