



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 26313 OF 2024

Mrs. Manisha Nimesh Mehta,
Promoter & Guarantor of M/s. Perfect Infraengineers Ltd.,
Plot No. R-637, T.T.C. Industrial Area,
Thane, Belapur Road, MIDC Rabale,
Navi Mumbai, Maharashtra – 400 701.

.....Petitioner

Vs.

1. Technology Development Board,
Through its Director
having its Reg. Office at :
Technology Bhavan, Block-II, 2nd Floor,
New Mehrauli Road, New Delhi – 110 016.
2. Shri. Rajesh Pathak,
Secretary,
Technology Development Board,
Department of Science & Technology,
Block-II, 2nd Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110 016.
3. The Project Monitoring Committee,
Represented by its Chairman,
Technology Development Board,
Department of Science & Technology,
Block-II, 2nd Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110 016.
4. Assistant Law Officer/Authorized Officer,
Technology Development Board,
Department of Science & Technology,
Block-II, 2nd Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110 016.
5. Shri. Rajesh Jain,
Director of Finance,
Technology Development Board,

Department of Science & Technology,
Block-II, 2nd Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110 016.

6. Smita Puthucheri,
Project Co-ordinator,
Technology Development Board,
Department of Science & Technology,
Block-II, 2nd Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110 016.
7. The Board of Directors of ICICI Bank,
Represented by its Chairman
and Managing Director,
ICICI Bank Ltd., Old Padra Road,
Near Chakli Circle, Vadodara,
Gujarat – 390 001.
8. Shri. Jignesh Shelani,
Authorized Officer,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai, Maharashtra – 400 051.
9. Shri. Vijay Kumar,
Chief Manager,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai, Maharashtra – 400 051.
10. Shri. Sandeep Bakshi,
Managing Director,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai, Maharashtra – 400 051.
11. Shri. Arun Jain,
Zonal Head, ICICI Bank,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai, Maharashtra – 400 051.
12. Ms. Ritu Maheshwari,
Relationship Manager,

- ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai, Maharashtra – 400 051.
13. Ministry of Micro Small And
Medium Enterprises,
Through its Secretary, Udyog Bhawan,
Rafi Marg, New Delhi – 110 011.
14. Ministry of Finance,
Through its Secretary,
Department of Banking,
Jeevan Deep Building,
Parliament Street, New Delhi – 110 001.
15. State of Maharashtra,
Rep. by its Chief Secretary,
C.S. Office Main Building,
Mantralaya, 6th Floor,
Madame Cama Road, Mumbai,
Maharashtra – 400 032.
16. Reserve Bank of India,
Represented by its Governor,
New Central Office Building,
Shahid Bhagat Singh Road, Fort,
Mumbai, Maharashtra – 400 001.
17. National Stock Exchange of India Ltd.,
Represented by its Managing Director & CEO,
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051.
18. Gaurang Chhotlal Shah,
Resolution Professional,
Flat No. 204, A Wing, Raj Vaibhav 1
CHS, Dhankar Wadi, Mahavir Nagar,
Kandivali (W), Mumbai – 400 067.
Also at :
1221, Maker Chambers V, Nariman Point,
Mumbai – 400 021,
Shahid Bhagat Singh Road, Fort,
Mumbai, Maharashtra – 400 001.

19. Ministry of Corporate Affairs,
A Wing, Shastri Bhawan,
Rajendra Prasad Road, New Delhi – 110 001.
20. Registrar of Companies,
100, Everest, Marine Drive,
Mumbai – 400 002.
21. Bank of India,
Kanmoor House, Narshi Natha St,
near Masjid, Bhat Bazar, Chinchbunder,
Mandvi Branch, Mandvi, Mumbai – 400 009.Respondents

Mr. Mathews Nedumpara a/w Ms. Hemali Merva and Mr. Akhilesh Nair i/b Nedumpara & Nedumpara for the Petitioner.

Mr. Sumedh Ruikar a/w Mr. Viraj Shelatkar & Ms. Kunjan Makawana i/b Mr. Pradip Yadav for Respondent Nos. 1 to 6.

Mr. Rishabh Shah along with Mr. Harjot Singh Alang i/b Raval Shah & Co. for Respondent No. 7.

Smt. Purnima H. Kantharia, Government Pleader a/w Mr. Vikrant Parshurami, A.G.P. for Respondent No. 15-State.

Mr. Yahya Batatawala a/w Mr. Mahek Saudagar & Ms. Krushi Shah for Respondent No. 18.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**

RESERVED ON : 19th SEPTEMBER 2024.

PRONOUNCED ON : 1st OCTOBER 2024.

JUDGMENT :- (*Per Dr. Neela Gokhale, J.*)

1) The Petitioner seeks a declaration that being Micro, Small and Medium Enterprise ('MSME') within the meaning of Micro, Small and Medium Enterprises Development Act, 2006 ('the Act') and the Notification dated 29th May 2015 issued by the Central Government under Section 9 of the Act, as well as circulars and guidelines issued by the Reserve Bank of India ('RBI') under Section 10 thereof providing for a mechanism for

resolution of stress, no proceedings for recovery under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI') would lie against the Petitioner, except in the manner contemplated under the Notification. The Petitioner also seeks a declaration that, the Act in so far as not having created a special forum/tribunal to adjudicate *inter-se* rights and obligations, the jurisdiction of the civil Court is not ousted, amongst other allied reliefs.

2) The proceeding has a checkered history. The Petitioner is the promoter and guarantor of a company, known as M/s. Perfect Infraengineer Limited. The relevant chronology of the proceedings is encapsulated in brief as follows:

2.1) A group of Petitions including that of the Petitioner were filed before this Court raising a common issue of challenge to the action of various banks and financial institutions of effecting recovery of loans and other financial assistance rendered by them to the Petitioners therein on the ground of Notification dated 29th May 2015 issued under Section 9 of the Act. The Petition of the present Petitioner was Writ Petition (L) No.35792 of 2022 in the bunch of other Writ Petitions.

2.2) This Court, by its Judgment dated 11th January 2024 held that considering thousands of MSMEs having raised loans from banks and Non-Banking Financial Companies ('NBFC'), identification of stress faced by MSMEs by the banks is not possible. Unless knowledge of incipient stress of

MSME is brought to the notice of the Bank, it is not possible for the Banks to identify such stress on its own. It is the person in charge of the MSME who is most likely to understand the beginning of the financial stress. Thus, this Court held that the Notification can be pressed into service only after the MSME concerned approaches the Bank with an application and by following the appropriate procedure. Dismissing the limited argument of the Petitioners in that matter, this Court however, granted leave to the Petitioners to agitate the other issues in their Petitions, facts of which varied on a case to case basis. Accordingly, the Writ Petitions were disposed off.

2.3) The Petitioner carried this Order to the Supreme Court by filing Special Leave Petition (SLP) No.2112/2024. The Supreme Court dismissed the SLP.

2.4) The Petitioner herein filed a Review Petition (Writ Petition) (L) No.4048 of 2024 along with other Petitioners in the original petition. This Court by its Order dated 19th March 2024 dismissed the Review Petition on the ground that reviewing the Order dismissed by the Supreme Court in the SLP, would amount to expressing an opinion different from the one expressed by the Supreme Court.

2.5) The Petitioner herein assailed the Order rejecting the Review Petition before the Supreme Court by filing Special Leave Petition (C) No. 11547 of 2024 (Civil Appeal No.7233 of 2024). By its Order dated 8th July 2024, the Supreme Court allowed the Appeal in part, to the extent that the

Judgment and Order dated 19th March 2024 passed by this Court in the Review Petition was set aside and the matter was remitted to this Court with a request to hear and decide the Review Petition on merits and in accordance with law.

2.6) In the meantime, the other Petitioners in the Original Petition also filed SLP (C) No.7898 of 2024. While this SLP was pending before the Supreme Court, the Petitioner herein approached this Court seeking hearing of the Review Petition which was remanded by the Supreme Court. The Review Petition was numbered as 9 of 2024.

2.7) By its Order dated 15th July 2024, the National Company Law Tribunal ('NCLT'), Mumbai Bench, Court I, admitted Company Petition (IB) No.322 of 2023 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I & B Code') filed by the Financial Creditors of the Petitioner namely, Technology Development Board ('TDB'), the Respondent No.1 herein initiating CIRP ('Corporate Insolvency Resolution Process') process. Moratorium under the I & B Code was also declared. Mr. Gaurang Shah, the Respondent No.18 herein was appointed as Insolvency Resolution Professional.

2.8) The Petitioner herein now the Corporate Debtor made Interlocutory Applications ('IA') No.3403 of 2024, 3291 of 2024 and 3290 of 2024 before the NCLT seeking recusal of the members of the Tribunal from hearing the Applications, seeking to implead officers' of the TDB in the

proceedings before the NCLT and recall of Order dated 18th March 2023, adjourning the Company Petitions for pronouncement of orders, respectively.

2.9) The NCLT dismissed all three applications of the Petitioner/Corporate Debtor recording reasons by its Orders dated 15th July 2024. It is recorded in the Order dated 15th July 2024 in IA No.3403 of 2024 that, the Petitioner had taken a number of adjournments on various grounds and hence, the NCLT had proceeded to pass its orders. It is also recorded that recusal was sought on the basis of frivolous and baseless allegations.

2.10) While these proceedings were on-going, the Petitioner/Corporate Debtor filed another Petition bearing (L) No.18889 of 2024 with an Interim Application before this Court seeking the same relief. This Court by its Order dated 18th July 2024 dismissed the Interim Applications recording in paragraph 5 of its Order that, it is necessary for the Petitioner to assail the Orders dated 15th July 2024 passed by the NCLT before the Appellate Tribunal, i.e., the NCLAT which is the statutory Appellate Forum to challenge the orders passed by the NCLT under the I & B Code.

2.11) Before the Review Petition No.9 of 2024 could be heard, the Supreme Court by its Order dated 1st August 2024 passed in SLP (C) No. 7898 of 2024 set aside the Judgment and Order dated 11th January 2024

passed by this Court in the original bunch of Petitions. The Supreme Court held that, the instructions/directions issued by the Central Government under Section 9 of the Act and by the RBI under Sections 21 and 35A has statutory force and are binding on all banking companies. The Supreme Court further held that since the proceedings under the SARFAESI Act were concluded and the possession of assets were already taken by the banks, there was no requirement to remand the matters to the High Courts for hearing afresh. However, it was left open for the Petitioners to take recourse to any legally available remedy.

2.12) On the backdrop of the Supreme Court Order dated 1st August 2024, the Petitioner in the present matter made a statement in the Review Petition No.9 of 2024 along with other Review Petitions that nothing survives in the Review Petitions and the same are rendered infructuous. The Review Petitions were accordingly disposed off by Order dated 5th August 2024.

2.13) The Petitioner filed another three Writ Petitions (L) No.23291 of 2024, 23292 of 2024 and 23295 of 2024 before this Court. The Petitions came up for hearing before the co-ordinate Bench (Coram: K.R.Shriram & Jitendra Jain, JJ.) and vide its Order dated 14th August 2024, the Bench opined that the NCLT may consider recalling its Orders dated 15th July 2024 and re-hear the applications and dispose the same at the earliest in accordance with law. On this observation, the Petitioner sought leave to

withdraw the three Writ Petitions and Petitions were accordingly dismissed as withdrawn.

2.14) The Petitioner has now once again filed the present Writ Petition seeking declarations as mentioned here-in-above and also assailing Orders dated 15th July 2024 passed by the NCLT in the three I.A's filed by the Petitioner herein.

3) Mr. Mathews Nedumpara, learned counsel appeared for the Petitioner. Mr. Sumedh Ruikar learned counsel appeared for Respondent Nos. 1 to 6 and Mr. Harjot Singh Alang learned counsel represented Respondent No. 7. Smt. Purnima H. Kantharia, learned G.P. appeared for Respondent No. 15-State. Mr. Yahya Batatawala, learned counsel represented Respondent No. 18.

4) During the course of arguments, both the parties agreed that the proper recourse for effective and expeditious determination of the issue in question was to request the NCLT to grant an opportunity to the Petitioner to be heard on the Company Petition No.322/IBC/MB/2023 filed by the TDB against the company of the Petitioner. Admittedly, most of the Orders passed by this Court and the NCLT, Mumbai Bench including the Orders dated 15th July 2024 assailed herein and especially the Order admitting the Company Petition filed by the Financial Creditors i.e, some of the Respondents herein against the Petitioner/Corporate Debtor are prior to the Judgment and Order dated 1st August 2024 passed by the Supreme Court

in SLP(C) No. 7898 of 2024. The Apex court, while setting aside Judgment and Order dated 11th January 2024 passed by this Court, held the instructions/directions issued by the Central Government under Section 9 of the Act and by the RBI under Sections 21 and 35A to have statutory force and binding on all banking companies. According to Mr. Nedumpara, this view of the Apex Court may have a bearing on the Company Petition pending before the NCLT, Mumbai Bench. In these circumstances, the parties agree that the Petitioner be afforded an opportunity to place on record of the Company Petition, the Judgment and Order dated 1st August 2024 passed by the Supreme Court and advance its arguments in that regard.

5) Since both the parties consented to advance their respective arguments on the Company Petition before the NCLT as mentioned above, we direct the NCLT to grant an opportunity to the Petitioner herein to place on record of the Company Petition No.322/IBC/MB/2023, the Judgment and Order dated 1st August 2024 passed by the Supreme Court in SLP (C) No.7898 of 2024 and advance its submissions in that regard and thereafter adjudicate on the initiation of the CIRP against the Petitioner/ Corporate Debtor. This Order is however, subject to the following terms and conditions:-

(i) Status-quo will be maintained in so far as Order dated 15th July 2024 passed by the NCLT, Mumbai bench in Company Petition

No.322/IBC/MB/2023, initiating CIRP, till fresh orders are passed by it after giving an opportunity to the Petitioner to place the Order dated 1st August 2024 of the Supreme Court on record and advance arguments thereon by all the parties.

(ii) The Petitioner shall not take any adjournment before the NCLT during the hearing of the Company Petition as directed above.

In case, the Petitioner seeks an adjournment, the NCLT is at liberty to impose exemplary costs on the Petitioner/Corporate Debtor as deemed fit by it or in the alternative, proceed to pass orders in the Company Petition.

In such case, the status-quo as directed in Clause (i) here-in-above shall stand vacated forthwith and the CIRP shall continue notwithstanding the present Order.

(iii) A chart detailing proceedings instituted by the Petitioner in various forums regarding the same issue is placed on record. The following proceedings pertaining the issue involved in this Petition are pending before various Courts, including this Court:

Sr.No.	Proceedings	Court before which the proceeding is pending
1.	Suit (I) No.11395 of 2022	City Civil Court, Mumbai.
2.	Appeal From Order No.552 of 2022	High Court, Bombay.
3.	Criminal Writ Petition No.3317 of 2022	High Court, Bombay.
4.	Criminal Writ Petition No.2570 of 2022	High Court, Delhi.
5.	Writ Petition No.4901 of 2022	High Court, Bombay.

6.	Appeal From Order No.285 of 2023	High Court, Bombay.
7.	Commercial Suit (l) No.27512 of 2023	High Court, Bombay.
8.	Writ Petition No.2614 of 2024	High Court, Bombay.
9.	Writ Petition (l) No.4667 of 2024	High Court, Bombay.
10.	Writ Petition (l) No.16964 of 2024	High Court, Bombay.
11.	Writ Petition (l) No.26313 of 2024	High Court, Bombay
12.	SLP(C) No. 21367 of 2024	Supreme Court of India.
13.	Review Petition (l) No.28352 of 2024 in Writ Petition (l) No.4667 of 2024	High Court, Bombay.

Save and except the Suit (L) No.11395 of 2022, A.O.No.552 of 2022 and A.O. No.285 of 2023 in Review Petition No.22 of 2023, the Petitioner undertakes and shall withdraw all the aforementioned tabulated proceedings pending before this Court or any other High Court or before the Hon'ble Supreme Court involving the questions of law raised in these proceedings within a period of one week from the date of this Order and/or shall not pursue the same in future. The Petitioner shall also withdraw any other proceeding initiated by her pertaining to the issue involved in the present Petition.

(iv) The NCLT is requested to decide the aforesaid Company Petition at the earliest and preferably within a period of two weeks from the date of commencement of hearing of the Company Petition. The parties shall present themselves before the NCLT on 16th October 2024 at 10.30 a.m. and produce this Order before it.

6) The parties herein have agreed to the aforesaid conditions for requesting the NCLT to hear the Company Petition, which we accept.

7) These conditions are binding on all parties to this Petition, including the promoters, directors, managers, representatives etc., by whatever name called, of the Corporate Debtor i.e., the Company of the Petitioner.

8) All rights and contentions of all the parties are left open.

9) This Order is only in respect of Company Petition No.322/IBC/MB/2023 filed by the Respondent No.1 herein, which was admitted by Order dated 15th July 2024 initially CIRP against the Petitioner/Corporate Debtor.

In view of this Order by consent, the other Orders dated 15th July 2024 on IA Nos.3403 of 2024, 3291 of 2024 and 3290 of 2024 seeking recusal of members of NCLT, impleading officers of TDB, etc. are redundant and are set aside.

10) The Petition is accordingly disposed off in the aforesaid terms.

11) All the concerned to act on the basis of an authenticated copy of this Order.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
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