IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 33593 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 – 400701 ...Petitioner

Versus

1. Technology Development Board,
Through Its Director Having Its Reg.
Office At: Technology Bhavan,
Block-II, 2nd Floor, New Mehrauli Road,
New Delhi-110016

2. Shri Rajesh Pathak,
Secretary, Technology Board Development
Department of Science & Technology,
Block-II, Second Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110016

3. The Project Monitoring Committee,
Represented By Its Chairman Technology
Development Board Department of Science
& Technology, Block-II, Second Floor,
Technology Bhawan, New Mehrauli Road,
New Delhi-110016

4. Assistant Law Officer/Authorized Officer,
Technology Development Board, Department
of Science & Technology, Block-II,
Second Floor, Technology Bhawan,
New Mehrauli Road, New Delhi-110016

5. Shri Rajesh Jain,
Director of Finance, Technology Board,
Development Department of Science &
Technology, Block-II, Second Floor,
Technology Bhawan, New Mehrauli Road,
New Delhi-110016

6. Smita Puthucheri,
Project Co-Ordinator, Technology Board,
Department of Science & Technology,
Block-II, Second Floor, Technology Bhawan,
New Mehrauli Road, New Delhi – 110016

7. The Board of Directors of ICICI Bank,
Represented By Its Chairman & Managing
Director ICICI Bank Ltd., Old Padra Road,
Near Chakli Circle, Vadodara, Gujarat-390001

8. Shri Jignesh Shelani,
Authorized Officer, ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai – 400051

9. Shri Vijay Kumar,
Chief Manager, ICICI Bank Head Office,

ICICI Bank Towers, Bandra Kurla
Complex, Mumbai – 400051

10. Shri Sandeep Bakshi
Managing Director, ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai – 400051

11. Shri Arun Jain,
Zonal Head, ICICI Bank, ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai 400051

12. Ms. Ritu Maheshwari,
Relationship Manager ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla Complex,
Mumbai 400051

13. Ministry of Micro Small & Medium Enterprises,
Through Its Secretary, Udyog Bhawan, Rafi Marg,
New Delhi – 110011

14. Ministry of Finance,
Thr. Its Secretary Department of Banking
Jeevan Deep Building, Parliament Street,
New Delhi-110001

15. State of Maharashtra,
Rep. By Its Chief Secretary,
C.S. Office Main Building, Mantralaya, 6th Floor,
Madame Cama Road, Mumbai - 400032

16. Reserve Bank of India,
Rep. By Its Governor, New Central Office Building,
Shahid Bhagat Singh Road, Fort, Mumbai-400001

17. National Stock Exchange of India Ltd.,
Rep. By Its Managing Director & CEO,
Exchange Plaza, C-1, G Block, Bandra Kurla
Complex, Bandra (E), Mumbai – 400051

18. Gaurang Chhotalal 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

19. Ministry of Corporate Affairs,
A Wing, Shastri Bhawan, Rajendra Prasad Road,
New Delhi- 110001

20. Registrar of Companies,
100, Everest, Marine Drive, Mumbai – 400002

21. Bank of India,
Kanmoor House, Narshi Natha St.,
Near Masjid, Bhat Bazar, Chinchbunder,
Mandvi Branch, Mandvi Mumbai – 400009

22. Hon'ble Mr. Justice Virendrasingh G. Bisht,
Member Judicial, NCLT - 1, Mumbai

23. Hon'ble Mr. Prabhat Kumar
Member Technical, NCLT - 1, Mumbai

24. The Chairman,
Empowered Committee On MSMES,
Rep. By The Regional Director,
Reserve Bank of India, Mumbai

25. The Chairman,
State Level Inter Institutional Committee,
Reserve Bank of India, Mumbai ...Respondents

Mr. Mathew Nedumpara a/w Ms. Hemali Merva, Advocate for the Petitioner.

Mr. Prashant Kamble a/w Mr. Himashu Takke, AGP for the Respondent-State.

Mr. Sumedh Ruikar a/w Mr. Viraj Shelatkar i/by Mr. Pradip Yadav, Advocate for Respondent Nos.1 to 6.

Mr. Anshul Anjarlekar i/by Raval Shah & Co., Advocate for Respondent No.7.

Mr. Yahya Batatawala a/w Ms. Shneha Mishra, Advocate for Respondent No.18.

CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

RESERVED ON : 5th DECEMBER, 2024

PRONOUNCED ON : 20th DECEMBER, 2024

ORDER (PER RAVINDRA V GHUGE, J)

1. On 12th November, 2024, the Bench (Coram : A.S. Chandurkar & Rajesh Patil, JJ.), referred to the order dated 18th July, 2024 passed in Interim Application (L) No.22605 of 2024 with Interim Application (L) No.22609 of 2024, and directed that this Petition should not be listed before the said Bench.

2. On 13th November, 2024, the Bench (Coram: M.S. Sonak and Jitendra Shantilal Jain, JJ), recorded that the matter would not be listed before the Bench of which Justice Jain is a member.

3. Pursuant to the above, the Hon'ble the Chief Justice of the Bombay High Court has placed this matter before this Bench.

4. On 27th November, 2024, we considered the oral submissions of the learned Advocate Mr. Nedumpara for almost three hours, from 12:00 noon to 1:30 p.m. and from 2:30 p.m. to 4:00 p.m. As Respondent Nos. 1 to 6, 7, and 18 had appeared *suo moto*, they were unable to file their affidavit and reply. We permitted them to file their written notes/bullet points or affidavit in reply, considering extensive submissions of Mr. Nedumpara. On the

request of Mr. Nedumpara, that a hearing after two days was inconvenient to him, we posted the matter on 4th December, 2024, only to receive the bullet points/submissions of the said Respondents.

5. The Petitioner has arrayed 25 Respondents, which include the learned members of the NCLT-1, Mumbai, Registrar of Companies, Ministry of Corporate Affairs, National Stock Exchange of India Ltd., Ministry of Finance, Ministry of Micro Small and Medium Enterprises, the Reserve Bank of India, through its Governor, etc.

6. The Petitioner has put forth the following prayers in this Writ Petition :-

> *"a) Declare that Section 3 of the Judges (Protection) Act of 1985 is unconstitutional and void inasmuch as it affords absolute immunity to judicial officers even where they have acted unfairly and wilfully denied justice;*
>
> *b) Declare that the concept of absolute judicial immunity is antithetical to the concept of rule of law, nay, equality before law and equal protection of law, and further that immunity is available only where a court or tribunal has acted bona fide, lest a litigant who is a victim of wilful denial of justice will be denied the ordinary remedy available to her in tort;*

c) To declare that Respondent no.22 and 23, namely, the Hon'ble Shri Justice VG Bhist, Member Judicial and Hon'ble Shri Prabhat Kumar Member (T) of the NCLT-1, Mumbai, are a coram non judice for the twin grounds of (a) bias and hostility to the Petitioner and also (b) lacking investiture of the jurisdiction to adjudicate upon the inter se rights and obligations arising out of the MSMED Act, and that the orders dated 15.07.2024 and 29.10.2024 in the purported exercise of their jurisdiction under Section 7 of the IBC is null and void ab initio, still born, one which never ever existed in the eyes of law;

d) In furtherance of relief (c) above, to issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction, calling for the entire records and proceedings leading to the orders – Exhibit-G dated 15.7.2024 and Exhibit-O dated 29.10.2024 in CP(IB) No.322/2023 being passed by the NCLT Mumbai Bench -1, in the purported exercise of that Tribunal's jurisdiction under Section 7 of the IBC, 2016 and to quash and set aside the same;

e) to declare that the Petitioner being an MSME within the meaning of the MSMED Act of 2006 and Notification dated 29.05.2015 issued by the Central Government under Section 9 thereof, as also the circulars and guidelines issued by the Reserve Bank of India under Section 10 thereof, which provides for a mechanism of resolution of stress, no proceedings for recovery under the SARFAESI Act, RDB Act, N.I. Act, will lie, except in the manner contemplated under the said notification, in particular Paragraph 5(4)(iii) of the same;

f) to declare that the MSMED Act, 2006 in so far as it has not created a special forum/tribunal to adjudicate the inter-se rights and obligations/remedies, which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is impossible to oust the jurisdiction of the Civil

Court without providing for an alternative forum/tribunal to adjudicate the inter se disputes between parties who are governed by the Act;

g) To declare that the Section 13 of the SARFAESI Act, Section 19 of the RDB Act and Section 7 of the IBC are unconstitutional, ultra vires and void and are liable to be so declared, inasmuch as the said enactments are wholly on-sided, drafted on the grossly erroneous premise that the right to relief, nay, remedies, arise only at the hands of a banker as against the borrower and that the enquiry to be conducted is wholly one-sided, or in the alternative to declare that the borrower's right to be an actor/plaintiff for the enforcement of his remedies has to be read into the said Acts;

h) To declare that Section 34 of the RDB Act, Section 34 of the SARFAESI Act and Sections 63 and 231 of the IBC which bar the jurisdiction of the civil court to entertain and adjudicate the Petitioner's/borrower's plea against the ICICI Bank and TDB, any, bank/financial institution, is unconstitutional and void inasmuch as the Petitioners, victims of the gross breach of contract, culpable negligence, malicious and tortious action, so too, violation of the express statutory provisions at the hands of the ICICI Bank and the TDB, are entitled to institute an action/suit as against the ICICI Bank and the TDB for the enforcement of the Petitioner's right as against them;

i) To issue a writ in the nature of certiorari or any other appropriate writ, order or directions, calling for the entire records and proceedings leading to the action at the hands of the ICICI Bank under Section 13(4) and 14 of the SARFAESI Act and Section 19 of the RDB Act;

j) To declare that the wilful failure on the part of the NCLT to record in its order dated 29.10.2024 that the Petitioner/her company is not in default and that no amount is due to the TDB because it is the TDB which in violation of the contract refused to release Rs.3

crores out of the Rs.7.5 crores which it had sanctioned for the import of foreign technology and not the Petitioner/her Company that is at default, and the malicious and false statement in the order at Paragraph 18 and 19 that 'there is not dispute that there exists a debt and there is default in repayment thereof', renders the order dated 29.10.2024 one rendered void ab initio, being vitiated by bias, prejudice and falsehood and the bench an coram non judice;

k) To issue a writ in the nature of prohibition and/or any other appropriate writ, order or direction, restraining and prohibiting the ICICI Bank and the Technology Development Board in proceeding any further in furtherance of Section 13(2), 13(4) & 14 of SARFAESI Act, Section 19 of the RDB Act, Section 7 of IBC, Section 138 of the Negotiable Instruments Act or under any other law;

l) To issue a writ in the nature of prohibition, restraining and prohibiting the Respondent no.22 and 23, the Hon'ble Members of the NCLT-1, Mumbai, from assuming to itself a jurisdiction which the law has not vested in them and from passing any order in CP/322/2023 instituted by the TDB, whatsoever, in the purported exercise of its jurisdiction under Section 7 of the IBC, the Petitioner being an MSME entitled to the protection under the notification dated 29.5.2015;

m) To issue a writ in the nature of mandamus directing the Respondents Bank of India and the ICICI Bank to allow the Petitioners, namely the Directors of Perfect infraengineers Pvt. Ltd. Who were illegally ousted, to operate the various accounts maintained by the Company and to cause no obstruction or inconvenience in the smooth operation of the company, and further to direct the Respondent no.18, who falsely claims to be the IRP, to undo whatever hasty steps he has taken in meddling with the affairs of the Petitioner's Company;

n) To initiate suo motu Contempt of Court

proceedings against the IRP for the gross breach of the oral directions and orders of this Court in the common orders dated 14.8.2024 in W.P(L) no.23291/2024; WP(L) no.23291/2024 and W.P(L) no.23295/2024, and subsequent order dated 01.10.2024 in WP/4583/2024 mandating that the IRP shall not take any precipitatory action, making it expressly clear that the 'IRP is yet to be born', the orders of the NCLT being ex facie null and void and further that the promoters/directors of the company shall be allowed to carry on their business without any obstruction or hinderance and that all authorities shall act accordingly to the oral directions which this Court in its wisdom did not find necessary to reduce writing, the parties being represented by counsel;

o) to issue a writ in the nature of prohibition, restraining and prohibiting the ICICI Bank, TDB, IRP, NSEL, SEBI, and the District Magistrate, Thane, from acting in furtherance of order dated 15.7.2024 and subsequent order dated 14.10.2024 of the NCLT-I, Mumbai, to not do anything which will tilt the vinculum juris as on 15.07.2024, and from causing any jeopardy or injury to the interests of the Petitioner and the affairs of its company."

7. By way of ad-interim reliefs, the Petitioner has put forth the following prayers:-

"a) To stay the operation of the orders of the NCLT-1, Mumbai, dated 15.7.2024 and 29.10.2024 in CP(IB)/322/2023 in the purported exercise of their jurisdiction under Section 7 of the IBC pending final disposal of the instant writ petition;

b) To restrain and prohibit Respondent no. 22 and 23, the Hon'ble Members of the NCLT-1, Mumbai, from assuming to itself a jurisdiction which the law has not

vested in them and from passing further any order in CP(IB)/322/2023 instituted by the TDB, whatsoever, in the purported exercise of its jurisdiction under Section 7 of the IBC, the Petitioner being an MSME entitled to the protection under the notification dated 29.5.2015;

c) To direct the Respondent No. 21 Bank of India to allow the Petitioner, namely the Director of Perfect Infraengineers Pvt. Ltd. who was illegally ousted, to operate the various bank accounts maintained by the Company and to cause no obstruction or inconvenience in the smooth operation of the company, and further to direct the IRP to undo whatever hasty steps he has taken in meddling with the affairs of the Petitioner's Company;

d) To direct the Respondent No. 19 & 20 to remove the particulars of the IRP and/or any other indication on the website of the MCA in Master data that the Petitioner's Company M/s Perfect Infraengineers Ltd. is under CIRP Process;

e) Any other order in the facts and circumstances of this matter which this Court may deem fit;"

8. Mr. Nedumpara, while addressing the Court for 3 hours, has made several submissions, some based on the pleadings in the Writ Petition, some based on the issues not pleaded and he narrated a host of latin phrases. However, we deem it appropriate to refer to the contentions which are in relation to the pleadings before us.

THE PETITIONER DECLINES TO APPROACH THE NCLAT

9. Considering Section 61(2) of the IBC prescribing 30 days limitation with a grace period of 15 days, the Petitioner had 45

days at its disposal for challenging the order of the NCLT-1, Mumbai dated 29th October, 2024 before the NCLAT. Within the said limitation period, the Petitioner had approached this Court, actually within 24 hours by filing this Petition running into 730 pages. We called upon Mr. Nedumpara as to whether the Petitioner desires to approach the NCLAT, in the light of the law laid down ***Godrej Sara Lee v. Excise and Taxation Officer, 2023 SCC Online SC 95***, and several judgments on special statutes and Forum/Tribunals created thereunder for specific purposes. He stated that NCLT and NCLAT do not have the jurisdiction to entertain the proceedings initiated before the NCLT and it is C*oram non judice*. The Petitioner will not approach the NCLAT.

10. In the case of ***Assistant Commissioner (CT) LT Kakinada & Ors. V/s. Glaxo Smith Kline Consumer Health Care Limited, (2020) 4 SCR 602,*** the Hon'ble Supreme Court concluded that if a litigant approaches the High Court within the limitation period in which he can prefer an Appeal and the limitation expires during the pendency of the Petition, the High Court may non-suit the Petitioner on the ground that alternate efficacious remedy is available and that be invoked by the Writ Petitioner. It was also held

in *Glaxo Smith Kline* (Supra), that where a right or liability is created by the statute which gives a special remedy, the remedy provided by that statute must only be availed of. The view taken in ***Titaghur Paper Mills Co. Ltd. & Anr. V/s. State of Orissa & Ors. (1983) 2 SCC 433*** and ***Mafatlal Industries Ltd. & Ors. V/s. Union of India & Ors., (1997) 5 SCC 536***, was followed.

11. In the case of ***Nivedita Sharma V/s. Cellular Operators Association of India & Ors., (2011) 14 SCC 337***, the Hon'ble Supreme Court has held that though the High Court can entertain a Writ Petition against any order or direction passed/action taken by the State under Article 226 of the Constitution of India, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law. Same is the view of the Hon'ble Supreme Court with regard the remedy available before the Debt Recovery Tribunal/DRAT. In ***Varimadugu Obi Reddy V/s. B. Sreenivasulu & Ors. (2023) 2 SCC 168***, in ***PHR Invent Educational Society V/s. UCO Bank And Ors., (2024) 6 SCC 579 (3 Judges Bench)***, and in ***Authorized Officer, State Bank of Travancore and Anr. V/s. Mathew K.C., (2018) 3 SCC 85,*** the Hon'ble Supreme Court concluded that when there is existence

of a remedy of Appeal, the High Court cannot entertain a Petition until the alternate remedy is exhausted. In the case of ***Assistant Collector of Central Excise, Chandan Nagar, W.B. V/s. DUNLOP India Ltd. And Ors., AIR 1985 SC 330 (3 Judges Bench)***, the Hon'ble Supreme Court held that the tendency to grant interim order for mere asking in a Writ Petition, is deprecated.

12. Despite the above, Mr. Nedumpara insisted that this Court should deal with this Petition.

SUMMARY OF THE SUBMISSIONS OF ADV NEDUMPARA

13. The Petitioner claims to be a promoter and guarantor of an Industry, which had taken loan from the ICICI Bank. After noticing that the Bank was incorrectly calculating the interest at a higher rate and in excess of the agreed rate of interest, the Petitioner initially addressed the ICICI Bank and later on approached the RBI/Banking ombudsman. The said Authority is said to have reversed the excess interest charge. During the COVID-19 pandemic, the RBI is said to have declared a moratorium against recovery from 1st March, 2020 to 31st August, 2020.

14. The ICICI Bank is said to have wrongly classified the Company's loan account as NPA in July, 2020 with retrospective effect from 29th February, 2020. It is alleged that this was done to deny the Petitioner of the benefit of the COVID-19 moratorium and various Government of India and RBI notifications. After classifying the loan account as NPA, the ICICI Bank invoked Section 13(2) of the The Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act, 2002') and took a symbolic possession of the Petitioner's property, viz. (a) Company Guest House at Lavasa, Pune and the residential Flat No.803 at Ghatkopar East, by invoking the proceedings under Section of the 13(3) of the SARFAESI Act, 2002.

15. The Petitioner claims to have sold off her factory premises and the company office premises and paid an amount of Rs.5.50 Crores, as against the dues of Rs.9.50 Crores. She claims to have cleared 55 % of the amount towards the dues. The Petitioner sought relaxation of the loan account, but the Bank did not pay any heed to the Petitioner's representation.

16. It is contended that ICICI Bank approached the Technology Development Board (for short 'TDB') to request it to credit the proceedings of the third tranche of the TDBI Loan to the Petitioner's Banking Account with ICICI Bank, instead of the Bank of India Account, as was done for the earlier two installments. The ICICI Bank *mala fide* acted against the Petitioner to prevent her from receiving the funds and to arbitrarily adjust the three installments toward the ICICI Bank Loan Account. It is alleged that owing to this action, the TDB went back on its contractual commitment to release the balance amount of Rs.3.50 Crores to the Petitioner. The third and fourth tranche of the TDB loan amount, were never released. It is contended that the import of foreign technology for the project, came to a grinding halt**.** The Petitioner was unable to meet the contractual obligations with her foreign partners, plummeting the Petitioner's company into further losses and financial stress. It is stated that further waves of the COVID-19 pandemic rendered further damage to the Petitioner Industry.

17. The Petitioner claims that her Company is a MSME Unit and she is entitled to the protection of the MSME Notification No. S.O.1432(E) dated 29th May, 2015. It is canvassed that the

ICICI Bank was under an obligation to identify incipient stress, which was not done by the said Bank. The Bank should have created a special account, constitute a Committee and make an application to the Committee under the notification dated 29th May, 2015. Hence, no recovery could have been effected except in a manner permitted by the Committee.

18. It is canvassed by the Petitioner that in an ideal system of administration of justice, the Petitioner would have initiated only one proceeding before the Civil Court. The Tribunals under the Recovery of Debts and Bankruptcy Act, 1993 (for short 'RDB Act'), SARFAESI Act, 2002 and IBC, do not have jurisdiction. However, as the Civil Court jurisdiction came be questioned whenever the Petitioner tried to invoke the same, therefore, she had to institute innumerable Petitions before the High Court, the Debts Recovery Tribunals (for short 'DRT'), etc.

19. The Petitioner submits that the TDB instituted an Application under Section 7 of the IBC. The Petitioner challenged the said action in W.P. (L) No.35792 of 2022, before the High Court. By a common Judgment dated 11th January, 2024, the plea of the

Petitioner and other MSMEs, was rejected. The said Judgment was carried in Special Leave Petition (C) No.2112 of 2024, under Article 136. The Hon'ble Supreme Court declined Leave to Appeal, by order dated 29th January, 2024. The Review Petition (L) No.4048 of 2024, was filed by the Petitioner in this Court seeking Review of the order of this Court dated 11th January, 2024. By order dated 19th March, 2024, the Review Petition (L) No.4048 of 2024, was dismissed.

20. The Petitioner preferred a Writ Petition (L) No.4667 of 2024, contending that the Petitioner is in the process of settling the dues with ICICI Bank as well as the TDB. In the meanwhile, TDB initiated insolvency proceedings against the Petitioner under Section 7 of IBC, before NCLT. The said proceedings were reserved for orders. In Writ Petition (L) No.4667 of 2024, the Petitioner prayed that NCLT be directed not to pronounce the order for four weeks. By order dated 1st April, 2024, this Court requested the NCLT not to pronounced the order on the Petition filed by the TDB for five weeks.

21. The Petitioner preferred a Civil Appeal before the

Hon'ble Supreme Court bearing Civil Appeal No.7233 of 2024, against the order dated 19th March, 2024 passed by this Court. By order dated 8th July, 2024, the Hon'ble Supreme Court requested the Division Bench to hear and decide the Review Petition, on its merits. The parties were directed to appear before the High Court on 18th July, 2024. In Paragraph No.14 of the said order, the Hon'ble Supreme Court has noted *"We also acknowledge various perturbing facts courteously noted by the High Court in the impugned order. We are, however, consciously not referring to the conduct of the appellant or her counsel at this stage.*"

22. In the meanwhile, considering that the order dated 11th January, 2024, was in relation to several MSMEs and the Petitioner's SLP was dismissed by the Hon'ble Supreme Court and the Review was also rejected, other parties to the group of matters, which were dismissed by order dated 11h January, 2024, namely ***M/s. Pro Knits V/s. The Board of Directors, Canara Bank & Ors. preferred a Special Leave Petition (Civil) No.7898 of 2024***. By Judgment dated 1st August, 2024, the Hon'ble Supreme Court set aside the Judgment of this Court dated 11th January, 2024. As a consequence, the pending Review Petition (L) No.4048 of 2024, was disposed off as

infructuous by this Court, vide order dated 5th August, 2024.

23. On 15th July, 2024, the NCLT-1, Mumbai admitted the Application filed by TDB under Section 7 of the IBC and declared moratorium under Section 14 of the IBC, with the following directions :

(a) Institution of suits or continuation of pending suits or proceedings against the Corporate debtor was prohibited.

(b) Transferring, encumbering, alienating or disposing off as a corporate debtor, any of its assets, was prohibited.

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, was prohibited.

(d) Recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor, was prohibited.

Further directions were also issued which include that the creditor would deposit a sum of Rs.5,00,000/- with IRP and that the order of moratorium shall have effect from the date of the order till completion of CIRP or until the Bench approves the resolution plan.

24. In Writ Petition (L) No.23291 of 2024, this Court requested the NCLT vide order dated 14th August, 2024, to consider the Recall Applications filed before NCLT by the present Petitioner. By order dated 29th October, 2024, the NCLT dismissed the Recall Applications observing that NCLAT is the Appellate Authority to decide on an Appeal arsing out of the order passed by NCLT.

25. The Petitioner preferred Writ Petition (L) No.26313 of 2024, before the High Court, against the order dated 15th July, 2024. The prayers put forth are as under :

> "*a) to declare that the Petitioner being an MSME within the meaning of the MSMED Act of 2006 and notification dated 29.05.2015 issued by the Central Government under Section 9 thereof, as also the circulars and guidelines issued by the Reserve Bank of India under Section 10 thereof, which provides for a mechanism of resolution of stress, no proceedings for recovery under the SARFAESI Act, RDB Act, IBC, N.I Act, will lie, except in the manner contemplated under the said notification, in particular Paragraph 5(4)(iii) of the same;*
>
> *b) to declare that the MSME Act in so far as it has not created a special forum/tribunal to adjudicate the inter-se rights and obligations/remedies, which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is impossible to oust the jurisdiction of the Civil Court without providing for an*

alternative forum/tribunal to adjudicate the inter se disputes between parties who are governed by the Act;

c) to Issue a writ in the nature of prohibition, restraining and prohibiting the IRP, NSEL, SEBI and the District Magistrate, Thane, from acting in furtherance of the order dated 15.7.2024 of the NCLT-I, Mumbai, and to not do anything which will tilt the vinculum juris as on 15.7.2024, and from causing any jeopardy or injury to the interests of the Petitioner and the affairs of its company;

d) To declare that the Section 13 of the SARFAESI Act, Section 19 of the RDB Act and Section 7 of the IBC are unconstitutional, ultra vires and void and are liable to be so declared, inasmuch as the said enactments are wholly one-sided, drafted on the grossly erroneous premise that the right to relief, nay, remedies, arise only at the hands of a banker as against the borrower and that the enquiry to be conducted is wholly one-sided, or in the alternative to declare that the borrower's right to be an actor/plaintiff for the enforcement of his remedies has to be read into the said Acts;

e) To declare that Section 34 of the RDB Act, Section 34 of the SARFEASI Act and Sections 63 and 231 of the IBC which bar the jurisdiction of the civil court to entertain and adjudicate the Petitioner's/borrower's plea against the ICICI Bank and TDB, nay, bank/financial institution, is unconstitutional and void inasmuch as the Petitioners, victims of the gross breach of contract, culpable negligence, malicious and tortious action, so too, violation of the express statutory provisions at the hands of the ICICI Bank and the TDB, are entitled to institute an action/suit as against the ICICI Bank and the TDB for the enforcement of the Petitioners' right as against them;

f) To Issue a writ in the nature of certiorari or any other appropriate writ, order or direction, calling for

the entire records and proceedings leading to the action at the hands of the ICICI Bank under Section 13(4) and 14 of the SARFAESI Act and Section 19 of the RDB Act, so too, the entire records and proceedings before the NCLT-1, Mumbai, in Company Petition No.322 (MB) of 2023 under Section 7 of IBC at the hands of the TDB leading to the orders dated 15.7.2024, so too, to quash and set aside the same, being unconstitutional and void;

g) To Issue a writ in the nature of prohibition or any other appropriate writ, order or direction restraining and prohibiting the ICICI Bank and the Technology Development Board in proceeding any further in furtherance of Section 13(2), 13(4) & 14 of SARFAESI Act, Section 19 of the RDB Act, Section 7 of IBC, Section 138 of the Negotiable Instruments Act or under any other law;

h) To declare that the order of the NCLT, Mumbai Bench-1 dated 15.07.2024 admitting Company Petition CP/322/2023 under Section 7 of the IBC and its order dated 15.07.2024 in I.A. nos. I.A/3403/2024, I.A/3290/2024, and IA/3291/2024 are void ab initio, still born and never existed in the eyes of the law;

i) To issue a writ in the nature of mandamus directing the Respondent Bank of India and the ICICI Bank to allow the Petitioners, namely the Directors of Perfect Infraengineers Pvt. Ltd. who were illegally ousted to operate the various accounts maintained by the Company and to cause no obstruction or inconvenience in the smooth operation of the company, and further to direct the IRP to undo whatever hasty steps he has taken in meddling with the affairs of the Petitioner's Company.

j) To initiate suo motu contempt of court proceedings against the IRP for the gross breach of the oral directions and orders of this Court in the common orders dated 14.8.2024 in W.P(L) no. 23291/2024; WP(L) no. 23291/2024 and W.P(L) no.23295/2024

mandating that the IRP shall not take any precipitatory action, making it expressly clear that the 'IRP is yet to be born', the orders of the NCLT being ex facie null and void and further that the promoters/directors of the company shall be allowed to carry on their business without any obstruction or hinderance and that all authorities shall act according to the oral directions which this Court in its wisdom did find to necessary to reduce writing, the parties being represented by counsel."

26. Vide Judgment dated 1st October, 2024, delivered by this Court (Coram: A.S. Gadkari and Dr. Neela Gokhale, JJ.), the Petition was disposed off. It was observed in the said Judgment in Paragraph Nos.2.13 and 2.14, which read as under :

"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."

27. Finally, this Court concluded in Paragraph No.5 and its

sub-clauses, as under :

> *"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.322/1BC/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 (l) No.11395 of 2022*	*City Civil Court, Mumbai.*
2.	*Appeal From Order No.552 of 022*	*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 024*	*High Court, Bombay.*
12.	*SLP (C) No.21367 of 024*	*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 aforenoted 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."*

28. The Petitioner then preferred a Review Petition (L) No.33425 of 2024, on 29th October, 2024. The Petitioner had appeared in person. The said Court permitted Mr. Nedumpara to canvass his submissions at length. The Review Petitioner in person sought time for arrangements of funds, that was the principal amount to be deposited with the Registry of this Court. Time was granted until 7th January, 2025. It was made clear that the Court had not granted any relief to the Review Petition. For clarity, we are reproducing the order dated 11th November, 2024, hereunder :

> *"1) Heard Mr. Nedumpara at length.*
>
> *2) The Review Petitioner in-person seeks time for arrangement of the funds, i.e. the principle amount to be deposited in the Registry of this Court. Time is granted.*
>
> *3) Stand over to 7th January, 2025.*
>
> *4) It is made clear that, we have not granted any relief till date in the present Petition."*

SUMMARY OF THE SUBMISSIONS OF THE RESPONDENTS

29. The Respondents have entered their responses and have relied upon the contents set out therein. The chequered history of the litigation is highlighted. It is vehemently contended that the Petitioner is indulging in forum shopping and making unfair statements. It is pointed out that the Petitioner had also made a statement before the Division Bench of Hon'ble Justice Gadkari, that the principal amount would be deposited in the Court. Extensive submissions have been canvased by the Respondents to support their contentions that the conduct of the Petitioner in this litigation deserves to be met with heavy costs.

ANALYSIS AND CONCLUSIONS

30. It needs mention that Mr. Nedumpara has put forth his lengthy submissions only as against the order dated 15th July, 2024 and 29th October, 2024. The other prayer canvased is to restrain and prohibit the two learned members of the NCLT-1, Mumbai from functioning and exercising jurisdiction. However, there is no prayer for issuance of a Writ of Quo Warranto, either in the main prayers or in the interim prayers. The further relief sought is to direct the Bank of India to allow the Petitioner to operate various Bank Accounts

maintained by the Company (Prayer Clause (c) reproduced above). The last Prayer at Clause (d), is for seeking a direction to Respondent Nos.19 and 20, to remove the particulars of the IRP and or any other indication on the website of the MCA in Master Data showing the Petitioner under CIRP process.

31. It is, thus, apparent from the record that the order dated 15th July, 2024, assailed by the Petitioner before us in this Petition, is already assailed in Writ Petition (L) No.26313 of 2024 before the Division Bench (Coram: Shri. A.S. Gadkari and Dr. Neela Gokhale, JJ.), (in short Justice Gadkari's bench) and in Interim Application (L) No.25072 of 2024 in Commercial Suit No.70 of 2024, before the learned Single Judge (Firdosh P. Pooniwalla, J.). That prayer has been subjected to a Judgment dated 1st October, 2024 by Justice Gadkari's bench. A Review Petition (L) No.33425 of 2024 is pending before the same Court.

32. An offshoot from the said order dated 1st October, 2024, led the Petitioner to once again approach the NCLT-1, Mumbai. Based on such order, the Petitioner practically re-argued the entire case before the NCLT, which dealt with the Petitioner's submissions

in the light of the observations in the order dated 1st October, 2024 below Paragraph No.4, which reads as *"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 in the Company Petition No.322/IBC/MB/2023 filed by the TDB against the company of the Petitioner".* It was further recorded that *"According to Mr. Nedumpara this view of the Apex Court may have a bearing on the Company Petition before the NCLT, Mumbai Bench".* It was further recorded in Paragraph No.5, as "*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*".

33. We have perused the order dated 29th October, 2024, which is an extensive order passed by the NCLT-1, Mumbai. We

have specifically perused Paragraph No.4 onwards. We have also perused the Judgments referred to by the Tribunal in ***Johnson Lifts Limited V/s. M/s. Tracks & Towers Infratech Pvt. Ltd. delivered by the NCLAT (Chennai Bench)***, the order of this Court in ***Jotun India Limited V/s. PSL Ltd. [2018] ibclaw.in 01 HC***, the pronouncement of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. and Anr. V/s. Union of India and Ors. (2019) ibclaw.in 03 SC***, ***M. Suresh Kumar Reddy V/s. Canara Bank & Ors., (2023) ibclaw.in 67 SC*** and ***Axis Bank Ltd. V/s. Lotus Three Development Ltd. and Others, 2018 SCC OnLine NCLAT 914***.

34. The view taken by the Hon'ble Supreme Court is now crystallized that even the non-payment of a part of the debt, when it becomes due and payable, will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IBC must follow. If the NCLT notices that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. When there is a non-payment of debt under Section 3(12) of the Code, when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may

be, it would amount to default and the proceeding under Section 7 of the IBC must follow. In view of the above, we do not find any illegality or error in the order dated 29th October, 2024.

FORUM SHOPPING, SUPPRESSION, MULTIPLICITY OF CASES AND WASTAGE OF THE TIME OF THE COURT

35. Insofar as the challenge to the impugned order dated 15th July, 2024, passed by NCLT-1, Mumbai, the same was already challenged in Writ Petition (L) No.26313 of 2024 and a Review as regards the Judgment dated 1st October, 2024 being pending, we are of the view that the Petitioner has attempted to mislead the Court by once again challenging the order dated 15th July, 2024, in this Petition. So also, main Prayer Clause (e) in this Petition is identical to Prayer Clause (a) in Writ Petition (L) No. 26313 of 2024. Main Prayer Clause (f) in the present Petition is identical to Prayer Clause (b) in the earlier Petition. Main Prayer Clause (g) in this Petition is identical to Prayer Clause (d) in the earlier Petition. Main Prayer Clause (h) in this Petition is identical to Prayer Clause (e) in the earlier Petition. Main Prayer Clause (i) in this Petition is identical in the Prayer Clause (f) in the earlier Petition. Main Prayer Clause (m)

and Interim Prayer Clause (d), are almost identical to Prayer Clause (i) in the earlier Petition. Main Prayer Clause (n) in this Petition is identical to Prayer Clause (j) in the earlier Petition. Interim Prayer Clause (a) in this Petition, except so far as it concerns Order dated 29th October, 2024, is identical to Interim Prayer Clause (a) in the earlier Petition. Interim Payer Clause (c) in this Petition is almost identical to Interim Prayer Clause (b) in the earlier Petition. Interim Payer Clause (d) in this Petition is identical to Interim Prayer Clause (c) in the earlier Petition.

36. In the light of the above, we have concluded in the earlier part of this order, that the impugned order dated 29th October, 2024, can neither be termed as perverse or illegal. Merely because a different view could be possible, would not call upon this Court to quash and set aside the impugned order, in view of the law laid down in ***Syed Yakoob V/s. K.S. Radhakrishnan, AIR 1964 SC 477*** and ***Surya Dev Rai V/s. Ram Chander Rai, AIR 2003 SC 3044,*** this **Petition to the extent of the challenge to this order, stands dismissed.**

37. Taking into account all the prayers put forth by the Petitioner, except the challenge to the impugned order dated 29th

October, 2024 and main Prayer Clause (a), all other prayers being practically 'copied and pasted', this Petition deserves to be dismissed with costs.

38. In so far as, the main Prayer Clauses (a) (b) and (c) [reproduced in the opening paragraphs], we find that besides making unsubstantiated, baseless and unfounded allegations against the two learned members of the Tribunal, there are neither any circumstances set out in the Petition, nor is there any justification to entertain these prayers. This Petition deserves to be dismissed on these counts, as well.

39. Taking into account all the above factors, this **Writ Petition is dismissed, with costs**.

REASONS FOR IMPOSING COST OF Rs. FIVE LAKHS

40. In this proceeding, we deem it appropriate to assign reasons for imposing cost upon the Petitioner. The reasons are as under :

(a) Except main Prayer Clause (a) pertaining to the Judges

(Protection) Act, 1985, Prayer Clause (c) pertaining to the contention that the two learned Members of the NCLT-1, Mumbai are *Coram non judice* and the challenge to the order dated 29th October, 2024, all other prayers are practically, 'copied and pasted' from the Writ Petition (L) No.26313 of 2024.

(b) In Writ Petition (L) No.26313 of 2024, this Court (Coram: A.S. Gadkari and Dr. Neela Gokhale, JJ.) has already delivered an order by consent of the Petitioner and disposed off the Writ Petition. A Review Petition (L) No.33425 of 2024, has been filed in which the same prayers are put forth and the same is still pending.

(c) In the order dated 11th November, 2024, it is recorded that the Petitioner-in-person sought time to make an arrangement for the funds (the principal amount), to be deposited in the Registry of this Court. Time was granted till 7th January, 2025. The statement has not been followed.

(d) Simultaneously, the Petitioner filed an Interim Application (L) No.25072 of 2024 in Commercial Suit No.70 of 2024. The learned Single Judge (Firdosh P. Pooniwalla, J.) delivered an order dated 19th November, 2024, recording that the first prayer put forth by the Petitioner is in the nature of seeking a stay to the order dated

15th July, 2024.

(e) In another Interim Application (L) No.25073 of 2024, in the same Commercial Suit, it is again prayed that the same order dated 15th July, 2024 passed in the same Company Petition No.322(MB) of 2023, be stayed. The learned Single Judge refused to grant ad-interim relief to the Petitioner.

(e) The fact of challenging the order dated 15th July, 2024, in the earlier Writ Petition and also in the Interim Application (L) Nos.25072 and 25073 of 2024, was suppressed from this Court.

(f) The law on suppression/misrepresentation, as settled in ***Kishore Samrite V/s. State of Uttar Pradesh, (2013) 2 SCC 398*** and ***Bhaskar Laxman Jadhav and others V/s. Karamveer Kakasaheb Wagh Education Society, AIR 2013 SC 523,*** would be squarely applicable.

41. This is a serious case of a Petitioner/litigant blatantly and glaringly indulging in forum shopping, misrepresentation and suppression. Imposition of cost would be justified in the light of ***Kamini Jaiswal V/s. Union of India, (2018) 1 SCC 156 (3 Judges)*** and ***Dinesh Gupta V/s. State of Uttar Pradesh and Anr., 2024 SCC***

OnLine 34. In Dinesh Gupta (supra), the Hon'ble Supreme Court recorded in the opening paragraph that unscrupulous litigants should not be allowed to go scot-free. They should be put to strict terms and conditions, including costs. It is time to check with firmness such litigation initiated and laced with concealment, falsehood and forum hunting. Litigants can be party to malicious litigation and should be seriously reprimanded. The Hon'ble Supreme Court imposed cost of Rs.25 Lakhs on the Respondent who had indulged in such act, to be deposited within four weeks.

42. In the case in hands, same prayers have been canvassed multiple times before the earlier Bench headed by Learned Brother A.S. Gadkari, J., Learned Brother Justice Pooniwalla and this Bench, coupled with challenging the same order dated 15th July, 2024 passed by NCLT-1, Mumbai, even before the Bench headed by Learned Brother A.S. Gadkari, J., before the Single Judge Bench Learned Brother Firdosh P. Pooniwalla, J. and before this Court and praying for interim stay orders in all these matters.

Hence, for the above conduct, we are imposing cost of Rs. 2.5 Lakhs.

WASTAGE OF TIME OF THE COURT

43. The Petitioner consumed three hours of this Court citing grave urgency, when the Daily Board of this Court is between 150 to 200 matters and when the fresh admission cases being heard for the first time and the urgent admission cases, total of about 100 to 125 cases per day. We had to push back the Daily Board and rearrange the dates for hearing urgent cases, and hear the learned Advocate Mr. Nedumpara for three hours, resulting in loss of precious time of the Court. For the reason of wasting the time of the Court, we are imposing cost of Rs. 2.5 Lakhs.

44. The total of Rs.5 Lakhs shall be deposited in this Court by the Petitioner, within 30 days from today. After this amount is deposited, this amount shall be transferred by the Registry, in the quantum of Rs. One Lakh each, to the following Institutions/Organizations :

1. Children Aid Society, Mumbai
Account No.02370100005612
Bank Name :UCO BANK
Branch – Matunga
IFSC : UCBA0000237

2. In Defense of Animals

Account No.04060100019102

Bank Name :Bank of Baroda

Branch – Chandavarkar Road Branch, Matunga

IFSC : BARB0CHANDA (‘0’ is a digit not alphabet)

MICR No.: 400012046

3. Girija Welfare Association

Account No.309006361574

Bank Name :RBL BANK

Branch – Kharghar

IFSC : RATN0000078

4. K.E.M. Hospital, Poor Box Charity Fund

Account No. 99350100000877 (S.B.)

Bank Name : Bank of Baroda

Branch : Parel Branch

IFSC : BARB0DBPARE (5TH Letter is Zero)

MICR No. :400012246

5. Bar Council of Maharashtra and Goa

Account No.10996711937

Bank Name : State Bank of India

Branch – Mumbai Main Branch

IFSC : SBIN0000300

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**