

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SWrit Petition(s) (Civil) No(s). 7/2025

BOLTMASER INDIA PRIVATE LIMITED & ANR.

Petitioner(s)

VERSUS

THE BOARD OF DIRECTORS OF UNION BANK OF INDIA & ORS. Respondent(s)

Date : 03-01-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTIFor Petitioner(s) Mr. Mathews J. Nedumpara, Adv.
Ms. Maria Nedumpara, Adv.
Ms. Hemali Kurne, Adv.
Ms. Rohini Amin, Adv.
Mr. Shameem Fayiz, Adv.
M/S. Lawfic, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

1. Heard Mr. Mathews J. Nedumpara, learned counsel appearing for the petitioners.
2. The petitioners are facing proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. They have come before this Court before this Court with the following prayer:

"a) To declare that the failure on the part of the Central Government/RBI to implement the MSMED Notification dated 29.05.2015, in particular, to ensure that the Board of Directors of the Banks/financial institutions in this country,

including the Respondent Bank, constitutes a committee for 'stressed micro, small and medium enterprise' and further to prevent the Banks and NBFCs from classifying the account of an MSME as NPA and resorting to recovery under the SARFAESI, RDB Act, IBC, NI Act, etc. in violation of the prohibition to do so as contained in Paragraph 1 and 5(4)(iii) of the said notification, amounts to gross failure on their part to comply with the statutory duty cast upon them under Sections 35, 35A, 35AA, 36, 36AA of the Banking Regulation Act and Sections 45-IE of the Reserve Bank of India Act, and Sections 9 and 10 of the MSMED Act; and

b) To declare that the entire proceedings initiated by the Respondent Bank as against the Petitioner in violation of the notification dated 29.05.2015, which not a single bank/financial institution in this country has given effect to, is rendered void ab initio, still born, and that that alone is the inevitable consequence because the notification does not provide for any penal provision for violation thereof, and that such an inevitable legal consequence is not lost or extinguished simply because an MSME, which the law recognizes as predominantly weak and financially illiterate, had failed to raise such a plea; and

c) To declare that the Section 13 of the SARFAESI Act, and Section 19 of the RDB Act, Sections 7, 9, 10 and 95 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 onesided, or in the alternative to declare that the borrower's right to be an actor/petitioner for the

enforcement of his remedies has to be read into the said Acts; and

d) To declare that Section 34 of the RDB Act, and Section 34 of the SARFEASI Act and Section 63 of the IBC which bar the jurisdiction of the Civil Court to entertain and adjudicate the Petitioner's/borrower's plea against the Respondent Bank 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 Respondent Bank, are entitled to institute an action/suit as against the Respondent Bank for the enforcement of the Petitioners' right as against them; and

e) Declare that the MSMED Act in so far as it has not created a special forum/tribunal to enforce 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, and further as a corollary thereof, the DRTs, NCLTs created under the RDB Act 1993 and the Companies Act 2013 are invested of no jurisdiction to adjudicate a dispute arising out of/involving the MSMED Act; and

f) To issue a writ in the nature of certiorari or any other appropriate writ or order calling for the entire records and proceedings leading to the classification of the account of the Petitioner as NPA, issuance of notices/orders

under Section 13(2), 13(4) and 14 of the SARFAESI Act and to quash and set aside the same."

3. We see no reason to entertain the Writ Petition filed under Article 32 containing the above prayers. The petition is accordingly dismissed.

4. Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR