

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**(Extraordinary Civil Writ Jurisdiction)**

Writ Petition (Civil) no.                      of 2020

In the matter of:

**M/s Ram Chand & Sons**

Through its Sole Proprietor Mr. Chetan Prakash Ajmani

Having its office at:

B – 1/226, Janak Puri

New Delhi – 110058

**...Petitioner**

**versus**

**Union of India**

Represented by its Secretary,

Ministry of Finance,

Shashtri Bhawan,

Dr. Rajendra Prasad Road,

New Delhi - 110 001.

**...Respondent**

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA SEEKING ISSUANCE OF A WRIT,  
ORDER OR DIRECTIONS THEREBY DECLARING AND**

**STRIKING DOWN THE PROVISO TO S. 4 (1) OF THE  
INSOLVENCY AND BANKRUPTCY CODE, 2016 AS VIOLATIVE  
OF ARTICLE 14 OF THE CONSTITUTION OF INDIA**

**AND**

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA SEEKING ISSUANCE OF A WRIT,  
ORDER OR DIRECTIONS THEREBY DECLARING THAT MCA  
NOTIFICATION NO. S.O. 1205(E) DATED 24.03.2020 ISSUED BY  
THE RESPONDENT IS UNCONSTITUTIONAL FOR BEING  
VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF  
INDIA**

Most respectfully submitted

1. That the Petitioner a Proprietorship firm acting through its sole proprietor Mr. Chetan Prakash Ajmani, having its office at B – 1/226, Janak Puri, New Delhi-110058.
2. That the Petitioner falls in the category of MSME and is duly registered with the Ministry of Micro, Small and Medium Enterprises. The Petitioner is engaged in the business of sale and purchase of natural rubber latex and allied products. (A copy of the Udyog Aadhar Registration Certificate bearing no. DL 11 A 0024011 issued to the Petitioner by Ministry of Micro, Small and Medium Enterprises is annexed herewith as **Annexure P-1** at page ..... to .....)
3. That the Petitioner has filed the present writ petition under Article 226 of the Constitution of India challenging the constitutional

validity of the proviso to S. 4(1) of the Insolvency & Bankruptcy Code, 2016 on the ground that the same confers uncanalised and arbitrary power upon the Central Government to set the threshold for initiation of corporate insolvency process for corporate persons and thus, it is violative of Article 14 of Constitution of India and is liable to be read down. The said proviso reads as under:

“(1) ....

PROVIDED that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”

(S. 4 of the Insolvency and Bankruptcy Code, 2016 is reproduced in **Annexure P-2** at page ..... to .....)

4. That the Petitioner has also challenged the constitutional validity of the MCA Notification No. S.O. 1205(E) dated 24.03.2020 on the grounds that the same is unreasonable, arbitrary and unconstitutional for being violative of Article 14 of the Constitution of India. (A copy of the MCA Notification No. S.O. 1205(E) dated 24.03.2020 is annexed herewith as **Annexure P-3** at page ..... to .....)

5. That it may be noted that by virtue of MCA Notification No. S.O. 1205(E) dated 24.03.2020, the Respondent has introduced an amendment in S. 4 of the Insolvency and Bankruptcy Code, 2016 and has thereby increased the threshold for initiation of corporate insolvency process from Rs. 1,00,000/- (Rupees One Lakh only) to Rs. 1,00,00,000/- (Rupees One Crore only).
6. That this increase of threshold amount of debt is wholly unreasonable, arbitrary and violative of Article 14 of the Constitution of India in as much as the same adversely affects the Petitioner.
7. That it may be noted that in April, 2019, the Petitioner had supplied goods i.e. 'Natural Rubber Latex Code 4001 (60% DRC)' also known as Natural Rubber Cenex (60% DRC) worth Rs. 19,08,550.00 (Rupees Nineteen Lakh Eight Thousand Five Hundred and Fifty Only) to a company named R F B Latex Limited having its Registered Office at K – 185, Surya Plaza, Sarai Julenna, New Delhi – 110025. The aforementioned goods were supplied to the factory of the aforementioned company located at 78 – 80, NSEZ, Noida Phase – II, Uttar Pradesh – 201305. The aforementioned company had issued a cheque towards payment of the said goods but the said cheque dishonored on presentation for reasons 'funds insufficient' and the Petitioner was constrained to

initiate legal proceedings under S. 138 of the Negotiable Instruments Act, 1881. Since, the goods were supplied pursuant to a valid purchase order as well as a valid invoice and various emails exchanged between the parties concerned, and the buyer in question had failed to make the payment, the Petitioner desired to initiate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 as an Operational Creditor against the aforementioned company. However, before any such action could have been initiated, the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 was published in the Gazette of India.

8. That the Petitioner has preferred the present petition on the following grounds:

### **GROUND**

A. BECAUSE proviso to S. 4(1) of the Insolvency and Bankruptcy Code, 2016 is violative of Article 14 of the Constitution of India confers uncanalised power upon the Central Government to set/fix the threshold for initiation of corporate insolvency process for corporate persons. The said proviso does not lay down any guidelines for the Central Government to follow while fixing/revising the aforementioned threshold. Therefore, the said proviso is arbitrary and deserves to be struck down. The said proviso gives absolute and arbitrary power to the Central

Government to decide the threshold for initiation of corporate insolvency resolution process. This arbitrary power vested in the Central Government has resulted in the issuance of the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 which is also arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

B. BECAUSE the Hon'ble Supreme Court of India observed in the case of 'E.P. Royappa v. State of Tamil Nadu & Anr.' reported as 1974 SCR (2) 348 that

“Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.”

It may be noted that proviso to S. 4(1) of the Insolvency and Bankruptcy Code, 2016 gives absolute and arbitrary power to the Central Government to decide the threshold for initiation of corporate insolvency resolution process and therefore, it deserves to be struck down.

C. BECAUSE the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is wholly arbitrary, unreasonable and violative of Article 14 of the Constitution of India as there cannot be any reasonable differentia between the creditors only on the basis of the amount in default. Article 14 provides for equality amongst equals. Apart from the distinction based on the different kinds of creditors i.e., Operational or Financial, the scheme of Insolvency and Bankruptcy Code, 2016 does not provide for any further distinctions. However, the Impugned Notification discriminates even between the same category of creditors. For instance, as per the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020, while an Operational Creditor with a claim of more than Rs. 1,00,00,000/- (Rupees One Crore Only) will be allowed to initiate corporate insolvency resolution process, another operational creditor who may have a claim of less than Rs. 1,00,00,000/- (Rupees One Crore Only) will not be allowed to initiate such process. Therefore, Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 creates inequality between the same category of creditors which have otherwise been recognized as equals. This itself makes the Impugned MCA Notification No. S.O. 1205(E)

dated 24.03.2020 unfair, unreasonable, discriminatory and violative of Article 14 of the Constitution of India.

D. BECAUSE the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is wholly arbitrary, unfair and violative of Article 14 of the Constitution of India in as much as the fixation of threshold of Rs. 1,00,00,000/- (Rupees One Crore Only) for initiating corporate insolvency process, is itself arbitrary. There is no reason why the right to initiate corporate insolvency process has been taken away from creditors qua default of less than Rs. 1,00,00,000/- (Rupees One Crore only). Therefore, the Impugned Notification fails the test of equality and fairness.

E. BECAUSE the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is wholly arbitrary, unfair and violative of Article 14 of the Constitution of India as the amendment brought by operation of the Impugned Notification fails to even achieve the object sought by the Insolvency and Bankruptcy Code, 2016. It may be noted that the preamble of the Insolvency and Bankruptcy Code, 2016 states as follows:

“An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons,



to promote entrepreneurship,, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, as for matters connected therewith or incidental thereto”

The Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 fails on two grounds. Firstly, it fails to balance the interest of all the stakeholders; in this case, the relevant stakeholders being the creditors qua defaults of less than Rs. 1,00,00,000/- (Rupees One Crore Only). The Impugned Notification not only ignores such creditors, it also fails to ensure protection of the interest of such creditors and also fails to balance their interest vis-à-vis other creditors and corporate debtor. Secondly, the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 tilts in favor of the Corporate Debtors and discriminates against the creditors.

F. BECAUSE the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is wholly arbitrary, unreasonable and violative of Article 14 of the Constitution of India in as much as it fails the test of reasonable classification. It fails to draw any reasonable intelligible differentia between the category of

creditors where default is less than Rs. 1,00,00,000/- (Rupees One Crore only) and category where such default may be more than the said amount. From the perspective of the creditors, there is no reasonable basis for distinguishing between creditors who may have to recover less than Rs. 1,00,00,000/- (Rupees One Crore only) and creditors who may have to recover more than the said amount. Even from the perspective of the defaulter/Corporate Debtor, there is no difference between the said two category of creditors. It is highly likely that if a defaulter/Corporate Debtor is unable to pay a debt of Rs. 1,00,00,000/- (Rupees One Crore only) or more, it will not be able to pay a debt of an amount which may be marginally less than Rs. 1,00,00,000/- (Rupees One Crore only). Thus, there is no reasonable basis why any distinction should be made between the creditors with claim of a lesser amount than Rs. 1,00,00,000/- (Rupees One Crore only) and others.

G. BECAUSE the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is also vague in as far as applicability of the same is concerned i.e., whether it is retrospective or prospective in effect. The Impugned Notification fails to provide whether it is applicable to defaults arising before the date of the notification

or whether it is only applicable to defaults which arise after the date of the impugned notification.

H. BECAUSE even though the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is arbitrary and discriminatory because while on one hand, it intends to safeguard the interest of MSMEs who may be defaulters, on the other hand, it adversely affects the rights of creditors who may also be MSMEs. The Impugned Notification loses sight of the fact that MSMEs tend to have business transactions with other MSMEs, especially when it comes to Operational Creditors. Therefore, any additional protection to defaulter MSMEs cannot be at the cost of/detriment to operational creditors who may also be MSMEs and for this reason, the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 is discriminatory and liable to be declared as violative of Article 14 of the Constitution of India.

I. BECAUSE even though the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020

J. BECAUSE even though the Impugned MCA Notification No. S.O. 1205(E) dated 24.03.2020 was introduced to contain/deal with the effects of COVID19 pandemic on the economy, the Impugned Notification, from the bare perusal of the same, does

not imply that it is a temporary measure. It rather appears that it will remain in force even after the COVID19 crisis is over.

K. BECAUSE the Hon'ble Supreme Court of India in Bhavesh D. Parish v. Union of India reported as (2000) 5 SCC 471 has held, *inter alia*, that if a statute is manifestly unjust and glaringly unconstitutional then its operation must be stayed.

9. That the Petitioner has not filed any similar writ petition previously either before this Hon'ble Court or any other High Court or the Hon'ble Supreme Court of India.

10. That this Hon'ble Court has jurisdiction to decide the present writ petition as the Respondent has its headquarter in New Delhi.

11. That there is no other equally efficacious alternative or remedy available with the Petitioner except to approach this Hon'ble Court under Article 226 of the Constitution of India.

12. That all the annexures as filed in the present writ petition are true copies of their respective originals.

13. That the present writ petition has been filed *bonafide* and in the interest of justice.

### **PRAYER**

Therefore, in light of the aforementioned facts and circumstances mentioned hereinabove, it is most respectfully prayed before this Hon'ble Court that it may kindly be pleased to:

- a) pass a writ/order/direction thereby declare and read down the proviso to S. 4 (1) of the Insolvency and Bankruptcy Code, 2016 as violative of Article 14 of the Constitution of India;
- b) pass a writ/order/direction thereby declare and strike down the MCA Notification no. S.O. 1205(E) dated 24.03.2020 issued by the Respondent as unconstitutional for being violative of article 14 of the Constitution of India;
- c) pass any further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

It is prayed accordingly.

Dated: 02.09.2020  
New Delhi

Petitioner

Through Counsel

**(Sermon Rawat)**                      **(Shivang Rawat)**

Office: C-58, South Extension-II, New Delhi-110049

Chamber: 810, Lawyers Chamber Block, Saket Courts, New Delhi-110017

Fixedline: 011 40159641

Email: [sermon.rawat@gmail.com](mailto:sermon.rawat@gmail.com)

Phone: 9873935601