

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

In the matter of an application for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition in terms of Article 140 of the Constitution.

Case No: CA/WRT/0719/2025

Union Trading Company (Pvt) Ltd.
No. 69, Maliban Street, Colombo 11.

PETITIONER

Vs.

1. DFCC Bank PLC
No. 73/5, Galle Road, Colombo 03.
2. Thusitha Karunarathne
Licensed Auctioneer
No. 50/3, Vihara Mawatha,
Kolonnewa.

RESPONDENTS

Before : Hon. Rohantha Abeysuriya PC, J.(P/CA)

: Hon. K. Priyantha Fernando, J. (CA)

Counsel : P. Radhakrishnan instructed by Niluka
Dissanayake for the Petitioner.

Keshan Thalgahagoda instructed by Thejaka
Perera for the 1st & 2nd Respondents.

Written Submissions on : 31.08.2026 for the 1st & 2nd Respondents.
24.09.2026 for the Petitioner.

Decided on : 28.09.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner has invoked the jurisdiction of this Court, primarily seeking a writ of *certiorari* quashing the Board Resolution dated 23.11.2024 marked 'P11' and a writ of *mandamus* compelling the restructuring of the loan facility.

FACTUAL MATRIX:

2. Upon the request of the Petitioner, the 1st Respondent Bank had, through its Corporate Banking Branch extended to the Petitioner several banking facilities, including terms loans and moratorium facilities.
3. The 1st Respondent has, inter alia, granted the following banking facilities by its Offer Letter dated 28.12.2020 (vide R3):

- (i) A term loan facility of Rs. 91,394,492.75
- (ii) A term loan facility of Rs. 100,078.02
- (iii) A term loan facility of rs. 170,694.90
- (iv) A term loan facility of Rs. 660,121.75

4. The 1st Respondent has also granted to Petitioner, *inter alia*, the following Moratorium Facilities pursuant to the relevant Circulars of the Central Bank:

- (i) A moratorium loan of Rs. 7,319,830.73 as confirmed by letter dated 30.12.2021 (vide R4)
- (ii) A moratorium loan of Rs. 208,001.51 as confirmed by letter dated 01.09.2022 (vide R5)
- (iii) A moratorium loan of Rs. 10,986,681.59 as confirmed by letter dated 02.10.2022 (vide R6)

5. The above facilities were secured by the following mortgages over the Petitioner's movable and immovable properties and a Personal Guarantee:

- (i) Mortgage Bond No. 670 dated 30.06.2015 for rs. 55,000,000/- over the Petitioner's immovable property [vide R7(a)].
- (ii) Mortgage Bond No. 495 dated 30.04.2013 for Rs. 50,000,000/- over the Petitioner's stocks. [vide R7(b)]
- (iii) Personal Guarantee dated 31.12.2020 for Rs. 50,000,000/- from R.A.B. Sriyananda Perera, A.P.H. Chandrakanthi Perera and R.A. Marlon Shanaka Perera. [vide R7(c)]

6. The Petitioner has failed and neglected to duly repay to the 1st Respondent Bank the monies lent under the above facilities. As at 31.12.2023, the **following aggregate sums were due** (vide Statement of Accounts marked as R2) from the Petitioner:

- | | | |
|-------------------------|-----------------|-------------------|
| (i) Rs. 98,638,890.71 | on term loan of | Rs. 91,394,492.75 |
| (ii) Rs. 100,078.02 | on term loan of | Rs. 100,078.02 |
| (iii) Rs. 170,694.90 | on term loan of | Rs. 170,694.02 |
| (iv) Rs. 660,121.75 | on term loan of | Rs. 660,121.75 |
| (v) Rs. 5,906,253.57 | on term loan of | Rs. 7,319,830.73 |
| (vi) Rs. 179,647.29 | on term loan of | Rs. 208,001.51 |
| (vii) Rs. 10,695,911.55 | on term loan of | Rs. 10,986,681.59 |

7. A letter of demand dated 09.10.2023 (R8) was sent to the Petitioner. As the Petitioner continued to default, the Board of Directors of the 1st Respondent Bank adopted a resolution under section 4 of the Recovery of Loans by Banks (Special Provisions), Act No. 4 of 1990 to sell by public auction the immovable property mortgaged to the Respondent Bank in order to recover the money outstanding. A copy of resolution has been sent to the Petitioner under the cover of letter dated 02.04.2024 [vide R9(a), R9(b) and R9(c)].
8. Consequently, as the Petitioner continued to default in the repayment, the 1st Respondent has published the resolution in the Government Gazette and daily newspapers [vide R10(a) to R10(f)]. The 1st Respondent Bank has also sent copies of the resolution as published under the cover of its letter dated 11.09.2025 [vide R11(a) and R11(b)].

POSITION OF THE PETITIONER:

9. The Petitioner's primary business is the wholesale importation and supply of textile fabric from China to the local market. The Petitioner, for its business operations, has since 2013 maintained a current account with the 1st Respondent Bank. The Petitioner was granted an Overdraft Facility of Rs. 10 million and a Revolving Loan Facility of Rs. 40 million in April 2013. The facility was secured against its trade stock. Later in June of 2015, based on the satisfactory repayment history of the Petitioner, the 1st Respondent Bank enhanced these facilities in to Rs. 50 million and Rs. 100 million respectively. These enhanced facilities were secured by the existing trade stock mortgage and a fresh primary mortgage over the Petitioner Company's land in Kelaniya.
10. The Petitioner submitted that servicing these facilities became irregular due to a substantial reduction in sales and delayed settlements from trade debtors following the Easter attacks in April 2019. Consequently, the facilities were restructured via an offer letter dated 07.11.2019, which amalgamated the capital

and interest into Term Loan I (Rs. 60,500,000) and Term Loan II (Rs. 36,544,492.75), resulting in an aggregate capital outstanding of approximately Rs. 97 million with nil interest. The Petitioner further stated that it made a bulk repayment of Rs. 25 million in May 2020.

11. It was submitted that in adherence to the circulars issued by the Central Bank of Sri Lanka (CBSL), the 1st Respondent Bank further restructured the facilities via an offer letter dated 28.12.2020. This restructure consolidated the loans into a single proposed term loan with a capital outstanding of approximately Rs. 91 million and granted a 12-month moratorium from January to December 2021, during which the Petitioner paid approximately Rs. 2.87 million in interest. Despite further business interruptions from the pandemic's third wave and the National Economic Crisis, it made capital repayments of approximately Rs. 12.82 million between January and August 2022.
12. The Petitioner stated that once again, the 1st Respondent Bank issued another offer letter to restructure, dated 02.10.2022, which granted a further moratorium from August to December 2022 and reflected a reduced capital outstanding of Rs. 86,794,492.75. The Petitioner maintained that it strictly complied with this revised payment plan by making capital repayments of Rs. 7 million between January and May 2023, and Rs. 7.5 million between June and December 2023.
13. The Petitioner contended that between May 2020 and January 2024, it paid a total of approximately Rs. 55.5 million to the 1st Respondent Bank, and contended that the true capital outstanding as of 01.01.2024 should have been Rs. 72,294,492.75. The Petitioner stated that it made a further payment of Rs. 500,000 in February 2024. However, the Petitioner argued that in February of 2024, the 1st Respondent Bank arbitrarily claimed an outstanding capital of Rs. 99 million, demanded a bulk payment of Rs. 25 million, and unlawfully refused to provide a detailed statement of accounts.

14. The 1st Respondent Bank issued a letter of demand on 05.02.2024, claiming Rs. 99 million in capital and Rs. 17 million in interest as of 31.12.2023. The Petitioner formally disputed this amount via a reply letter dated 25.03.2024, which was rejected by the 1st Respondent on 28.03.2024.
15. The Petitioner submitted that in April of 2024, it received a Board Resolution dated 23.03.2024 authorizing the 2nd Respondent to auction the mortgaged land and trade stock based on a purported total default of Rs. 116,351,597.79, which inaccurately listed the capital in default as Rs. 92,975,189.40.
16. The Petitioner argued that the 1st Respondent Bank's Board Resolution is illegal, *ultra vires*, and bad in law in light of Section 3 of the Recovery of Loans by Banks (Special Provisions), Act No. 4 of 1990 which only empowers resolutions for amounts lawfully in default. The Petitioner argued that the Resolution is bad in law as the 1st Respondent Bank issued a Balance Confirmation on 07.04.2025 which indicated a total capital outstanding of approximately Rs. 83.79 million as at 02.04.2025, whereas this figure contradicts the Rs. 92 million capital default amount contained in the earlier Board Resolution.
17. Furthermore, the Petitioner contended that the scheme of the Recovery of Loans Act does not permit the *parate* execution of movable property. Thus, the auctioning off of 'trade stock' was unreasonable. Thus, it was contended that the Petitioner's legitimate expectation to receive restructuring relief under the CBSL circulars was unlawfully denied by the Respondent.
18. Finally, the Petitioner stated that the 1st Respondent maliciously ignored the Feasibility Report submitted by the Petitioner and disregarded the mitigating circumstances pleaded, specifically that the Petitioner's Managing Director underwent three major surgeries (cardiac, spinal, and prostrate) during 2023 and 2024.

19. The Petitioner argued that the Bank's intent was to be unjustly enriched by auctioning the mortgaged land, which has now appreciated to a market value of approximately Rs. 248 million according to the valuation report dated 26.06.2025. As such, the Petitioner argued that it would suffer grave loss and irreparable damage.

POSITION OF THE RESPONDENTS:

20. The Respondents argued that the Petitioner's application relies solely on two baseless contentions and ought to be dismissed on the same. First, on the basis that there exists an alleged discrepancy between the capital amount recorded in default in the impugned Resolution and the subsequently sent balance confirmation letter and secondly, on the allegation that there was denial of relief under the Central Bank of Sri Lanka Circular No. 4 of 2024.

21. Regarding the first, the Respondents contended that the claim of discrepancy was founded on a gross and deliberate misrepresentation of material facts. The Petitioner falsely claimed the impugned Resolution reflected a total capital default of Rs. 92,975,189.40, which purportedly contradicted a balance confirmation letter dated 07.04.2025 reflecting approximately Rs. 83.79 million. The Respondents contended that the figure depicted in the Resolution merely represented a portion of the outstanding facilities, whereas the total capital outstanding as of 31.12.2023 was Rs. 99,094,468.82 out of a total due amount of Rs. 116,351,597.79. The document dated 07.04.2025 confirmed a total capital outstanding of Rs. 99,069,340.16 as of 02.04.2025, and that the Petitioner had deliberately extracted Rs. 83.79 million, which applied to a single loan account.

22. The Respondents stated that the minor variance between the capital outstanding on 31.12.2023 and 02.04.2025 was in fact due to a capital recovery of Rs. 25,128.66 made on 01.02.2024. As such, the Respondent argued that the Petitioner had

suppressed facts, failed to approach the court with clean hands, and is therefore disentitled to the relief sought.

23. Additionally, the Respondents argued that the alleged discrepancy in the capital amounts constituted a disputed question of fact, as opposed to one of law. As such, it was argued that writ jurisdiction cannot be invoked to decide in matters where facts are disputed. Furthermore, as the Respondents contended, in the instant matter the factual dispute is regarding the precise amount that ought to be deemed a recoverable sum. The Respondents argued that such matters require the intervention of a Court in which a trial can be gone into.

24. The Respondents further contended that the Petitioner's argument challenging the Board of Directors' statutory power to authorize the sale of movable property, specifically trade stock, was fundamentally misconceived. The Respondents argued that Section 4 of the Recovery of Loans by Banks Act explicitly empowers the Board to authorize the public auction of "any property mortgaged" without distinguishing between movable and immovable assets. The trade stock in question was the subject of a formally executed Mortgage Bond No. 495 dated 30.04.2013, and thus is within the ambit of Section 4. It was the contention of the Respondents that its position is further reaffirmed upon a reading of Section 5(2) of the Act which explicitly draws a distinction between the types of property.

25. Furthermore, the Respondents contended that the Petitioner's claim to a legitimate expectation of relief under Circular No. 4 of 2024 was untenable. The Respondents stated that the Petitioner; did not meet the criteria to be considered a Small and Medium Enterprise within the meaning of the Circular; failed to submit a viable repayment plan; and did not meet the eligibility conditions for such relief.

DISCUSSION OF FACTS AND SUBMISSIONS:

26. With regard to the main ground urged by the Petitioner, i.e., the alleged discrepancies in the amounts claimed, the Court is acceded to the explanation provided by the 1st and 2nd Respondents which goes as follows:

(a) Capital amount shown as in default in the impugned Resolution Rs. 92,975,189.40 differs from the capital amount subsequently recorded in a balance confirmation letter dated 07.04.2025 (P15) which is stated to be approximately 83.79 million. This is gross misrepresentation of material facts.

(b) The resolution does not in fact record the total capital in default as Rs. 92,975,189.40 which is just a part of the capital attributable to a portion of the outstanding facilities. The total capital outstanding as at 31.12.2023 is a sum of Rs. 99,094,468.82, as reflected in the Letter of Demand P8 where clearly sets out the total amount due as Rs. 116,351,597.79 of which the capital sum due is set out as Rs. 99,094,468.82. This is the same aggregate figure as set out in the Resolution.

(c) Upon a complete and proper reading of P15, it is clear that the total capital outstanding as at 02.04.2025 was Rs. 99,069,340.16. The figure of Rs. 83.79 million mention reflects the capital outstanding on one loan amount only (Loan No. 104085378279) which has been extracted from a document confirming balance across several facilities.

(d) While there is minor variance that does exist between the capital outstanding as at 31.12.2023 (Rs. 99,094,468.82) per the Resolution and as at 02.04.2025 (Rs. 99,069,340.16) per P15, this difference is explained by a capital recovery of Rs. 25,128.66 made on 01.02.2024, which reduced the outstanding balance on Loan Reference No. 104000514896 from Rs. 9,180,696.65 to Rs. 9,155,567.99.

27. Therefore, it is revealed that the entire basis of the Petitioner's application is founded on a gross suppression and misrepresentation of material facts. In view of suppression of material facts, the Petitioner is not entitled to any relief from this Court. I rely on the following case law:

28. In Biso Menika v Cyril De Alwis & Others [1982] 1 Sri L. R. 368, it was held that "*A person who applies for the extra-ordinary remedy of Writ must come with clean hands and must not suppress any relevant facts from Court. He must refrain from making any misleading or incorrect statements to Court*".

29. Furthermore, in Orient Pearl Hotels v Cey-Nor Foundation Limited & Others CA/WRT/0266/2018 decided on 02.08.2021 it was held, "*Furthermore, it is settled law that a party seeking prerogative relief should come to Court with clean hands. The expression is derived from one of Equity's maxims - 'He who comes to Equity must come with clean hands.'*"

DOES THIS APPLICATION INVOLVE DISPUTED FACTS?

30. In any event, the alleged discrepancy in the capital amounts due is a dispute on a question of fact, which is not a matter that can be determined in a writ application. A. S. CHOUDRI in his book on the Law of Writs and Fundamental Rights (2nd Edition) Vol. 2, at page 449 states thus:

"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

DOES THE ACT VEST POWER IN THE BOARD OF DIRECTORS TO
AUTHORIZE THE SALE OF MOVABLE PROPERTY?

31. The Petitioner has contended at paragraph 43(iv) of the Petition that the scheme of the Act does not vest power in the Board of Directors to authorize the sale of movable property such as trade stock. Section 4 of the Act empowers the Board to authorize the sale by public auction of “*any property mortgaged to the Bank as security for any loan in respect of which default has been made*”, drawing no distinction between movable and immovable property.

32. If the legislature intended to draw such a distinction within the scheme of the Act, it would have been done expressly as in Section 5(2) which separately extends an equivalent power in respect of “any plant, machinery or other movable property” that has been “pledged or mortgaged” to a bank. The trade stock in question was itself the subject of a formally executed Mortgage Bond No. 495 dated 30.04.2013, for Rs. 50,000,000/- admitted by the Petitioner at paragraph 6(ii) of the Petition and is accordingly “property mortgaged to the bank” squarely within the words of Section 4 which is reproduced as follows:

“Subject to the provisions of section 7 the Board may by resolution to be recorded in writing authorize any person specified in the resolution to sell by public auction any property mortgaged to the bank as security for any loan in respect of which default has been made in order to recover the whole of the unpaid portion of such loan, and the interest due thereon upto the date of the sale, together with the money and costs recoverable under section 13.”

33. It is also appropriate to lay down the provision in section 5(2):

“Whenever any sum of money due on any loan granted for any agricultural or industrial undertaking on the security of any plant, machinery or other movable property to the bank is in default or where the terms of any loan

agreement are contravened in respect of such property, the Board may authorize any person specified in writing to enter and take possession of such agricultural or industrial undertaking in which such plant, machinery or other movable property is situate, and exercise the same power in the control and management of such under-taking as might have been exercised if such property had been pledged or mortgaged.”

34. Furthermore, I find it pertinent to particularly note and consider the response of the Respondents to the contention that the Petitioner enjoys a legitimate expectation of relief under CBSL Circular No. 4 of 2024, and that it operates as a novation of the Mortgage Bonds. The Respondents base its argument of untenability on the fact that the Petitioner is not a Small and Medium Enterprise within the meaning of the said Circular. Accordingly, I am of the view that the Petitioner does indeed fall outside the class of borrowers eligible for the relief it contemplates. Furthermore, the Petitioner has not fulfilled the conditions attached to such relief or submitted a viable repayment plan.

35. In the case of Bettans Group of Companies (Pvt) Ltd v Lankaputra Development Bank and others in CA/WRT/230/2015 decided on 10.07.2020, where similar arguments as advanced in the instant case, i.e., that default was due to reasons beyond the control of the Petitioner etc., were raised. In dismissing the application, Samayawardhena J., held as follows:

“Admittedly, the Petitioner Company obtained banking facilities from the 1st Respondent Bank and defaulted. The Petitioner 3 says the default is due to reasons beyond its control. After a spate of correspondence spanning many years, the Bank has, in terms of section 4 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, as amended, passed a Board resolution dated 27.04.2015 marked R13 to recover the dues of the Petitioner Company by parate execution.

The Petitioner says the Bank refused to reschedule the loan, as recommended by the Central Bank by letter dated 19.05.2015. In fact, the said letter marked R15(A) tendered with the Respondents' statement of objections, merely requests the Respondent Bank to look into the matter and respond to the Petitioner within 14 days.

The Petitioner filed this application seeking a writ of mandamus compelling the Bank to reschedule the loan, and a writ of certiorari quashing the aforesaid Board resolution as it is "arbitrary and grossly unreasonable".

*This Court cannot quash the said Board resolution on the grounds of arbitrariness and unreasonableness because the resolution is not arbitrary and unreasonable. **The Bank is statutorily entitled to pass such resolutions to recover its dues. Nor can this Court force the Bank to reschedule the Petitioner's loan.** There is no obligation, statutory or otherwise, on the part of the Bank to reschedule the loan."* (the emphasis was added)

The concluding remarks made by Justice Samayawardhena are also very apt:

*"Before I part with this judgment, let me also add the following. The Petitioner cannot invoke the writ jurisdiction of this Court as of right. It is a discretionary relief; an act of grace on the part of the Court. The fact that the loan was obtained and the Petitioner is in default is undisputed. By this application, **filed more than five years ago, the Petitioner has prevented the Bank from recovering its dues through parate execution-a quicker and faster procedure recognized by the law. Banks are not charitable institutions; they are the cornerstones of economies.** It should be understood that similar to the Petitioner being engaged in a business, granting loans with the expectation of timely repayment is a major part of ordinary course of business of a Bank. If a bank is prevented from taking such measures as it is entitled in law to take to protect its interests, the economy of the country would suffer. The Recovery of Loans by Banks (Special Provisions)*

Act was passed to assist Banks to fast-track the procedure of debt recovery. There is no place for high flown technical objections under this Act. As this Court held in Zubair v Bank of Ceylon [2000] 2 Sri LR 187, “In debt recovery matters it would not be correct for the Court to hold against the intention of the legislature on technicalities.” (the emphasis was added)

36. In all the above circumstances, the Petitioner has not been able to satisfy that there is a *prima facie* case which warrants issuing of formal notices. Thus, I dismiss this application without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal