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

In the matter of an application for Writ of *Certiorari* and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

NMK Holdings (Private) Limited
No. 627,
Dr. Danister De Silva Mawatha,
Colombo 09

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/606/2026.

1. People's Bank
   No. 75,
   Sir Chittampalam A. Gardiner Mawatha,
   Colombo 02.

2. Naratha Agro Industries Lanka (Private) Limited
   No.08, Jayasooriya Road,
   Nugape
   Uswetakeiyawa.

3. Cherubium Lanka Private Limited
   (Former Marina Foods Private Limited)
   No.627, Baseline Road,
   Colombo 09.

4. M/S Schokman & Samerawickrema
   Licensed Auctioneer
   No. 6A, Fairfield Gardens,
   Colombo 08

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Uditha Egalahewa, PC with Riad Ameen, Rumesh Perera instructed by JK Chambers for the Petitioner.
Kaushalya Nawarathne, PC with Prabudda Hettiarachchi and Onali Induruwage instructed by Sandamali Nisansala for the 1st Respondent.

Supported on: 07.08.2026

Decided on: 17.08.2026

Mayadunne Corea J

The facts in brief of this case are as follows. The Petitioner filed this application on the basis that they have mortgaged a property to the 1st Respondent and obtained a loan. However, due to the failure to repay the loan, the 1st Respondent had passed a board resolution and taken steps to go by way of parate execution to auction the mortgaged property. The Petitioner in this application has sought *inter alia* for the following reliefs;

"i. Grant and issue a mandate in the nature of a Writ of Certiorari quashing the auction notices dated 03.08.2026 marked P19, insofar as it relates to the Petitioner's properties morefully described in the First and Second Schedules to Mortgage bond No. 2382 dated 23.02.2021, presently bearing Assessment Nos. 619/15 and 625, Dr. Danister De Silva Mawatha, Colombo 09;

j. Grant and issue a mandate in the nature of a Writ of Certiorari quashing the purported parate resolution dated 24.02.2026, as published in Gazette Extraordinary No. 2483 dated 02.04.2026 and marked P2(a),

k. Grant and issue a mandate in the nature of a Writ of Prohibition prohibiting the 1st and 4th Respondents, their servants, agents and/or any person acting under or through them, from taking any further steps pursuant to the auction notices dated 03.08.2026 marked P19,

l. *Grant and issue a mandate in the nature of a Writ of Prohibition prohibiting the 1st and 4th Respondents, their servants, agents and/or any person acting under or through them, from taking any further steps pursuant to the impugned parate resolution dated 24.02.2026, as published in Gazette Extraordinary No. 2483 dated 02.04.2026 and marked P2(a), insofar as it relates to the Petitioner's properties morefully described in the First and Second Schedules to Mortgage bond No. 2382 dated 23.02.2021, presently bearing Assessment Nos. 619/15 and 625, Dr. Danister De Silva Mawatha, Colombo 09; and"*

<u>The Petitioner's contention</u>

When this application was taken up for support, the parties agreed that this Court should consider the issue of issuing notice and granting interim relief together. Although there are several Respondents, only the 1st Respondent objected to the issuance of notice and the interim orders. Hence, hereinafter the 1st Respondent may sometimes be referred to as 'Respondent'.

The Petitioner at the support stage narrowed his arguments only to a single ground. The Petitioner contends that the amount secured by the mortgage bond, as per clause 3 of the mortgage bond marked as P4 is limited to Rs. 400,000,000. However, it was contended that by P2a, the board resolution passed, provides for a recovery amount of Rs. 466,445,782.39. Hence, the Petitioner contends that the board resolution is bad in law.

<u>The Respondent's contention</u>

- The Petitioner has misinterpreted the board resolution and thereby misrepresented material facts.
- The Petitioner has not urged any grounds to challenge the letter of demand (hereinafter 'LOD'). Hence, the amounts due have been accepted.
- The Petitioner has failed to name necessary parties.

Analysis

The parties are not at dispute that the 1st Respondent has passed a board resolution as reflected in P2a. It is common ground that the Petitioner had obtained a loan by mortgaging the three properties reflected in the mortgage bond P4 no. 2382. It is also common ground that the board resolution is published in the government gazette no. 2483/2026 dated 02.04.2026 (P2a). The Petitioner also concedes that, the Petitioner, the 2nd Respondent and the 3rd Respondents are related parties. The Petitioner contends that it had obtained several credit facilities from the 1st Respondent. It is also not disputed that due to the failure to repay, there had been several rounds of negotiations and letters exchanged between the Petitioner and the 1st Respondent, and the 1st Respondent had allowed the loans to be restructured. Accordingly, the Petitioner alleges that mortgage bond no. 2382 dated 23.02.2021 had been executed in favour of the 1st Respondent. As the Petitioner has failed to honour and pay as per the said restructuring, as agreed, a LOD had been issued by the 1st Respondent dated 17.11.2023 demanding the payment of the amounts due under the said facilities secured by the mortgage bond.

The Petitioner also concedes that pursuant to the receipt of the LOD, the parties had still continued the discussions pertaining to a settlement. The Petitioner further concedes that, as a result of the negotiations, the Petitioner has been successful in releasing a property at Nugapei Uswetakeiyawa at the payment of Rs. 153,500,000. By paragraph 16, the Petitioner alleges that, subsequent to deducting the said payment, a sum of Rs. 288,000,000 was still due to be paid. This amount is disputed by the Respondents and they submit that a further sum of Rs.298,060,500 and interest upon the said amount is due from the Petitioner.

The Petitioner further submits that, for the purpose of full disclosure, there had been a case in the Commercial High Court bearing case no. CHC/71/2024/CO. However, the Petitioner submits that, he does not wish to make submissions on the said case.

For the purpose of supporting this application at this stage and for the purpose of seeking notice and interim relief, the Petitioner has confined his arguments only to the ground that, as per the mortgage bond P4, the 1st Respondent cannot seek the amount that they have demanded or the amount which has been approved by the board resolution. This would be an ideal time to consider clause 3 of mortgage bond marked as P4, which reads as follows;

> *"3) That these presents shall be a continuing security to the Bank for all and every the sums and sum of money which now are or is or which shall or may at any time to time and at all times hereafter be or become due owing and payable by the Obligor, Mortgagor to the Bank under by virtue or in respect of or secured by these presents notwithstanding that the amount of such sums or sum of money may from time to time vary or be reduced or fluctuate or be repaid in full and that fresh liabilities shall be incurred after the Obligor ceased to be indebted to the Bank it being intended that the total amount of moneys hereby* ***secured shall not exceed Rupees Four Hundred Million (Rs.400,000,000/-)*** *of lawful money of Sri Lanka* ***and interest*** *the security hereby created being intended to cover the final balance of account between the Obligor, Mortgagor of the one part and the Bank of the other part in respect of all transactions and dealings such final balance not to exceed in the whole the sum of Rupees Four Hundred Million (Rs.400,000,000/-) and Interest thereon."*

It is the contention of the Petitioner that, as per the wording in clause 3 namely, *"...the total amount of money hereby secured shall hereby not exceed Rs.400 million of lawful money of Sri Lanka and interest. The security hereby created being intended to cover the final balance of account between the obligor, mortgagor of the one part and the bank of the other part. In respect of all transactions and dealings such final balance not to exceed in the whole the sum of Rs.400 million and interest thereon."*, the amount secured under the mortgage bond is strictly limited or kept at Rs.400,000,000 and interest thereon. Hence, it is argued that, by P2a, when the board of the 1st Respondent bank passed a resolution to go by way of parate execution under section 29(d) of the People's Bank Act No. 29 of 1961 (as amended), it is bad in law. It is argued that passing the said resolution for a sum of Rs.466,445,782.39 up to 20.10.2025 with further interest from 21.10.2025, the amount contemplated as secured by the mortgage has been exceeded.

Hence, the Petitioner argues that the resolution is bad in law. To substantiate this argument, the Petitioner relied on the case of ***Commercial Bank of Ceylon v. Srija Ceramics (Pvt Ltd)*** **SC Appeal 181/2018 decided on 27.11.2024**. The Petitioner further submits that, the resolution passed is bad in law and is amenable to be quashed by way of a Writ of Certiorari. As a date for the auction has been fixed, the Petitioner is seeking for interim relief to prevent the said auction from being carried out.

On an examination of clause 3, this Court observes that, parties have agreed that the indebtedness to the bank to be secured by the mortgage must not exceed Rs.400,000,000. This clause was not contested by the 1st Respondent.

<u>The board resolution</u>

Upon a plain reading of the board resolution marked as P2a, it appears that the amount reflected is Rs.466,445,782.39. For a better understanding, the said resolution is reproduced here.

> ***"PEOPLE'S BANK***
>
> ***Resolution under section 29D of the People's Bank Act, No. 29 of 1961 as amended by Act, No. 32 of 1986***
>
> *IT is hereby notified that the following resolution was unanimously passed by the Board of Directors of the People's Bank under section 29D of the People's Bank Act, No. 29 of 1961 as amended by the Act, No. 32 of 1986 at their meeting held on 24.02.2026.*
>
> *Whereas Naratha Agro Industries Lanka (Private) Limited a company duly incorporated under the Companies Act, No. 07 of 2007, bearing Registration No. PV 64011 and having its Registered Office at No. 08, Jayasooriya Road, Nugape, Uswetakeiyawa has made default in payment due by R. A. C. Kumarasiri, Notary Public, there is now due on the Mortgage bond No. 2382 dated 23.02.2021 attested and owing to the People's Bank a sum of Rupees Four Hundred and Sixty Six Million Four Hundred and Forty Five Thousand Seven Hundred and Eighty Two and Cents Thirty Nine (Rs. 466,445,782.39) up to 20.10.2025 on the said Bonds together with further interest from 21.10.2025.*
>
> *The Board of Directors of the People's Bank under the powers vested in them by the People's Bank Act, No. 29 of 1961 as amended by the Act, No. 32 of 1986 do hereby resolve that the property and premises mortgaged to the said Bank by aforesaid Mortgage bond No. 2382 dated 23.02.2021 attested by R. A. C. Kumarasiri, Notary Public, morefully described in the schedule hereto be sold by Public Auction by Navinda Thushara Benjamin De Alwis Samarawickrema of No. 391/1, Hokandara South, Hokandara, Anuja Indika Leonard De Alwis Samarawickrema of No. 61, St. Rita Road, Mt. Lavinia auctioneers of Schokman & Samarawickrema carrying on business In a partnership under the name style and firm of M/S Schokman &*

Samerawickrema, Licensed Auctioneer of No. 6A, Fairfield Gardens, Colombo 08 for the recovery of aforesaid a sum of Rupees Four Hundred and Sixty Six Million Four Hundred and Forty Five Thousand Seven Hundred and Eighty Two and Cents Thirty Nine (Rs. 466,445,782.39) together with further Interest at the rate of Weekly Average Weighted Prime Lending Rate plus four decimal five per centum (AWPLR + 4.5%) per annum subject to monthly review on a sum of Rupees Two Hundred Ninety Eight Million Sixty Thousand and Five Hundred (Rs. 298,060,500) From 21.10.2025 up to the date of sale and costs and moneys recoverable under section (29L) of the said People's Bank Act less payment (if any) since received."

Hence, the Petitioner submits that, this amount exceeds the liability that is secured by the mortgage bond P4. On a plain reading, it is clear that the Mortgage bond clause 3 secures the liability to read as **Rs.400,000,000 and interest thereon**. Hence, it is apparent that what the parties have agreed is the capital not to exceed Rs.400,000,000 and interest thereon. In my view, the cap on the interest component is not reflected.

In response, the learned Counsel for the 1st Respondent contended that, the capital amount sought does not exceed Rs.400,000,000 but, is limited to **Rs.298,060,500 and the interest**. Hence, the argument by the Respondents that the total comes to Rs. 466,445,782.39 which clearly establishes that the capital amount due is within the sum secured by the mortgage bond. It was stressed by the learned Counsel that, in this instance the capital amount yet to be paid is only Rs.298,060,500. On a plain reading of the resolution, this Court is inclined to agree with the said submission. It was also brought to this Court's attention the document marked as P8b. In the said document, which is a letter by the 1st Respondent to the chairman of the 2nd Respondent, the Counsel submitted that the Petitioner itself at a meeting between the parties has agreed to dispose the other two properties upon the release of the property at Uswatakeiyawa. The LOD sent by the bank to the 2nd Respondent marked as P13a was also brought to this Court's attention. In the said letter, this Court's attention was brought to a paragraph that gives a breakdown of the balance capital to be paid and the total inclusive of interest. For ease of reference, the said paragraph is reproduced here.

"I am instructed that, in violation of the said terms and conditions, you have defaulted the repayment of the said banking facility granted to you and having duly credited all payments received from you, as at 20.10.2025, there is an outstanding sum of Rupees Four Hundred Sixty Six Million Four Hundred Forty Five Thousand Seven Hundred Eighty Two and Cents Thirty Nine (Rs.466, 445, 782.39) which is comprised of the capital sum of Rupees Two Hundred Ninety Eight Million Sixty Thousand Five Hundred (Rs. 298,060,500/-) and accrued interest in a sum of Rupees One Hundred Sixty Eight Thousand Three Hundred Eighty Five Thousand

Two Hundred Eighty Two And Cents Thirty Nine (Rs. 168,385,282.39) is due and owing from you to my client under the said loan facility."

This letter clearly depicts that the amount due is Rs. 298,060,500 and the accrued interest and the culmination of both the total which comes Rs. 466,445,782.39 which has been demanded by the bank. It was also brought to our attention by the learned Counsel for the Respondent, the reply the Petitioner sent which is marked as P13b, which specifically states that it is a reply to the LOD marked as P13a. Drawing the attention of this Court to the said letter, it was submitted that, in the said letter, the Petitioner has failed to challenge specifically the amount stated as capital nor have they taken up the position that the amount exceeds the guarantee that has been obtained under P4.

In the above circumstances, it is the contention of the Respondent that, it is clear that the Petitioner has not challenged the fact that the capital amount due as reflected in the LOD to be Rs. 298,060,500. Hence, it was the contention of the Respondent that, the Petitioner is now estopped from challenging the said sum. The Respondent also submits that the Petitioner has conceded to the said sum to be the amount due as the capital. In considering the submissions made and considering the documents marked as P4, P2a, and P13a, the Court is inclined to agree with the submissions of the learned Counsel for the Respondent regarding the capital the and the fact that the amount due falls within the secured limit under clause 3 of P4. Hence, the Petitioner's contention that, the board resolution exceeds the secured liability under clause 3 of P4, cannot be sustained.

The Respondents' next contention is that, by misrepresenting the amounts due and giving a wrongful interpretation, the Petitioner has attempted to misrepresent material facts to this Court and also has failed to invoke the jurisdiction of this Court with clean hands. In view of my above analysis, I am inclined to agree with the 1st Respondent's said objection.

Necessary parties

The Respondent contended that the impugned board resolution is a resolution published on the orders of the board of directors. However, the learned President's Counsel for the Respondent submits that the board of directors of the said bank have not been made parties to this application. It is further contended that, if this Court is to make a pronouncement on the board resolution, it will have a direct effect on the board of directors. Hence, the

Counsel for the 1st Respondent argues that the board of directors become necessary parties to this application. The failure to make them parties, is fatal to this application. However, the learned President's Counsel for the Petitioner in response submits that, as the 1st Respondent bank had been named and the loan had been obtained from the bank, there is no necessity to directly name the board of directors of the bank but, naming the bank as the 1st Respondent is sufficient. Both parties made submissions on this ground. However. in view of my above findings on the main ground contested by the Petitioner, I don't propose to answer this objection as the necessity to answer this question does not arise.

Applicability of *Commercial Bank of Ceylon v. Srija Ceramics (Pvt Ltd)* (supra)

The Petitioner placed heavy reliance on the above-mentioned case. I have considered the said case and find the facts and circumstances in the said are different to the case before us. I observe that there are several facts in the instant case that establish that the principal amount in default is below the ceiling set out in the mortgage bond. Therefore, even if the judgment in *Srija's* case were to be applied, it would not assist the Petitioner as in the said case the total the bank was attempting to recover exceeded the cap the parties had agreed on in the bond. However, in the instant case before this Court, I have clearly stated that the amount proposed to be recovered as per the impugned resolution is well within the cap the parties had agreed upon. Hence, in my view, the said case has no applicability to the instant case and cannot assist the Petitioner.

The effect of granting the interim relief as prayed

It was also brought to the attention of this Court that a bank uses public money and that is the money lent to the Petitioner. The Petitioner in this case, has not denied obtaining credit facilities which the Respondent contends consists of public money. It is not disputed that the Petitioner has failed to pay and settle the credit facility. Accordingly, the learned President's Counsel for the Respondent submits that they are entitled by law, to exercise a parate execution and to recover the said money. It was also not disputed by the Petitioner that, the parties have constantly engaged in negotiations and that there were many opportunities given to the petitioner to pay the credit facility which the Petitioner has failed to settle in full. This contention is not denied by the Petitioner. Hence, the granting of any interim relief will have an effect on the banks power to recover the public money that has been lent to the Petitioner which in turn, will have an adverse consequence on the public at large and the banking system. Hence, any interim orders to prevent the bank from executing their legal rights would adversely affect and be detrimental to the public and to the banking system.

I also observe, in granting an interim relief in the instant case, the balance of probability lies not with the Petitioner but, with the 1st Respondent and the loss for the 1st Respondent in not being able to recover the money lent is far greater than the loss that will be suffered by the Petitioner. Hence, in this instance it is further observed that, even the equitable considerations favour the 1st Respondent and not the Petitioner. In considering the effects of issuing interim orders against banks in my view the courts should exercise extra caution. Especially, when a bank is empowered by a statute and the statute lays down the procedure that the bank has to follow to recover the monies due. In this instance, the Petitioner does not challenge the procedure adopted nor does he deny his liability to the bank yet, he contends to restrain the bank from exercising the statutory power which is vested with the bank to recover the sum due. Granting a restraining order at this stage will prevent the bank from exercising the statutory power vested with it to recover the monies due to the bank which in turn will have a strangulated effect in the economy. In this context I wish to reproduce the opinion of the Court as held in ***Hemas Marketing Pvt Ltd vs Chandrasiri and others*** **1994 (2) SLR 181**:

> "*When a bank has given a guarantee, it is required to honor it according to its terms and is not concerned whether either party to the contract which underlay the contract was in default. The whole purpose of such commercial instruments was to provide security which was to be readily, promptly and assuredly realizable when the prescribed event occurred. The only exception to the rule is where fraud by one of the parties to the underlying contract has been established and the bank had notice of the fraud. A mere plea of fraud put in for the purpose of bringing the case within this exception and which rests in the uncorroborated statements of the applicant will not suffice." In the said judgment, Dr. Ranaraja J further observed as follows, "****It is only in exceptional circumstances that Courts will interfere with the machinery of obligations assumed by the banks. They are the lifeblood of international commerce. Such obligations are regarded as collateral to underlying rights and obligations between merchants at either end of the banking chain. Courts will leave the merchants to settle their disputes under the contract by litigation."*** [Emphasis added]

Although this case pertains to the recovery of money due on a credit instrument, it reflects the effect on the economy in granting interim orders against banks in the exercise of its lawful powers, to which this Court agrees with.

Conclusion

I have considered the submissions made and the material submitted. In my view, the Petitioner has failed to establish a case that warrants this Court granting interim relief. Hence, interim relief is refused. Considering all the material, the Petitioner has failed to establish a prima facie case that warrants formal notice to be issued on the Respondents. Therefore, I refuse to issue formal notice and proceed to dismiss this Writ application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal