[2025] 7 S.C.R. 1851 : 2025 INSC 908

Shri Shri Swami Samarth Construction & Finance Solution & Anr.
v.
The Board of Directors of NKGSB CO-OP. Bank Ltd. & Ors.

(Writ Petition (Civil) No. 684 of 2025)

28 July 2025

[Dipankar Dutta* and Augustine George Masih, JJ.]

Issue for Consideration

Lending banks/secured creditors, if under an obligation, in terms of the notification dated 29.05.2015 containing the "Framework For Revival And Rehabilitation Of Micro, Small And Medium Enterprises" (Framework), to identify "incipient stress" in the loan account of the MSMEs prior to classifying the loan account as NPA.

Headnotes†

Micro, Small and Medium Enterprises Development Act, 2006 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Loan account of the petitioner-MSME classified as NPA – Demand notice issued by respondent no.2-Bank u/s.13(2), SARFAESI Act – Present petition filed by the petitioner contending that it was the obligation of the respondent no.2 in terms of the Framework to identify "incipient stress" in the loan account of the petitioner prior to classifying the loan account as NPA and its failure to do so was illegal:

Held: The confusing terms of the Framework are to be interpreted harmoniously to ensure that a right under the MSME Act is not destroyed by the SARFAESI Act or *vice versa* – The Framework does not prohibit the lending bank/secured creditor to classify the account of the defaulting MSME as NPA and to even issue the demand notice u/s.13(2), SARFAESI Act without such identification of incipient stress in the account of the defaulting borrower (MSME) – However, upon receipt of the demand notice, if such borrower in its response asserts that it is an MSME and claims the benefit of the Framework, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping

* Author

further action under the SARFAESI Act in abeyance; and, if the claim is found to be worthy of acceptance within the framework of the Framework, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower – Furthermore, any MSME may choose to voluntarily initiate proceedings under the Framework if it reasonably apprehends failure of its business or its inability or likely inability to pay debts and before the accumulated losses of the enterprise equals to half or more of its entire net worth – Thus, it is equally incumbent on the part of the MSMEs to be vigilant enough to follow the process laid down under the Framework, and bring to the notice of the Banks concerned to show its eligibility to get the benefit of the said Framework – An Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage – Petitioner did not claim the benefit of the terms of the Framework after the demand notice u/s.13(2), SARFAESI Act was issued – It is at the stage of compliance with an order passed by the relevant Magistrate u/s.14, SARFAESI Act that the present writ petition was filed claiming benefits of the Framework to restrain the respondent no.2 and its officers from proceeding further under the SARFAESI Act and other enactments except in the manner contemplated under the said Notification – *Bona fides* of the petitioner suspected – No merit in the writ petition. [Paras 6-9]

Case Law Cited

Pro Knits v. Canara Bank **[2024] 8 SCR 140 : (2024) 10 SCC 292 – clarified.**

List of Acts

Micro, Small and Medium Enterprises Development Act, 2006; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

List of Keywords

Lending banks/secured creditors; Framework For Revival And Rehabilitation Of Micro, Small And Medium Enterprises; Incipient stress; Non-performing asset (NPA); Loan account of MSME classified as NPA; Prior to classifying the loan account as NPA; Stressed MSMEs; Demand notice under Section 13(2),

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Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; SARFAESI Act; MSME; Benefit of the Framework; MSME failed to repay loan; Defaulting borrower; Revival and rehabilitation of the defaulting borrower.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 684 of 2025

Under Article 32 of the Constitution of India

Appearances for Parties

Advs. for the Petitioners:
Mathews J Nedumpara, Ms. Maria Nedumpara, Ms. Hemali Suresh Kurne, Shameem Fayiz, Chand Qureshi, Dewashish Vishwakarma.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

1. This is a writ petition under Article 32 of the Constitution of India by an enterprise registered under the Micro, Small and Medium Enterprises Development Act, 2006[1].

2. The petitioning enterprise had executed a loan agreement with the NKGSB Co-operative Bank[2] but had failed in its obligation to repay the loan. In due course, the account of the petitioning enterprise was classified as a non-performing asset[3]. The authorised officer of the respondent no.2 issued a demand notice dated 13th May, 2024 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[4], calling upon the petitioning enterprise to repay the dues of the respondent no.2 within 60 days. It does not appear from the writ petition, filed on 14th July, 2025, that the petitioning enterprise objected to classification

1 MSME Act
2 respondent no.2
3 NPA
4 SARFAESI Act

of its account as NPA as well as issuance of the demand notice on the ground that the action of the respondent no.2 was in violation of Notification[5] dated 29th May, 2015, containing the "FRAMEWORK FOR REVIVAL AND REHABILITATION OF MICRO, SMALL AND MEDIUM ENTERPRISES"[6] issued by the Joint Secretary to the Government of India, Ministry of Micro, Small and Medium Enterprises. The respondent no.2 having moved an application before the relevant Magistrate under Section 14 of the SARFAESI Act, a Court Commissioner was appointed per order dated 3rd April, 2025. Such order was communicated by the Court Commissioner to the petitioning enterprise on 18th June, 2025.

3. Mr. Nedumpara, learned counsel appearing for the petitioning enterprise, submits that it was the obligation of the respondent no.2 to identify "incipient stress" in the loan account of the petitioning enterprise but it did not so identify prior to classifying the loan account as NPA which, according to him, is wholly illegal. Mr. Nedumpara further submits that the Notification is binding on the lending banks/secured creditors under the SARFAESI Act and, therefore, any measure taken under the SARFAESI Act without complying with the terms of the FRAMEWORK against a micro, small or medium enterprise[7] would amount to an act in excess of jurisdiction. The decision in ***Pro Knits v. Canara Bank***[8], forming part of the writ petition and though not formally cited, was referred to by Mr. Nedumpara in course of his arguments in support of this submission. Also, Mr. Nedumpara submits that such Notification/FRAMEWORK does not mandatorily require an MSME to notify the lending bank/secured creditor first that the MSME wishes to have incipient stress in its account identified; therefore, any defence that the MSME did not voluntarily initiate proceedings ought not to be allowed to be raised. He, thus, prayed for admission of the writ petition and grant of *ad-interim* relief against the respondents.

4. The respondents are not required to be noticed since we are not persuaded to agree with any of the submissions advanced by Mr. Nedumpara.

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5 Notification

6 Framework

7 MSME

8 (2024) 10 SCC 292

5. The Notification detailing the FRAMEWORK, more particularly paragraph 1 and its sub-paragraphs, have to be read together to make its terms effective and meaningful. Although, in the sequence of the FRAMEWORK "Identification by Banks or Creditors" comes first, it is immediately followed by "Identification by the Enterprise". In terms of sub-paragraph 2, any MSME may choose to voluntarily initiate proceedings under the FRAMEWORK if it "reasonably apprehends failure of its business or its inability or likely inability to pay debts and before the accumulated losses of the enterprise equals to half or more of its entire net worth" (emphasis ours). The obligation of the MSME does not end there. For initiation of proceedings under the FRAMEWORK, the application has to be verified by an affidavit of an authorised person and upon receipt of a request, the lending bank/secured creditor is mandatorily bound to proceed in terms of the FRAMEWORK and to constitute a committee to identify incipient stress in the account.

6. The way Mr. Nedumpara urges us to read the Notification and the terms of the FRAMEWORK, if accepted, would lead to the conclusion that every lending bank/secured creditor under the SARFAESI Act would be obliged to find out in every event of continuing default, likely to give rise to classification of the relevant account as NPA, whether the borrower is an MSME to which the FRAMEWORK applies, whether its business has failed or whether it is suffering from any disability to pay its debts; and upon receiving a response, to apply the terms thereof by, *inter alia*, including the account in the Special Mention Account for the claim for a corrective action plan to be considered by the Committee for stressed MSMEs. This could not have been the intention behind introduction of the FRAMEWORK to aid the MSMEs which, for reasons personal to them, is unable to clear its debt and require revival and rehabilitation that the FRAMEWORK envisages. If indeed it is only the obligation of the lending bank/secured creditor to identify incipient stress in the account, sub-paragraphs 2 and 3 of paragraph 1 would be rendered redundant. An MSME, despite finding that its business is failing or that it is unable to pay its debts or accumulation of losses equals to half or more of its entire net worth and classification of its account as NPA is imminent, it would rest on its oars believing that it has no responsibility and that its account will not be classified as NPA because it is the entire obligation of the lending bank/secured creditor to do what the FRAMEWORK requires.

We would read and interpret the seemingly confusing terms of the FRAMEWORK harmoniously to ensure that a right under the MSME Act is not destroyed by the SARFAESI Act or vice versa. In our reading, the terms of the FRAMEWORK do not prohibit the lending bank/secured creditor (assuming that it has no conscious knowledge that the defaulting borrower is an MSME) to classify the account of the defaulting MSME as NPA and to even issue the demand notice under Section 13(2) of the SARFAESI Act without such identification of incipient stress in the account of the defaulting borrower (MSME); however, upon receipt of the demand notice, if such borrower in its response under Section 13(3-A) of the SARFAESI Act asserts that it an MSME and claims the benefit of the FRAMEWORK citing reasons supported by an affidavit, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance; and, should the claim be found to be worthy of acceptance within the framework of the FRAMEWORK, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower.

7. As has been noted above, the petitioning enterprise does not seem to have ever claimed the benefit of the terms of the FRAMEWORK after the demand notice under Section 13(2) of the SARFAESI Act was issued. It is at the stage of compliance with an order passed by the relevant Magistrate under Section 14 of the SARFAESI Act that this writ petition has been presented before this Court claiming benefits of the FRAMEWORK to restrain the respondent no.2 and its officers from proceeding further under the SARFAESI Act and other enactments except in the manner contemplated under the said Notification. We find the *bona fides* of the petitioning enterprise to be suspect.

8. ***Pro-Knits*** (supra) is a decision of a coordinate Bench of this Court holding, *inter alia*, that the Notification is binding on the lending banks/secured creditors. Finding to the contrary by the High Court of Bombay in the judgment and order under challenge in the appeal was, thus, quashed. Though while stressing that the terms of the FRAMEWORK need to be followed by the lending banks/secured creditors before the account of an MSME is classified as NPA, this decision also lays stress on the obligation of the MSMEs by holding that *"it would be equally incumbent on the part of the MSMEs concerned to be vigilant enough to follow the process laid down under the*

said Framework, and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework". It was cautioned that *"if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the bank/creditor concerned in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage"*. This decision, however, left unsaid something which we have explained hereinabove while construing the terms consistently to prevent undermining of rights that one central enactment confers by another.

9. No case for interference under Article 32 of the Constitution has been set up. There being no merit in the writ petition, the same is accordingly ordered to be dismissed. Pending applications, if any, stand closed.

10. Needless to observe, the petitioning enterprise will be at liberty to pursue its remedy under Section 17 of the SARFAESI Act, in accordance with law.

Result of the case: Writ petition dismissed.

†*Headnotes prepared by:* Divya Pandey