

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

IA No. GA-COM/1/2024

In

CS-COM/813/2024

DOOARS JUTE TEXTILES PRIVATE LIMITED AND ORS.

VS

STATE BANK OF INDIA.

For petitioners:

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Aritra Basu, Adv.

Miss. Sonia Sharma, Adv.

For respondent/bank :

Mrs. Deblina Lahiri Adv.

Mr. Debasish Sarkar, Adv.

Mr. Mrinmoy Chatterjee, Adv.

Reserved on : 19.01.2026

Judgment on : 12.02.2026

ANIRUDDHA ROY, J.:

In Re: IA No. GA-COM/1/2024

Facts:

1. This is an interlocutory application filed by the plaintiffs/petitioners, inter alia, praying for the following reliefs:-
 - (a) Injunction restraining the Respondent, its men, agents, servants, representatives and assigns from giving any effect or further effect or acting in terms of or in furtherance of the demand notice dated December 6, 2023.
 - (b) Ad interim orders in terms of prayers above;

(c) Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

2. Petitioner no. 1 is engaged in the business of manufacturing, selling and distribution of jute yarn and hessian cloth. The petitioner has its manufacturing unit at Cooch Behar, West Bengal. The petitioner no. 2 and 3 are the promoters and directors of the petitioner no. 1. The petitioner no. 1 was recognized as a small unit within the meaning of **Micro, Small, Medium and Enterprises Development Act, 2006 (for short MSME Act)** with effect from February 20, 2019. In support of such contention the petitioners have disclosed several documents, annexure “A” to the said petition.
3. The petitioner no. 1 was incorporated on February 20, 2019. To meet the requirement of working capital, the petitioner no. 1 in August 2019 approached the respondent bank to avail of credit facilities and the respondent on February 12, 2020 sanctioned credit facilities aggregating to a sum of Rs.8,05,00,000/-. The said credit facility was enhanced on February 7, 2022 to the extent of Rs.9,05,00,000/- and further extended on September 14, 2022 to the extent of Rs.12,02,00,000/-. The petitioner no. 1 had created equitable mortgage of immovable properties as collateral security and the petitioner nos. 2 and 3 stood as guarantors in respect of the said credit facilities and executed various guaranteed documents in usual course of business.
4. The petitioners have contended that the petitioner no. 1 could not generate sufficient revenue, for the reasons beyond its control, during the COVID-19 Pandemic. Because of the lock down having been

declared by the State, the petitioners could not manufacture its products or sale the same and as a result the petitioner no. 1 had undergone a severe financial recession and suffered losses which led the respondent to declare the loan account of the petitioner no. 1 as **Non-performing Asset** (in short **NPA**) with effect from November 29, 2023.

5. On December 6, 2023 the respondent bank through its Advocate's letter issued a demand notice **annexure "M" at page 117** to the petition whereby and where under the respondent had called upon the petitioner no. 1 and other petitioners to pay a sum of Rs.11,94,46,227/-.
6. Since, the petitioners failed and neglected to pay the demanded amount, the respondent had issued a notice dated February 3, 2024 under Section 13 (2) of **Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** (for short **SARFAESI Act**), annexure "N" at page 120, 122 to the petition. The consequential possession notice dated May 3, 2024 was also issued in respect of the secured assets at page 128 to the petition.
7. Thereafter, the petitioners filed the instant suit with the following reliefs:-
 - a) Decree for Rs.30,00,00,000/- (Rupees Thirty Crore only as pleaded in paragraph 24 above;
 - b) Declaration that the account of the plaintiff No. 1 has been illegally classified and/or declared as NPA with effect from November 29, 2023;
 - c) XXXX

- d) Declaration that the legal notice dated 6th December, 2023 being Annexure “M” hereto is illegal, null and void and also all steps taken in pursuance of and/or in furtherance thereof are also illegal, null and void;
- e) Perpetual injunction restraining the Defendant, its men, agents and assigns from taking any steps or further step on the basis of and /or in furtherance of the said legal notice dated 6th December, 2023 being Annexure “M” here to;
- f) Mandatory injunction directing the Defendant, its men, agents, assigns, servants and representatives from to forthwith withdraw the notice dated 6th December, 2023
XXXXXXXXXX
- g) Receiver;
- h) Injunction;
- i) Attachment;
- j) Costs;
- k) Such further and/or other relief or reliefs.

8. On December 16, 2024 after hearing the parties a Co-ordinate Bench passed an order restraining the defendant bank from giving any effect or further effect to the said demand notice dated December 6, 2023. The initial interim order was for a limited period which was then extended from time to time and still is in existence.
9. Pursuant to the direction made by the co-ordinate bench the parties have filed and exchanged their affidavits.
10. The parties have also filed their respective written notes.

Submissions :

11. Mr. Abhrajit Mitra, learned Senior Advocate refers to various documents from the petition as well as the supplementary affidavit filed on behalf of the petitioners, in support of his contention that the petitioner no. 1 is an established MSME unit within the meaning of the MSME Act. Relying upon the averments made in the affidavit in opposition filed by the bank. Learned Senior Advocate Mr. Abhrajit

Mitra submits that, the bank at all material time at the time of sanctioning the credit facilities in favor of the petitioner no. 1 had knowledge and was aware of the fact that the petitioner no. 1 is an MSME unit. It was on the basis of such understanding the credit facility was granted in favour of the petitioner no. 1 by the bank.

12. Mr. Abhrajit Mitra, learned Senior advocate has specifically referred to the documents being the sanctioned letter dated February 12, 2020 at page 80 to the petition, February 14, 2022 at page 92 to the petition and November 28, 2023 at page 210 to the affidavit in opposition filed by the bank and also the bank statement disclosed by the bank at pages 214 and 216 to the affidavit in opposition, which would show that the petitioner no. 1 had all along maintain an MSME account with the respondent bank.

13. Mr. Abhrajit Mitra further submits that as per the various ameliorative measures adopted by the Reserve Bank of India (for short RBI) for MSME units during the COVID-19 Pandemic the respondent bank offered the petitioner no. 1 and Guaranteed the Emergency Credit Line and in that context by a letter dated February 4, 2022 at page 32 to the supplementary affidavit, called upon the petitioner no. 1 to submit a standardized form which require the petitioner no. 1 to submit its MSME registration number (at page 34 to the supplementary affidavit). The petitioner no. 1 had filled up the form with MSME registration number disclosing its Udyog Aadhaar Number at page 37 to the supplementary affidavit and submitted the

same to the respondent as an attachment to the e-mail dated February 7, 2022.

14. Mr. Abhrajit Mitra then drew attention of this Court to the various documents disclosed by the bank in its affidavit-in-opposition and submits that the respondent bank itself had taken certain measures under MSME guidelines 2016 issued by RBI in favour of the petitioner no. 1. Thus, the respondent bank had all along proceeded and accepted the petitioner no. 1 as an MSME unit.
15. Learned Senior Advocate, Mr. Abhrajit Mitra appearing for the petitioners then drew attention of this court at the RBI guidelines under the notification dated May 29, 2015. He has also referred to the RBI guidelines dated March 17, 2016. Referring to Clause 2 from the said RBI guidelines of 2016, Mr. Mitra has further submits that the revival and rehabilitation of MSME having loan limit up to 25 crore will be in terms of the operative instructions mentioned in the said 2016 guidelines. Restructuring of loan accounts with exposure of above Rs.25 crore will continue to be governed by the extent guidelines on Corporate Debt Restructuring (CDR). Referring to clause 2.1 from the said 2016 guidelines learned Senior Advocate submits that before a loan account of an MSME enterprise turns into a non-performing asset, the bank should identify incipient stress in the account by creating three sub categories under the special mention account category. In the instant case, the petitioner no. 1 was declared as **SMA-2 category**. In order to enable first a resolution of stress in an MSME account, the bank shall form committees for

stressed MSME enterprises by following a specific procedure mentioned under Clause 3 of the said 2016 guidelines. All eligible stressed MSME enterprises shall have access to the committee for resolving stressed accounts in accordance with the regulations prescribed in the framework. Provided that where the committee decides that recovery is to be made as part of CAP, the manner and method of recovery shall be in accordance with the existing policies approved by the Board of Directors of the bank which has extended credit facilities to the MSME enterprise, subject to any regulations prescribed by RBI and extant statutory requirements. Any lender on identifying an MSME account as SMA-2 or suitable for consideration under the framework or on receipt of an application from the stressed enterprise, shall forward the cases having aggregate loan limits above Rs.10 lakh to the committee for immediate convening of meeting and deciding on a CAP.

- 16.** Referring to various provisions from said RBI guideline, 2016 Mr. Mitra submits that ultimately the corrective action plan shall be adopted by the committee and the entire procedure is a time bound procedure, as described and stipulated under the said 2016 guidelines.
- 17.** Mr. Abhrajit Mitra, Learned Senior Advocate appearing for the petitioners submits that the said RBI guidelines of 2016 has a statutory flavour and the procedures laid down there under are required to be strictly followed for an MSME enterprise, like the petitioner no. 1. In the instant case, the committee has not even been

formed to address the stress of the MSME enterprise. There was no step to refer the case of the petitioner no. 1 before the committee by the bank following the RBI guidelines. Mr. Mitra submits that before issuing the said demand notice dated December 6, 2023 when the account of the petitioner has been classified as SMA-2, it was a bounden legal obligation of the bank to follow the procedure under the said 2016 guidelines to address the stress of the petitioner no. 1 which is an MSME enterprise. By not following the said procedure laid down under the 2016 RBI guideline the respondent bank had acted illegally and without jurisdiction while issuing the said recall notice dated December 6, 2023 and the subsequent steps taken under the SARFAESI Act.

- 18.** Mr. Abhrajit Mitra, Learned Senior Advocate submits the instruction/directions issued by Central Government under Section 9 of the MSME Act and by the Reserve Bank of India have a statutory force and are binding on the banking companies. The guidelines framed are in 2015/2016 have statutory force. The respondent bank is obliged in law to follow the procedure strictly as laid down there under to address the stress of an MSME enterprise. In support, he has relied upon the decision of the Hon'ble Supreme Court ***In the matter of: Pro Knits vs Board of Directors of Canara Bank and others (and connected files) reported at 2024 246 Comp Case 422: 2024 SCC OnLine SC 1864.*** He has also placed reliance on a judgment of Andhra Pradesh High Court ***In the matter of : Sri***

***Rajalakshmi Traders vs. The Reserve bank of India and others
reported at 258 Comp Cases 163.***

- 19.** Learned Senior Advocate Mr. Abhrajit Mitra appearing for the petitioners submits that the MSME guidelines 2016 is a revised framework for revival and rehabilitation of MSME enterprises issued by RBI for restructuring of loan account with sanctioned limits upto Rs. 25 crores. It is the RBI guidelines 2016 which is applicable to the petitioner no.1 as the sanctioned limit was Rs.12.20 crore. 2016 guidelines makes it mandatory for banks to immediately constitute a MSME committee and makes such committee always accessible to the MSME enterprises. MSME guidelines 2016 also does not require any application or affidavit to be submitted by a MSME enterprise and on the contrary it is the mandatory obligation of the bank to forward a MSME account classified as SMA-2 to the MSME committee, irrespective of any application from MSME enterprise. Referring to the affidavit-in-opposition filed by the bank, Mr. Mitra submits that it is not the case of the bank that the 2015 guidelines is applicable to the petitioners and not the 2016 guidelines. It is also not the case in affidavit pleaded by the bank that the petitioner no.1 should have applied along with an affidavit as per Clauses 1(3) and 1(4) of 2015 guidelines as a pre-condition for constitution of MSME committee. He submits that it is a mandate under the 2016 guidelines that MSME borrower, as the petitioner no.1, shall have access to the MSME committee for resolving the reported stress of MSME accounts. Under Clause 3.5 of 2016 guidelines, a MSME at

any time can approach the MSME committee for resolving the stress in the MSME. On November 24, 2023 the petitioner no.1 submitted its restructuring proposal at page 210 to the petition. Even then the bank did not constitute any MSME committee according to Clauses 4.2, 4.4, 4.5 and 4.6 of the 2016 guidelines and thus, the bank has failed to act in strict compliance of the 2016 guidelines.

20. On the point of mala fide on the part of the bank Mr. Abhrajit Mitra, learned Senior Advocate has submitted that despite there being restructuring proposal submitted by petitioner no.1 and the surprise inspection having been carried out by the bank on November 25, 2023 and after reaching to a conclusion by the bank that it is possible to revive the petitioner no.1, on November 29, 2023 the respondent-bank declared the account of the petitioner no.1 as NPA and issued notice under Section 13(2) of SARFAESI Act.

21. In the light of the above, learned Senior Counsel Mr. Abhrajit Mitra submits that declaration of NPA in respect of a MSME enterprise without following the 2016 guidelines is illegal, wrongful and without jurisdiction and therefore all the subsequent steps taken by the bank in exercise of its power under SARFAESI Act are also bad in law and without jurisdiction. The order of injunction should be made absolute.

22. Ms. Deblina Lahiri, learned Advocate appearing for the respondent-bank has referred to the various portions from the affidavit-in-opposition filed by the bank. She submits that Corrective Action Plan (**CAP**) was followed by the bank at SMA-0, SMA-1 and SMA-2 at the

bank level. From the several reports annexed to the affidavit-in-opposition, it reveals that discussion were held between the representatives of the parties, the visits of the factory, of the petitioner no.1, the working capacity investment of the factory are all mentioned in detail in the affidavit-in-opposition indicating that petitioners were aware of the fact that the loan account was tending towards to be classified as NPA. The petitioners were repeatedly requested by the bank to pay the irregularity amount for the purpose of restructuring the loan accounts of the petitioner no.1 but the petitioner no.1 failed and neglected to pay the same though they have assured the bank specifically time and again. The petitioners did not reply to the notice issued by the bank under Section 13(2) of the SARFAESI Act and thereby chose not to raise any objection with regard to the demand of the bank and invocation of the provisions under the SARFAESI Act. Thereafter possession notices were issued under Rule 8 (1) of the Security Interest Rules for taking possession of the secured assets then only to resist the steps taken by the bank in exercise of its power under Section 13(4) of the SARFAESI Act, the petitioners have filed the instant suit.

- 23.** Ms. Deblina Lahiri, learned Advocate appearing for the respondent-bank then refers to the irregularity notices dated September 18, 2023, November 17, 2023 and November 20, 2023 served upon the petitioners by the bank at pages 151 to 156 to the affidavit-in-opposition (volume II) and none of those notices was replied to by the petitioners. The loan recall notice dated December 6, 2023 was served

upon the petitioners by the bank through its Advocate's letter at pages 282 to 284 to the affidavit-in-opposition. The letter was replied to by the petitioner no.1 through its Advocate's letter dated December 14, 2023 at page 285 to the affidavit-in-opposition, where the petitioners never stated that it is an MSME enterprise or never raised any objection with regard to the violation of 2016 guidelines/framework

- 24.** She submits that notice was then issued dated February 3, 2024 under Section 13(2) of SARFAESI Act at page 122 to the petition. No objection was submitted by the petitioners in terms of Section 13(3A) of the SARFAESI Act. On March 18, 2024 at pages 291 to the affidavit-in-opposition a further demand notice for repayment of loan was served by the bank's Advocate upon the petitioners but the petitioners did not reply thereto. On April 2, 2024 the respondent-bank had initiated a recovery proceeding under Section 19 (1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, before the jurisdictional Debt Recovery Tribunal, Kolkata, the same is pending. On May 3, 2024 in exercise of its power under Section 13(4) of the SARFAESI Act read with Rule 8 (1) of the Security Interest Rules 2002, a possession notice was served for taking possession of the secured assets at pages 127 to 129 to the petition. On May 5, 2024 an email was sent by petitioner no.2 to the respondent-bank with a revised proposal for reconstruction of loan account at page 300 to the affidavit-in-opposition. The loan reconstruction proposal is available at pages 193 to 209 to the affidavit-in-opposition. Ms.

Deblina Lahiri, learned Advocate appearing for the respondent-bank submits that in the said loan reconstruction proposal there was no reference of the petitioners being an MSME enterprise. The proposal was also not under the framework/2016 guidelines. At no point of time the petitioners claimed any benefit of any framework neither did they apply to avail of the framework/2016 guidelines.

25. Referring to a letter dated July 11, 2024 at page 301 to the affidavit-in-opposition, Ms. Deblina Lahiri, learned Advocate appearing for the respondent-bank submits that a letter was issued by the petitioners acknowledging the revocation of the restructuring proposal and the petitioners further assured the respondent bank that they were in process of bringing investors to support the company. Prayer was also made by the petitioners for 60 days extension on and from July 11, 2024 to finalize the infusion of funds and the petitioners requested the bank not to proceed against the petitioners in the meantime. She submits that on October 8, 2024 the respondent served one letter upon the petitioners at page 176 to the petition requesting to handover the physical possession of the mortgaged property to the bank and immediately thereafter on November 21, 2024 the instant suit was filed.

26. Ms. Deblina Lahiri, learned Advocate appearing for the respondent-bank then submits that the notification dealing with the framework/2016 guidelines has to be read 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 of enterprises. An MSME enterprise may choose to voluntarily initiate proceeding 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 equal to half or more of its entire worth. The obligation of MSME does not end there that for initiation of proceeding under the framework, the application has to be verified by an affidavit by an authorized person of the enterprise and upon receipt of a request, the lender bank is mandatorily bound to proceed in terms of the framework and to constitute a committee to identify the incipient stress in the account. The framework is to be read harmoniously to ensure that a right under the MSME Act is not destroyed by the SARFAESI Act or vice versa.

- 27.** She further submits that upon receipt of a notice under Section 13(2) of the SARFAESI Act, if the petitioners in its response under Section 13(3A) asserts that it is an MSME enterprise and claims the benefit of the framework/2016 guidelines citing reasons supported by an affidavit, then it would be mandatory upon the lending bank to look into such claim instead of proceeding under SARFAESI Act. In support, learned Counsel has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Shri Shri Swami Samarth Construction & Finance Solution and Another vs. Board of Directors of NKGSB Co-op. Bank Ltd. and Others reported at 2025 SCC OnLine SC 1566.***

- 28.** On the point of balance of convenience and/or inconvenience, Ms. Deblina Lahiri, learned Advocate appearing for the respondent-bank submits that a party to a suit where there is a prayer for damages, can be an adequate relief in the event plaintiff succeeds. Damages can be an adequate compensation to the plaintiffs if they succeed in the suit and injunction should ordinarily not be granted. In support, she has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Best Sellers Retail (India) Private Limited vs. Aditya Birla Nuvo Limited and Others with A.C. Thirumalaraj vs. Aditya Birla Nuvo Limited and Others reported at (2012) 6 SCC 792.***
- 29.** While dealing with the decision of the Hon'ble Supreme Court ***In the matter of: Pro Knits (Supra)*** learned Counsel Ms. Deblina Lahiri submits that while creating special categories under special loan account categories, the bank must have some authenticate and verifiable materials with them as produced by the concern MSME enterprise to show that loan account is of the enterprise is under the MSME Act. The framework enables the MSME enterprises to voluntarily initiate proceeding under the said framework by filing an application along with the affidavit of an authorized person. Encumbrance on the part of the MSME enterprise also to produce authenticate and verifiable documents/materials for substantiating its claim of being MSME enterprise before its account is classified as NPA.

- 30.** She further submits that if at the stage of classification of loan account of the petitioners as NPA, the petitioners does not bring to the notice of the concerned bank that it is a MSME enterprise and if such an enterprise allows the entire process under the SARFAESI Act to be carried out by the bank without any challenge or if no challenge is filed before any judicial forum, such an enterprise could not be permitted to misuse the process of law for thwarting the action taken under the SARFAESI Act by taking plea of being a MSME enterprise at a belated stage.
- 31. *In the matter of : Sri Rajalakshmi Traders (Supra)*** the glaring distinguishing feature is that the MSME enterprise had submitted an objection under Section 13(3A) of the SARFAESI Act where it has specifically pleaded its MSME status and asked for referring it before the committee under the framework for debt restructuring.
- 32.** On the point of delay Ms. Deblina Lahiri submits that throughout upto the stage of invocation of Section 13(4) of the SARFAESI Act, the petitioners never objected to despite knowing that the restructuring proposal has been rejected by the bank and then when the bank proceeds to take steps against the mortgaged property for taking possession in exercise of power under SARFAESI Act then only the suit has been filed. There had been a gross delay on the part of the petitioners. On this ground, the injunction should not have been granted and should be vacated forthwith.

- 33.** In the light of the above, learned Advocate Ms. Deblina Lahiri submits that the order of injunction already passed should be vacated and the petition for injunction should be dismissed.
- 34.** In reply, Mr. Abhrajit Mitra, Learned Senior Advocate appearing for the petitioner while distinguishing the judgment of the Hon'ble Supreme Court ***In the matter of: Shri Shri Swami Samarth Construction & Finance Solution and Another (Supra)*** has submitted that the said judgment was rendered on 2015 MSME guideline under which there was a specific requirement for filing an application by the MSME entrepreneur as a pre-condition for formation of MSME committee. He further submits that 2016 MSME guideline is a revised framework for revival and rehabilitation of MSME enterprise for reconstructing the loan account with a sanctioned limit upto Rs.25 crores, which is applicable for the petitioner no.1. 2016 guideline is mandatory for the bank to immediately constitute MSME committee to make such committee always accessible to MSME enterprise. 2016 guideline does not require an application with or without affidavit to be submitted by the MSME enterprise and on the contrary it is the mandatory obligation of the bank to forward an MSME account classified as SMA-2, to the MSME committee irrespective of any application from the enterprise.
- 35.** While distinguishing the judgment ***In the matter of: Best Sellers Retail (India) Private Limited (Supra)*** learned Senior Advocate Mr. Mitra submits that money claim raised by the petitioner is on account of loss and damages already suffered by them for respondent's non-

compliance of MSME guideline 2016. The right of petitioners to compel the respondent-bank to act as per the 2016 guideline is an independent right, which is prospective in nature. The claim of damage and the claim for injunction are not mutually exclusive.

- 36.** On the plea of delay taken by learned Advocate Ms. Lahiri, the petitioners submit that immediately when the recall notice was issued and steps were taken under the SARFAESI Act, the petitioners have filed the instant suit, as accordingly to the petitioners' step taken under the SARFAESI Act was illegal and without jurisdiction, as the bank has not complied with the mandate under the 2016 guideline/framework before initiating steps under SARFAESI Act.

Decision :

- 37.** After hearing the rival contentions of the parties and on perusal of the materials on record, it appears to this Court at the threshold that, the plaintiffs had availed of and obtained loan/credit facility/financial assistance from the respondent/bank. The documents disclosed by the plaintiffs/petitioners on record show that the plaintiffs is a registered MSME enterprise. The plaintiff no.1 had availed of the financial assistance finally to the extent of Rs.12.02 crores, inter alia, against creation of equitable mortgage. The plaintiffs/petitioners had admitted default in paying of the loan and as such from time to time made several representations/proposals before the bank including restructuring of its defaulted loan account by a letter dated November 24, 2023. The admitted fact is also that on November 29, 2023 the account of the petitioner no.1 was declared as NPA. The loan recall

notice was issued on December 06, 2023. On February 03, 2024 the bank had issued notice under Section 13(2) of the SARFAESI Act to which no objection was submitted by the petitioners under Section 13 (3A) of the SARFAESI Act. The bank then issued notice under Section 13(4) read with Rule 8(1) of the Security Interest Rules, 2002 dated May 03, 2024 and the possession notice was served for taking possession of the mortgaged assets/Security Interest. Admittedly, the petitioners did not challenge the steps taken by the bank under Section 13 of the SARFAESI Act or otherwise.

38. The RBI guideline of 2016/framework, as the parties hereto have admitted is applicable in the facts of this case, undoubtedly has a statutory flavour which is applicable for the petitioner no.1, being an MSME enterprise.
39. On a plain reading of the said 2016 RBI guideline, it appears, prima facie to this Court that the said 2016 guideline, inter alia, prescribes certain obligations both on the MSME enterprise as well as on the bank. The loan account of the petitioner no.1 had been categorized as **SMA-2** which is required to be mandatorily examined for Corrective Action Plan (CAP) by the specific branch of the bank itself under the authority of the branch manager or such other officials designated in this regard. Clause 2.3 of 2016 guideline, inter alia, provides that any MSME borrower may voluntarily initiate proceeding under the framework, if the enterprise reasonably apprehends failure of its business or its inability or likely inability to pay debts or there is erosion in the net-worth due to accumulated losses to the extent of

50 per cent of its net-worth during the previous accounting year, by making an application to the branch or directly to the MSME committee wherever applicable. When such a request is received by the lender/bank, the account should be referred to the committee and the committee should examine the account for a suitable CAP. All eligible MSME enterprises shall have access to the committee for resolving the stress in its accounts according with the framework.

40. Clause 4.1 of 2016 guideline, inter alia, provides that any lender on identifying MSME account as SMA-2 or suitable for consideration under the framework or on receipt of an application from the stressed enterprises, shall forward the cases to the committee to decide on a CAP. The stressed enterprises having aggregated loan limit above Rs.10 lakh can also directly file an application for CAP to the committee or to the largest lender for onward submission under the advice to all its lenders. The said 2016 guideline then provides for the mechanisms and procedures to be followed by MSME committee for CAP of an MSME enterprise.

41. On reading various clauses from the said 2016 guideline, prima facie, it appears to this Court that, the petitioner no.1 being an MSME enterprise also has an obligation to be vigilant about its stressed loan account to avail of a proper CAP under the said 2016 guideline. Since the time of default, at all material times the petitioner no.1 was aware of its stressed loan account that the same had become irregular. From time to time, repeatedly, the irregularity notices dated September 18, 2023, November 17, 2023 and November 20, 2023

were issued by the bank upon the petitioners and the petitioners failed and neglected to reply thereto. Neither prior to the stressed loan account become irregular the petitioners informed the bank nor subsequently informed the bank that the petitioner no.1 is an MSME enterprise and the bank would have to exercise the provisions under the said 2016 guideline for a proper CAP for the stressed loan account of the petitioner no.1. In reply to the recall notice dated **December 06, 2023** issued by the petitioner no.1 by the respondent/bank, the petitioners through its reply dated December 14, 2023 replied thereto but had not claimed any benefit or right as an MSME enterprise under the said 2016 guideline, neither raised any objection with regard to the alleged violation of the framework under the said 2016 guideline by the bank. The petitioners did not raise any objection under Section 13 (3A) of the SARFAESI Act after receiving the notice issued by the bank dated February 03, 2024 under Section 13(2) of the SARFAESI Act. Petitioners have not challenged the SARFAESI action initiated by the bank.

- 42.** On a reading of the said 2016 guideline it also, prima facie, appears to this Court that there is a reciprocal obligation on the part of both the MSME borrower and the lender bank under the said framework. The admitted fact is that irrespective of default on the part of the petitioners in repaying loan granted by the bank to the extent of Rs.12.02 crores. The recall notice issued by the bank dated December 06, 2023 contained a claim for a total sum of **Rs.11,38,76,556.83/-** and together with interest it is **Rs.11,94,46,227.83/-**. The notice

dated February 03, 2024 issued by the bank under Section 13(2) of SARFAESI Act contains the claim for a sum of **Rs.12.02 crores**, as would be evident from pages 117, 120 and the relevant possession notices at pages 128 and 129 to the petition. The Coordinate Bench had passed an unconditional order of injunction dated December 16, 2024 restraining the bank from giving any effect or further effect to the said recall notice dated December 06, 2023 which was extended from time to time and still is in existence.

- 43.** The said 2016 guideline/framework had received a judicial consideration before the Hon'ble Supreme Court ***In the matter of: Pro Knits (Supra)***, when the Hon'ble Supreme Court had opined and held that the said guideline/framework has a statutory force and is binding on all the banking companies. The Hon'ble Supreme Court had also observed as under :-

“16. We may hasten to add that under the “Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises”, the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non-performing assets, by creating three sub-categories under the “Special Mention Account” Category, however, while creating such sub-categories, the Banks must have some authenticated and verifiable material with them as produced by the concerned Micro, Small and Medium Enterprise to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the Micro, Small and Medium Enterprises Development Act, 2006. The said Framework also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorized person. Therefore, the stage of identification of incipient stress in the loan account of Micro, Small and Medium Enterprise and categorization under the Special Mention Account category, before the loan account of Micro, Small and Medium Enterprise turns into Non-Performing Asset is a very crucial stage, and

therefore it would be incumbent on the part of the concerned Micro, Small and Medium Enterprises also to produce authenticated and verifiable documents/material for substantiating its claim of being Micro, Small and Medium Enterprises, before its account is classified as Non-Performing Asset. If that is not done, and once the account is classified as Non-Performing Asset, the banks i.e. secured creditors would be entitled to take the recourse to Chapter III of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for the enforcement of the security interest.

17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as Non-Performing Asset, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the Micro, Small and Medium Enterprises Development Act, 2006 and if such an Enterprise allows the entire process for enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to be over, or it having challenged such action of the concerned bank/creditor 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by raising the plea of being an Micro, Small and Medium Enterprise at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, it would be equally incumbent on the part of the concerned Micro, Small and Medium Enterprise to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said framework.”

- 44.** The said 2015 notification had also received judicial consideration before the Hon’ble Supreme Court ***In the matter of: Shri Shri Swami Samarth Construction & Finance Solution and Another (Supra)***. In the said judgment while dealing with the said 2015

notification, the Hon'ble Supreme Court had also taken note of ***In the matter of: Pro Knits (Supra)*** and observed as under :-

“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 Micro, Small or Medium Enterprise 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 Micro, Small or Medium Enterprise 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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 Micro, Small and Medium Enterprise 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 Micro, Small and Medium Enterprises. This could not have been the intention behind introduction of the framework to aid the Micro, Small and Medium Enterprises 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. A Micro, Small and Medium Enterprise, 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 Micro, Small and Medium Enterprise Act is not destroyed by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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 Micro, Small and Medium Enterprises) to classify the account of the defaulting Micro, Small and Medium Enterprise as non-performing asset and to even issue the demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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(3A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act asserts that it is a Micro, Small and Medium Enterprise and claims the benefit of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was issued. It is at the stage of compliance with an order passed by the relevant Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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* 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 Micro, Small and Medium Enterprise is classified as non-performing asset, this decision also lays stress on the obligation of the Micro, Small and Medium Enterprises by holding that “it would be equally incumbent on the part of the Micro, Small and Medium Enterprises 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act by raising the plea of being an Micro, Small and Medium Enterprise 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.”

- 45.** The law is well settled and there is no doubt that both these guidelines/frameworks of 2015 and 2016 having a statutory force operate as binding guidelines upon the banks. When a statutory guideline is issued for the benefit of a party, it is for such party to decide whether it will avail of the same or not. If the beneficiary avails of such beneficial guideline, if it is otherwise eligible, then the terms and provisions of the said guideline is required mandatorily to be followed strictly. If such a beneficiary does not want to avail of the said beneficial guideline, the mandatory provisions thereunder subsequently are not required to be followed. The golden rule of law is

if a particular provision is laid down in a statutory scheme, such provision is required to be mandatorily followed in the manner and fashion it is laid down or not at all. All other modes are expressly forbidden.

- 46.** In the light of the above, if it appears in the facts of the instant case that, the petitioner no.1 being an MSME enterprise has not availed of the said 2016 guideline/framework then the subsequent obligation on the part of the bank to initiate the CAP following the prescribed formula laid down therein are no more mandatory on the bank to follow. In such case, it is neither a statutory nor a mandatory requirement for the bank to follow the said guideline/framework.
- 47.** The facts in the instant case shows that the repeated notices issued by the bank upon the petitioner no.1/petitioners prior to declaring the account of the petitioner no.1 being irregular/NPA were never replied by the petitioner no.1. The petitioners never contended with materials that the petitioner no.1 being an MSME enterprise shall avail of 2016 guideline/framework for a proper CAP. The petitioner no.1 or the other petitioners had never raised any objection under Section 13(3A) of the SARFAESI Act after receiving the notice from the bank under Section 13(2) of the SARFAESI Act. Thus, the petitioner no.1 and/or petitioners never objected to the declaration of the account of the petitioner no.1 to be NPA, as declared by the bank and never raised the contention that before declaring the loan account of the petitioner no.1 as irregular and/or NPA, the bank should have

taken steps under the said 2016 guideline/framework for proper CAP to be framed.

- 48.** The scope and effect of the said 2016 guideline and the framework thereunder and whether the petitioner no.1 and/or petitioners have availed of the said framework and applied for the same are not to be gone into at this interim stage by holding a mini trial but such a detail enquiry should await for the final hearing of the suit. The admitted facts are that the petitioners had availed of a loan facility from the bank to the extent of a sum of Rs.12.02 crore and has defaulted in paying of the same. The further admitted fact is that despite receipt of a notice under Section 13(2) of the SARFAESI Act issued by the bank, the petitioner no.1 and/or petitioners did not raise any objection under Section 13(3A) of the SARFAESI Act, where the petitioners could have raised all its plea. Only when the possession notice has been issued in exercise of power under Section 13(4) of the SARFAESI Act, then the instant suit has been filed. On a plain reading of 2016 guideline, prima facie, it appears to this Court that the said framework also enables the petitioner no.1 to initiate the proceeding under the said framework by filing an application along with affidavit of an authorized person. Thus, when the identification of incipient stress in the loan account of petitioner no.1 under SMA-2 category was there before the loan account of the petitioner no.1 turned into NPA was the crucial stage when it was incumbent upon the petitioner no.1 to produce authenticate and verifiable documents/materials for substantiating its claim of being an MSME

enterprise. Since, prima facie, that is not done and once the account of the petitioner no.1 has been classified as Non-performing Asset, the bank was/is entitled to take recourse to Section 13 of the SARFAESI Act for enforcement of the security interests. Petitioner no.1 has allowed the entire process for enforcement of the security interests under the SARFAESI Act to be carried out without any challenge in terms of the statute and at this stage petitioner no.1 cannot be permitted to misuse the process of law for thwarting the action taken under SARFAESI Act by raising the plea being an MSME enterprise.

49. When it was mandatory obligation on the part of the bank to follow the statutory framework for framing a proper CAP for the petitioner no.1, it was equally incumbent on the part of the petitioner no.1 to be vigilant enough to follow the said statutory guideline being 2016 guideline to avail of the same, in its strict compliance. Inasmuch as 2016 guideline/framework does not create an absolute bar or prohibition on the bank to classify the loan account of an MSME enterprise as NPA or to take steps under SARFAESI Act, if an MSME enterprise raises objection with all supporting materials to establish that it is an MSME enterprise citing reasons supported by an affidavit, the bank only then would be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance.

50. The judgment of the Hon'ble Division Bench of this Court ***In the matter of: State Bank of India vs. SRC Steels Pvt. Ltd. reported***

at 2014 SCC OnLine Cal 20626 deals with the operation of Section 34 of the SARFAESI Act. In any event, the two recent judgments of the Hon'ble Supreme Court, referred to above, are subsequent in point of time which have specifically dealt with the 2016 guideline/framework. In the instant case, the petitioners have challenged the loan recall notice and the follow up actions resulting into SARFAESI notices issued by the bank. Therefore, the ratio laid down ***In the matter of: State Bank of India (Supra)*** would not apply in the facts of the instant case.

51. *In the matter of: Sri Rajalakshmi Traders (Supra)* the MSME enterprise raised its objection under Section 13(3A) of the SARFAESI Act particularly taking the point being an MSME enterprise it was eligible to avail of the framework. Facts are not the same in the instant case, as the petitioners did not submit any objection under Section 13(3A) of the SARFAESI Act. Therefore, the ratio laid down in the said judgment has no application in the facts of the instant case.

52. The judgment cited on behalf of the respondent bank ***In the matter of: Best Sellers Retail (India) Private Limited (Supra)*** would have no application in the facts of this case, as this is an interim application and not the final trial of the suit.

53. Inasmuch as, the loan was granted to the petitioner no.1 by the respondent bank, the financial source was public exchequer. Default on the part of the petitioner no.1 is admitted in paying of the loan. Bank has already initiated proceeding for recovery of its claim before DRT, which is pending before the jurisdictional DRT. By not raising

any objection under Section 13(3A) of SARFAESI Act and by not challenging the steps taken by the bank under Section 13(4) of the SARFAESI Act, the petitioner no.1/petitioners have allowed the SARFAESI proceeding to proceed. To grant an interim order is always in exercise of discretionary and equitable power of Court. Discretion and equity should be exercised considering the particular facts in a case. Prima facie case and balance of convenience and inconvenience would have a great role to play while granting or refusing an interim order.

- 54.** In view of the foregoing reasons and discussions, this Court is of the considered and firm prima facie view that the petitioner no.1 and/or petitioners should not be allowed to enjoy any further an unconditional interim order which was passed on December 16, 2024, when the defendant was restrained from giving any effect or further effect to the loan recall notice dated December 06, 2023. Accordingly, the interim order dated December 16, 2024 stands modified with further directions as follows:-

- (a) The unconditional interim order dated December 16, 2024 shall continue for a further period of four weeks from date;
- (b) The petitioner no.1 and/or petitioners shall secure a sum of **Rs.11,38,76,556.83/-** being the principal amount claimed by the bank under the said loan recall notice dated **December 06, 2023** at **page 283** to the affidavit-in-opposition positively within **four weeks** from date with the learned Registrar, Original Side;

- (c) In the event, such deposit is made by the petitioner no.1 and/or petitioners, there shall be an interim order of injunction restraining the respondent bank and/or its men, agents, servants, assigns and officials from taking any steps or further steps or to give effect or further effect to the said loan recall notice dated December 06, 2023 at page 283 to the affidavit-in-opposition in any manner whatsoever and status quo as on date shall be maintained with regard to the security interests created by the petitioner no.1 and/or petitioners in favour of the respondent bank until disposal of the suit;
- (d) In the event, such deposit is made by the petitioner no.1 and/or petitioners, the Registrar Original Side shall forthwith deposit the same in an interest bearing fix deposit account at the nearest branch of the State Bank of India and shall prepare a report and keep the same in the original suit file;
- (e) In the event, the petitioner no.1 and/or petitioners default and/or fail to deposit the said sum with the Registrar, Original Side, there shall be no interim order and the interim order dated December 16, 2024 shall automatically stand vacated without any further reference to the Court and the respondent bank shall be entitled to proceed and take all steps and necessary steps pursuant to the said loan recall notice dated **December 06, 2023** and with regard to

the steps already taken by the bank in exercise of the power under SARFAESI Act forthwith in accordance with law without any fetter. The bank shall also be free to proceed with the recovery proceeding pending before the jurisdictional DRT without any fetter.

- 55.** With the above observations and directions the application being **IA No. GA-COM/1/2024** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)