IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.O. No. 330 of 2026

M/s. Merchant Monger Hospitality Pvt. Ltd. & Ors.

Vs.

Indian Bank & Ors.

Mr. Debashis Kundu, Sr. Adv.
Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Aditya Kanodia
Mr. R.N. Barik
Mr. Chayan Gupta
Mr. A. Kundu
Ms. Kousani Dey

....For the petitioners.

Mr. Shiv Mangal Singh

....For the respondent bank.

Hearing Concluded On : 15.07.2026

Judgment Delivered On : 28.07.2026

Judgment Uploaded On : 28.07.2026

Krishna Rao, J.:

1. The petitioner no.1 is a registered MSME company under the Ministry of Micro Small and Medium Enterprises. With an object to ensure tea trading for which financial assistance was required, the petitioner no.1 made an application before the respondent bank for grant of Open Cash Credit of Rs. 2 crores and the same was sanctioned by the bank under MSME-IND SME Secure Scheme. On the request of the petitioner the bank has enhanced the existing cash credit facilities from Rs. 2 crores to Rs 8 crores under the "Agri Scheme Plantation Crop-Tea Grower Scheme".

2. The respondent bank has also granted terms loan of Rs. 5 crores to the petitioner no.1 for meeting the cost of renovation, major repair and maintenance and purchase of urgent spare parts of the factory of the tea gardens.

3. The petitioner felt need of further induction of funds since the tea gardens could only be revived and rehabilitated on large scale induction of funds and accordingly, the associated company of the petitioner no.1 namely Merchant Monger Hospitality Private Limited (herein after referred to as "MMHPL) was granted a Secured Overdraft Facility of Rs.19.25 crores upon mortgage of another set of immovable properties.

4. The petitioner no.2 who is the Director of MMHPL on receipt of sanction letter dated 25th March, 2025, was surprised to see the "foreclosure" clause incorporated in the sanction letter which was not the condition during discussion. The petitioners made a representation to the bank for withdrawal of the "foreclosure" clause and not to give any effect to the said clause in the sanction letter. In spite of settling the issue raised by the petitioners with regard to the "foreclosure" clause, on 21st April, 2025, the petitioners came to know that the respondent bank has debit freeze the CC account no. 7695285777 of the petitioner no.1 and the request for online payment of the labourers was declined in spite of there being adequate funds lying in the account.

5. Prior to debit freeze, the companies regularly made payments towards monthly EMIs/ interest and other charges in respect of the CC account and there was no default. From 15th March, 2025 to 17th September, 2025, the petitioner company could not utilize the CC account to the extent of Rs. 5 crores. After initial debit freeze on and from 21st April, 2025, at the request of the petitioners certain transactions were permitted to be withdrawn from the CC account for a sum of Rs. 2,00,000/- on 25th April, 2025 and Rs. 1 crore on 12th June, 2025 for making payment to the labours. Apart from the above transactions, no further transactions were permitted by the bank from the debit freeze account. The respondent bank deducted various amounts on account of unpaid interest and other charges aggregating to Rs. 8 lacs from the current account maintained by the petitioners instead of the cash credit account.

6. The petitioners has filed a writ petition being WPA No. 21732 of 2025 and this Court has disposed of the writ petition on 18th September, 2025, directing the Branch Manager of the bank to consideration of the prayer of the petitioners as requested in the representation.

7. Mr. Debashis Kundu, Learned Senior Advocate along with Mr. Krishnaraj Thaker, Learned Senior Advocate, representing the petitioners submits that without giving any opportunity of hearing to the petitioners, the bank lifted the debit freeze of CC account of the petitioners on 25th September, 2025, without any intimation to the petitioners. He submits that on 4th March, 2026, the bank has issued notice under Section 13(2) of the SARFAESI Act, by demanding an amount of Rs. 12,69,33,776/- and also informed to the petitioners that the account of the petitioners has been classified as "Non-Performing Assets" (hereinafter referred to as "NPA") since 27th February, 2026. The petitioners have submitted their reply to the said notice by denying the allegation and requested the bank to withdraw the notice issued under Section 13(2) of the SARFAESI Act, 2002.

8. Mr. Kundu submits that the respondent bank had the knowledge that petitioner no. 1 is a MSME but instead of sending the issue of revival and rehabilitation of the petitioner company to the Board under Section 4 of the Micro Small and Medium Enterprises Development Act, 2006, (hereinafter referred to as "MSMED Act, 2006") had wrongly and willfully issued notice under Section 13(2) of SARFAESI Act, 2002. He submits that without issuing any notice under Section 13(4) of the SARFAESI Act, 2002, the respondent bank by a letter dated 27th May, 2026, took the symbolic possession of the secured assets of the petitioner company by affixing a copy of notice on the outer walls of the secured assets and published a notification in the daily newspaper, namely, “The Telegraph”.

9. Mr. Kundu submits that before classification of the account of a MSME as NPA, the mechanism as framed in Section 4 of the MSMED Act, 2006, are required to be followed for the purpose of facilitating the promotion and development of MSMEs but in the case of the petitioners, the bank has not followed the guidelines before declaring the account of the petitioners as “NPA”. He submits that the petitioners have submitted representation to the respondent bank seeking consideration of revival, rehabilitation, rectification and restructuring of MSME Credit facilities in terms of the MSMED Act, 2006 and the guidelines issued by RBI for revival and rehabilitation of MSMEs by way of an affidavit but the respondent bank has not forwarded the copy to the Board for consideration.

10. Mr. Kundu has relied upon the judgment passed by this Court in the case of ***Mahua Bhaumik vs. Union of India & Ors.*** in ***WPA No. 27289 of 2025*** dated ***16th December, 2025*** and submits that in the said case also this Court directed the bank to consider the representations of the petitioners for initiation of revival and rehabilitation process with respect to the loan accounts of the petitioners in accordance with the Reserve Bank of India’s Framework for revival and rehabilitation of MSMEs Notification dated 17th March, 2016.

11. Mr. Kundu has further relied upon the judgment in the case of ***Bizitza Retail Ventures Private Limited and Others Vs. Central Bank of India and Others*** reported in ***2026 SCC OnLine Cal 405*** and submits that it is mandatory on the part of the bank **that, in reply,** if the borrower claims benefit of the framework with reasons and affidavit the bank is bound to look into the claim of the borrower.

12. *Per contra,* Learned Advocate appearing for the bank submits that the bank has issued notice under Section 13(2) of the SARFAESI Act, and the petitioners have submitted reply to the said notice but the petitioners in the said notice, have not informed the bank with regard to consideration of this Court under the Framework. He submits that subsequent to issuance of notice under section 13(2) of the SARFAESI Act, the petitioners have made representation only with regard to consideration for modification of the sanction letter by deleting the existing clause and necessary changes/ amendments to the CIBIL score of the petitioners.

13. Learned Advocate submits that neither in the representation nor before this Court when the petitioners have filed the writ petition on the first round of litigation, the petitioners have not prayed for the benefit of the framework. He further submits that subsequently the petitioners have made a request to the Mediation Centre of this Court for settlement in the said request also the petitioners have not prayed for any benefit of the Framework.

14. Learned Advocate submits that the respondent authorities has issued the notice under Section 13(2) of the SARFAESI Act, the petitioners have submitted the reply to the said notice and on receipt of the reply to the notice, the bank has not satisfied with the reply to the petitioners and accordingly, symbolic possession of the secured property was taken by the bank and finally when the bank has issued the notice for possession of the property, the petitioners have filed the present writ petition claiming the benefit of the framework under the MSMED Act, 2006 and Rules framed therein.

15. Learned Advocate further submits that on 24th September, 2025, the petitioners have submitted an undertaking by way of an affidavit stating that the company will use the Cash Credit Account No. 7695285777 for the purpose of the business of the company and by February, 2026, the company will close the Cash Credit Account No. 7695285777 and will not continue with the said Account.

16. Learned counsel for respondent bank has relied upon the judgment in the case of ***Indian Bank vs. Blue Jaggers Estates Ltd. & Ors.*** reported in ***(2010) 8 SCC 129*** and submits that the petitioner availed the loan and other financial facilities from the creditor bank without questioning the terms and conditions thereof, now the petitioner cannot turn around about the terms and conditions as the petitioner has signed the agreement with open eye and agreed to abide by terms on which the loan was offered by the bank.

17. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the parties. There is no dispute with regard to the declaration of the account of the petitioners as “NPA” and the same was informed by the bank and issued notice under Section 13(2) of the SARFAESI Act. When the notice was issued to the petitioners, the petitioners have replied to the said notice but the petitioners have not prayed for any benefit of revival and rehabilitation under the MSMED Act, 2006.

18. By a letter dated 27th May, 2026, the respondent bank took symbolic possession of the secured assets of the petitioner company by affixing the copy of the notice of the outer wall of the secured assets and published a notification in the English daily newspaper “The Telegraph” on 1st June, 2026 wherein the respondent bank called upon the petitioners to re-pay the entire outstanding amount within 60 days from the date of publication of the notice.

19. Now, the petitioners are claiming the benefit for revival and rehabilitation of the stressed assets under MSMED Act and the Rules framed there under. The petitioners have not shown any document to establish that the petitioners at any point of time have requested the respondent bank for consideration of its case under the revival and rehabilitation scheme instead, the petitioners have filed an application before the Mediation Centre, High Court at Calcutta, for settlement.

20. In the case of ***Pro Knits vs. Board of Directors of Canara Bank & Ors.*** reported in ***2024 SCC OnLine SC 1864,*** the Hon'ble Supreme Court held that it is also an incumbent on the part of the MSMEs concerned to be vigilant enough to follow the process laid down under the said Framework Instructions and bring to the notice of the bank concerned.

21. In the case of ***Shri Shri Swami Samarth Construction and Finance Solution & Anr. vs. Board of Directors of NKGSB Co-op. Bank Ltd. & Ors.*** reported in **2025 SCC OnLine SC 1566,** the Hon'ble Supreme Court has held that:

> *"**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 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.*
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> ***8.** Pro Knits is a decision of a co-ordinate 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."*

22. In the present case on 4th March, 2026, notice under Section 13(2) of the SARFAESI Act, was issued by the respondent bank to the petitioners. On 28th April, 2026, the petitioners have submitted their reply to the said notice. In the said reply, the petitioners have not made any request for the benefit of revival and rehabilitation scheme. On 27th May, 2026, the symbolic possession of the secured assets of the petitioner company was taken by the respondent bank by sticking the notice on the wall of the secured assets. On 1st June, 2026, the bank has published notification in the English daily newspaper calling upon the petitioners to repay the entire outstanding dues within 60 days from the date of publication of the notice. Only after publication of the notice in the newspaper on 1st June 2026, the petitioners have made representation on 11th June, 2026, seeking consideration for revival, rehabilitation, rectification, and restructuring of MSME Credit facilities in terms of MSMED Act, 2006 and the RBI Framework for Revival and Rehabilitation on MSMEs.

23. In the judgments relied by the petitioners, the petitioners made request along with all documents but inspite of the request made by the petitioners, the bank has issued notice declaring the accounts of the petitioners as "NPA" and in reply to the notices issued by the respondent bank, the petitioners have requested the respondent bank for consideration of their request under the Framework for Revival and Rehabilitation of MSMEs as per Circular issued by the Reserve Bank of India from time to time but in the present case, the petitioners have never requested the bank for such benefit till 11th June, 2026 when the bank has already taken symbolic possession of the secured property and published the notice in the newspaper.

24. Taking into consideration of the above facts this Court finds that the petitioners have not claimed the benefit in the terms of Framework even after the demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The bank has also taken symbolic possession of the secured properties and also proceeded further in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Thus at the fag end of the proceeding under the Act of 2002, the petitioners cannot claim the benefit in the terms of the Framework.

25. In view of the above, **WPO No. 330 of 2026** is **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)