IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.O. No. 198 of 2026

Debpara Tea Company Limited & Ors.

Vs.

State Bank of India & Anr.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Abhidipto Tarafder
Mr. Debayan Ghosh
Mr. Dipankar Thakur

....For the petitioners.

Mr. Anirban Pramanick
Mr. P. Nath
Ms. Bhagyasree Dey

....For the respondents.

Hearing Concluded On : 06.08.2026

Judgment Delivered On : 02.09.2026

Judgment Uploaded On : 02.09.2026

<u>Krishna Rao, J.</u>:

1. The petitioners have filed the present writ petition praying for declaration that the respondents have not discharged their obligations under the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (hereinafter referred to as "MSMEs") dated 17^{th} March, 2016, before declaring the account of the petitioner no.1 as Non-Performing Asset (hereinafter referred to as "NPA") and consequently the declaration of NPA is null and void.

2. The petitioner no.1 being an MSME applied for grant of financial assistance from the respondent no.1 and the same was granted to the petitioner no. 1 for a sum of Rs. 13,73,00,000/- on 7^{th} October, 2020. The petitioner nos. 2, 3 and 4 are the guarantors for the financial assistance granted to the petitioner no. 1. The petitioner nos. 2, 3 and 4 are also the Directors of the petitioner no.1 company. The financial assistance granted to the petitioner no.1 were enhanced on 6^{th} May, 2022.

3. The respondent no.1 by a communication dated 2^{nd} January, 2024, informed the petitioners that the account of the petitioner no.1 is classified as a Non-Performing Asset on 29^{th} December, 2023.

4. Mr. Abhrajit Mitra, Learned Senior Advocate, representing the petitioners submits that the financial assistance granted to the petitioner no.1 being an MSME and the petitioners were under the legitimate expectation that the petitioner no.1's account would be dealt with in terms of the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises dated 29th May, 2015, read with the Framework dated 17th March, 2016 and the Master Directions dated 21st July, 2016. He submits that the loan limit of the petitioner no. 1 was below Rs. 25 Crores, the Framework of 2016 would be applicable to the petitioners.

5. Mr. Mitra submits that instead of considering the case of the petitioners under the framework of 2016, the respondents through its advocate by a letter dated 15th January, 2024, demanded repayment of a sum of Rs. 13,24,91,937/-. On 21st March, 2024, the respondent no.1 has issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) calling upon the petitioners to pay the sum of Rs. 14,28,25,618/- along with future interest. On 3rd April, 2024, the respondent bank has again issued notice to the petitioners giving liberty to the petitioners to visit the branch with an acceptable settlement/ resolution plan failing which the bank will proceed to initiate further action against the petitioners.

6. By a reply dated 17th May, 2024, the petitioners informed the bank that the account of the petitioner no.1 declared as NPA on 29th December, 2023 on the grounds of alleged irregularities but the petitioners have not received any prior reminders regarding the regularization of the loan accounts before they have classified under the Special Mention Account (SMA) and designated as Non-Performing Assets (NPAs), category as mandated under the Reserve Bank of India. In the said letter, the petitioners also informed the bank that the bank has disregarded the directives of the Reserve Bank of India by declaring the account of the petitioner no. 1 as NPA.

7. Mr. Mitra submits that time and again the petitioners have requested the respondent bank for consideration of the request of the petitioners in terms of the frameworks, guidelines, directives and circulars issued by the MSME authorities but without following the respondent bank has initiated recovery proceedings under the Recovery of Debts and Bankruptcy Act, 1993 before the Tribunal at Siliguri. He submits that the respondent bank has also issued notice under Section 13(4) of the SARFAESI Act. The petitioner no.1 by challenging the said notice, has filed an application under Section 17 of the SARFAESI Act before the Tribunal and the same is pending.

8. Mr. Anirban Pramanick, Learned Advocate, representing the respondent bank submits that the account of the petitioner no. 1 declared as NPA on 29th December, 2023, and the same was duly informed to the petitioners by a notice dated 2nd January, 2024. On 15th January, 2024, the respondent bank has sent a notice to the petitioners calling upon the petitioners to pay the amount of Rs.13,24,91,937/- within 7 days from the date of issue of the notice and on receipt of the said notice. The petitioners have submitted reply to the bank but the petitioners in the said reply have not prayed for the benefit of the framework as claimed by the petitioners in the present writ petition.

9. Mr. Pramanick submits that the petitioners have not paid the amount, accordingly, on 21st March, 2024, the bank has issued notice under Section 13(2) of the SARFAESI Act. Again on 3rd April, 2024, the bank has issued notice to the petitioners requesting the petitioners to come with an acceptable settlement/ resolution plan failing which the bank will proceed to recover the dues pending against the petitioners under the SARFAESI Act. The petitioners have neither come for settlement or have paid the dues to the bank. Accordingly, on 16th September, 2024, the bank has issued notice under Section 13(4) of the SARFAESI Act for taking possession of the Secured Assets of the petitioners. He submits that the petitioners have also initiated a proceeding under Section 17 of the SARFAESI Act and now the petitioners have filed the present application praying for grant of benefit under the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises dated 17th March, 2016, which is not maintainable.

10. Heard the Learned Counsel for the respective parties and perused the materials on record. The admitted fact in the present case is that the petitioner no. 1 is an MSME and the account of the petitioners declared as NPA, and the bank has issued notice under Section 13(2) as well as Section 13(4) of the SARFAESI Act. The petitioners have submitted their reply dated 17th May, 2024 to the demand notice dated 21st March, 2024, issued under Section 13(2) of the SARFAESI Act wherein the petitioners have informed the bank that the petitioners did not receive any prior reminders regarding regularization of the loan accounts before classified under the Special Mention Account (SMA) category or designated as Non-Performing Assets (NPAs) as mandated by the Reserve Bank of India. On 4th December, 2024, the petitioners have submitted second revised proposal for settlement of dues and requested the bank to extend the benefit to the petitioners for a reasonable and amicable settlement, again on 4th January, 2025, the petitioners have requested the same benefit from the bank. As both the requests have not been considered by the bank, accordingly, on 30th March, 2025, the petitioners have again submitted its 4th revised proposal by requesting the bank to consider their request in terms of Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as per the Reserve Bank of India Circular and in terms of the judgment passed by the Hon'ble Supreme Court from time to time.

11. The petitioners have made a representation to the Reserve Bank of India on 10th April, 2026, informing that the petitioners are entitled to get the benefit under the Framework for Revival and Rehabilitation of the Micro, Small and Medium Enterprises dated 17th March, 2016.

12. Initially the Ministry of Micro, Small and Medium Enterprises issued a notification dated 29th May, 2015 for the purpose of facilitating the promotion and development of MSMEs. Subsequently on 17th March, 2016, a Framework for Revival and Rehabilitation of the MSMEs is issued by the Reserve Bank of India. The said framework could be applicable to the MSMEs having loan limits upto Rs. 25 crores, including the accounts under consortium or multiple banking arrangements. As per Clause 2.1 of the Framework for Revival and Rehabilitation of the MSME dated 17th March, 2016, before a loan account of MSME turns into a NPA, the banks or creditors should identify incipient stress in the account by creating three sub-categories under the Special Mentioned Account (SMA) category which reads as follows:

SMA Sub-categories	***Basis for classification***
SMA-0	*Principal or interest payment not overdue for more than 30 days but account showing signs of incipient stress (Please see Annex – I)*
SMA-1	*Principal or interest payment overdue between 31-60*
SMA-2	*Principal or interest payment overdue between 61-90 days*

13. As per Clause 3.3, the Composition of the Committee shall be as under:

> *(a) The regional or zonal head of the convener bank, shall be the Chairperson of the Committee;*
>
> *(b) Officer-in-charge of the Micro, Small and Medium Enterprises Credit Department of the convener bank at the regional or zonal office level, shall be the member and convener of the Committee;*
>
> *(c) One independent external expert with expertise in Micro, Small and Medium Enterprises related matters to be nominated by bank.*

(d) *One representative from the concerned State Government. Endeavour should be made to bring representative from the respective State Government in the Committee. In case State Government does not nominate any member, then the convening bank should proceed to include an independent expert in the Committee, namely a retired executive of another bank of the rank of AGM and above.*

(e) *When handling accounts under consortium or MBA, senior representatives of all banks/ lenders having exposure to the borrower."*

14. In the case of ***Pro Knits vs. Board of Directors of Canara Bank & Ors.*** reported in ***(2024) 10 SCC 292***, the Hon'ble Supreme Court held that:

> ***"17.*** *What is contemplated in the "Framework for Revival and Rehabilitation of MSMEs" contained in the Instructions/Directions stated hereinabove, is required to be followed prior to the classification of the borrower's account, (in the instant case MSMEs loan account), as non-performing assets. The said Instructions contained in the Notification dated 29-5-2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSMED Act, followed by the Directions issued by the RBI in exercise of the powers conferred under Sections 21 and 35-A of the Banking Regulation Act, the banking companies though may be "secured creditors" as per the definition contained in Section 2(zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.*
>
> ***18.*** *We may hasten to add that under the "Framework for Revival and Rehabilitation of MSMEs", 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 MSME concerned to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act.

19. *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 authorised person.*

20. *Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorisation under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage, and therefore it would be incumbent on the part of the MSME concerned also to produce authenticated and verifiable documents/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest.*

21. *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 NPA, the borrower does not bring to the notice of the bank/creditor concerned that it is a Micro, Small or Medium Enterprise under the MSMED Act and 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. 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 MSMEs, 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."*

15. 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 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.*
>
> ***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."*

16. In the present case, the account of the petitioner no. 1 declared as NPA on 29th December, 2023, and the same was informed to the petitioners on 2nd January, 2024. On 15th January, 2024, the bank has issued notice to the petitioners under Section 13(2) of the SARFAESI Act. The petitioners have sent a reply to the said notice but the petitioners have not informed the bank or not requested the bank for the benefit under the Framework for Revival and Rehabilitation of the MSMEs.

17. The petitioners have submitted further representation on 15th July, 2024 and in the said representation also the petitioners have not prayed for any benefit under the said framework. The bank has issued notice under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 and after receipt of the said notice, the petitioners have initiated a proceeding before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act against the bank and the same is pending for adjudication.

18. Subsequently, the petitioners have made representations, only requesting for extend the benefit of MSMEs but the petitioners have not voluntarily initiated the proceedings under the Framework for Revival and Rehabilitation of the MSMEs by filing an application along with affidavit of an authorized process. In the case of ***Shri Shri Swami Samarth Construction and Finance Solution (supra),*** the Hon'ble Supreme Court by considering the case of ***Pro Knits (supra),*** held that 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.

19. In the present case, the account of the petitioner no. 1 was declared as NPA in the month of December, 2023, the same was informed to the petitioners in the month of January, 2024 and on the same month, the notice under Section 13(2) of the SARFAESI Act was issued. The petitioners have submitted reply to the said notice but the petitioners have not requested for benefit of the framework and in reply to the notice, the bank has again issued notice to the petitioners and subsequently, the bank has issued notice under Section 13(4) of the SARFAESI Act and on receipt of the said notice, the petitioners have initiated a case under Section 17 of the SARFAESI Act against the bank before the Debt Recovery Tribunal, Siliguri, being S.A. No. 193 of 2024 and the same is pending for adjudication.

20. Considering the above, this Court finds that only after issuance of notice under Section 13(4) of the SARFAESI Act, the petitioners have filed the present writ petition praying for the benefit under the Framework for Revival and Rehabilitation of the MSMEs but this Court finds that the petitioners have not taken appropriate steps for getting the benefit of the said Framework for Revival and Rehabilitation of the MSMEs of the appropriate stage and on the other hand, the petitioners have taken the recourse of Section 17 of the SARFAESI Act by initiating a proceeding against the bank before the Learned Tribunal. Once the petitioners have invoked the provisions of Section 17 of SARFAESI Act, the grievance of the petitioners cannot be decided in the writ proceeding.

21. In view of the above, this Court did not find that the petitioners are entitled to get the benefit of Framework for Revival and Rehabilitation of the MSMEs at the later stage when the bank has also issued notice under Section 13(4) of the SARFAESI Act and the petitioners have also initiated a proceeding under Section 17 of the SARFAESI Act against the bank before the Tribunal.

22. WPO No. 198 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.)