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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 18th September, 2024**

+ **W.P.(C) 13094/2024 & CM APPL. 54729/2024**

MS KHUKHRAIN BUILDERS & ORS.Petitioners

Through: **Mr. Saurabh Kripal, Sr. Adv.
with Mr. Ashutosh Thakur,
Adv.**

versus

INDIAN BANK & ORS.Respondents

Through: **Ms. Seema Gupta, Adv. for
Respondent No.1/Indian Bank.
Mr. Rajesh Gogna, CGSC with
Mr. Vasuchit Anand/GP and
Ms. Priya Singh and Mr. Nipun
Jain, Advs. for R-5**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 54730/2024 – (EXMP)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 54731/2024

3. This application has been moved on behalf of the petitioners seeking permission to file lengthy list of dates and synopsis.
4. For the reasons stated in the application, the application is allowed.



5. The application stands disposed of.

W.P.(C) 13094/2024 & CM APPL. 54729/2024

6. The petitioner No.1 is a partnership firm, which along with its partners, who are arraigned as petitioners No. 2 to 4, hereinafter referred to as the petitioners, invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950 for directions to the respondents not to curtail the fundamental rights of the petitioners under Articles 19(1)(g), 21 and 300A of the Constitution of India.

7. Learned counsel for the respondents No.1 and 2/Indian Bank as well as learned counsel for respondent No.5 are present on advance notice.

8. It is the case of the petitioners that it is registered as an MSME¹. Shorn of unnecessary details, the petitioners availed a loan facility from the respondent No.2/Indian Bank but was unable to make repayment of the said loan amount, consequent to which, proceedings have been initiated by the Secured Creditor i.e. the respondent No.1/Indian bank under SARFAESI Act² so as to seek possession of the property mortgaged with the latter.

9. It is claimed by the petitioners that they challenged the action initiated by the respondents No.1 and 2/ Indian Bank before the DRT³-II, Delhi, which application was withdrawn on 25.07.2024 with liberty to file afresh as and when need arises, based upon assurance by the

¹ Micro, Small and Medium Enterprises

² The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002

³ Debt Recovery Tribunal



respondent no.1/Indian Bank that they will release the property documents for sale for which the petitioners have arranged a buyer.

10. Mr. Saurabh Kripal, learned Senior Advocate for the petitioners has heavily relied upon decision by the Supreme Court in the case of **Pro Knits v. Board of Directors of Canara Bank**⁴, wherein the Supreme Court explained the very object and purpose of the MSMED Act⁵ which is to provide for facilitating the promotion, development and enhancing the competitiveness of Micro, Small and Medium Enterprises; and it was held that the notification dated 29.05.2015 issued under Section 9 of the MSMED Act was mandatory and binding on all the scheduled banks.

11. The grievance of the petitioners is that despite making several requests and lastly *vide* letter dated 05.09.2024 for complying with the directions of the Supreme Court in the aforesaid case, the respondents *vide* letter dated 11.09.2024 have refused to adhere to the MSME guidelines and that of the Apex Court in the aforesaid referred matter.

12. *Per contra*, learned counsel for the respondents No.1 and 2/Indian Bank has pointed out that consequent to the loan account of the petitioners becoming NPA⁶, learned Chief Metropolitan Magistrate (Central), Tis Hazari Courts, Delhi *vide* order dated 02.06.2023 in MA No. 142/2023 in proceedings initiated by the respondents No.1 and 2/Indian Bank under Section 14 of the SARFAESI Act, directed taking over the possession of the assets mortgaged i.e. Plot No. 7, admeasuring 270.02 Sq. Meters, D.B.

⁴ 2024 SCC OnLine SC 1864

⁵ Micro, Small and Medium Enterprises Development Act, 2006



Gupta Road, Paharganj, New Delhi and the SA⁷ moved by the petitioners under Section 17(1) of the SARFAESI Act was rejected by the DRT-II, *vide* detailed order dated 23.06.2023, which order was not assailed before the Appellate Forum.

13. It appears that the notice of intended sale under Rule 6 (2) and 8(6) of the Security Interest (Enforcement Rules), 2002 under SARFAESI Act was issued by the respondent no.1/Indian Bank to the petitioners bringing to the fore that as on 12.07.2023, a total sum of Rs. 1866.91 Lacs was due and the auction for sale of the aforesaid property was fixed on 23.08.2023 at a reserved price of Rs.1390.53 lacs. On notice being issued by the Receiver dated 17.07.2023, the petitioners challenged the entire SARAFESI action in question in SA No. 204/2023 before the DRT-II, which was dismissed as withdrawn on 25.07.2024.

14. Learned counsel for the respondents No.1 and 2/Indian Bank has urged that as the petitioners have already invoked the remedy before the competent forum, they cannot turn around and take benefit of the decision by the Supreme Court in the cited case of *Pro Knits (supra)*.

15. Having heard the learned counsels for the parties and on perusal of the record, although notification dated 29.05.2015 issued by the Central Government under Section 9 of the MSMED Act is binding on the scheduled banks; and indeed before declaring the account of the petitioners as NPA, the matter should have been considered by the

⁶ Non Performing Asset

⁷ Securitisation Application



Committee for Stressed Micro, Small and Medium Enterprises, however the case of the petitioners is on slippery ground.

16. It is pertinent to mention that as per the **RBI Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs) dated March 17, 2016** *vide* clause 2.3⁸, an option was available to the petitioner No.1 as well to move an application before the Committee for immediate convening of the meeting and deciding on the issue of reconstruction of its financial liabilities at the earliest available opportunity. However, no such application had been moved prior to 11.03.2024. It would be pertinent to refer to the observations of the Supreme Court in the case of *Pro Knits (supra)*, which provides as under:-

“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 NPA, the borrower does not bring to the notice of the concerned bank/creditor 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 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 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

⁸**2.3 Identification by the Borrower Enterprise** - Any MSME borrower may voluntarily initiate proceedings under this 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% of its net worth during the previous accounting year, by making an application to the branch or directly to the Committee as referred in para 3.3, wherever applicable.. When such a request is received by lender, the account with aggregate loan limits above Rs.10 lakh should be referred to the Committee. The Committee should convene its meeting at the earliest **but not later than five working days** from the receipt of the application, to examine the account for a suitable CAP. The accounts with aggregate loan limit up to Rs.10 lakh may be dealt with by the branch manager / designated official for a suitable CAP.



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 concerned MSMEs 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.”

{underlined portions emphasized}

17. Reverting to the instant matter, at the cost of repetition, no issue was ever raised by the petitioners seeking relief under the relevant notification issued under Section 9 of the MSMED Act, at the earliest point of time. Such issue was not even raised while filing SA No. 204/2023. As a matter of fact, in the earlier writ petition bearing No. 3294/2024 whereby the action of the respondents No.1 and 2/Indian Bank with regard to valuation placed on the subject property was questioned, no such issue was ever raised by the petitioner to the effect that the revival and rehabilitation of the petitioner company may be resorted to in terms of clause 2.3⁹ of the **RBI Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs) dated March 17, 2016**. The said writ petition was disposed of with directions that the said petition be treated as a representation on behalf of the petitioners, to be decided by the

⁹**2.3 Identification by the Borrower Enterprise** - Any MSME borrower may voluntarily initiate proceedings under this 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% of its net worth during the previous accounting year, by making an application to the branch or directly to the Committee as referred in para 3.3, wherever applicable.. When such a request is received by lender, the account with aggregate loan limits above Rs.10 lakh should be referred to the Committee. The Committee should convene its meeting at the earliest **but not later than five working days** from the receipt of the application, to examine the account for a suitable CAP. The accounts with aggregate loan limit up to Rs.10 lakh may be dealt with by the branch manager / designated official for a suitable CAP.



respondents no.1 and 2/Indian Bank, after affording a hearing to the petitioners and by passing a speaking order.

18. Last but not the least, the assertion made by the petitioners that SA No. 204/2023 has been dismissed as withdrawn *vide* order dated 25.07.2024 is also not correct. The said application was dismissed for non-prosecution and has not been revived.

19. In view of the aforesaid blemishes in the case of the petitioners, unhesitatingly, the guidelines dated 29.05.2015 cannot be invoked at this belated stage. The petitioners have availed an efficacious remedy before the DRT and have chosen not to pursue the same after dismissal dated 25.07.2024. In fact, it was pointed out by the learned counsel for respondents no.1 & 2/Indian Bank that out of four properties that were mortgaged, possession of two of the properties has already been obtained.

20. In view of the foregoing discussion, the present writ petition is dismissed for being barred by laches and delay besides deliberate omission, on the part of the petitioners, to exhaust the efficacious remedy available in law.

21. The pending application also stands disposed of accordingly.

DHARMESH SHARMA, J.

SEPTEMBER 18, 2024

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