**ML 107**
11.06.2025
Court No.14
*AGM*

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 5725 of 2025

MSV Laboratories Private Limited & Anr.
Vs.
Union of India & Ors.

*Mr. Biswarup Bhattacharya.*
*Mr. Arup Nath Bhattacharya.*
*Ms. Sayani Das.*
*Ms. Sreetama Biswas.*
*Mr. Arya Bhattacharyya.*
*…For the Petitioners.*

*Mr. Biswabrata Basu Mallick. AGP*
*Ms. Parna Roy Chowdhury.*
*… For the State.*

*Ms. Sanjukta Dutta.*
*Mr. Debabrata Das.*
*Mr. A. Sarkar.*
*Mr. P. Acharjee.*
*… for the respondent no. 3.*

*Mr. Avishek Guha.*
*Ms. Shilpa Das.*
*… for the respondent nos. 4 to 6.*

1. Affidavit-of-service filed in Court today be kept with the records.

2. The petitioners claim to be a Micro, Small and Medium Enterprise. The account of the petitioners has been declared as non performing asset (NPA) in 2020. The petitioners have already approached the Debts Recovery Tribunal challenging the steps taken by the secured creditor for recovery of the loan amount.

3. The petitioners, in the instant writ petition, seek relief under the Notification published by the Ministry of

Micro, Small and Medium Enterprises on 29th May, 2015 being S.O. 1432 (E).

4. Stress has been laid on the judgment delivered by the Hon'ble Supreme Court in the matter of **Pro Knits –Vs- Board of Directors of Canara Bank and Others** reported in **(2024) 10 SCC 292** wherein the Court held that the entire exercise as contained in the 'Framework for Revival and Rehabilitation of MSMEs' is required to be carried out by the banking companies before the account of the MSMEs turn into Non-Performing Asset. It is the contention of the petitioners that the Bank failed to act in terms of the aforesaid notification.

5. Learned advocate representing the Bank refers to the notification under reference and submits that it was the obligation of the MSME i.e., the petitioner herein, to make an application for initiation of the proceeding under the Framework. The petitioners failed to apply before the Bank with an application in terms of the said notification.

6. Reliance has been placed on the portion of the judgment delivered in the matter of Pro Knits (supra) wherein the Court held that 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 MSME under the MSMED Act and if 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.

7. The Court categorically held that it is incumbent on the part of the MSME concerned to be vigilant enough to follow the process laid down under the Framework and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/materials to show its eligibility to get the benefit of the said framework.

8. It appears from records that the petitioners by a letter dated 17th December, 2024 approached the Bank for the first time praying for obtaining benefit under the subject notification. Prior to the same, no application appears to have been filed by the petitioners before the Bank disclosing its status as MSME and trying to take benefit of the subject notification.

9. It further appears from the submission made on behalf of the parties that a securitization application at the behest of the petitioners is already pending consideration before the Debts Recovery Tribunal. The petitioners did not raise the issue of being a MSME unit before the Tribunal. The issue of being an MSME and the effort to take the benefit of the subject notification is an afterthought based on the direction passed by the Hon'ble Supreme Court in the matter of Pro Knits (supra).

10. In view of the above, the relief sought for by the petitioners cannot be allowed.

11. The writ petition fails and is hereby dismissed.

12. As the instant writ petition is only restricted to the benefit sought for by the petitioners as a MSME under the above notification which is not a subject matter of challenge in the securitization application before the tribunal, accordingly, the Tribunal will proceed to decide the pending application on its own merits relying on the submission made on behalf of the parties without being influenced by any observation passed hereinabove.
13. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

**(Amrita Sinha, J.)**