17.06.2025
Sl. No.8
akd

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

W. P. A. 1172 of 2025

[M/s. Sabita Automobiles -Vs- Union of India & Ors.]

Mr. Kunaljit Bhattacharjee
Ms. Suman Sehanabis (Mondal)
Ms. Anwesha Chakraborty
… … for the petitioner

Mr. Milindo Paul
Mr. Nabankur Paul
Mrs. Sutapa Sen Paul
Mrs. Bedasruti Bose
Mr. Subham Das
Mr. Bodhisatya Ghosh
… for respondent nos.4 & 5

1. Affidavit-of-service filed in court today is taken on record.

2. The petitioner has preferred the present writ petition challenging the entire process initiated by the respondent-Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*in short* 'SARFAESI Act') against the SME loan account of the petitioner. The challenge includes the alleged illegal possession and sale of the petitioner's mortgaged property in connection with Small and Medium Enterprise loan account.

3. The case of the petitioner is that it is a registered MSME unit that had availed of loan facilities from the respondent-Bank. Upon failure to repay the loan in a timely manner, the respondent-Bank initiated recovery proceedings

under the SARFAESI Act. The Debts Recovery Tribunal, Siliguri vide order dated 28.06.2024 in O.A. No. 19 of 2022, disposed of the petition and permitted the respondent-Bank to proceed with recovery of the outstanding dues through auction of the secured assets. Pursuant thereto, the respondent-Bank issued e-auction notice dated 07.01.2025. Aggrieved by the said proceeding and the steps taken by the respondent-Bank under the SARFAESI Act, the petitioner has approached this Court.

4. Learned Advocate for the petitioner contends that the proceedings initiated by the respondent-Bank under the SARFAESI Act, are in violation of the guidelines issued by the Government of India pertaining to MSMEs. It is submitted that as per these guidelines, before classifying the account of a MSME as a 'Non-performing Asset' (NPA), the respondent-Bank is mandated to explore restructurization and rehabilitation measures. In the instant case, it is alleged that the respondent-Bank initiated proceedings under the SARFAESI Act without adhering to such mandatory guidelines. Moreover, the respondent-Bank is stated to have taken possession of the petitioner's property on 07.02.2025 without due notice or intimation to the petitioner.

5. This Court has heard the arguments advanced by the learned Advocates for the petitioner as well as the respondent-Bank and has perused the materials placed on record.

6. The materials on record reveal that the petitioner availed of the MSME loan facilities from the respondent-Bank

and failed to make timely repayments. Owing to the defaults in repayment, the respondent-Bank issued multiple communications to the petitioner, inter alia, dated 03.12.2018, 19.07.2017 and 10.10.2019, informing the petitioner of the continuing default and that the assets would be classified as Non-performing Assets. Subsequently, the respondent-Bank issued a notice under Section 13(2) of the SARFAESI Act on 28.10.2019. The petitioner's account was declared as Non-performing Asset on 13.06.2021. Thereafter, proceedings under the SARFAESI Act were initiated, several notices were issued to the petitioner including a possession notice.

7. The Debts Recovery Tribunal, Siliguri vide its order dated 28.06.2024 in O.A. No. 19 of 2022, upheld the respondent-Bank's actions. The respondent-Bank now has proceeded with steps for e-auctioning of the secured assets. Notably, the petitioner, despite being aware of the entire process, failed to challenge any of the actions taken by the respondent-Bank at any relevant stage. Although the petitioner claims to have MSME status, no documentary evidence was furnished to establish that this fact was ever communicated to the bank or raised before the tribunal. No objection regarding non-compliance with MSME guidelines was filed during the proceedings.

8. The Hon'ble Supreme Court in ***Pro Knits Vs. Board of Directors of Canara Bank & Others*** reported in ***2024 (10) SCC 292*** has categorically held that compliance with MSME guidelines is mandatory before classifying him an

MSME account as NPA. However, in paragraph 21 of the said judgment, the Apex Court has clarified :-

> *"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."*

9. Applying the said principle to the present case, it is evident that the petitioner had adequate opportunity to raise the plea of MSME status during the SARFAESI proceedings or before the Debts Recovery Tribunal, Siliguri. However, it failed to take any steps to assert such a claim or object to the alleged procedural lapses at the relevant time before the appropriate authorities. However, the petitioner remained inactive and has now approached this Court at a belated stage, when the proceedings have reached the final stage of e-auction, seeking to invalidate the entire recovery process. Such conduct cannot be countenanced in light of the law laid down by the Hon'ble Supreme Court.

10. In view of the foregoing, this Court finds no merit in the contentions of the learned Advocate for the petitioner.

11. The petitioner has slept over his right and has failed to act in a timely manner and cannot now invoke its MSME status to stall the recovery proceedings under the said Act. The SARFAESI Act does not countenance interference at such a belated stage especially when the borrower had sufficient opportunity to raise the plea before the appropriate authorities at an earlier stage.

12. The petitioner has fairly admitted that he neither informed the respondent-Bank nor asserted his MSME status at any stage of the proceedings. The petitioner further submits that although reference to MSME status was made in the pleadings but no documentary evidence is available to support such claims, nor is thereby anything on record to show that this information was ever communicated to the respondent-Bank.

13. With the aforesaid observations, the present writ petition is dismissed.

14. There shall be no order as to costs.

15. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

16. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)