2025:PHHC:058766-DB

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

256 **CWP-3473-2025 (O&M).**
Date of Decision: 05.05.2025.

Dinesh Puri Partner of M/s Kuku Exports ....Petitioner.

VERSUS

Punjab National Bank and another ....Respondents.

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**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Naveen Sharma, Advocate for the petitioner.

Mr. C.S. Pasricha, Advocate and
Mr. Sushil K. Bhardwaj, Advocate for the respondents.

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ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner has challenged the demand notice dated 10.12.2024 (Annexure P-5) issued by the respondents under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), for an outstanding amount of Rs.10,38,04,919.60.

2. Learned counsel for the petitioner submits that the firm (M/s Kuku Exports) of the petitioner is an MSME unit and its loan account was classified as NPA on 21.06.2021 without any attempt on the part of the respondent-Bank for restructuring the same, which is in violation of the notification dated 29.05.2015 (Annexure P-3) containing instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium

Enterprises issued by the Central Government, RBI Guidelines of 2016 and the judgment of the Supreme Court in the case of **M/s Pro Knits vs. The Board of Directors of Canara Bank, 2024(3) RCR (Civil) 690.** He also submits that although the respondents had stated that the account of the firm of the petitioner was restructured, but it is incorrect as the respondents are relying upon the meeting held on 10.03.2021 while as per the UDYAM registration certificate issued by the Ministry of Micro, Small and Medium Enterprises (Annexure P-2) the firm had been registered as an MSME only on 18.03.2021.

3. Learned counsel for the respondent-Bank, while referring to the written statement filed by it, submits that the account of the firm of the petitioner had been duly restructured vide sanction letter dated 17.08.2022 (Annexure R-1/1) and various other concessions were granted to the petitioner which have also been utilized by him. The petitioner had also submitted an offer for One Time Settlement for an amount of Rs.3 crores on 26.03.2025, but the same was not accepted, as the amount which was due as on 30.11.2024, was over Rs.10 crores.

4. Heard.

5. The petitioner, who is stated to be a partner of M/s Kuku Exports, had availed credit facilities from the respondent-Bank. The respondent has issued a demand notice dated 10.12.2024 (Annexure P-5) under Section 13(2) of the SARFAESI Act for a sum of Rs.10,38,04,919.60 which was due as on 30.11.2024. It is admitted case of the respondent-Bank that the firm of the petitioner is an MSME unit and, therefore, it was entitled to restructuring of the loan account. The firm of the petitioner is stated to have been registered under UDYAM as an MSME unit on 18.03.2021 in terms of

the notification dated 26.06.2020 issued by the Ministry of Micro, Small and Medium Enterprises, whereby MSMEs were required to register before 31.03.2021 under UDYAM to avail or to continue availing benefits of different schemes.

6. The respondent-Bank is stated to have restructured the loan account of the petitioner's firm vide sanction letter dated 17.08.2022 (Annexure R-1/1). The petitioner is stated to have agreed to the restructuring plan as the sanction letter bears the signatures of the petitioner. The restructuring was carried out on the agreed terms and conditions which included the following concessions as per the sanction letter dated 17.08.2022:-

> *"(i) Waiver of processing fee for the FY 2022-23*
>
> *(ii) Upfront fee applicable in WCTL & FITL*
>
> *(iii) Waiver of penal charges to be levied on account of late closure of Current Account with SBI on 26.07.2021 for not adhering to terms & sanction of previous sanction.*
>
> *(iv) Restructuring was allowed a moratorium period of 24 months (interest during this period was to be paid as and when charged) and installments were to be paid w.e.f. July, 2024."*

7. It is also stated in the written statement that the respondent-Bank had provided every possible help to the petitioner for restructuring the loan account of his firm and to repay the debts, but the petitioner consistently defaulted in repayment and failed to regularize his loan account which led to declaration of the firm of the petitioner as 'Non-Performing Asset' in compliance with the guidelines issued by the RBI.

8. The afore-noted averments in the written statement filed by the respondent-Bank that the account of the firm of the petitioner had been

restructured to which the petitioner had agreed and availed the benefits have not been controverted by the petitioner. No replication has been filed to the written statement of respondent-Bank dated 19.02.2025. As the firm of the petitioner had accepted the concessions under the restructuring offered by the respondent-Bank, it cannot later turn around and contend that the restructuring had not been done as per the RBI Guidelines. The restructuring had been sanctioned vide communication dated 17.08.2022 while the firm of the petitioner had been registered as an MSME unit under UDYAM on 18.03.2021. The factum of a meeting having been conducted on 10.03.2021 would not help the case of the petitioner, as there is no dispute that the firm of the petitioner was a MSME unit right from its incorporation in 1998, however, it had got itself registered under UDYAM only in 2021 in view of the revised definition of MSME and scrapping of earlier Udyog Aadhaar Memorandum (UAM) in 2020.

9. It is true that the Supreme Court in the case of **M/s Pro Knits** (supra) has held that before declaring MSME unit as NPA, it is incumbent upon the Banks to follow the guidelines issued by Reserve Bank of India and try to revive the MSME by way of restructuring of the loan account. The relevant paragraphs are reproduced hereunder:-

> *"13. In view of the above, **it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29th May, 2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as revised by the RBI Notification dated 17th March, 2016, and the Master Directions i.e. the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016, issued by the Reserve Bank of India in exercise of the powers conferred by Section 21 and 35(A) of the Banking Regulation Act, having statutory force, are binding to all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India, as stated in the***

said Directions. *It cannot be gainsaid that the B*anking Regulation Act *1949 basically seeks to regulate banking business and mandates a statutory comprehensive and formal structure of banking regulation and supervision in India.* Section 21 *and Section 35A of the said Act empower the Reserve Bank of India to frame the policy and give directions to the banking companies in relation to the advances to be followed by the banking companies. Such directions have got to be read as supplement to the provisions of the* Banking Regulation Act *and accordingly are required to be construed as having statutory force and mandatory.*

14. As transpiring from the said Instructions/Directions, 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 accounts of MSMEs turn into Non-Performing Asset. It is true that the security interest created in favour of any Bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter-III of the SARFAESI Act, and that as per Section 35 of the SARFAESI Act, the provisions of the said Act have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. However, pertinently the whole process of enforcement of security interest as contained in Chapter III of the SARFAESI Act, could be initiated only when the borrower makes ***any default in repayment of secured debt or any instalment thereof****, and his account in respect of* ***such debt is classified by the secured creditor as non-performing asset****, in view of Section 13(2) of the said Act.*

15. xxx xxx xxx

16. xxx xxx xxx 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 authorized person. ***Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization 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 concerned MSME 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****.*

xxx xxx xxx." *(Emphasis supplied)*

However, the judgment of the Supreme Court in the case of **M/s Pro Knits** (supra) would not benefit the case of the petitioner, as the respondent-Bank is stated to have offered benefits of restructuring to the petitioner as mentioned in the foregoing paragraphs which has not been rebutted by the petitioner.

10. Furthermore, the petitioner has approached this Court by preferring writ petition although he has an alternative and efficacious statutory remedy under Section 17 of the SARFAESI Act to challenge the action of the respondent-Bank of issuance of notice under Section 13(4) of the SARFAESI Act dated 27.02.2025 and notice under Section 13(8) of the SARFAESI Act dated 11.03.2025 before the Debt Recovery Tribunal.

11. It is trite that the writ jurisdiction under Article 226 of the Constitution of India must be exercised sparingly, especially when an efficacious alternate remedy is provided under the statute. Reference can be made to the judgment of the Supreme Court in the case of **South Indian Bank Ltd. & others vs. Naveen Mathew Philip & Anr., 2023 (2) R.C.R. (Civil) 771**. The relevant extract of the judgment is reproduced hereunder:

> *"27. The principles of law which emerge are that:*
> *xxx xxx xxx*
> *27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
>
> *27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
> *xxx xxx xxx."*

12. Consequently, we do not deem it appropriate to entertain this writ petition as the petitioner has an alternative statutory remedy. The petition stands dismissed. The petitioner would be at liberty to seek recourse to the alternative remedy in accordance with law.

13. It is, however, clarified that nothing which has been observed hereinbefore would be taken as an expression on the merits of the controversy. The observations made by this Court shall not have any bearing on the adjudication by the competent Court/Tribunal.

14. Pending application(s), if any, also stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

05.05.2025
jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No