IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

27.03.2026
12
as

WPA 495 of 2026

Mohindra Tubes Ltd.
Vs.
Union of India & Anr.

Mr. Ajay Singhal,
Ms. Heena Shaikh.
…for the Petitioner.

Mr. Jishnu Chowdhury, Ld. Sr. Adv.,
Mr. Rahul Misra,
Mr. Deborshi Dhar,
Ms. Taniya Bhowmik.
...for the HDFC Bank.

Mr. Debajyoti Basu, Ld. Sr. Adv.,
Mr. Bijoy Bikram Das.
…for the Respondent No.8

1. The petitioner has preferred the present writ petition challenging the following issues;

   i) Order dated 02.12.2025 passed by the respondent No.3 rejecting the complaint of the petitioner ;

   ii) The action of the respondent No.7 in classifying the petitioner's account as NPA during the pendency of the petitioner's application dated 13.06.2025 filed under the framework for revival and rehabilitation of

Micro, Small and Medium Enterprises (hereinafter referred to as MSME); and

iii) A direction upon the respondent No.2 to restore the bank guarantee in cash at its behest;

2. Learned Counsel for the petitioner submits that the petitioner is an MSME unit and had availed financial facilities from respondent No.7 including the ODAP facilities of Rs.200 lakhs and a bank guarantee facility of Rs.257 lakhs. A performance bank guarantee was issued in favour of the respondent NO.8 against a contract i.e. supply order No.EZ/LOA/R & B/SIKKIM 1335 dated 18.01.2019.
3. Learned Counsel for the petitioner states that the contract was terminated on 15th May, 2025 and that the bank guarantee was invoked and encashed, resulting in financial stress to the petitioner.
4. In such circumstances, the petitioner submitted an application dated 13.06.2025 seeking restricting of its credit facilities under the MSME framework. During the pendency of the said application, the account of the petitioner was classified as Non-Performing Asset (NPA) on 26th May, 2025.

5. Aggrieved thereby, the petitioner thereafter approached the Ombudsman by way of a complaint dated 28.11.2025, which came to be rejected by order dated 02.12.2025. It is submitted by the learned Counsel for the petitioner that the decision to declare its account as NPA was illegal and contrary to the scheme for revival and rehabilitation of MSMEs. He further states that the order passed by the Ombudsman is without any substance and the Ombudsman has failed to consider the issues raised by the petitioner.

6. Learned Counsel for the respondent Bank has drawn the attention of this Court to the letter dated 17.03.2026 to impress upon this Court that the said allegation of the petitioner that during the course of the application the account was declared as NPA and that no adequate opportunity of representation was granted, is not correct. The letter dated 17.03.2026 is reproduced hereinbelow;

> *"We hereby refer to your letter/ e-mall dated 13.06.2025 and various other correspondences, and state as follows:*
>
> *1. Bank basis your letter dated 13.06.2025 requesting for Inclusion of your firm under the revival and rehabilitation scheme of the Bank had presented your case before the MSME committee on 11.11.2025 and letter duly shared to you however in light of the specific allegation put forward by you that such communication had not been received by you, the Bank had again duly presented your case before the MSME committee on 05/03/2026 after you requested for a review*

of the decision of the Committee vide your email dated 03.02 2026 wherein the case was deliberated virtually by the committee members and the decision of the committee is as stated below:

Resolution Provided by committee after considering the case:

(a) BG invocation request was unconditional it was invoked.

(b) Further debtor are stuck due to breach of timelines in all the contract further he was in litigation with all the contracts.

(c) Further net worth and cash flows are deteriorating.

(d) Further there is no settlement on the dispute also no viability on new order and it is not a going concern hence account is not eligible for Rehabilitation.

(e) Further customer has to share the projected fund flow and cash flow and complete plan to repay and plan for revival of business whereas the plan customer shared is contingent and business is not running and there is no concrete plan shared.

Category of Resolution: Recovery

2. With regard to your allegation of fraudulent renewal and encashment of Bank Guarantee by HDFC Bank in collusion with NPCCL we say that the BG invocation request was unconditional and as such the same was honoured by the Bank after the request for such Invocation was received from NPCCL following the rules and regulations laid down by RBI with regard to the same. If you believe this invocation was unwarranted, you may address the matter directly with NPCCL. We categorically deny any malpractice by the Bank as alleged and require strict proof for any such claims."

7. The contents of the letter would show that the MSME Committee had taken a decision on the application of the petitioner.

8. Mr. Basu, learned Senior Counsel for the respondent submits that the petitioner has approached to this Court by suppressing material facts and has handed over a copy of the order passed in WPA 12308 of 2025 dated 12th June, 2025, wherein the termination of the contract of the petitioner dated 15th May, 2025 was under challenge. He states that the petitioner's prayer for restoration of the bank guarantee is not maintainable, in view of the fact that the petitioner had already filed a writ petition seeking similar reliefs which were consequential in nature vis-a-vis the termination of the contract dated 15th May, 2025. He further states that the petitioner by seeking such prayer is attempting to obtain orders similar to those which were rejected in the earlier round of litigation in WPA 12308 of 2025. He states that on this ground itself, the present writ petition is liable to be dismissed on the ground of suppression of material facts.

9. This Court has heard the arguments advanced by the learned Counsel for the parties and has perused the materials placed on record.

10. The classification of an account as NPA is governed by regulatory norms and banking guidelines. It is well settled that such classification is

based on objection criteria relating to the conduct of the account. The mere pendency of an application for restricting under the MSME framework does not create any embargo against classification of an account as NPA. In the absence of statutory prohibition, such action cannot be held to be arbitration or illegal. The fact that the Committee had deliberated on the application of the petitioner dated 13th June, 2025 and had decided the said application. It cannot be said that the Committee had not taken into consideration the allegations alleged to have been raised by the petitioner.

11. From the materials placed on record, it appears that the petitioner's application dated 13th June, 2025 for restructuring was duly considered by the competent MSME Committee. The committee after evaluating the financial position of the petitioner, the viability of the unit, and other relevant parameters took a conscious decision not to grant restructuring. The decision of the Committee is a commercial and financial determination based on expert assessment.

12. This Court, in exercise of jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over such decision, unless the same is shown to be arbitrary, perverse or in violation of the statutory provision. No such infirmity has been

demonstrated in the present case. The order dated 2nd December, 2025 passed by the Ombudsman has been perused. The said order reflects due consideration of the grievances raised by the petitioner, including issues relating to classification of the account and restructuring. The Ombudsman has assigned reasons for rejecting the complaint, and the decision cannot be said to suffer from non-application of mind or procedural impropriety. This Court finds no ground to interfere with the said order.

13. The Law relating to bank guarantee is well settled. A Bank guarantee constitutes an independent contract and its encashment is not ordinarily subject to judicial interference, except in cases of fraud or irreparable injustice. In the present case, no material has been placed to establish either fraud or irreparable injustice so as to justify interference.

14. Accordingly, the prayer for restoration of the encashed of bank guarantee is also liable to be rejected. It is further observed by this Court that the petitioner in WPA 12308 of 2025 had already challenged the termination of the contract which would have had a consequential impact on the bank guarantee and the Co-ordinate Bench of this Court had declined to interfere, holding that it was a contractual dispute between the parties and that the

Court could not sit over and adjudicate upon the terms and conditions entered into by and between the parties in a contract.

15. On such disputed question of facts, the Court had declined to adjudicate the matter under Article 226 of the Constitution of India. However, this fact has been completely suppressed by the petitioner in the present writ petition and nowhere has the petitioner mentioned the same or filed the Judgment of the Co-ordinate Bench. Such practice is deprecated and the petitioner is cautioned against adopting such conduct.

16. Learned Counsel for the petitioner states that he was not aware of any such petition being filed. He further states that it is an inadvertent mistake on his part and that there was no intention to suppress the said fact. The scope of judicial review in matters involving in banking and contractual decision is limited. Unless the decision making process is vitiated by arbitrariness, *mala fide* or illegality, interference is unwarranted. In the present case, the actions of the respondent authority do not suffer from any infirmity.

17. In view of the aforesaid discussions, this Court is of the considered opinion that no case is made out for interference under Article 226 of the Constitution of India.

18. Accordingly, the present writ petition stands dismissed with cost.

19. Since the petitioner has suppressed material facts, this Court is inclined to impose costs of Rs.50,000/-on the petitioner. Let the cost be deposited with the State Legal Aid Services Authority at Circuit Bench, Jalpaiguri.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Gaurang Kanth, J.)