



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 10TH DAY OF JULY 2026 / 19TH ASHADHA, 1948

WA NO. 1192 OF 2026
[AGAINST THE JUDGMENT DATED 19.03.2026 IN WP(C) NO.46397 OF 2025
OF HIGH COURT OF KERALA]

APPELLANTS/PETITIONERS:

- 1 M/S. IRINE AGRO SPICES,
REPRESENTED BY ITS PROPRIETOR, XII/354,
KAIPATTOOR, KALADY P.O., ERNAKULAM, PIN – 683574.
- 2 V.A. ROJO, AGED 49 YEARS,
S/O. VALLOORAN ANTONY, VALLOORAN HOUSE,
KAIPATTOOR, KALADY P.O., ERNAKULAM, PIN – 683574.

BY ADVS. SRI. MATHEWS J. NEDUMPARA,
SMT. MARIA NEDUMPARA
SRI. SHAMEEM FAYIZ V.P.
SRI. ROY PALLIKOODAM

RESPONDENTS/RESPONDENTS:

- 1 THE BOARD OF DIRECTORS OF AXIS BANK LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR 'TRISHUL',
3RD FLOOR, OPP. SAMARTHESWAR TEMPLE, NEAR LAW GARDEN,
ELLISBRIDGE, AHMEDABAD, PIN – 380006.
- 2 AXIS BANK LTD., REPRESENTED BY ITS MANAGING DIRECTOR,
'TRISHUL', 3RD FLOOR, OPP. SAMARTHESWAR TEMPLE,
NEAR LAW GARDEN, ELLISBRIDGE, AHMEDABAD, PIN – 380006.
- 3 AUTHORISED OFFICER, AXIS BANK LTD.,
ASC/CPC BRANCH, 5TH FLOOR, CHICAGO PLAZA,
RAJAJI ROAD, ERNAKULAM, PIN – 682035.



- *4 [THE BOARD OF DIRECTORS OF BANK OF MAHARASHTRA,
REPRESENTED BY ITS MANAGING DIRECTOR, LOKMANGAL, 1501,
SHIVAJI NAGAR, PUNE, MAHARASHTRA, PIN – 411005.
- 5 BANK OF MAHARASHTRA,
REPRESENTED BY ITS MANAGING DIRECTOR, LOKMANGAL,
1501, SHIVAJI NAGAR, PUNE, MAHARASHTRA, PIN – 411005.
- 6 AUTHORISED OFFICER,
BANK OF MAHARASHTRA, ZONAL OFFICE-ERNAKULAM,
IIND FLOOR, G.K. ARCADE, PALARIVATTOM BYPASS JN.,
VENNALA P.O., ERNAKULAM, PIN – 682028.]
- * RESPONDENT NOS.4 TO 6 ARE DELETED FROM THE
PARTY ARRAY AS PER THE ORDER DATED 08-07-2026 IN IA 1/2026 IN
WA 1192/26.
- 7 THE BOARD OF DIRECTORS OF THE KARUR VYSYA BANK LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, NO. 20,
ERODE ROAD, VADIVEL NAGAR, L.N.S., KARUR,
TAMIL NADU, PIN – 639002.
- 8 KARUR VYSYA BANK LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, NO. 20,
ERODE ROAD, VADIVEL NAGAR, L.N.S., KARUR,
TAMIL NADU, PIN – 639002.
- 9 AUTHORISED OFFICER,
KARUR VYSYA BANK LTD., 40/1045C, 1ST FLOOR,
AMRITHA TOWERS, OPP. MAHARAJA'S COLLEGE GROUND,
M.G. ROAD, ERNAKULAM, KERALA, PIN – 682011.
- 10 MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES,
REPRESENTED BY ITS SECRETARY, UDYOG BHAWAN,
RAFI MARG, NEW DELHI, DELHI, PIN – 110001.
- 11 UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF FINANCIAL SERVICES, MINISTRY OF FINANCE,
3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG,
NEW DELHI, PIN – 110001.
- 12 GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE,
ERNAKULAM, KAKKANAD, PIN – 682030.



- 13 CHAIRMAN, MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL (MSEFC), DIRECTORATE OF INDUSTRIES COMMERCE, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM, KERALA, PIN – 695033.
- 14 CHAIRMAN, STATE LEVEL INTER-INSTITUTIONAL COMMITTEE REGIONAL OFFICE, RESERVE BANK OF INDIA, BAKERY JUNCTION, P.B. NO. 6507, THIRUVANANTHAPURAM, PIN – 695033.
- 15 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001.
- 16 RESERVE BANK OF INDIA, REPRESENTED BY ITS GOVERNOR, NEW CENTRAL OFFICE BUILDING, SHAHID BHAGAT SINGH ROAD, FORT, MUMBAI, MAHARASHTRA, PIN – 400001.
- 17 ANIL DHIRAJLAL AMBANI. SEA WIND, CUFF PARADE, MUMBAI, MAHARASHTRA, PIN – 400005.
- 18 MUKESH DHIRAJLAL AMABANI, ANTILLA, ALTAMOUNT ROAD, CUMBALLA HILL, MUMBAI, MAHARASHTRA, PIN – 400036.
- 19 THE ATTORNEY GENERAL OF INDIA.
OFFICE OF ATTORNEY GENERAL OF INDIA,
SUPREME COURT OF INDIA, TILAK MARG,
NEW DELHI, PIN – 400001.
- 20 THE CHAIRMAN, STATE BANK OF INDIA, STATE BANK BHAWAN, NARIMAN POINT, MUMBAI, PIN – 400021.

BY ADVS. SRI. P. PAULOCHAN ANTONY
SRI. T. A. PRAKASH
SMT. ANNTREESA ANIL
SRI. MILLU DANDAPANI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08.07.2026, THE COURT ON 10.07.2026 DELIVERED THE FOLLOWING:



SOUMEN SEN, C.J.
&
SYAM KUMAR V. M., J.

W.A. No.1192 of 2026

Dated this the 10th day of July, 2026

J U D G M E N T

Soumen Sen, C.J.

1. The appeal arises out of a judgment passed by the learned Single Judge, dismissing the writ petition filed by the appellants/writ petitioners, granting them liberty to approach the Debts Recovery Tribunal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, the “SARFAESI Act”).
2. The writ petition was dismissed in view of the existence of an efficacious alternative remedy available under the SARFAESI Act.
3. The brief undisputed facts are that the appellant No.1 is a Micro, Small and Medium Enterprise (in short, “MSME”) engaged in the manufacture of food products. It had availed



credit facilities from respondent Nos. 2, 5 and 8 (the Banks). Due to default in repayment, the respondents-Banks have enforced their security interest and initiated recovery proceedings under the SARFAESI Act.

4. In view of default in repayment of overdue loan amount, the respondent No.2, Axis Bank, classified the said account as Non-Performing Asset (NPA) and the respondent No.3 on behalf of respondent No.2, Axis Bank, issued a demand notice (Exhibit-P6) dated 25th June, 2025 under Section 13(2) of the SARFAESI Act, demanding payment of overdue amounts. Since the account was not regularised and defaults continued, symbolic possession of the secured assets was taken under possession notices dated 12th September, 2025 and 19th September, 2025, respectively.
5. Under similar circumstances, demand notice dated 5th May, 2025 was issued by the original respondent No.6 on behalf of respondent No.5, Bank of Maharashtra, to petitioner No.2 under Section 13(2) of the SARFAESI Act followed by a recall notice dated 28th October, 2025 issued by respondent No.9.



However, this loan was a home loan availed by the appellant No.2/petitioner No.2. During the pendency of the appeal, the names of respondent Nos.4 to 6 have been deleted by an order dated 8th July, 2026.

6. Aggrieved by the initiation of such recovery proceedings, the appellants filed the writ petition culminating in the impugned judgment.
7. The learned counsel for the appellants has questioned the jurisdiction and consequent decision of the respondent-banks to initiate coercive measures notwithstanding the perceived protection the appellant No.1 enjoyed under the notification dated 26th June, 2020, issued under sub-section (1) read with sub-section (9) of Section 7 and sub-section (2) read with sub-section (3) of Section 8 of the MSME Act. According to the learned counsel, the said notification strictly prohibits the classification of an MSME account as a Non-Performing Asset (NPA), and bars any recovery action except through the mechanism of the Committee contemplated therein, which must first conclude that the



resolution of stress is non-feasible. It is submitted that the Committee alone is empowered to decide the mode and initiation of recovery. The notification dated 29th May, 2015, issued by the Central Government in exercise of powers conferred under Section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED”, for short) mandates the rehabilitation of MSMEs by the Committee, rather than the automatic invocation of recovery measures. The learned counsel further submits that the reliance placed by the learned Single Judge upon the decisions of the Hon'ble Supreme Court in ***Pro Knits v. Board of Directors of Canara Bank and Others***¹ and ***Shri Shri Swami Samarth Construction and Finance Solution and Another v. Board of Directors of NKGSB Coop. Bank Ltd. and Others***² as well as the decision of the Co-ordinate Bench of this Court in ***P.K. Krishnakumar v. IndusInd Bank***³, are rendered *per incuriam* and *sub silentio* and are not binding precedents.

¹ (2024) 10 SCC 292

² 2025 SCC OnLine SC 1566

³ 2024 (6) KLT 606



8. The appellants have also challenged the constitutionality of the vires of the notification dated 17th March, 2016, issued by the Reserve Bank of India concerning Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSME). It is submitted that the constitutionality of an Act of Parliament or statutory instrument can only be challenged in a civil court, not even in the High Court, except in a proceeding under Article 226 of the Constitution of India, as observed in ***Mafatlal Industries Ltd. & Ors. v. Union of India & Ors.***⁴. The learned counsel, therefore, contended that the learned Single Judge has failed to address any of these issues and failed to protect the interests of the appellants.
9. The learned counsel has submitted that the appellants could not have made any application for revival and rehabilitation under the MSMED Act as the respondent-Bank has not constituted any Committee in terms of Clause 3 of the Framework. Although the respondent-Bank was aware of the fact that the appellant No.1 is an MSME, the

⁴ (1997) 5 SCC 536



Bank did not intimate to the appellants about the constitution of the Committee. There is every reason to believe that such Committee was never formed. It is thus irrelevant as to whether any representation was made by the appellants for rehabilitation. It is the duty of the Bank to act *suo motu* once the loan account becomes incipient and stressed.

10. Although in the statement of facts, the constitutional validity of the Tribunals constituted under the notification dated 17th March, 2016 was challenged, no argument on this issue has been advanced either before the learned Single Judge or in this appeal.
11. The learned counsel for the respondents have reiterated the submissions made before the learned Single Judge, namely, that the writ petition is not maintainable as there is an efficacious alternative statutory remedy available to the appellants under Section 17 of the SARFAESI Act, against the proceedings initiated by the Banks and financial institutions. The learned counsel has relied upon the



decisions of the Hon'ble Supreme Court in ***United Bank of India v. Satyawati Tondon***⁵, ***Authorized Officer, State Bank of Travancore v. Mathew K.C.***⁶ and in ***Phoenix ARC (P) Limited v. Vishwa Bharati Vidya Mandir***⁷ wherein it has been categorically held that the High Courts, in the exercise of their high prerogative writ jurisdiction under Article 226 of the Constitution of India, should refrain from entertaining writ petitions challenging SARFAESI actions, unless the High Court is satisfied that there are exceptional circumstances involving a total lack of jurisdiction or violation of the principles of natural justice or breach of fundamental rights.

12. The learned counsel has further submitted that the appellants only relied upon the MSME certificate of the year 2020, whereas the loan was availed in the year 2022. There is nothing on record to show as to whether the MSME certificate produced before the writ court was valid or subsisting as on the date of sanction of the said loan. The

⁵ (2010) 8 SCC 110

⁶ (2018) 3 SCC 85

⁷ (2022) 5 SCC 345



appellants have failed to substantiate the status of the appellant No.1 as an MSME. The respondent-Bank was never informed of any applicable MSME directives at the time of availing the loan. The appellants have failed to establish the aforesaid facts before the learned Single Judge. Even in this appeal, no such document has been produced.

13. In the aforesaid factual background, the merits of the judgment under appeal are to be addressed and decided.
14. The principal challenge to the measures adopted by the respondents-Banks under the SARFAESI Act is the non-consideration of the MSME character of the appellant No.1. In addition to the aforesaid, the other challenge appears to be the Reserve Bank notification dated 17th March, 2016 regarding the Framework for Revival and Rehabilitation of MSME. The said notification was issued to give effect to the notification dated 29th May, 2015, upon consideration of certain changes suggested by the Government of India, Ministry of MSME, in order to make it compatible with the existing regulatory guidelines on income recognition, asset



classification and provisioning pertaining to advances, issued to banks by the RBI. A revised Framework along with operating instructions has been issued by the RBI with the approval of the Board. In paragraph 2, it has been clarified that the revival and rehabilitation of MSMEs having loan limits up to ₹25 Crores would be in terms of the operating instructions now issued under the said circular. Thereafter, the Framework for Revival and Rehabilitation of MSME has been framed and duly notified under SO No. 1432E dated 29th March, 2015, in exercise of the power under Section 9 of the MSMED Act.

15. The interplay between the SARFAESI Act and the MSMED Act has been elaborately considered by the Hon'ble Supreme Court in the decisions in ***Pro Knits (supra)*** and ***Shri Shri Swami Samarth Construction and Finance Solution (supra)*** and that had been considered in the impugned judgment.
16. The learned Single Judge has found that the appellants had failed to demonstrate even *prima facie* that it is an MSME



when it availed the credit facilities and thus had failed to adhere to the guidelines to avail the benefit of immunity under the MSMED Act. The learned Single Judge has relied upon the decision of the Hon'ble Supreme Court in **Pro Knits** (*supra*). The law in this regard has been succinctly explained in the following words:

“18. We may hasten to add that under the “Framework for Revival and Rehabilitation of MSMEs”, the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non-performing assets, by creating three sub-categories under the “Special Mention Account” category, however, while creating such sub-categories, the banks must have some authenticated and verifiable material with them as produced by the MSME concerned to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act.

19. 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 authorised person.

20. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorisation 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 MSME concerned 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.

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.”

(emphasis supplied)

17. Further, in the same judgment (**Pro Knits**) while taking note of the need for the financial institutions to identify the



incipient stress in the account of the MSMEs before their accounts turn into non-performing assets, the Hon'ble Supreme Court had observed that the Framework of the said Act also enables the MSME to voluntarily initiate the proceedings under the same framework by filing an application along with the affidavit of an authorized person. The stage of identification of incipient stress in the loan account of MSMEs and categorisation under the Special Mention Account category, before the loan account of MSMEs is identified as NPA, is a crucial point that has been emphasised in the said judgment. Considering the importance of the stage at which the account of an MSME unit turns into an NPA, in respect of the loan account of an MSME unit, it was observed that it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable documents as required for substantiating its claim of being an MSME before its account is classified as NPA. The judgment also categorically stated that in absence of any such exercise being done and once the account is classified as NPA, the Banks, i.e.



secured creditors would be entitled to take recourse to Chapter III of the SARFAESI Act for enforcement of security interests.

18. The financial institutions in this proceeding have categorically submitted that at the stage of classification of the loan account of a borrower as an NPA, the appellants as the borrowers did not bring to the notice of the financial institutions that the appellant No.1 is an MSME under the MSMED Act and had allowed the proceeding to continue till symbolic possession of the secured assets has been taken by the financial institutions.
19. The learned Single Judge, in the impugned judgment, at paragraph 8, has also referred to the judgment in **P.K. Krishnakumar** (*supra*) wherein it has also observed that an MSME cannot later assert benefits, if they did not notify the Banks before classification as an NPA, thereby emphasising the duty incumbent upon the concerned MSMEs to notify the Banks regarding the MSME status in order to avail the benefits attached thereto before the NPA classification is



effected. The relevant observation in **P.K. Krishnakumar** (*supra*) in this regard is as follows:

"19. xxx xxxx xxxx xxxx xxxxx xxxxx In cases where a borrower who qualifies as MSME does not initially raise its status to challenge a bank's recovery proceedings under the SARFAESI Act but instead participates fully in the process without objection, cannot later use their MSME status to argue that the proceedings were without jurisdiction. The power of the High Court under Article 226 of the Constitution of India is discretionary based on the principles of fairness and justice, which include examining the conduct of the parties involved. When the Appellants, by their actions, accepted the bank's authority without objection, the High Court will refuse to exercise its writ jurisdiction to assist such Appellants, even if there are questions about the jurisdiction of the bank. This is because the Appellants' own conduct disqualifies them from claiming such relief. When the High Court declines to interfere in such circumstances, it does not mean that the Appellants' waiver vested the bank with jurisdiction, assuming it is inherently lacking; it means that the borrower is not entitled to invoke writ jurisdiction irrespective of whether the bank's actions are without jurisdiction or not. These two concepts are distinct, and the distinction is emphasized by the Hon'ble Supreme Court in the case of M/s. Pro Knits."

(emphasis supplied)

20. The learned Single Judge has further referred to a recent decision of the Hon'ble Supreme Court in **Shri Shri Swami Samarth Construction and Finance Solution** (*supra*) wherein the interplay between the MSMED Act and the SARFAESI Act has been explained in the following words:



“6. xxxx xxxx We would read and interpret the seemingly confusing terms of the Framework harmoniously to ensure that a right under the MSME Act is not destroyed by the SARFAESI Act or vice versa. In our reading, the terms of the Framework do not prohibit the lending bank / secured creditor (assuming that it has no conscious knowledge that the defaulting borrower is an MSME) to classify the account of the defaulting MSME as NPA and to even issue the demand notice under S.13(2) of the SARFAESI Act without such identification of incipient stress in the account of the defaulting borrower (MSME); however, upon receipt of the demand notice, if such borrower in its response under S.13(3A) of the SARFAESI Act asserts that it an MSME and claims the benefit of the Framework citing reasons supported by an affidavit, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance; and, should the claim be found to be worthy of acceptance within the framework of the Framework, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower.

7. As has been noted above, the petitioning enterprise does not seem to have ever claimed the benefit of the terms of the Framework after the demand notice under s.13(2) of the SARFAESI Act was issued. It is at the stage of compliance with an order passed by the relevant Magistrate under s.14 of the SARFAESI Act that this writ petition has been presented before this Court claiming benefits of the Framework to restrain the respondent no.2 and its officers from proceeding further under the SARFAESI Act and other enactments except in the manner



contemplated under the said Notification. We find the bona fides of the petitioning enterprise to be suspect.

8. Pro Knits is a decision of a coordinate Bench of this Court holding inter alia, that the Notification is binding on the lending banks / secured creditors. Finding to the contrary by the High Court of Bombay in the judgment and order under challenge in the appeal was, thus, quashed. Though while stressing that the terms of the Framework need to be followed by the lending banks / secured creditors before the account of an MSME is classified as NPA, this decision also lays stress on the obligation of the MSMEs by holding that "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". It was cautioned that "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". This decision, however, left unsaid something which we have explained hereinabove while construing the terms consistently to prevent undermining the rights that one central enactment confers on by another."

(emphasis supplied)



21. Although it is argued that the dicta in ***Pro Knits*** (*supra*) and ***Shri Shri Swami Samarth Construction and Finance Solution*** (*supra*) are *per incuriam*, this argument was not advanced before the learned Single Judge, as is evident from the relevant paragraph of the impugned judgment, which reads thus:

“Although counsel for the petitioners chose not to press the prayer seeking a declaration that the dicta in *Pro Knits* and *Shri Shri Swami Samarth* are *per incuriam*, this Court is bound to adhere to those decisions. .”

(emphasis supplied)

22. The principle laid down by Salmond in the famous treatise on jurisprudence is very pertinent. In paragraph 28, page 158 of the treatise, the learned Author opined as under:

“The general rule is that a Court is bound by the decisions of all Courts higher than itself. A High Court Judge cannot question a decision of the Court of Appeal, nor can the Court of Appeal refuse to follow judgments of the House of Lords.”

23. A decision should be treated as given *per incuriam* when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. A decision passes *sub silentio*,



in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. (Salmond on Jurisprudence 12th Edn., P. 153).

24. '*Incuria*' literally means '*carelessness*'. In practice, *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of *stare decisis*. The '*quotable in law*' is avoided and ignored if it is rendered '*in ignoratium of a statute or other binding authority*'. (*Young v. Bristol Aeroplane Co. Ltd.*) (See ***Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board*** ⁸)
25. The aforesaid decisions were rendered not in ignorance of any statute or other binding authority. The interpretation of the highest Court of the land is binding upon all courts under Article 141 of the Constitution of India. It is also trite that the binding precedents which are authoritative in nature and are made to be applied should not be ignored on the application of the doctrine of *sub silentio* or *per incuriam* without applying specific reasons thereof.

⁸ (2016) 15 SCC 37 at paragraph 47



26. Neither of the decisions of the Hon'ble Supreme Court can be said to be a mere casual expression or a passive expression of the Hon'ble Bench deciding the said issue. In the instant case, the essence of the decisions in ***Pro Knits (supra)*** and ***Shri Shri Swami Samarth Construction and Finance Solution (supra)*** is that the proper remedy is to approach the DRT.
27. The core issues raised in the writ petition were considered in comprehensive detail by the Hon'ble Supreme Court in that very decisions and the law laid down therein is strictly binding on this Court by reason of Article 141 of the Constitution of India.
28. The duties and obligations of an MSME to voluntarily initiate the proceedings under the Framework of the MSMED Act have been discussed in ***Pro Knits (supra)*** elaborately, as well as in the subsequent decision in ***Shri Shri Swami Samarth Construction and Finance Solution (supra)***. It has also been clearly stated that even in a case where the secured creditor may, in absence of any conscious



knowledge that the defaulting borrower is an MSME, issue a notice under Section 13(2) of the SARFAESI Act, still the borrower, in its response under Section 13(3A) of the SARFAESI Act, can assert that it is an MSME and claim the benefit of the Framework citing reasons supported by an affidavit, and in such a situation, the lending bank/secured creditor would then be mandatorily bound to look into such claim, keeping further action under the SARFAESI Act in abeyance; and, should the claim be found to be worthy of acceptance within the framework of the Framework, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower. In the instant case, we do not find from the record that the appellants have ever approached the financial creditors to avail the benefit of the terms of the Framework after the demand notice under Section 13(2) of the SARFAESI Act was issued. In fact, under Clause 4 of the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, any eligible stressed MSME is entitled to file an application to the Committee, in the manner specified by the Bank, for a decision on a corrective



plan. It was only at the stage of implementation of an order passed by the learned Magistrate under Section 14 of the SARFAESI Act that the writ petition was filed questioning the jurisdiction of the secured creditors to proceed under the SARFAESI Act. Both the aforesaid decisions in the facts and circumstances of the case cannot be either accepted as judgment *sub silentio* or *per incuriam*.

29. In any event, we are of the view that a careful reading of both the decisions of the Hon'ble Supreme Court would clearly show that it cannot be contended and held that the said decisions were rendered without any argument or without reference to the crucial words and phrases of the SARFAESI Act and the MSMED Act. Hence, it cannot be said that, in the instant case, we should apply the principle that "precedents *sub silentio* and without argument are of no moment" and accept the submission of the learned counsel for the appellants that, notwithstanding the clear enunciation of law, which is binding on us, we should set aside the measures already taken by the secured creditors under the SARFAESI Act.



30. The challenge to the constitutional validity of the notification dated 17th March, 2016, has not been argued.

31. The said challenge appears to be a desperate attempt by the appellants-borrowers to thwart the proceedings initiated under the SARFAESI Act for realisation of the dues. In fact, during the hearing of the writ appeal on 22nd June, 2026, we, *inter alia*, passed the following order:-

“2. The matter is adjourned by one week to enable the learned counsel for the appellants to obtain instructions as to whether the appellants are willing to deposit a sum of ₹10/- crores with the respondent financial institutions.”

32. The learned counsel for the respondent Nos. 1 to 3 had agreed to consider the proposal for revival and rehabilitation in the event the appellants are willing to deposit the said amount. However, subsequently, the learned counsel for the appellants, on instructions, has submitted that the appellants are not willing to deposit the said amount. In order to ascertain the principal sum due on the date the account was classified as NPA, the Bank has filed a detailed statement verified on 7th April, 2026, upon prior service on



the learned counsel for the appellants. In the said affidavit, the following facts have been disclosed:

“2. The Appellant was initially sanctioned a Working Capital Credit Facility of Rs.6.50 Crores vide Sanction Letter dated 04.05.2022 by way of takeover from Bank of Maharashtra. The corresponding Loan Agreement was executed on 01.06.2022. Upon execution of the loan documents and fulfilment of the terms and conditions of sanction, the sanctioned credit facility was disbursed from time to time in stages, depending upon the operational requirements of the borrower and in accordance with the terms and conditions of the sanction. The Appellant ultimately availed the entire sanctioned facility.

3. Thereafter, the Working Capital Credit Facility was enhanced to Rs.10.00 Crores vide Sanction Letter dated 14.06.2023. The Loan Agreement in respect of the enhanced facility was executed on 17.06.2023. The enhanced credit facility was also disbursed from time to time in stages in accordance with the sanction terms and the operational requirements of the borrower. The Appellant availed the entire enhanced sanctioned facility.

4. Subsequently, the aggregate credit facilities were enhanced to Rs.25.00 Crores by sanctioning an additional Export Packing Credit Foreign Currency Scheme (EPCFS) facility of Rs.15.00 Crores, pursuant to the Sanction Letter dated 30.03.2024 and the Loan Agreement was executed on 30.03.2024. Pursuant to the delay in exports, the EPC limit was converted to CC. The enhanced credit facilities were thereafter disbursed in stages, as and when required by the borrower, strictly in accordance with the sanction terms and conditions, and the Appellant availed the entire sanctioned facilities.



5. Subsequently, an Ad hoc Working Capital Facility of Rs.1.00 Crore was sanctioned on 24.03.2025, and the corresponding Loan Agreement was executed on the same day. The said facility was also disbursed in stages, in accordance with the sanctioned terms and was fully availed by the Appellant. Consequently, during the year 2025, the total sanctioned credit facilities available to the Appellant aggregated to Rs.26.00 Crores.

6. The aforesaid loan accounts were classified as Non-Performing Assets (NPA) on 22.06.2025. As on the said date, the principal outstanding in Loan Account No.922030029533435, pertaining to the Working Capital/EPCS facility having a sanctioned limit of Rs. 25.00 Crores, was Rs.25,40,93,647.37. The accrued interest in the said account as on the date of NPA was Rs.10,76,939.38, making the total outstanding in the said account Rs.25,51,70,586.75 excluding penal interest.

7. As on the same date, the principal outstanding in Loan Account No. 925030013306064, pertaining to the Ad hoc Working Capital Facility of Rs.1.00 Crore, was Rs.1,02,25,673.00. The accrued interest in the said account as on the date of NPA was Rs.48,102.69, making the total outstanding in the said account Rs.1,02,73,775.69 excluding penal interest.

8. Thus, as on 22.06.2025, the aggregate principal outstanding in both the loan accounts was Rs.26,43,19,320.37, while the aggregate accrued interest was Rs.11,25,042.07, resulting in a total outstanding of Rs.26,54,44,362.44. This statement is in compliance with the directions contained in the Order dated 01.07.2026 passed by this Hon'ble Court.”



33. Having regard to the fact that the appellants have not responded to notice issued under Section 13(2) of the SARFAESI Act and also not even objected to the proceedings initiated under Section 14 of the said Act and their failure to demonstrate that at the time of availing the credit facilities the appellant No.1 was an MSME enterprise, the *rationes decidendi* of the decisions in ***Pro Knits (supra)*** and ***Shri Shri Swami Samarth Construction and Finance Solution (supra)*** squarely applies. Moreover, the appellants have also not, before the account was declared as NPA, approached the financial institutions for rehabilitation. We also seriously doubt the *bona fides* of the appellants, having regard to the fact that the appellants are not even prepared to approach for revival and rehabilitation.
34. The contention of the appellants that the appellant No.1 was unable to file an application for revival and rehabilitation, due to the non-existence of the Committee to be constituted under Clause 3 of the Framework, also cannot be accepted. The respondent-Bank has categorically stated that at the time of availing the credit facility, no certificate was



produced by the appellant No.1 to show that it owns an MSME certificate. Curiously, the appellants did not reply to the notice issued under Section 13(2) of the SARFAESI Act. Even at that stage, such a certificate was not produced before the Bank. It is incumbent on the appellants to bring to the notice of the Bank at the time of availing the loan facility, or at least when the account of the appellant No.1 was classified as NPA, that it is an MSME unit. The appellant No.1 was obliged to bring it to the notice of the respondent-Bank by producing authenticated documents / materials to show its eligibility in order to avail the benefit of the said Framework. The appellants did not produce any such certificate either before the learned Single Judge or in this appeal. The appellants are unable to offer any explanation for not replying to the notice issued under Section 13(2) of the SARFAESI Act. Its continued silence in respect of its status as an MSME unit raises serious doubt as to its claim as an MSME unit at the time of availing the credit facilities. In the absence of an MSME certificate, which is to be valid when the appellant No.1 approached the



Banks for availing credit facilities, the plea raised by the appellants that the appellant No.1 was unable to file any application under Clause 3 of the Framework as the formation of the Committee was never intimated to the appellants does not hold water. It is an argument in despair.

35. In view of the aforesaid, we do not find any reason to interfere with the judgment delivered by the learned Single Judge. The Appeal fails and is accordingly dismissed, however, there shall be no order as to costs.

Sd/-
SOUMEN SEN,
CHIEF JUSTICE

Sd/-
SYAM KUMAR V. M.,
JUDGE