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.

MONDAY, THE 10TH DAY OF AUGUST 2026 / 19TH SRAVANA, 1948

WA NO. 649 OF 2026

AGAINST THE JUDGMENT DATED 05.03.2026 IN WP(C) NO.44603 OF 2025 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER

M/S. SREE MATHA COSMETIC INDUSTRIES,
REPRESENTED BY ITS PROPRIETOR SUDESHNA KUMAR,
S/O. SRI. SUKUMARAN RESIDING AT SUKUMARA
MANDIRAM' MANGADU P.O., KOLLAM, PIN - 691015

BY ADVS.
SRI.MATHEW NEDUMPARA
SMT. MARIA NEDUMPARA
SHRI.SHAMEEM FAYIZ V.P.
SHRI.ROY PALLIKOODAM

RESPONDENTS/RESPONDENTS

1 THE BOARD OF DIRECTORS OF THE UCO BANK,
REPRESENTED BY ITS MANAGING DIRECTOR, HEAD OFFICE,
10, B T M SARANI, KOLKATA, PIN - 700001

2 UCO BANK,
REPRESENTED BY ITS MANAGING DIRECTOR, HEAD
OFFICE,10, B T M SARANI, KOLKATA, PIN – 700001

3 AUTHORISED OFFICER & CHIEF MANAGER,
UCO BANK, KOLLAM BRANCH, KHAISE BUILDING, BEACH ROAD, KOLLAM, PIN - 691001

4 MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES,
REPRESENTED BY ITS SECRETARY, UDYOG BHAWAN, RAFI MARG, NEW DELHI, DELHI, PIN - 110001

5 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

6 GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, ERNAKULAM, KAKKANAD, PIN - 682030

7 CHAIRMAN,
MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL (MSEFC),DIRECTORATE OF INDUSTRIES COMMERCE, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM, PIN - 695033

8 CHAIRMAN,
STATE LEVEL INTER-INSTITUTIONAL COMMITTEE REGIONAL OFFICE, RESERVE BANK OF INDIA, BAKERY JUNCTION, P.B. NO. 6507, THIRUVANANTHAPURAM, PIN - 695033

9 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

10 LAKSHMI NARAYANAN S.,
ADVOCATE,ROOM NO.20, RAJ SADAN BUILDING,WEST OF COLLECTORATE, KOLLAM, (ADVOCATE COMMISSIONER APPOINTED IN MC 745/2025 OF CJM COURT, KOLLAM), PIN - 691001

11 STATION HOUSE OFFICER,
KILIKOLLUR POLICE STATION, KOLLAM, PIN – 691004

12 RESERVE BANK OF INDIA,
REPRESENTED BY ITS GOVERNOR,NEW CENTRAL OFFICE BUILDING, SHAHID BHAGAT SINGH ROAD, FORT, MUMBAI, MAHARASHTRA, PIN - 400001

13 ANIL DHIRAJLAL AMBANI,
SEA WIND, CUFF PARADE, MUMBAI,
MAHARASHTRA, PIN - 400005

14 MUKESH DHIRAJLAL AMABANI,
ANTILLA, ALTAMOUNT ROAD, CUMBALLA HILL, MUMBAI,
MAHARASHTRA, PIN - 400036

15 THE ATTORNEY GENERAL OF INDIA,
OFFICE OF ATTORNEY GENERAL OF INDIA, SUPREME COURT OF INDIA, TILAK MARG, NEW DELHI, DELHI,
PIN - 110001

16 CHAIRMAN,
STATE BANK OF INDIA, STATE BANK BHAWAN, NARIMAN POINT, MUMBAI, PIN - 400021

BY ADVS.
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN
SMT.AKHILA NAMBIAR

DEEPAK JOY K.-R2 AND R3

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

<u>J U D G M E N T</u>

<u>Soumen Sen, C.J.</u>

` This Writ Appeal is arising out of the judgment delivered by the learned Single Judge dated 05.03.2026 in a writ petition, in which the writ petitioner has challenged the classification of the account as a Non Performing Asset (for short, 'NPA'), without adhering to the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, 'M.S.M.E.D Act') and Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises notification number S.O.1432(E) dated 29.05.2015.

2. Heard Mr. Mathew Nedumpara, learned counsel for the appellant, and Mr. Deepak Joy K., learned counsel for respondent Nos.2 and 3.

3. Before we advert to the submissions made by the learned counsel for the parties, it is necessary to indicate the relevant facts.

4. The petitioner/appellant availed an M.S.E cash

credit facility from the 3rd respondent UCO Bank, Kollam Branch. The account was classified as NPA on 31.07.2024, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). Notice under Section 13(2) of the SARFAESI Act was issued on 17.08.2024, followed by possession notice dated 16.11.2024. The petitioner did not reply to the said notice. On 03.05.2025, the learned Chief Judicial Magistrate passed an order appointing an Advocate Commissioner to take physical possession. Thereafter sale notice was issued on 5.11.2025, scheduling the sale on 28.11.2025. On 13.11.2025, possession notice was issued by the Advocate Commissioner for taking physical possession of the mortgaged properties on 03.12.2025.

5. The petitioner did not initiate any proceedings under the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises on any reasonable apprehension of there being a possibility of failure of its business or its inability to pay debts, or before the accumulated losses of the enterprise

equal half or more of its entire net worth. The Framework permits the petitioner to file an application for the initiating of the proceedings under the said Framework, by an affidavit duly verified by an authorised person.

6. The decision of the respondent-Bank to initiate proceedings under the SARFAESI Act was put under challenge for non-compliance of the notification dated 29.05.2015 issued by the Ministry of Micro, Small and Medium Enterprises and for not giving any opportunity to the petitioner for revival and rehabilitation.

7. Mr. Mathew Nedumpara, the learned counsel appearing for the petitioner/appellant has submitted that under the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises dated 29.05.2015, it is incumbent upon the Bank to identify incipient stress in the account before turning the loan account into a Non Performing Asset by creating three sub categories under the Special Mention Account (SMA) category as given in the Table under Clause 1 of the Framework for Revival and Rehabilitation of

Micro, Small and Medium Enterprises.

8. Moreover, a committee has not been constituted by respondent No.3 in accordance with the notification dated 29.05.2015, who are supposed to consider and decide a corrective action plan and determining the terms thereof in accordance with the regulations prescribed in the said Framework. The Bank has not formed any such committee. It is submitted that without adhering to the said guidelines which are *sine qua non* before the Bank to proceed under the SARFAESI Act, the action of the Bank is manifestly arbitrary and contrary to the statutory guidelines prescribed in this regard. It is submitted that only after exhausting the various measures envisaged in the said notification dated 29.05.2015, recovery steps can be initiated in terms of Clause 5(4)(iii) of the said notification and only upon finding that the options in Clause 4(5)(a) and (b) are not feasible.

9. Mr. Mathew Nedumpara, the learned counsel appearing for the petitioner has submitted that in the facts of the case, the decisions in ***M/s.Pro Knits v. The Board of Directors of Canara Bank and Others***[1] and ***Shri Shri Swami Samarath Construction & Finance Solution and Another v. the Board of Directors of NKGSB Co-operative Bank Ltd. and Others***[2] are squarely applicable as the Bank has failed to discharge the mandatory duty of identifying the incipient stress in the M.S.M.E. account and constituting a committee for stressed M.S.M.Es.

10. It is submitted that the very issuance of the notice under Section 13(2) of the SARFAESI Act shows that there is an incipient stress in the loan account for which the guidelines in the Framework are required to be followed.

11. Although it appears that an argument was made before the learned Single Judge that the decisions in ***M/s. Pro Knits*** (supra) and ***Shri Shri Swami Samarth Construction and Finance Solution*** (supra) were rendered *per incuriam*,

1 (2024) 10 SCC 292
2 2025 SCC OnLine 1566

however, in the appeal, it is argued that the *rationes decidendii* of the said decisions are applicable in the facts and circumstances of the case.

12. On the basis of the such submission, it is argued that the notice under Section 13(2) of the SARFAESI Act and all subsequent actions, including taking possession of the assets, are to be quashed.

13. Mr. Mathews Nedumpara has submitted that the learned Single Judge has failed to consider that, in the said proceeding, one of the reliefs claimed in the writ petition that Sections 13(2), 13(4) and 14 of the SARFAESI Act are violative of Paragraph 5(4)(iii) of the notification dated 29.05.2015, could not be urged or decided by the Tribunal.

14. The learned Standing Counsel for the 3rd respondent-Bank, while reiterating the submissions made before the learned Single Judge, has submitted that a Securitisation Application is pending before the Debts Recovery Tribunal being S.A.No.762 of 2025 filed on 26.11.2025 and it has not been withdrawn. We also take notice of the fact that an

application under Section 17 of the Debts Recovery Act is also presently pending before the DRT concerning the same issue.

15. In the light of the aforesaid facts, we need to decide whether we should exercise our discretion under Article 226 of the Constitution of India to interfere with the order passed by the learned Single Judge, in dismissing the writ petition on the ground of availability of an efficacious alternative remedy.

16. We have carefully read the Framework and the provisions of the SARFAESI Act. The Framework dated 29.05.2015 precedes the SARFAESI Act. However, the interplay of the two provisions has been considered and explained in ***M/s. Pro Knits*** (supra) and ***Shri Shri Swami Samarth Construction and Finance Solution*** (supra). We have also considered the said decisions in a similar challenge in ***Irine Agro Spices (M/s.) v. Board of Directors of Axis Bank Ltd.***[3]

17. One common thread in both the decisions was that there was an obligation on the enterprise to voluntarily initiate

3 2026 SCC OnLine Ker 6753; 2026 KHC 2009; 2026 KLT OnLine 1952

proceedings under the Framework if the enterprise apprehends failure of its business or its inability to pay its debts and before the accumulated losses of the enterprise equals to half or more of its entire net worth. While the Framework casts an obligation for the Bank to identify the incipient stress in the loan account by creating sub categories, the obligation on the part of the enterprise to make such application remains.

18. The petitioner did not approach the Bank with any rehabilitation package or give any reply to notice under Section 13(2) of the SARFAESI Act. Although it is not in dispute that the Bank was aware of the M.S.M.E. character of the petitioner, and at the time of issuance of the notice, the Bank must have felt the incipient stress on the loan account, however, nothing prevented the petitioner from making an application for rehabilitation as it was quite clear to the enterprise that there has been a failure of the business and its inability or likely inability to pay debts, as well as the resultant accumulated losses which might equal to half or more of its entire net worth. The learned Standing Counsel for the Bank has submitted that

no application has been filed for rehabilitation. There is nothing on record to show that any application was filed by the writ petitioner/appellant for rehabilitation of the said enterprise. The corrective measures can only be undertaken provided a proper application is filed before the Committee for a corrective action plan.

19. In ***Irine Agro Spices (M/s.)*** (supra), we have considered the circumstances under which proceedings under the SARFAESI Act can be initiated against an M.S.M.E. in paragraph 28, which reads as follows:

> *"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."

20. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge dated 05.03.2026. Moreover, we have taken note of the fact that two proceedings are presently pending before the Tribunal, namely, S.A.No.762/2025 and an application under Section 17 of the Act, wherein measures under the SARFAESI Act have been challenged. It has also been brought to our notice by the learned counsel for the respondent that a Review Petition, being R.P. No.324 of 2026, is pending before the learned Single Judge.

21. We are not inclined to interfere with the order passed by the learned Single Judge. The Writ Appeal fails and is dismissed.

Sd/-

SOUMEN SEN,
CHIEF JUSTICE

Sd/-

SYAM KUMAR V. M.,
JUDGE

smm