IN THE HIGH COURT AT CALCUTTA
AN APPEAL FROM ORDER PASSED IN
IT'S CONSTITUTIONAL
WRIT JURISDICTION
ORIGINAL SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

A.P.O No. 38 of 2026

I.A. No. G.A. 1 of 2026

M/S. Merchant Monger
Agrotech Pvt. Ltd. & Ors.
vs.
Indian Bank & Ors.

With

A.P.O No. 39 of 2026

I.A. No. G.A. 1 of 2026

M/S. Merchant Monger
Hospitality Pvt. Ltd & Ors.
vs.
Indian Bank & Ors.

For the Appellant : Mr. Debashis Kundu, Sr.Adv.
Mr. Jishnu Saha, Sr.Adv.
Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Debabrata Basu Ray, Adv.
Mr. Aditya Kanodia, Adv.
Mr. Rajendra Nath Barik, Adv.
Mr. Chayan Gupta, Adv.
Mrs. Shreya Trivedi, Adv.

Mr. Amitayu Kundu, Adv.
Ms. Kaushani Dey, Adv.

For the Respondent Bank : Mr. Shiv Mangal Singh, Adv.
Mrs. Madhu Shaw, Adv.
Ms. Anjali Mishra, Adv.

Judgment reserved on : 20.08.2026
Judgment pronounced on : 25.08.2026
Judgment uploaded on : 25.08.2026

Shampa Sarkar, J.

1. APO 38 of 2026 and 39 of 2026 involved a similar question of law and as such were heard analogously.

2. APO 38 of 2026 was filed challenging an order dated July 28, 2026 passed in WPO No. 329 of 2026. WPO No. 329 of 2026 was filed with the following prayers :-

> "a) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw all steps taken by the respondent under the provisions of SARFAESI Act, 2002 against the petitioner no. 1 and its secured assets without first complying with the provisions of prudential norms required for the purpose of corrective action for revival and rehabilitation of the stressed assets under MSMED Act and rules framed thereunder as also the circulars/guidelines issued by RBI from time to time;
> b) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw all the steps taken by them under Section 13 of the SARFAESI Act, 2002 and to send the application dated 11th of June, 2026 being Annexure "P22" made by the petitioners for sending the same to the Committee for a Corrective Action Plan;
> c) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw the notices under Section 13(2), non-consideration of the representation made by the

petitioners under Section 13(3) by the respondent bank and thereafter taking symbolic possession of the secured assets of the petitioner company as also proceeding to obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002;

d) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw the alleged classification of account of the petitioner no. 1 as NPA on 27th February, 2026 without first adhering to the applicability of the prudential norms for revival and rehabilitation of the stressed assets of the petitioners;

e) A writ of and/or order in the nature Mandamus do issue commanding the respondents and each one of them to forthwith restructure all the accounts, namely, CC account and Term Loan Account so that the petitioners can make the payments in terms of the restructured accounts to the respondent bank;

f) A Writ of and/or order and/or direction in the nature of Prohibition do issue prohibiting the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures in respect of the secured properties mentioned in the schedule being annexure "P5" until disposal of the instant writ petition;

g) A Writ of and/or order and/or direction in the nature of Prohibition do issue prohibiting the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures pursuant to the application to obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002 and all the steps taken pursuant thereto and in terms thereof till the disposal of the instant writ petition;

h) Rule Nisi in terms of prayers above;

i) An in interim order be passed restraining the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures in respect of the secured properties mentioned in the schedule being annexure "P5" until disposal of the instant writ petition;

j) An interim order be passed restraining the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures pursuant to the application to obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002 and all the steps taken pursuant thereto and in terms thereof till the disposal of the instant writ petition;

k) An interim order be passed directing the respondents to forthwith restructure all the accounts, namely, CC account and Term Loan

Account so that the petitioners can make the payments in terms of the restructured accounts to the respondent bank;
l) Ad-interim orders in terms of prayers (i), (j) and (k) above;
m) Costs of and incidental to this application including the Advocates' fees be borne by the respondents;
n) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper;”

3. APO 39 of 2026 was filed challenging an order dated July 28, 2026 passed in WPO No. 330 of 2026. WPO No. 330 of 2026 was filed with the following prayers :-

“a) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw all steps taken by respondent bank under the provisions of SAFAESI Act, 2002 against the petitioner no. 1 and its secured assets without first complying with the provisions of prudential norms required for the purpose of corrective action for revival and rehabilitation of the stressed assets under MSMED Act and rules framed thereunder as also the circulars/guidelines issued by RBI from time to time;
b) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw all the steps taken by them under Section 13 of the SARFAESI Act, 2002 and to send the application dated 11th of June, 2026 being annexure "P18" made by the petitioners for sending the same to the Committee for a Corrective Action Plan;
c) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw the notices under Section 13(2), non- consideration of the representation made by the petitioners under Section 13(3) by the respondent bank and thereafter issuance of notice dated 27th May, 2026 taking symbolic possession of the secured assets of the petitioner company as also proceeding to obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002;
d) A writ of and/or in the nature of Mandamus do issue commanding the respondents to forthwith cancel, rescind and withdraw the alleged classification of account of the petitioner no. 1 as NPA on 27th February, 2026 without first adhering to the applicability of the prudential norms for revival and
rehabilitation of the stressed assets of the petitioners;

e) A writ of and/or in the nature of Mandamus do issued commanding the respondents and each one of them to set aside, cancel and/or withdraw the notice issued under Sections 13(2) dated 4th March, 2026 and taking symbolic possession of the secured assets of the petitioners as also proceeding to obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002 and all the steps taken pursuant thereto and in terms thereof;

f) A writ of and/or order in the nature of Mandamus do issue commanding the respondents and each one of them to forthwith restructure all the accounts, namely, Secured Overdraft so that the petitioners can make the payments in terms of the restructured accounts to the respondent bank;

g) A Writ of and/or order and/or direction in the nature of Prohibition do issue prohibiting the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures in respect of the secured properties in relation to the loan
account until disposal of the instant writ petition;

h) A Writ of and/or order and/or direction in the nature of Prohibition do issue prohibiting the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures pursuant to the application to obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002 and all the steps taken pursuant thereto and in terms thereof till the disposal of the instant writ petition;

i) Rule Nisi in terms of prayers above;

j) An interim order be passed directing the respondents to send the application dated 11th of June, 2026 being annexure "P18" made by the petitioners to the Committee for a Corrective Action Plan;

k) An interim order be passed directing respondents and each one of them to forthwith restructure all the accounts, namely, Secured Overdraft so that the petitioners can make the payments in terms of the restructured accounts to the respondent bank;

l) An in interim order be passed restraining the respondents and each one of them and/or anyone
claiming under them from taking and steps or further steps and/or coercive measures in respect of the secured properties in relation to the loan account until disposal of the instant writ petition;

m) An interim order be passed restraining the respondents and each one of them and/or anyone claiming under them from taking and steps or further steps and/or coercive measures pursuant to the application to

> obtain the permissions from the District Magistrates in which the secured assets are located under Section 14 of the SARFAESI Act, 2002 and all the steps taken pursuant thereto and in terms thereof till the disposal of the instant writ petition;
> n) Ad-interim orders in terms of prayers (i), (k), (L) and (m) above;
> o) Costs of and incidental to this application including the Advocates' fees be borne by the respondents;
> p) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper;"

4. The learned Single Judge concluded the hearing of the writ petition on the point of interim order on July 15, 2026 and fixed the matters on July 23, 2026 under the heading 'For Orders'. The judgments were delivered on July 28, 2026, thereby dismissing both the writ petitions on merits. His Lordship held that the 'Framework for Revival and Rehabilitation of MSMEs' of the Reserve Bank of India (RBI) would not be applicable to the appellants.

5. We agree with the learned senior Advocate for the appellants on the issue that, having concluded the hearing on the point of interim orders, His Lordship could not have dismissed the writ petitions on the basis of factual issues raised by the learned Advocate for the Bank, without calling for affidavits. The final hearing of the writ petitions had not been concluded. The decision, thus, violated the principles of natural justice and suffered from a procedural irregularity.

6. The question before us is, whether the appellants have made out a, prima facie, case for obtaining an interim order, staying the proceeding initiated by the Bank.

7. The appellant No. 1 in both the appeals is a Company. The appellant Nos. 2 to 6 are the Directors. They own several immovable properties which have been mortgaged to the respondent No. 1 Bank, as collateral security for the credit facilities which were extended by the respondent No. 1 Bank to the appellant to run, manage, control various tea gardens owned by the appellant No. 1. The respondent No. 1 is a scheduled Bank and the respondent Nos. 2 and 3 are the officers of the respondent No. 1. The respondent No. 3 has also been designated as the authorised officer under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act).

8. According to Mr. Jishnu Saha, learned Senior Advocate, the learned writ court failed to appreciate the contentions of the appellants in both the writ petitions. The appellants had sought to establish the illegality in the declaration of the loan accounts of the appellant No. 1 in both the appeals as 'NPA'. Further, all consequential steps taken pursuant to the notices under Section 13(2) of the SARFAESI Act in respect of the two companies were also illegal. The illegality arose on account of non-consideration or non-compliance of the Master Circular of the RBI relating to the 'Framework for Revival and Rehabilitation of MSMEs'. According to Mr. Saha, the learned Single Judge, proceeded on the basis of the submissions of the Bank, which were not supported by any affidavit. The Bank had randomly handed over documents to His Lordship and on the basis of those documents, His Lordship arrived at

certain factual findings which were actually contrary to the Bank's records. The fact that the Companies, being the appellant No. 1 in each of the appeals, were all registered as a Micro, Small and Medium Enterprise under the appropriate Ministry and had been allotted Udyam Registration Number on February 12, 2025, was a matter of record before the Bank. The loan was granted to the companies under the MSME-IND SME Secure Scheme. Thus, the finding of His Lordship that the appellants had not shown any document to establish that they had requested the Bank for consideration of their cases for revival and rehabilitation under the Revival Scheme of the Reserve Bank of India, was perverse. Mr. Saha submitted that it was incumbent upon the Bank to identify the incipient stress in the accounts by creating three sub-categories under the SMA as per the Framework. The salient features of the Framework are quoted below :-

> "i. Before a loan account of an MSME turns into a Non-Performing Asset (NPA), banks or creditors should identify incipient stress in the account by creating three sub-categories under the Special Mention Account (SMA) category as given in the Framework.
> ii. Any MSME borrower may also voluntarily initiate proceedings under this Framework
> iii. Committee approach to be adopted for deciding the correc5tive action plan
> iv. Timelines have been fixed for taking various decisions under the Framework."

9. The Bank was required to place a structured mechanism to monitor the entire gamut of the credit related issues belonging to the MSME Sector. The public sector Banks were advised to open at least one specialized branch in

each of the Districts as specialized MSME Branches for providing better service to the said sector as a whole. Empowered Committees on MSMEs were required to be constituted at the regional offices of the Reserve Bank of India under the Chairmanship of the Regional Directors with the representatives of SLBC Convenor, senior Officials from two Banks having predominant shares in MSME financing in the state, representative of SIDBI Regional Office, the Director of MSME or Industries of State Government, one or two senior representatives from the MSME Associations in the State and a senior level Officer for SFC/SIDC, as members.

10. According to Mr. Saha, the decisions of the Hon'ble Apex Court in ***Pro Knits vs Board of Directors of Canara Bank and Ors.*** reported in ***(2024) 10 SCC 292*** and ***Shri Shri Swami Samarth Construction and Finance Solution and Anr. vs Board of Directors of NKGSB Co-op. Bank Ltd. and Ors.*** reported in ***2025 SCC Online SC 1566*** clearly laid down that the Framework for Revival and Rehabilitation of MSMEs should be mandatorily followed by all scheduled Banks The distinction drawn in ***Shri Shri Swami Samarth*** (supra) would not be applicable to the facts of the case on the ground that in the said decisions the Bank was not aware that the borrower was a MSME, whereas, in the case in hand the borrower was granted credit facilities under a specific scheme for MSMEs. According to Mr. Saha, the learned Single Judge misconstrued the ratio of ***Pro Knit*** (supra) and ***Shri Shri Swami Samarth*** (supra) and erroneously held that there was an inordinate delay on

the part of the appellants in approaching the Bank by the representation dated June 11, 2026, seeking revival, rehabilitation, rectification and restructuring of the MSME credit facilities, in terms of the MSMED Act, 2006 and the Framework of the Reserve Bank of India. According to Mr. Saha, His Lordship erred in holding that, as the petitioners had never claimed the benefit in terms of the Framework even after the demand notice was issued under Section 13(2) of the SARFAESI Act, such prayer for restructuring of the credit facilities / loan account could not be made at the fag end. It was further submitted that, it was wrongly decided that, the appellants could not claim any benefit in terms of the Framework of the RBI. Paragraphs 14-16 of the ***Pro Knit*** (supra) were placed reliance upon by Mr. Saha, to urge that the instruction for the Framework for Revival and Rehabilitation of Micro, Small and Medium enterprise as, notified by the Central Government vide notification dated May 29, 2015, in exercise of the powers conferred under Section 9 of the MSMED Act and as revised thereafter, had a statutory force and was binding on all scheduled commercial Banks licensed to operate in India by RBI. The RBI was empowered to frame policies and Rules under Section 21 and 35A of the Banking Regulation Act, 1949 and give directions to the banking companies. Such directions were to be read as supplements to the provisions of the Banking Regulation Act and were accordingly required to be construed to have statutory force of being mandatory in character. The entire exercise under the Framework was required to be carried out by the banking companies before the accounts of the MSMEs turned into Non-Performing Assets (NPA). The Framework was mandatorily required to be followed prior to classification of the borrowers account as NPA. Referring to ***Shri Shri Swami Samarth*** (supra) it was submitted that the ratio of the said decision could be distinguished on the facts of this case. Their Lordships held that assuming that the Bank did not know about the borrowing enterprise to be a MSME, the duty was upon the said MSME to produce authenticated documents and adequate material before the Bank in order to establish its eligibility to get the benefit of the Framework. Whereas, in the case in hand, such requirement was not necessary as the Bank had advanced the credit facilities under a scheme solely applicable for MSMEs. As such, there was no further requirement for the companies to produce material before the Bank, thereby, claiming consideration under the Framework of the RBI. The decision in ***Shri Shri Swami Samarth*** (supra) would apply only in cases where the Bank did not have knowledge about the borrowing enterprise being an MSME.

11. Mr. Saha took us through the documents, especially the reply issued by the M/s Merchant Monger Agrotech Pvt. Limited dated April 28, 2026, to the notice issued under Section 13(2) of the SARFAESI Act, wherein a request was made to consider a proposal filed before the Bank in the middle of April, 2026, seeking regularization and normal operation of the credit facilities. Such request clearly indicated that the appellant No. 1 was seeking regularisation of the account meaning, thereby, a request was made for restructuring of the

account on the basis of the Framework. Mr. Saha highlighted the portion in the said reply, wherein, one of the Directors of the Company had put on record that the credit facilities were taken under the SME Scheme. Similar reference was also made to the answer made by the Director of Merchant Monger Hospitality Private Limited. Mr. Saha further relied on the sanction letter dated January 31, 2024 issued to M/s Merchant Monger Agrotech Pvt. Limited with regard to the sanction of fresh OCC Limit of Rs. 2,00,00000/- under the MSME-IND SME Secure Scheme, to urge that all along and throughout the transactions and dealings between the parties, the Bank recognized the appellants as MSMEs and accordingly granted the loans under the scheme applicable to MSMEs..

12. Mr. Singh, learned Advocate for the Bank submitted that, although, no directions for affidavits were called for, His Lordship had heard the matters at length and the documents produced by the Bank clearly indicated that the appellants had approached the court with unclean hands and had misrepresented the facts. Under such circumstances, the appellants could not be protected by any order at all. Thus, the writ petitions were rightly dismissed.

13. Mr. Singh referred to a letter dated March 25, 2025, issued by the Indian Bank to M/s. Merchant Monger Hospitality (P) Ltd. indicating that a fresh sanction of SOD of Rs. 19.25 crores under general MSME had been granted in favour of M/s. Merchant Monger Hospitality (P) Ltd., under certain terms and conditions. One of such conditions being that the loan account of Merchant

Monger Agrotech Private Limited would be closed. The appellants accepted such proposal and also furnished an undertaking before the Bank, to close the loan account in respect of Merchant Monger Agrotech Private Limited. Mr. Singh further submitted that, after such undertaking was given, the appellants could not retract from the same. The undertaking was placed before the writ court. Prior to the undertaking, Bank had marked debit freeze on the loan account of Merchant Monger Agotech, which was removed only upon the undertaking being given. Thereafter, payments towards monthly EMIs were also made. The appellants also filed an application under Section 12-A of the Commercial Courts Act, 2015, seek mediation of the disputes which had arisen between the parties and the said proceeding was numbered as PLM 150 of 2026. The matter was fixed for hearing by the Mediation Tribunal on June 11, 2026, but the Bank chose not to appear. The Bank issued notice under Section 13(2) of the SARFAESI Act and possession notice under Section 14 of the SARFAESI Act. After having made the representation for being considered under the Framework of the RBI, the appellants filed S.A No. 281 of 2026 and 286 of 2026 before the Debts Recovery Tribunal, Kolkata (3) challenging the entire SARFAESI Act action. Under such circumstances, Mr. Singh contended that, the prayers in all the writ petitions for restructuring of the loan account in terms of the Framework of the RBI could not be granted.

14. We find from the records that the credit facilities in favour of Merchant Monger Hospitality Private Limited to the tune of more than Rs. 19 crores had

been sanctioned by the Bank subject to the condition that the credit facilities already sanctioned in favour of Merchant Monger Agro Tech Private Limited would be foreclosed and the appellant No. 1 in APO 38 of 2026 would exit from the said account upon closing the same. The appellant did not close the said account. The Bank marked a debit freeze on the account. After the undertaking was filed by the Merchant Monger Agrotech Private Limited, the debit freeze was removed. The Bank acted on the basis of the undertaking filed by way of a notarized affidavit dated September 25, 2026 and altered its position. The undertaking given by the appellants is quoted below :-

> "Accordingly, I/We hereby undertake that:
> a. That the Company will use the said Cash Credit Account No. 7695285777 for the purpose of Business of the Company.
> b. That by February, 2026 the Company will close the Cash Credit Account No. 7695285777 and will not continue the said Account.
> C. That the Company will hear all the directive of Bank and will not raise any dispute and if any dispute arises bank's direction will be final and the Company will not contradict the same and all the disputes to be treated as null and void in the eye of law.
> d. If permitted as per norms of the Bank, the Bank in the mean time will provide another Loan Facility of equivalent amount or more to closure value.
> I/We, make this declaration sincerely and conscientiously knowing the same to be true and knowing that on the faith of the said declaration the Bank has given and agreed to continue to give permission for operation of Cash Credit Account No. 7695285777 for the stipulated period."

15. We also find from the records that Merchant Monger Agrotech by letter dated April 16, 2026, made a proposal for repayment of the outstanding overdue so that the accounts could be regularised. The letter dated April 16, 2026 is quoted below :-

“

16.04.2026

1.The AGM
Branch In Charge Indian Bank
AuC Bose Road Branch
119 Park Street
Kolkata -700016
2.Zonal Office Kolkata Central
2nd & 3rd Floor,
14 India Exchange Palace
Kolkata - 700001
Ref: C/CA/c. No. 7695285777 and Term Loan A/c No. 7829314518 both Accounts maintain by Merchan Monger Agrotech (P) Ltd. with the AJC Bose Road Branch.

Sub: Our proposal for payment of the outstanding overdue amount in respect of the aforesaid accounts so as to regularise the accounts by eradicate the irregularities in the aforesaid account

Dear Sir,

The undersigned on behalf of Merchant Monger Agrotech (P) Ltd. propose to make repayment of the entire overdue in the bank account under reference with a view of regularise the same so as to continue with normal and usual transactions in respect of the accounts stated above, on the following terms and conditions:-

b)That upon payment of the overdue amount, the account will become regularise and you shall allow us with the regular operation.

c) Bank shall let us know the present outstanding overdue amount payable to our CC A/c and TL A/c at the earliest.

d) We shall make all our earnest endeavour to make repayment of all the overdue amount immediately after receiving your communication regarding overdue for both the accounts.

In the event, you are agreeable to our aforesaid proposal, confirm the same by a letter/email at the earliest so that we can take all steps for immediate payment of the outstanding overdue amount on account of Merchan Monger Agrotech (P) Ltd (CC and TL). so as to regularise the account and further if you have any query, please be feel tree to communicate to us.

> Please note that once this account is regularised, we will also take initiative to regularise our Merchant Monger Hospitality (P) Ltd. Accounts at the earliest.
> Thanking you in anticipation.
> Yours Faithfully
>
> Merchant Monger Agrotech Pyt. Ltd"

16. Notices were issued to both the companies under Section 13(2) of the SARFAESI Act. Thereafter, Merchant Monger Agrotech Private Limited issued the letter dated April 16, 2026. Both the companies replied to the notices under Section 13(2), whereby they called upon the Bank to withdraw the said notices and furnish the detailed accounts so that the payments could be made upon verification of those accounts. The appellants sought to regularize the accounts in question and to proceed with normal operations of the tea gardens. His Lordship recorded that on 1st June, 2026, the Bank published notification in English newspapers calling upon the appellants to repay the entire outstanding dues within 60 days from the date of publication of the notice. After the said publication of the notice the appellants made the representation on June 11, 2026, seeking consideration of their case under the Framework of the Reserve Bank of India.

17. It is a matter of record that the Bank took symbolic possession of the secured assets of the appellants on May 27, 2026.

18. We also find that the entire SARFAESI proceedings have been challenged before the DRT by both the companies. Thus, the question whether the SARFAESI proceeding had been rightly initiated by the Bank and whether the

steps taken under the SARFAESI Act were legally permissible in view of the Framework of the RBI, in our, prima facie, view can be decided by the Debts Recovery Tribunal. With regard to the prayer for a direction upon the Bank to consider the case of the appellants under the Framework of the RBI, we are of the, prima facie, opinion that the appellants had missed the bus. In none of the correspondences before us do we find that the appellants requested for consideration of the case for revival under the Framework.

19. Prior to the notice under Section 13(2) of the Act and declaration of the account as an NPA, several correspondences and communications took place including furnishing of an undertaking that Merchant Monger Agrotech Private Limited. The same discloses that, the sanction of the loan in favour of M/s. Merchant Monger Hospitality (P) Ltd. was subject to the condition that the loan account of Merchant Monger Agrotech Private Limited would be closed. However, the appellants did not comply with the undertaking and did not foreclose the loan account of Merchant Monger Agro Tech. Under such circumstances, when the Bank had already taken all necessary steps under the SARFAESI Act, it would not be proper to pass any interim protection in favour of the appellants by staying such proceedings. The learned Single Judge will hear the writ petition on affidavits and pass necessary orders with regard to the directions of the Bank as His Lordship deems fit. We do not agree with the learned senior Advocate for the appellants that the conduct of the appellants in this case would not be a relevant factor for bringing them within the purview of

the Framework of the RBI. It is not only a question as to whether the Bank knew that the appellant No. 1 was an MSME, but both parties were aware that the loan was sanctioned under MSME Scheme, but the appellants continued to negotiate with the Bank and sought to repay the amount at various stages, but none of their requests and communications indicated that they were desirous of coming within the Framework. In ***Pro Knits*** (supra), the Hon'ble Apex Court held that the enterprise could not be permitted to misuse the process of law to thwart the actions taken under the SARFAESI Act, by raising the plea of being an MSME at a belated stage. Just as it was mandatory and obligatory on the part of the Bank to follow the instructions of the RBI, it was equally incumbent on the part of the MSME to be vigilant enough to follow the process under the Framework and bring to the notice of the bank concerned by producing authenticated and verifiable documents to show its eligibility to get the benefit of the Framework. In this case, the appellant did not take any step at all. In ***Shri Shri Swami Samarth*** (supra) the Hon'ble Apex Court interpreted the decision in ***Pro Knits*** (supra) and held as follows :-

> "**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 section 12(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was issued. It is at the stage of compliance with an order passed by the relevant Magistrate under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act that this writ petition has been presented before this court claiming benefits of the framework to restrain respondent No. 2 and its officers from proceeding further under the Securitisation and Reconstruction of Financial Assets and

> Enforcement of Security Interest 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 co-ordinate 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 micro, small and medium enterprise is classified as non-performing asset, this decision also lays stress on the obligation of the micro, small and medium enterprises by holding that "it would be equally incumbent on the part of the micro, small and medium enterprises 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act by raising the plea of being an micro, small and medium enterprise at a belated stage". This decision, however, left unsaid something which we have explained hereinabove while construing the terms consistently to prevent undermining of rights that one central enactment confers by another."

20. We are of the, prima facie, opinion that the Bank had granted several opportunities to the appellants to repay the loan at the request of the appellants. Thereafter, when the appellants failed and committed a breach of the undertaking, the Bank took steps in accordance with law.

21. In view of the above, we are not inclined to pass any interim order of protection in favour of the appellants, by staying the SARFAESI actions. The

prayers in the writ petition will be decided by His Lordship. We set aside the order of dismissal of the writ petition as also the finding that the Framework will not be applicable. We direct that the findings of His Lordship should be treated as interim findings justifying refusal of an interim order. The appellants have already approached the appropriate forum and as such the remedy with regard to the illegality in the SARFAESI proceedings also lies before the forum. Parallel proceedings should not be allowed.

22. Accordingly, the appeal and the connected applications are disposed of. The learned Single Judge will proceed independently. Our observations are tentative.

23. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)

I Agree.

(**Arjun Ray Mukherjee, J.**)

Later:-

24. Learned Senior Advocate prays for stay of operation of this order. Considered and refused.

(**Shampa Sarkar, J.**)

I Agree.

(**Arjun Ray Mukherjee, J.**)