NEUTRAL CITATION

2026:GUJHC:71120

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16175 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIKHIL S. KARIEL SD/-

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Approved for Reporting	Yes	No
	Yes	

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M/S PHARMAKEM THROUGH DIVYESH VALJIBHAI JAGANI
Versus
PUNJAB AND SINDH BANK & ORS.

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Appearance:
MR NR PARIKH(578) for the Petitioner(s) No. 1
MS MITTAL GADHVI FOR MR ANKIT SHAH(6371) for the Respondent(s) No. 3
MR MOHITKUMAR R GUPTA(10588) for the Respondent(s) No. 1
MR RITURAJ M. MEENA FOR SNB ASSOCIATES(20131) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

Date : 03/11/2026

ORAL JUDGMENT

1. Heard learned advocate Mr. N.R. Parikh for the petitioner, learned advocate Mr. Mohitkumar Gupta for respondent No.1, learned advocate Mr. Rituraj Meena for respondent No.2 and learned advocate Ms. Mittal Gadhvi for learned advocate Mr. Ankit Shah for respondent No.3.

2. Rule returnable forthwith. Learned advocates waive service of notice of rule on behalf of the respective

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respondents.

3. By way of this petition, the petitioner has interalia challenged the decision of respondent No.1 – Bank of issuing the sale notice dated 29.09.2026 with regard to the property in question, more particularly, on the ground that respondent No.1 – Bank has not followed the Master Direction of the R.B.I. whereby, special protection is granted to MSME under a Framework.

4. Learned advocate Mr. Parikh would submit that the R.B.I. has issued a Notification whereby, framework for Revival & Rehabilitation of Micro, Small and Medium Enterprises (hereinafter to be referred to as the "Framework") has been published, which interalia requires the Bank, before declaring the account of an MSME as "Non-Performing Asset" (NPA), to identify incipient stress in the account falling under one of the three sub-categories found in the said Framework. Learned advocate would submit that while the loan account of the petitioner had been classified as NPA on 30.04.2026 and whereas, symbolic possession had been taken over by the respondent – Bank under section 13(4) of the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2000* (for short, "the Act") on

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09.07.2026, yet, during the entire exercise, the respondent – Bank has conveniently not taken into consideration the fact that the petitioner was an MSME and would be covered under the Framework referred to herein-above. Thus, learned advocate would request this Court to interfere and set aside the measures undertaken by the respondent – Bank.

5. As against the same, learned advocate Mr. Gupta on behalf of the respondent – Bank would vehemently contest this petition by submitting that the present petition may not be entertained by the Court, more particularly, since the petitioner has approached this Court belatedly. Learned advocate would submit that the under-lying idea being that an MSME, having availed of a loan and not being able to repay the same, should take up the issue immediately and whereas, it would not enure in its favour, if the MSME is initiating proceedings at a belated stage.

5.1 Learned advocate would submit that since the procedure under Section 13(4) of the Act has been followed by the respondent – Bank while taking symbolic possession of the property, there may not be any requirement for initiating proceedings under Section 14 of the Act.

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5.2 Learned advocate would submit that the Apex Court in the decisions in case of **Pro Knits v. Board of Directors of Canara Bank and others** reported in **(2024) 10 SCC 292** and in **Shri Swami Samarth Construction & Finance Solution and Anr. v. The Board of Directors of NKGSB Co-operative Bank Ltd. and others** reported in **2025 INSC 908** have interalia laid down that the MSMEs should be vigilant and should follow the process laid down under the Framework and bring it to the notice of the Bank at the earliest. It is also laid down that if the Enterprise allows the entire process for enforcement of security interest under the Act to be over or having challenged such action of the Bank / Creditor in the Court of Law and having failed, such an Enterprise could not be allowed to misuse the process of law for thwarting the actions taken under the Act.

5.3 It is also pointed out that in a similar scenario, where the order passed by the Magistrate under Section 14 of the Act has been taken, the Hon'ble Apex Court in case of the later decision in the case of *Shri Swami Samarth Construction* (supra) had refused to entertain the present petition, more particularly, the Hon'ble Apex Court having observed that the bonafides of the petitioning Enterprise was suspicious.

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5.4 Learned advocate would submit in this regard that while the proceedings against the petitioner for enforcement of security interest had been initiated after the loan account of the petitioner had been declared NPA, the petitioner, for the first time, had submitted his representation on 28.09.2026 after the notice under Section 13(2) of Act was issued by the respondent – Bank. Learned advocate would submit that as such, the notice under Section 13(2) of the Act was dated 04.05.2026 and whereas, the symbolic possession under Section 13(4) of the Act was taken over on 09.07.2026 and whereas, it is just but a belated approach of the petitioner in filing the representation on 28.09.2025, more particularly, since the said reply is to a notice, which has out-lived its utility, upon the Bank going further with the measures under the Act. Thus, learned advocate would request this Court not to interfere in the present petition.

6. Learned advocate Mr. Meena for respondent No.2 and learned advocate Ms. Gadhvi for respondent No.3 would support the stand of respondent No.1 – Bank.

7. Having heard the learned advocates for the respective parties and having perused the documents on record, the only question which arises for consideration of this Court is whether

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the petitioner makes out a case for interference as per the Framework set out for MSMEs. At the outset, before travelling further, it would be apposite to refer to the decision of the Hon'ble Apex Court in case of *Shri Swami Samarth Construction* (supra) and whereas, paragraphs – 7 and 8 of the said decision being relevant for the present purpose, they are reproduced herein-below for benefit;

> "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 13(2) of the SARFAESI Act was issued. It is at the stage of compliance with an order passed by the relevant Magistrate under Section 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.
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> 8. Pro-Knits (supra) 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

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> 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 of rights that one central enactment confers by another."

8. A perusal of the dictum of the Hon'ble Apex Court interalia reveals that in paragraph-7, on facts, the Hon'ble Apex Court has observed that the petitioner did not claim benefit of the Framework after the demand notice under Section 13(2) of the Act was issued and whereas, it was at the stage of compliance with an order passed by the Magistrate under Section 14 of the Act that the petition had been presented before the Hon'ble Apex Court claiming benefit of the Framework. The Hon'ble Apex Court, in this regard, had not been inclined to interfere with the decision of the Bank.

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9. The Hon'ble Apex Court, thereafter, refers to the decision in *Pro Knits* (supra) and whereas, the Hon'ble Apex Court emphasises the law laid down in the case of Pro Knits (supra) that MSME have to be vigilant enough to follow the process laid down under the Framework and whereas, if the Enterprise allows the process for enforcement of security interest under the Act to be over or having challenged such action of the Bank in Court and having failed, then such Enterprise would not be permitted to misuse the process of law by thwarting the actions under the Act.

10. As against this, this Court notices that in the present case, while the Notice under Section 13(2) of the Act had been issued on 04.05.2026, the petitioner did not file any reply thereto. It also appears that thereafter, the respondent – Bank had initiated proceedings under Section 13(4) of the Act for taking symbolic possession of the property in question and whereas, the symbolic possession of the property had been taken over, more particularly, after the notice dated 09.07.2026.

11. It appears that even after the symbolic possession had been taken over, the petitioner had waited for a few months,

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for the first time, to raise a dispute about the petitioner being an MSME and being entitled to the benefit under the Framework. It also appears that while the said communication ostensibly refers to the show cause notice dated 04.05.2026, the same would not be of any avail to the petitioner since it is clearly seen that while the notice under section 13(2) of the Act had been issued on 04.05.2026 whereas, the reply of the petitioner to such notice was on 28.09.2026, i.e. after the symbolic possession of the property had been taken-over.

12. Considering from the perspective of the law laid down by the Hon'ble Apex Court, it would appear that the benefit of the Framework has to be sought for by the MSME in reply to the notice under Section 13(2) of the Act. In the instant case, while the reply portrays as if it is to the notice under Section 13(2) of the Act, yet, it would appear that the petitioner had permitted the proceedings under the Act to continue for a while, i.e. till symbolic possession of its property had been taken over under Section 13(4) of the Act and even almost three months thereafter, i.e. while the symbolic possession had been taken over on 09.07.2020, the reply to the notice under Section 13(2) of the Act was given on 28.09.2026. The petitioner having initiated steps for getting benefit under the Framework, in the considered opinion of this Court, as per the

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law laid down by the Hon'ble Apex Court in case of *Shri Swami Samarth Construction* (supra), the petitioner would not be entitled to any benefit of the Framework.

13. Considering the above position, the petition stands disposed of, as rejected. Rule is discharged. No order as to costs. It is clarified that the petitioner would be entitled to exercise his rights as available under the SARFAESI Act for challenging the measures under Sections 14 or 13(4) of the Act, as the case may be.

SD/-

(NIKHIL S. KARIEL, J)

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