

(2025) 08 KL CK 0801

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5466 OF 2025

M/S. PDMC Industries

APPELLANT

Vs

Ministry Of Micro Small And Medium Enterprises

RESPONDENT

Date of Decision : 06-08-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Banking Regulation Act, 1949 — Section 21, 35A
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 2(zd), 13(2), 13(3A), 13(4), 17
Micro, Small And Medium Enterprises Development Act, 2006 — Section 9

Citation : (2025) 08 KL CK 0801

Hon'ble Judges : Mohammed Nias C.P, J

Bench : Single Bench

Advocate : Nisha George, George Poonthottam, T.C.Krishna, Sunil Sankar.P, Mohan Jacob George, P.V.Parvathy, Reena Thomas, Nigi George, Ananthu V.Lal, Sherin Varghese, Brahma R.K., C.Dinesh, O.M.Shalina

Final Decision : Partly Allowed

Judgement

Mohammed Nias C.P., J.

1. The first petitioner, M/s PDMC Industries, a partnership firm, engaged in metal crushing and M-sand production, and the second petitioner is a proprietary concern, engaged in the business of rubber processing. The third petitioner is the Managing Partner of M/s PDMC Industries and the proprietor of M/s PDMC CO Rubber.

2. The first petitioner availed a cash credit overdraft facility of Rs. 2 crores from the second respondent Bank in 2018–19. The first petitioner also obtained ECLGS loans of Rs.39 lakhs and Rs.10 lakhs under the Central Government's COVID-19 relief scheme. The second petitioner availed overdraft facilities of Rs. 1.25 crores and Rs. 50 lakhs in 2018–19, along with ECLGS loans of Rs.76 lakhs and Rs.48 lakhs, working capital term loans of Rs. 9.28 lakhs and Rs. 2.0868 crores, and a

funded interest term loan of Rs. 34.66 lakhs. The third petitioner, jointly with his brother Mr. Cyriac Mathew, also availed a KCC/OD facility of Rs. 2.75 crores.

3. The petitioners contend that, being an MSME, they are entitled to the benefits conferred under the MSMED Act and the notifications issued pursuant thereto, including Ext. P3 Notification dated 29.05.2015 issued by the first respondent and Ext. P4 Notification dated 21.07.2016 issued by the Reserve Bank of India. Exhibit P3 and Ext. P4 mandates early identification of stress in MSME loan accounts by banks, and requires classification under SMA-0, SMA-1, and SMA-2 based on the extent of payment delays as specifically provided in Clause 1 of Ext. P3. Ext P4 notification also mandates that such an identification of incipient stress be made before classification of an MSME Account as NPA, as provided in Clause 4.8 therein.

4. The first petitioner's account was declared NPA as on 29.03.2023, as communicated through Exhibit P7 dated 12.04.2023, followed by Ext. P8 loan recall notice dated 19.04.2023. The second and third petitioners were also issued recall notices on 02.05.2023, despite no overdue in their accounts, solely on the grounds of common security and management. The first petitioner was issued Ext. P9 demand notice under Section 13(2) on 02.06.2023, and objections raised through Exhibit P10 were rejected with a vague Ext. P11 reply on 07.07.2023. Petitioners contend this was contrary to RBI norms, as the account was in the SMA-0 category and within limits as on March 2023. Ext. P13 revival request of the first petitioner, dated 02.09.2023, was also ignored, leading to a possession notice on 08.09.2023. W.P.(C) No. 29909/2023, challenging this inaction, was filed and dismissed, following which the first petitioner filed S.A. No. 462/2024, and later OP(DRT) No. 258/2024, which was withdrawn. The second petitioner's objections to the demand notice were rejected via Exhibit P18, leading to W.P.(C) No. 32643/2023 and S.A. No. 600/2024, where the Bank failed to file its counter. The third petitioner's KCC-OD account was recalled without cause; his objections dated 10.05.2023 and 12.09.2023 were rejected by Exhibit P22. The third petitioner preferred W.P.(C) No. 32498/2023, which was dismissed along with the connected cases on 21.05.2024. Review Petition No. 536/2024 was disposed of on 31.05.2024 on the ground that the petitioners had an alternate statutory remedy before the Debts Recovery Tribunal, and W.A.No. 806/2024 was withdrawn with liberty on 20.06.2024. The third petitioner has since filed S.A. No. 598/2024 before the DRT, which is pending.

5. Petitioners 1 and 2 had preferred W.P.(L) Nos. 30531 and 30600 of 2024 before the High Court of Judicature at Bombay seeking enforcement of MSME protections and to declare the SARFAESI proceedings void, and while these were pending, the respondent Bank proceeded under SARFAESI and obtained Exhibit P23 and P25 orders from the CJM Court, Kottayam, for taking possession of properties mortgaged by the first and third petitioners. Ext. P24 and P26 possession notices issued by Advocate Commissioners were issued accordingly. Citing cross-lien over all secured assets, the Bank moved to take possession of

all properties, without filing a counter before the DRT, likely to avoid disclosure of the flawed NPA classification in violation of Exhibits P3 and P4. Petitioners then filed W.P.(C) No. 44147/2024 before this Court, resulting in Ext. P27 interim order on 30.12.2024, following which they withdrew the cases filed in Bombay. On 30.12.2024, the Bank took possession of agricultural land and attempted to seize the residential house on 02.01.2025, but further steps were stayed.

6. The petitioner contends that, in *M/s Pro Knits v. Board of Directors of Canara Bank & Ors.*, [(2024) 10 SCC 292], the Hon'ble Supreme Court held that banks must follow the revival and rehabilitation framework before classifying MSME accounts as NPA or initiating recovery under SARFAESI. The second respondent bank failed to do so in the case of the first and second petitioners, thereby acting in violation of the binding precedent.

7. It is submitted that clause 2.1 of Ext. P4 mandates that banks identify incipient stress in the account by creating sub-categories, and the branch maintaining the account should consider forwarding the stressed accounts with aggregate loan limits above 10 lakh to the committee as referred in para 3.3 within five working days for a suitable corrective action plan (CAP). The second respondent has not only failed to comply with these obligations but also has failed to respond to Ext. P5 and P6 email communications issued by the first petitioner seeking restructuring under the MSME scheme.

8. Clauses 4 and 5 of the Framework provide for a robust mechanism to revive and restructure the stressed account of the borrower, which includes (a) rectification (b) restructuring (c) recovery, i.e, availing the legal recourse and recovery options if and only if the first two options are not feasible or failed. The second respondent, without providing any opportunity for rectification and restructuring, malafidely proceeded with the recovery proceedings, and it contends that thereby the notices for taking over physical possession are rendered void ab initio.

9. The petitioners contend that none of the communications issued by the second respondent bank indicated that the accounts of petitioners 1 to 3 were overdue for more than 90 days or classified as 'out of order' in terms of the Prudential Norms. It is argued that the reasons cited in Exhibit P11, reply to the first petitioner's objection, namely, expiry of sanctioned limit and stock failure, do not meet the criteria for NPA classification under RBI guidelines. Further, Exhibits P18 and P22 merely state that the classification was as per RBI's Prudential Norms, without addressing the petitioner's specific assertion that interest servicing was regular.

In the above circumstances, the petitioners sought the following prayers:

"i) To issue a writ of certiorari calling for the records leading to Ext. P8, Ext. P8(a) and Ext. P8(b) whereby the loan facilities were recalled.

ii) To issue a writ declaring further that the classification of the loan accounts of

the petitioners as NPA by resorting to circuitous methods contrary to the provisions of law is bad in law.

iii) To issue a writ declaring that the petitioners are entitled to the benefits as per Ext. P3 and Ext. P4 notifications, and that the denial of the same is violative of their fundamental rights.

iv) To issue a writ of certiorari calling for the records leading to Ext. P23 and Ext. P25 orders as well as Ext. P24 and Ext. P26 notices, and all further actions taken thereunder, and to quash the same.

v) To issue a writ declaring that the action taken to take possession of the property given as security towards the KCC loan is a device resorted to defeat the MSME benefits which the petitioners are entitled to, and that such action amounts to a fraud on power.

vi) To dispense with the filing of English translation of vernacular documents.

vii) To issue any other order or direction that this Hon'ble Court would deem fit to issue in the interest of justice.

10. The second respondent bank, in the counter affidavit, states that the petitioners jointly owe Rs. 14.20 crore as on 20.03.2025. It is pointed out that the petitioners had earlier challenged the SARFAESI proceedings and sought restructuring of their accounts by filing W.P.(C) Nos. 32643, 29909, and 32498 of 2023, which were dismissed by Ext. R2(b) common judgment dated 21.05.2024, directing them to approach the DRT. The review petitions and writ appeals were also dismissed by Exts. R2(c) to R2(f). The respondent alleges that the petitioners suppressed these proceedings in the present writ petition, warranting dismissal for suppression of material facts, and argues that the claims are barred by res judicata and estoppel. It is further contended that only the first petitioner had sought MSME restructuring, while the second petitioner failed to disclose its MSME status, and the third petitioner, having availed loans in his personal capacity, is not entitled to MSME relief.

11. The bank submits that the first petitioner's account was treated as an MSME account and that Ext. R2(g) request for restructuring, dated 16.06.2021, was duly considered by the MSME Rehabilitation Committee in its meeting held on 12.11.2021. The competent authority evaluated the account on 30.10.2021 and noted multiple deficiencies, including incipient stress in servicing obligations since 2018, negative capital position, and non-compliance with MSME restructuring policy norms. The Committee observed that the promoters were struggling to meet financial obligations and had failed to provide a credible action plan for revival, as recorded in Ext. R2(h) restructuring proceedings and Ext. R2(i) minutes of the Committee.

12. Despite rejection of the restructuring request, the bank extended financial assistance under the ECLGS to the first petitioner to support the petitioner's operations during the pandemic. However, it is contended that the funds were

not properly utilised, and subsequently, the accounts of the first petitioner were classified as NPA, and the accounts of the second petitioner and the third petitioner were classified as NPA on 06.04.2023.

13. The bank submits that, following the NPA classification, and at the request of the promoters, the account of the first petitioner was reconsidered for restructuring on 06.07.2023. During the visit to the unit, it was found that no stock was available, stock statements had not been submitted since 30.09.2022, the power supply was severed, and the unit was not in operation as recorded in Ext. R2(j) minutes of the Committee. It is further stated that the first petitioner was aware of this decision and cannot now claim ignorance.

14. Regarding the SARFAESI action, the bank denies any illegality or circuitous approach. It contends that different loans were availed by each of the petitioners in their individual capacities and that collateral securities were also separate. The residential property of the third petitioner was mortgaged both for his personal loan and for the loan of the second petitioner, but not for the loan availed by the first petitioner. It is further submitted that the bank has proceeded against other secured assets as well, including those owned by Mr. Cyriac Sebastian Mathew and Mrs. Sunitha Sebastian, and not merely the residential house of the third petitioner. The bank disputes the allegation that the properties are agricultural in nature, stating that no such evidence has been produced by the petitioners. It is asserted that the classification of accounts as NPA was made following RBI guidelines and prudential norms due to failure to service obligations, expiry of sanctioned limits, and operational deficiencies.

15. The symbolic possession measures initiated under Section 13(4) were necessitated due to the continued default and were supported by orders from the Chief Judicial Magistrate, Kottayam, as evidenced by Ext. P23 and Ext. P25 orders and Ext. P24 and Ext. P26 notices issued by the Advocate Commissioner. The bank contends that all steps were taken under the Act and that the petitioners have, instead, adopted a strategy of forum shopping. The learned counsel for the respondent bank relies on *Esthappan M.D. v. Reserve Bank of India* (2025 KHC OnLine 655), *Celir LLP v. Sumati Prasad Bafna and Ors* (2024 SCC OnLine SC 3727), *Jayaprakash A v. Union of India* (2023 (7) KHC 282).

16. In the reply affidavit filed by the third petitioner on behalf of all the petitioners, rejects the contention of respondents on suppression of fact as it is clarified that the earlier writ petitions, review petitions, and appeals have all been disclosed and were either dismissed on technical grounds or withdrawn with liberty, without any adjudication on the merits of the issues raised in the present petition. The respondent bank deliberately failed to file counter or written statements in the Securitisation Applications before the DRT, thus frustrating the petitioners' access to remedy and compelling them to return to this Court.

17. The petitioners state that the Ext. P30 email communication dated 21.02.2022, sent by the third petitioner, clearly shows that the bank was

informed of the second petitioner's MSME status well before the account was classified as NPA on 06.04.2023. The petitioners deny that any fresh restructuring request was made after NPA classification, as alleged by the bank, and contend that the meetings referred to in Ext. R2(j) were never communicated to them. The Ext. P11 reply issued under Section 13(3A), makes no mention of the said committee or any detailed grounds for refusal. The petitioners also refer to the consistent submission of monthly stock statements through Ext. P31 to P31(f), email communications that contradict the bank's claim of non-submission and stock failure. The authenticity of the minutes now relied upon by the bank is also challenged.

18. Heard Sri. George Poonthottam, learned senior counsel, instructed by Smt. Nisha George, for the petitioners and Sri. Mohan Jacob George, learned counsel for the respondent bank.

19. The learned Senior Counsel for the petitioners, Sri. George Poonthottam argues that the petitioner's case is squarely covered by the judgment in *Pro Knits v. Canara Bank*, [(2024) 10 SCC 292]. It was also argued that the borrowers in the instant case had brought to the notice of the bank that they were MSMEs and claimed the benefit of the notification, and therefore, the bank was under an obligation, going by Ext. P3 Notification, to refer the matter to the committee stated in the notification. Although the bank raises a contention that the matter was considered by the committee in terms of the notification, the very constitution of the committee is against the notification. It is also argued that none of the decisions taken by the bank showing the alleged compliance of the notification were communicated/served on the petitioners, and therefore, the designation of the account as NPA is completely illegal, and as a consequence, the further proceedings will become a nullity.

20. The learned counsel for the respondent bank, Sri. Mohan Jacob George argues that the petitioner had earlier filed W.P. (C) No. 29909, 32498, and 32643/2023, which was dismissed by the judgment dated 21.05.2024. A review was also filed in which permission was sought to move the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, and the same was granted. A writ appeal was also filed by the petitioner, which was also dismissed by the judgment dated 20.06.2024. In view of the above proceedings, it is argued by the bank that the petitioner cannot maintain this writ petition. The learned counsel also argues that the MSME notification has been complied with, and the petitioner was given credit facilities, which must be taken as a compliance with the notification. Under such circumstances, the petitioner's case is covered by the judgment in *Pro Knits* (Supra) as the bank had complied with the notification. It is also argued that at best, only the first petitioner can claim the benefits of the MSME and not the other petitioners, and actions against them cannot be considered in terms of the notification. The writ petition filed by them has to be dismissed without anything more.

21. On a consideration of the rival contentions, it is to be noted that the specific

contention of the petitioners is that the respondent Bank was statutorily bound to comply with the Ext. P3 and P4 notifications, which mandate that before classifying an MSME account as NPA, banks must identify incipient stress in the account by categorising it as SMA-0, SMA-1, or SMA-2 and thereafter constitute a Committee to formulate a Corrective Action Plan. However, they failed to adhere to it, resulting in a clear violation of the notifications above and the law laid down in Pro Knits (supra). The relevant paragraphs of Pro Knits (supra) are given below:

"16. 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 concerned MSME to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act. 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 authorized person. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization 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 concerned MSME 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.

17. What is contemplated in the "Framework for Revival and Rehabilitation of MSMEs" contained in the Instructions/ Directions stated hereinabove, is required to be followed prior to the classification of the borrower's account, (in the instant case MSMEs loan account), as Non-Performing Assets. The said Instructions contained in the Notification dated 29.05.2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSMED Act, followed by the Directions issued by the RBI in exercise of the powers conferred under Section 21 and 35A of the Banking Regulation Act, the Banking companies though may be 'secured creditors' as per the definition contained in Section 2 (zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.

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 concerned MSME 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 authorized person.

20. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization 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 concerned MSME 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 concerned bank/creditor 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 concerned bank/creditor 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 concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework."

22. In a recent judgment of the Supreme Court in Shri Shri Swami Samarth Construction & Finance Solution and Ors. Vs. The Board of Directors of NKGSB Co-op. Bank Ltd. and Ors. (MANU/SC/0997/2025), It was held as follows:

"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 Section 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 Section 13(3-A) of the SARFAESI Act asserts that it is 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 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.

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 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."

23. A combined reading of the judgments in Pro Knits and Shri Shri Swami Samarth Construction (supra) makes it clear that banks are mandatorily required to identify incipient stress and classify MSME accounts under the Special Mention Account (SMA) categories before declaring them as NPAs, provided the MSME

furnishes authenticated and verifiable documents establishing its status under the MSMED Act. While Pro Knits (supra) held that this obligation arises only upon production of such material before NPA classification, Shri Shri Swami Samarth Construction (supra) clarified that even if the bank has no prior knowledge, once the borrower, in its reply to the Section 13(2) notice, asserts that it is an MSME and claims the benefit of the framework citing reasons supported by an affidavit, the bank is mandatorily bound to look into such claim and keep SARFAESI proceedings in abeyance. Both cases caution that MSMEs cannot raise their status belatedly, after SARFAESI actions have concluded or failed in litigation.

24. In response to the contention that the law laid in Pro Knits is violated, the bank states that the communication concerning the MSME status was received only from the first petitioner, but it is not disputed that the first petitioner invoked the MSME notification before the NPA classification. As regards the second petitioner, the bank contends that there was neither any communication regarding the MSME status nor claimed benefit under the RBI circular. With regard to the third petitioner, there is no question of MSME as he availed a loan in his personal capacity. To refute this contention of the bank, in the reply affidavit, it is stated that Ext. P30 email communication, along with MSME Udyam registration, was communicated to the bank before classifying the second petitioner's account as NPA. Thus, it is to be found that both the first and second petitioners have claimed the benefit of Ext P3 and P4 through communication dated 20.03.2023 and 29.03.2023, well before their accounts were classified as NPAs on 29.03.2023 and 06.04.2023, respectively, and therefore, the bank was bound to comply with the relevant notifications applicable to the MSME enterprises.

25. The respondent bank, in its counter affidavit, states that the first petitioner's Exhibit R2(g) request dated 16.06.2021 was considered by the competent authority for restructuring of advances on 30.10.2021 as shown in Exhibit R2(h) proceedings, and thereafter by the MSME Rehabilitation Committee on 12.11.2021 as shown in Exhibit R2(i) proceedings, which found restructuring not viable. It is further stated that, notwithstanding this rejection, ECLGS assistance was sanctioned to the first petitioner, and subsequently, the petitioner allegedly failed to maintain financial discipline, and the account was classified as NPA. The Bank also claims that a second evaluation was done post-NPA by the Committee on 06.07.2023, which noted various discrepancies as recorded in Exhibit R2(j). Thus, it is to be seen that in the instant case, the fact is that the petitioner had claimed the benefit of MSME, and the bank's case is that they have considered the same. The petitioners have specifically pleaded that the consideration based on the MSME notification was not by the committee as mandated in Clause 3 of Exhibit P3. This ground is specifically as follows:

"C. A bare perusal of Exhibit P3 would categorically establish the fact that before a loan account of MSME Borrower turns stressed, the banks or creditors are required to identify incipient stress in the account by creating three sub-

categories as laid down under the Special Mention Account (SMA) category, pursuant to which the Bank or the Creditor are required to inform the MSME Borrower about the mechanism of availing the 'Corrective Action Plan 'as may be formulated by the Composition of Committee for Stressed Micro Small & Medium Enterprises. Clause 3 of the said framework provides for the constitution of an impartial and an expert Committee representing the interests of all stakeholders, such as the creditor, the State government so too an independent external expert with expertise in the Micro Small & Medium Enterprises related matters."

Clause 3 of Ext P3 is extracted as below:

"3. Composition of Committee for Stressed Micro, Small and Medium Enterprises

(1) The constitution of the Committee shall be as under:

1. The regional or zonal head of the bank, who shall be the Chairperson of the Committee.
2. Officer in charge of the Micro, Small and Medium Enterprises Credit Department of the bank at the regional or zonal office level, who shall be the member and convener of the Committee.
3. One independent external expert with expertise n Micro, Small and Medium Enterprises related matters to be nominated by bank.
4. One representative from the concerned State Government.

(2) The composition of the Committee, the terms of appointment of its members, the manner of filling vacancies, and the procedure to be followed in the discharge of the Committee's functions shall be as may be prescribed by the board of directors of the bank."

26. To this contention, the bank has merely stated that the first petitioner's request was considered first by the competent authority and later by its MSME Rehabilitation Committee, which rejected the restructuring proposal. However, there is no specific denial of the above averments, and there is no pleading that the Committee constituted was in accordance with Clause 3 of the MSME Framework, which mandates the inclusion of an independent external expert, a State Government representative, and other stakeholders. In the absence of any material, compliance with the mandatory structure and procedure under Exhibit P3 remains unsubstantiated. A perusal of Exhibits R2(i) and R2(j) minutes of the committee confirms that the Committee comprised only internal bank officials, such as the DGM, Chief Manager, Assistant General Manager, Manager, and Assistant Manager, with no indication of any external or government representation. Thus, it is clear that there has been no consideration by a Committee as envisaged under Clause 3 of the MSME Framework, which is mandatory.

27. Accordingly, it follows that the bank has not complied with the specific conditions in Ext. P3 and P4 Notification, in particular Clause 1, Clause 3, Clause

5 of Ext.P3 and Clause 2.1, Clause 4.8 of Ext.P4, before classifying the accounts of the first and second petitioners as NPAs, thus breaching the principles laid down by the Apex Court in the judgments referred above.

28. The third contention of the petitioner in this regard is that the orders purportedly passed by the committee were never communicated to the petitioners. The Bank did not specifically respond to this assertion of non-communication, but merely stated in paragraph 8 of the counter that the first petitioner is “well aware” of the Committee’s rejection, a vague claim unsupported by any material showing actual communication of Exhibits R2(h) and R2(i). Non-communication of the alleged consideration also violates the intent of the notification.

29. As regards the maintainability of the instant writ petition, it is to be noted that the classification of an account as NPA is a distinct and preliminary act having serious civil consequences, more so when it is in breach of the judgments referred to earlier, besides the notifications concerned. As such, the classification of the accounts of the first and the second petitioners is clearly illegal and liable to be declared so. The grievance of a borrower regarding asset classification and consequential invocation of the SARFAESI Act by issuing notice under Section 13(2) of the SARFAESI Act, cannot be redressed under section 17 of the SARFAESI Act in the absence of invocation of Section 13(4) of the SARFAESI Act and judicial review under Article 226 is the only remedy.

30. The remedy under Section 17 is only against the invocation of Section 13(4) of the SARFAESI Act, after a legal and valid classification of the accounts as NPA. In the present case, although proceedings under Section 13(4) have since been initiated, the foundational challenge is not to the recovery steps themselves but to the very legality of the NPA classification on the ground that the mandatory procedure prescribed under Ext. P3 and P4 were not followed. This renders the classification as NPA illegal, given the position of law reinforced by the decisions in *Pro Knits* and *Shri Shri Swami Samarth Construction* (supra), that the RBI Framework is binding and must be complied with before NPA classification in MSME accounts. Since the petitioners’ grievance arises at the threshold stage of wrongful classification itself, and it cannot be redressed under Section 17 of the SARFAESI Act, the writ petition is therefore maintainable under Article 226 of the Constitution.

31. The objection raised by the respondent Bank that the writ petition is barred by res judicata due to the filing of the earlier writ petitions, W.P.(C) Nos. 29909, 32498, and 32643 of 2023, and subsequent proceedings in R.P. Nos. 535 and 536 of 2024 and W.A. Nos. 787, 806, and 835 of 2024, also cannot be sustained. In W.P.(C) No. 44147 of 2024, the last in the series of petitions, this Court had expressly left all contentions of the petitioners open. Given the above, none of the judgments cited by the respondent apply to the facts of the case.

For the foregoing reasons, it is declared that the first and second petitioners are

entitled to the benefits as per Ext. P3 and P4 notifications. Ext. P9 and P16 are quashed. Consequently, there will be a direction to the respondents to comply with Ext. P3 and P4 Notifications, as far as the first and second petitioners are concerned, and only after the said compliance and based on the decision thereon, the bank shall decide on the classification of the accounts of the first and second petitioners as Non-Performing Assets to proceed under the SARFAESI Act.

The writ petition is partly allowed.