



Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (ST) NO. 14829 OF 2025
WITH
INTERIM APPLICATION (L) NO. 17532 OF 2025
IN
WRIT PETITION (ST) NO. 14829 OF 2025
WITH
INTERIM APPLICATION (L) NO. 18564 OF 2025
IN
WRIT PETITION (ST) NO. 14829 OF 2025
WITH
INTERIM APPLICATION (L) NO. 21757 OF 2025
IN
WRIT PETITION (ST) NO. 14829 OF 2025

SHEPHALI
SANJAY
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Mrs Manisha Nimesh Mehta,
Promotor & Guarantor of
M/s. Perfect Infraengineers Ltd,
Plot No. R-637, T.T.C. Industrial Area,
Thane Belapur Road, MIDC, Rabale,
Navi Mumbai,
Maharashtra 400 701

...Petitioner

~ versus ~

1. **Technology Development Board,**
Through its Director having its
registered office at Technology Bhavan,

Block-II, 2nd Floor, New Mehrauli Road,
New Delhi 110016

2. **Shri Rajesh Pathak,**
Secretary, Technology Development
Board, Department of Science &
Technology, Block-II, Second Floor, New
Mehrauli Road, New Delhi 110016
3. **The Project Monitoring Committee,**
Represented by its Chairman,
Technology Development Board,
Department of Science & Technology,
Block-II, Second Floor, New Mehrauli
Road, New Delhi 110016
4. **Assistant Law Officer/Authorized
Officer,**
Technology Development Board,
Department of Science & Technology,
Block-II, Second Floor, New Mehrauli
Road, New Delhi 110016
5. **Shri Rajesh Jain,**
Director of Finance,
Technology Development Board,
Department of Science & Technology,
Block-II, Second Floor, New Mehrauli
Road, New Delhi 110016
6. **Smita Puthucheri,**
Project Co-ordinator,
Technology Development Board,
Department of Science & Technology,
Block-II, Second Floor, New Mehrauli
Road, New Delhi 110016
7. **The Board of Directors of ICICI Bank,**
Represented by its Chairman &
Managing Director, ICICI Bank Ltd,
Old Padra Road, Near Chakli Circle,
Vadodara, Gujarat 390 001.
8. **Shri Jignesh Shelani,**
Authorized Officer,

ICICI Bank Head Office,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai 400 051

9. **Shri Vijay Kumar,**
Chief Manager,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla
Complex, Mumbai 400 051
10. **Shri Sandeep Bakshi,**
Managing Director,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla
Complex, Mumbai 400 051
11. **Shri Arjun Jain,**
Zonal Head, ICICI Bank,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla
Complex, Mumbai 400 051
12. **Ms Ritu Maheshwari,**
Relationship Manager,
ICICI Bank Head Office,
ICICI Bank Towers, Bandra Kurla
Complex, Mumbai 400 051
13. **Ministry of Micro Small & Medium
Enterprises,**
through its Secretary, Udyog Bhawan,
Rafi Marg, New Delhi 110 011.
14. **Ministry of Finance,**
Through its Secretary, Department of
Banking, Jeevan Deep Building,
Parliament Street, New Delhi 110 011.
15. **State of Maharashtra,**
Rep. by its Chief Secretary,
C.S. Office Main Building, Mantralaya,
6t Floor, Madame Cama Road, Mumbai
400 032.

16. **Reserve Bank of India,**
Represented by Its Governor,
New Central Office Building,
Shahid Bhagat Singh Road,
Fort, Mumbai 400 001.
17. **National Stock Exchange of India Ltd,**
Represented by its Managing Director &
CEO, Exchange Plaze, C-1, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051.
18. **Gaurang Chhotalal Shah,**
Resolution Professional,
Flat No. 204, A Wing, Raj Vaibhav 1
CHS, Dhankar Wadi, Mahavir Nagar,
Kandivali (W), Mumbai 400 067.
Also at:
1221, Maker Chambers V, Nariman
Point, Mumbai 400 021.
19. **Ministry of Corporate Affairs,**
A Wing, Shastri Bhawan, Rajendra
Prasad Road, New Delhi 110 001
20. **Registrar of Companies,**
100, Everest, Marine Drive,
Mumbai 400 002.
21. **Bank of India,**
Kanmoor House, Narshi Natha St,
Near Masjid, Bhat Bazar,
Chinchbunder, Mandvi Branch, Mandvi,
Mumbai 400 0009.
22. **The Chairman,**
Empowered Committee on MSMEs,
Represented by the Regional Director,
Reserve Bank of India, Mumbai
23. **The Chairman,**
State Level Inter Institutional
Committee, Reserve Bank of India,
Mumbai.

...Respondents

APPEARANCES

For the Petitioner	Mr Mathews Nedumpara , with Hemali Merva, Maria Nedumpara, Akhilesh Nair & Mahesh Parab, i/b Nedumpara & Nedumpara.
For Respondents Nos. 1 to 6	Mr Viraj Shelatkar , with Sumedh Ruikar, i/b Pradip Yadav.
For Respondents No. 7	Mr Anshul Anjarlekar , with Manshi Thakkar, Sanika Athalye & Priyanka Shanalesha, i/b Raval Shah & Co.
For Respondents No. 15- State	Smt Jyoti Chavan, Addl. GP
For Respondents Nos. 16, 22 & 23	Mr Huzan Bhungara , with Pradeep Mane & Shubhi Dotya, i/b Desai & Diwanji.
For Respondents No. 18	Mr Yahya Batatawala , with Sneha Mishra.

**CORAM : SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ**

**RESERVED ON : 29TH SEPTEMBER 2025.
PRONOUNCED ON : 7TH OCTOBER 2025.**

JUDGMENT (Per Suman Shyam, J):-

1. Rule. Rule made returnable forthwith. By consent of the learned counsel for the parties, the Writ Petition (St) No. 14829 of 2025 is taken up for final hearing and disposal.

2. The Writ Petitioner herein is the promoter and guarantor of M/s. Perfect Infraengineers Ltd, which is a company registered under section 8 of the Micro , Small and Medium Enterprises Act (“**MSME Act**”). The MSME unit of the Petitioner had availed credit facility from the ICICI Bank represented by the Respondent No. 7. However, on account of its failure to repay the amount, the loan account was declared as a Non Performing Asset (“**NPA**”) on 29th February 2020. Consequently, the Loan Recall Letter, along with Guarantee Invocation Notice, was issued to the Petitioner, which was followed by a Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI**”) issued on 14th October 2020. In pursuance to the aforesaid Notice, Respondent No. 7-Bank took over possession of the secured assets belonging to the Petitioner. Thereafter, on 28th September , 2022 the Bank had issued notice for sale of the secured assets of Petitioner. The Respondent No. 1-Technology Development Board (“**TDB**”) had also extended loan assistance to the Petitioner’s MSME unit to the tune of Rs. 750 lakhs. However, according to the Writ Petitioner, after disbursing an amount of Rs. 450 lakhs, Respondent No. 1 had issued a communication dated 31st May 2021 conveying its

decision not to continue with the Loan Agreement. As such, on 25th April 2022 a notice was issued by Respondent No. 1 to the Petitioner seeking repayment of the outstanding dues of Rs. 5,76,25,606/-. The primary contention of the Petitioner before this Court is that in view of the Notification dated 29th May 2015 issued by the Government of India providing for a mechanism for identifying incipient stress in the MSME Unit and for referring the matter to the Committee envisaged by clause 2 of the Notification for implementation of a “Corrective Action Plan” it was incumbent upon the Bank/ Financial Institution to first explore a revival plan before initiating any action for loan recovery. It is the contention of the petitioner that until and unless such revival proposal/ correction plan is examined by the Committee envisaged by the Notification dated 29th May 2015 it would not be permissible under law for the Bank/ Secured Creditor to declare the loan accounts of an MSME as an NPA account and proceed under the SARFAESI Act as well as IBC. The Writ Petitioner has, therefore, approached this Court by filing the instant Writ Petition praying for the following reliefs :-

“a) To declare that the M/s. Perfect Infraengineers Ltd being an MSME within the meaning of Section 8 of the

MSMED Act is entitled to the benefit of the notification dated 29.5.2015 and that its account could not have been classified as NPA without identification of the incipient stress by the ICICI Bank, the largest lender, and the constitution of a committee by it, and further that no recovery proceedings could have been initiated or continued except in the manner contemplated in paragraph 5(4)(iii) of the notification and further that the steps initiated by the ICICI Bank and the TDB under the SARFAESI, RDB Act and the IBC are illegal and void ab initio;

b) To issue a writ in the nature of mandamus directing the ICICI Bank to constitute a committee as mandated by the notification dated 29.5.2015 and further to implement a corrective action plan as contemplated by the notification, which would cover the TDB as well, in terms of paragraph 4(7)(11) of the notification;

c) To declare that in the light of the judgment of the Supreme Court dated 8.7.2024, M/s. Perfect Infraengineers Ltd./the Petitioner is entitled to an adjudication at the hands of this Court as to the claim of the Petitioner that, it being an MSME, is entitled to the protection under the notification and that its classification as NPA without the constitution of a committee is illegal and rendered void ab initio being in gross violation of the notification dated 29.5.2015.”

3. This case has a chequered history. After going through the records we find that before approaching this Court by filing the present Petition, the Writ Petitioner had instituted multiple proceedings before different forums agitating the same issue, seeking more or less similar reliefs. However, apart from granting some interim orders the final relief in those proceedings had been declined by all the forums. As such, in order to appreciate the

issues raised in this Writ Petition as well as the contentions of the rival parties, we deem it necessary to briefly narrate the facts and circumstances leading to the filing of this Writ Petition:-

- (a) On 29.05.2015 the Government of India, Ministry of MSME, had issued Notification No.1432(E) in exercise of powers conferred under section 9 of the MSMED Act. The said notification *inter-alia* contemplates a “Framework for Revival and Rehabilitation of MSMEs” Clause 1 of the notification contains instructions upon the Banks or Creditor for identification of incipient stress of an MSME unit before a loan account turns into an NPA. As per the Scheme of Clause 1 an MSME can voluntarily initiate proceeding under the Framework if it reasonably apprehends failure of its business or likelihood of inability to pay its debts before the accumulated losses of the enterprise equals to half or more of its entire net worth. However, such application for initiation of proceeding must be verified by an affidavit of an authorized person. Clause 2(1) of the Notification lays down that subject

to any regulation prescribed by the RBI for this Framework, all Banks to constitute one or more Committees so as to provide reasonable access to all MSME Units who have availed credit facilities from the Bank. As per Clause 2(2) all MSME units to have access to the Committee for deciding on a corrective action plan and determining the terms thereof ,in accordance with the regulations prescribed in the Framework.

- (b) As noted above, the MSME Unit of the Petitioner had availed financial assistance from the Respondent No 1 (TDB) and Respondent No 7 (ICICI Bank). It appears from the record that on 2nd October, 2019 the Writ Petitioner had addressed a letter to the Managing Director of the ICIC Bank *inter-alia* requesting for correction in the interest rate as per the RBI guidelines/ policy for MSME borrowers on the ground that the interest rate charged by the Bank was not proper. The said letter was followed by the communication dated 2nd November, 2019 issued by the Writ Petitioner for renewal of limits. However, on 29th February, 2020 the ICICI Bank had classified Petitioner's

loan account as NPA which fact was intimated to the Petitioner only in the month of July,2020. According to the Petitioner, the loan account with the ICICI bank was declared as an NPA with retrospective effect only to deny her the benefit of the moratorium imposed by the RBI due to the outbreak of COVID-19 Pandemic with effect from 01.03.2020 to 31.08.2020. On 14th October, 2020, notice under section 13(2) of the SARFAESI was issued by the Bank whereafter, symbolic possession of the properties belonging to the Petitioner viz, the Guest House situated at Lavasa, Pune and residential Flat at Garodia Nagar, Ghatkopar East were taken over.

- (c) According to the Writ Petitioner, the action initiated by the ICICI bank had prompted the Respondent No 1 - TDB to pull out of the loan agreement after disbursing only Rs 450 lakhs out of the total agreed amount of Rs 750 lakhs by taking some legally untenable stand as a result of which, the business activities of the Petitioner's MSME came to a grinding halt. In the meanwhile, at the instance of the Respondent No. 1

NCLT, Mumbai had initiated CP(IB)/322/2023 against the Petitioner under Section 7 of the IBC.

(d) The notice issued under the SARFAESI was assailed by the Petitioner by filing Suit (L) No. 11395/2021 before the City Civil Court, Mumbai on 21.12.2021 seeking declaratory reliefs for implementation of MSME Notification dated 29th May 2015 against the Respondent No. 1-TDB and Respondent No. 7-ICICI Bank. However, since no injunction, as prayed for by the Writ Petitioner, was granted by the Civil Court, she had moved the Hon'ble Supreme Court by filing an SLP (C) No 6184 /2023 which was disposed of by the order dated 15.05.2023 asking the Writ Petitioner to seek relief before this Court. Liberty was granted to the Writ Petitioner to raise all pleas.

(e) During the pendency of the Civil Suit, the Petitioner had instituted Writ Petition No. 35792 of 2022 before this Court seeking the same relief of enforcement of her right under the MSME Notification dated 29th May 2015. Since no restraint order was passed by this Court, on 6th May 2023, an order was passed by the Jurisdictional Magistrate in SARFAESI Case No 939/SA/2021 appointing a

Commissioner to take over physical possession of the secured assets, which included a residential flat and to handover possession to the Applicant-Bank. In terms of the order dated 6th May 2023, the Petitioner was dispossessed from the property on 10th July 2023.

(f) It appears that on 30.09.2023, the Petitioner had submitted an application before the ICICI Bank with a request to refer the matter before the MSME Committee for examining and implementing the Corrective Action Plan for Revival and Rehabilitation of MSMEs as envisaged by the Notification dated 29th May 2015. However, no action was taken by the Bank on such request made by the Writ Petitioner.

(g) In the meantime, the Writ Petitioner, along with several other similarly situated MSMES instituted individual Writ Petitions (19 in total) before this Court contending that in view of the provisions contained in the Notification dated 29th May 2015, the loan accounts of the MSME units cannot be declared NPA prior to exhausting the protective measures envisaged by that Notification. The Writ Petition filed by the present Petitioner was numbered as Writ

Petition (L) No 35792 of 2022. Alleging breach of contract on the part of the lenders, the Petitioners had also claimed compensation for breach of contract.

(h) After hearing the counsel for the parties, by the Judgment dated 11th January 2024, a Division Bench of this Court (Coram: BP Colabawalla and MM Sathaye, JJ) had dismissed all the Writ Petitions by holding that application of MSME Notification dated 29th May 2015 is neither mandatory nor automatic. However, the other issues raised by the Petitioners were left open to be agitated before the appropriate forum. By the Judgment and Order dated 11th January 2024, the Division Bench had also extended the interim relief granted earlier to the Writ Petitioners for a period of two weeks so as to allow them to prefer Appeal before the Hon'ble Supreme Court.

(i) The Writ Petitioner had preferred SLP (C) No. 2112/2024 before the Supreme Court assailing the Judgment and Order dated 11th January 2024 passed by the Bombay High Court. By the order dated 29th January 2024, the Hon'ble Supreme Court had dismissed the SLP. In the meantime, by order dated 18th March 2024, the NCLT, Mumbai had

closed CP(IB)/322/2023 filed by Respondent No. 1 under Section 7 of the IBC for orders.

- (j) In the wake of the order dated 29th January 2024 passed by the Supreme Court, the Petitioner had preferred Review Petition (L) No. 4048 of 2024 seeking review of the Judgment and Order dated 11th January 2024 passed in Writ Petition (L) No. 35792 of 2022 preferred by the Petitioner. By the order dated 19th March 2024, the Review Petition was dismissed by holding that pursuant to the dismissal of the SLP by order dated 29th January 2024, it would not be permissible for the Review Court to express a different opinion in the matter.
- (k) The order dated 19th March 2024 was assailed by the Petitioner before the Supreme Court by filing SLP(C)/11547/2024 (CA/7233/2024), which was disposed of by the order dated 8th July 2024 by observing that since no leave was granted while dismissing the SLP by order dated 29th January 2024 merger principle would not be attracted. It would, therefore, be open for the Bombay High Court to entertain the Review Petition and make a final determination of the same on merit.

- (l) On 15th July 2024, the NCLT, Mumbai had admitted CIRP against the Petitioner (CB(1B)/322/2023). Moratorium was imposed on the Petitioner. The Respondent No. 18 was appointed as Resolution Professional.
- (m) It appears that the Judgment and Order dated 11th January 2024 was also assailed before Supreme Court by the six other Petitioners, viz., (i) M/s. Pro Knits, (ii) Mr Zuhair Mohamedai Merchant, (iii) Nilesh Shah, (iv) Sadhana Bharat Rai, (v) M/s. A Navinchandra Steels Pvt Ltd & Anr and (vi) M/s. Shree Shantinath Steels & Anr. By the Judgment and Order dated 1st August 2024 passed in ***Pro Knits vs The Board of Directors of Canara Bank & Ors***,¹ and the batch of connected SLPs, the Hon'ble Supreme Court has held that the process of Revival and Rehabilitation of MSMEs is mandatory, requiring the financial institutions to follow the structured process before declaring the MSME loan as NPA or initiating any action for recovery of the amounts. As such, the Supreme Court had effectively over ruled the Judgment and Order dated 11th January 2024 passed

1 2024 SCC OnLine SC 1864.

by this Court in so far as the nature of applicability of the notification dated 29.05.2015 is concerned. Having held as above, by taking note of the fact that the proceedings initiated against the Petitioners under the SARFAESI Act had already been concluded and the possession of the respective premises had already been taken over, the Hon'ble Supreme Court had refused to remand the matter for a fresh decision of the Writ Petitions by the High Court. Instead, liberty was granted to the Petitioners to take recourse to remedy as may be legally available to them for agitating the issues which were not decided by the High Court by the impugned Judgment and order dated 11th January 2024.

- (n) The Writ Petitioner filed Writ Petition (L) No. 23291 of 2024, Writ Petition (L) No. 23292 of 2024 and Writ Petition (L) No. 23295 of 2024 before this Court *inter-alia* contending that in view of the law laid down by the Supreme Court in the case of ***Pro Knits vs The Board of Directors of Canara Bank & Ors*** (Supra), the

matter called for a fresh consideration by the NCLT. Therefore, a prayer was made before this Court to direct the NCLT to consider the recall Applications No. 7226 of 2024, Applications No. 7230 of 2024 and Applications No. 7238 of 2024, in the light of the law laid down in the case of *Pro Knits* (supra). By the order dated 14th August, 2024 passed by a co-ordinate Bench (K.R. Shriram, Jitendra Jain JJ) of this Court, all the three Writ Petitions were disposed of as withdrawn with a request to the learned NCLT to consider the recall applications as per law.

- (o) According to the Petitioner, no action was taken in the matter by the NCLT in terms of order dated 14th August 2024. As such, the Petitioner had again approached this Court by filing Writ Petition (L) No. 26313 of 2024, which was disposed of by order dated 1st October 2024 (Coram: AS Gadkari & Neela K Gokhale, JJ) with a request to the learned NCLT to decide the Company Petition afresh, preferably within two weeks, by laying down certain conditions which

included the condition to withdraw all pending proceedings save and except the Commercial Suit (I) No. 27512 of 2023 and A.O. No. 285 of 2023 in Review Petition No.22 of 2023, within a period of one week from the order or not to pursue the same.

- (p) In terms of the order dated 1st October 2024, the NCLT had considered the matter afresh but by order dated 29th October 2024, rejected the Petitioner's plea thus, confirming its earlier order dated 15th July 2024.
- (q) Embolden by the order of the NCLT the ICICI Bank had issued auction sale notice dated 12th December 2024 for sale of Petitioner's residence. Aggrieved thereby, the Petitioner had once again approached this Court by filing Writ Petition (L) No. 33593 of 2024 *inter alia* contending that the NCLT, Mumbai was a *coram non-judice*. In that Writ Petition, the Petitioner had arrayed the Learned Members of the NCLT -1 Mumbai besides several other Officials, thus making certain allegations against them. The said Writ Petition was heard and disposed on by a coordinate

Bench of this Court (Coram: RV Ghuge & AD Bhobe, JJ) by the Judgment and Order dated 20th December, 2024 rejecting the plea raised in the Petition. By observing that the Petitioner was guilty of filing repetitive Petitions duplicating her prayers, the Division Bench, while, confirming the order of NCLT, had dismissed the Writ Petition by imposing cost of Rs. 5 Lakhs upon the Petitioner for abusing the process of the Court.

- (r) The Petitioner had challenged the Judgement and Order dated 20.12.2024 passed by this Court by filing W.P.(C) No 08 of 2025 before the Supreme Court which was dismissed by the order dated 20.01.2025 by granting leave to the Petitioner to take recourse to any other remedy available under the law.
- (s) In the meantime, the Petitioner has filed another Writ Petition being Writ Petition (L) No. 2295 of 2025 before this Court seeking constitution of an MSME Committee for implementation of revival scheme which Writ Petition is pending before this Court.

4. From a scrutiny of the materials placed before us, we find that the Writ Petitioner has instituted more than 15 proceedings before, different forums, seeking more or less the same relief, the list whereof is provided hereunder in tabular form:-

Sr. No.	Proceedings	Court before which the proceeding is pending
1.	Suit (L) No. 11395 of 2022	City Civil Court, Mumbai
2.	Appeal From Order No. 552 of 2022	High Court, Bombay
3.	Criminal Writ Petition No. 3317 of 2022	High Court, Bombay
4.	Criminal Writ Petition No. 2570 of 2022	High Court, Delhi
5.	Writ Petition No. 4901 of 2022	High Court, Bombay
6.	Appeal From Order No. 285 of 2023	High Court, Bombay
7.	Commercial Suit (L) No. 27512 of 2023	High Court, Bombay
8.	Writ Petition No. 2614 of 2024	High Court, Bombay
9.	Writ Petition (L) No. 4667 of 2024	High Court, Bombay
10.	Writ Petition No. (L) No. 16964 of 2024	High Court, Bombay
11.	Writ Petition (L) No. 26313 of 2024	High Court, Bombay
12.	SLP (C) No. 21367 of 2024	Supreme Court of India
13.	Review Petition (L) No. 28352 of 2024 in Writ Petition (L) No. 4667 of 2024	High Court, Bombay
14.	Writ Petition (C) No. 46 of 2025	Supreme Court of India
15.	Writ Petition (L) No. 2295 of 2025	High Court, Bombay

5. During the course of his arguments, Mr. Nedumpara, learned counsel appearing for the Petitioner, by placing heavy reliance on the decision of the Supreme Court rendered in *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra), has submitted

that the Petitioner being a registered MSME Unit, action on the part of the Respondents Nos. 1 and 7 in declaring the Petitioner's loan account as NPA without referring the matter to the MSME Committee for implementation of a Revival Scheme as per notification dated 29th May, 2015 and Consequential actions taken thereunder by the ICICI Bank and the TDB are illegal, without the authority of law and hence, liable to be set aside. It is also the submission of Mr. Nedumpara that since the Bank had not constituted any Committee hence, the petitioner could not avail the benefits under the MSME notification despite the same being available to her under the law. He therefore, seeks a direction from this Court upon the Respondents to constitute a Committee of MSME and refer the matter to the said Committee for consideration of the an "Action Plan" for Revival of the MSME and till then, all further action for loan recovery by the Respondent Nos 1 and 7 be kept in abeyance.

6. It is also the submission of Mr. Nedumpara that the issue raised in the Writ Petition is a pure question of law which calls for determination by this Court. However, no such determination has taken place *qua* the Writ Petitioner in any of the proceedings so far

instituted by his client. According to Mr. Nedumpara, the TDB is liable for legal action for illegally withholding an amount of Rs. 300 Lakhs from the financial assistance promised to the Petitioner under the loan agreement. As a result of breach of the conditions of the Loan Agreement by the Respondent No1 the running business of the Petitioner's MSME had collapsed. He, therefore, submits that the claim of the petitioner deserves adjudication in accordance with law. However, in view of the provisions contained in SARFAESI and IBC, the Petitioner has been deprived of any forum to agitate the said issues.

7. We are in agreement with the submissions of Mr Nedumpara that the core issue raised in this Writ Petition is a pure question of law of great significance and in view of the decision of the Hon'ble Supreme Court in the case of *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra), the matter calls for proper consideration and decision by the Court on merit. However, after going through the materials on record with the assistance of the learned counsel for the Respondents (particularly Respondent No 6), we find that the core issue raised in this Writ Petition has been

conclusively dealt with and adjudicated upon by a co-ordinate bench of this Court.

8. The core issue raised in this Writ Petition was also the subject matter of consideration in another Writ Petition being Writ Petition (L) No. 4667 of 2024 earlier instituted by the present Petitioner. The question arising for determination by this Court in that proceeding was as to whether, the Petitioner would be entitled to the benefit of the MSME notification dated 29.05.2015 before the Loan Account could be declared as an NPA by the Bank/ Financial Institution. By the Judgment and Order dated 1st July 2024 passed by a Coordinate Bench of this Court (Coram: AS Chandurkar and Rajesh S Patil, JJ) in Writ Petition (L) No. 4667 of 2024, the above issue was decided against the Writ Petitioner by taking note of the applicable law as well as the peculiar facts and circumstances of the case. The Writ Petition was dismissed by the Court by making the following observations on merit :-

“7. We have heard the learned counsel for the parties at considerable length and with their assistance, we have also perused the documents on record. Having given due consideration to the rival submissions, in our view, we find that the petitioners on facts are not entitled for the reliefs sought by them in the Writ Petition. It is to be noted that the petitioners’ account insofar as ICICI Bank is concerned was declared as NPA on 29th May 2020. Under

the Notification dated 29th May 2015, it is necessary for Banks or creditors to identify incipient stress before a loan account of a MSME turns into NPA. On such identification, the account has to be categorized under the special mention account, after which further steps are required to be taken for resolution of the stress. As noted above, after the petitioners' account was declared as NPA, proceedings under the Act of 2002 came to be initiated by ICICI Bank that have thereafter culminated into notice of sale / auction in view of various subsequent events taking place. ICICI Bank after declaring the account as NPA on 29th May 2020 has taken various further steps to recover its dues under the Act of 2002. The petitioners approached the DRT and thereafter the DRAT challenging the action taken by the Bank. We find in the facts of the present case that with passage of time, the steps taken by ICICI Bank have crystallized into a right in its favour, which at this point of time have become irreversible and do not deserve to be set aside in equity jurisdiction. The challenge as regards non-initiation of any action by the ICICI Bank in accordance with the Notification dated 29th May 2015 ought to have been taken immediately on the petitioners' account being declared as NPA on 29th May 2020 or shortly thereafter. Any rights claimed under the Notification ought to have been pursued within reasonable time of the petitioners' account being declared as NPA. The same not having been done in the present case coupled with the resultant initiation of action by the Bank under the Act of 2002 dis-entitles consideration of the petitioners' prayers based on the Notification dated 29th May 2015 on the ground of unreasonable delay in seeking such relief.

8. It is true that in the earlier round of litigation, the petitioners had sought relief based on the said Notification. By the judgment dated 11th January 2024 delivered in the petitioners' earlier Writ Petition, it was held that in absence of any steps being taken by the petitioners to seek benefit under the Notification, it was not obligatory for the Bank to have categorized the account of the petitioners for benefit under the said Notification. The liberty granted in the aforesaid judgment was with regard to raising other issues than the one decided. In the earlier Writ Petition, the issue with

regard to action of the ICICI Bank not acting as per the Notification dated 29th May 2015 was under consideration. This issue cannot be re-agitated in this Writ Petition afresh.

. It is true that the doctrine of merger would not apply when a Special Leave Petition is dismissed by the Supreme Court without grant of leave, as held in the decision in Kunhayammed and Ors. (supra). Despite this position, in our view the principle of issue estoppel would arise in the light of the fact that the petitioners had sought similar reliefs in the earlier Writ Petition based on the Notification dated 29th May 2015 and were unsuccessful. Since we find that the petitioners' earlier Writ Petition came to be decided on 11th January 2024, followed by dismissal of the Review Application, the ratio of the decision in Nivrutti G. Ahire Vs. State of Maharashtra and Ors., (2007) 5 MhLJ 284 would be attracted precluding the Court from having a re-look at the matter. We therefore find that on the principle of issue estoppel coupled with the challenge being raised by the petitioners beyond reasonable period of time as a result of which rights have crystallized in favour of the Bank, the petitioners are not entitled for the reliefs sought against ICICI Bank. In these facts therefore the ratio of the decisions relied upon by the learned counsel for the petitioners cannot be applied to present case.

9. Insofar as TDB is concerned, we find that it is a Statutory Board constituted under the Act of 1995. It's learned counsel is justified in referring to the Circulars issued by the Reserve Bank of India which have been addressed to Commercial Banks alone and hence the same are not applicable to TDB. In any event, we find that the aspect of approaching the Court after considerable period of time also precludes grant of any relief to the petitioners. The TDB has also initiated proceedings under Section 7 of the Code, which are stated to have now been concluded with the judgment therein being awaited. The TDB took steps to recall the amounts advanced to the petitioners on 26th April 2022, after which it had approached the National Company Law Tribunal by filing proceedings under the Code. Hence, on this count, we do not find that this is a fit case to exercise discretion under

Article 226 of the Constitution of India as regards the prayers made against the TDB.

10. For aforesaid reasons, we do not find any case made out to grant any relief to the petitioners in the Writ Petition. It is accordingly dismissed with no order as to costs.”

9. From a careful reading of the Judgment and Order dated 1st July 2024, it is apparent that the core issue raised by the Petitioner in the present Writ Petition which is pertaining to the question of applicability of the Notification dated 29th May 2015 to the MSME Unit of the Petitioner and the need for identification of incipient stress of the MSME, has been dealt with in great details and conclusively decided against the Petitioner. But the said fact has not been mentioned in the Writ Petition. Not only that, being aggrieved by the Judgment and Order dated 1st July 2024, the Petitioner had approached the Hon’ble Supreme Court by filing an SLP(C) No. 21367 of 2024 and had also preferred Review Petition (L) No. 28352 of 2024 before this Court, which is pending disposal. The Special Leave Petition was withdrawn by the Petitioner so as to pursue the Review Petition (L) No. 28352 of 2024. What would be significant to note herein that there is not even a whisper in the Writ Petition about the Judgment and Order dated 1st July 2024, the filing and withdrawal of Special Leave

Petition (C) No. 21367 of 2024, as well as pendency of the Review Petition (L) No. 28352 of 2024 before this Court, wherein the same issue had earlier been agitated by the Petitioner. It was only when the learned counsel appearing for Respondent No. 6 had pointed the said fact during the course of hearing that this Court had become aware of the aforesaid development. It is thus apparent that the Writ Petitioner has approached this Court by suppressing material facts and particulars only to avail favourable order.

10. On being confronted with the plea of non-disclosure of material facts in the Writ Petition, Mr. Nedumpara, by referring to the Judgment and Order dated 1st July 2024, has addressed elaborate arguments so as to contend that the decision rendered by the coordinate Bench on 1st July 2024 is erroneous on several counts and, therefore, would not be binding on this Court. Contending that an order which suffers from error in law as well as jurisdiction would not lay down a binding precedent to be followed by a coordinate Bench, Mr Nedumpara has argued that the issues decided by the Judgment and Order dated 1st July 2024 would not constitute a *res-judicata* preventing this Court from adjudicating the issues raised in the present Writ Petition on merits. In support

of his above arguments Mr Nedumpara has placed reliance on the decision of the Supreme Court in the case of ***AR Antulay vs RS Nayak & Anr***² as well as in the case of ***Canara Bank VS NG Subbaraya Setty & Anr***.³

11. However, on a careful reading of the Judgment and Order dated 1st July 2024 we do not find any basis to accept the above arguments advanced by Mr. Nedumpara. It is clear on the face of the record that by the judgement and order dated 1st July 2024 rendered *inter se* the parties to this proceeding, the same issue raised in the present Writ Petition had been considered on merit and rejected by furnishing proper reasons. Therefore, the issue cannot be re-agitated in the present proceeding . Although Mr. Nedumpara has submitted that the Judgment dated 1st July,2024 is erroneous, yet, such a plea cannot be accepted by this Court as it is not for this Court to sit in Appeal over a Judgment passed by a coordinate Bench. Even assuming for arguments sake that the plea raised by the learned counsel for the Writ Petitioner is tenable in law, even in that event, the said plea can only be entertained by a superior Court exercising Appellate Jurisdiction in the matter and

2 (1988) 2 SCC 602.

3 (2018) 16 SCC 228.

not by this Court. Unless the Judgment and Order dated 1st July 2024 is interfered with by a superior court or recalled in exercise of review jurisdiction, the earlier decision of the court must be accepted as correct, thus promoting finality in the matter.

12. Having held as above, we are conscious of the fact that the Hon'ble Supreme Court had held in the case of ***Pro Knits vs The Board of Directors of Canara Bank & Ors*** (Supra) that the MSME Notification dated 29th May 2015 is mandatory in nature and to that extent, the decision and conclusion of this Court, as recorded in the Judgment and Order dated 11th January 2024 has been overruled. However, we find that the Judgment and Order dated 11th January 2024 *qua* the Writ Petitioner has attained finality in the eyes of law after the dismissal of the connected Review Petition. Moreover, in the case of ***Pro Knits vs The Board of Directors of Canara Bank & Ors*** (Supra), the Hon'ble Supreme Court has declined to remand the matter back to the High Court for deciding the Writ Petition afresh although liberty was given to the respective Petitioners to take recourse to any remedy as may be legally available for them for agitating the issues not decided by

the High Court by the Judgment and Order dated 11th January 2024.

13. In *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra), the Supreme Court has emphasized on the importance on identification of incipient stress in the loan account of MSME and categorization under the special mentioned account category before the same turns into an NPA. The observations made in paragraphs 20 and 21 of the said Judgment are relevant for the purpose of this case and, therefore, are being reproduced hereinbelow:-

“16. 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. 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.”

14. The law laid down in the case of *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra), has been further explained in a subsequent decision in *Shri Shri Swami Samarth Construction & Finance Solution & Anr vs The Board of Directors of NKGSB Coop Bank Ltd & Ors*,⁴ wherein it has been held that the terms of the frame work do not prohibit the lending bank/ secured creditor to classify the account of the defaulting MSME as NPA or even to issue notice under section 13(2) of the SARFAESI Act without identification of incipient stress in the account of the defaulting borrower. However, upon receipt of the demand notice, if the borrower in its response under section 13(3A) of the

4 2025 SCC OnLine SC 1566.

SARFAESI Act, asserts that it is a Micro , Small and Medium Enterprises and claims the benefit of the scheme stating reasons supported by affidavit, the lending bank would than be mandatorily bound to look into such claim by keeping the action initiated under the SARFAESI Act in abeyance.

15. What follows from the above decisions recorded in the case of *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra) and *Shri Shri Swami Samarth Construction & Finance Solution & Anr vs The Board of Directors of NKGSB Coop Bank Ltd & Ors* (Supra) is that although it would be mandatory for the Banks to adopt the restructuring process under the Notification dated 29th May 2015 by identifying incipient stress in its MSME Unit, yet, the same would apply only if the borrower brings to the notice of the Bank, the incipient stress of the MSME unit by citing reason supported by an Affidavit , at the earliest opportunity, but not later than submitting its response under Section 13 (3A) of the SARFAESI Act. After going through the materials on record, we find that although the notice under Section 13(2) of the SARFAESI Act was received by the Petitioner way back in the year 2020, yet, the MSME Notification dated 29th May 2015 was invoked by her

only in the month of September 2023, by which time, the SARFAESI proceedings and proceedings under IBC were in very advance stage and/or had virtually been concluded. There was also no application, furnishing reasons, submitted by the Petitioner, supported by Affidavit as per prescription of law requiring the lender to initiate action under the Notification dated 29th May 2015.

16. We are conscious of the fact that the Judgment and Order dated 1st July 2024 was passed by the Division Bench of this Court without considering the law laid down in the case of *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra) and *Shri Shri Swami Samarth Construction & Finance Solution & Anr vs The Board of Directors of NKGSB Coop Bank Ltd & Ors* (Supra). However, we are also of the opinion that the Judgment and Order dated 1st July 2024 is wholly consistent with the law laid down by the Hon'ble Supreme Court in the above two decisions. Viewed from that angle also, we are of the considered opinion that there is no scope for this Court to take a different view in the matter on the same set of facts.

17. It would further be pertinent to note here-in that although there was a categorical order from this Court passed on 1st October 2024 requiring the Petitioner to withdraw all pending proceedings within a week, yet, the Petitioner has admittedly not done so. Therefore, she is evidently in contempt of this Court. That apart, as noted above, the Petitioner is also guilty of suppression of material facts. Under these circumstances, it would ordinarily be wholly justified for this Court to dismiss the Writ Petition by imposing heavy costs upon the Petitioner. However, considering the fact that by the earlier order date 20th December 2024 passed by this Court in Writ Petition (L) No. 33593 of 2024 cost of Rs. 5 Lakhs has already been imposed upon the Petitioner, we are impelled to take a lenient view in the matter. We, therefore, refrain from imposing further cost upon the Petitioner in the present proceeding.

18. For the reasons stated hereinabove, we are of the view that there is no scope for this Court to entertain the Writ Petition. The Writ Petition, therefore, stands dismissed. Interim order passed earlier also stands vacated. Liberty is, however, granted to the Writ Petitioner to avail appropriate legal remedy, in accordance with law and in terms of the leave granted by the Judgment dated

11th January ,2024 as well as in the decision of *Pro Knits vs The Board of Directors of Canara Bank & Ors* (Supra) to similarly situated MSME Units, if so advised.

19. In view of dismissal of the Writ Petition, the Interim Applications would also stand disposed of.

(MANJUSHA DESHPANDE, J.)

(SUMAN SHYAM, J.)