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Pro-Knits Revisited: How the Apex Court Refines the MSME–SARFAESI Tug-of-War

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The Supreme Court's recent judgment in Shri Shri Swami Samarth Construction & Finance Solution v. Board of Directors, NKGSB Co-operative Bank Ltd. has quietly re-calibrated the balance between special insolvency measures for micro, small and medium enterprises and the coercive machinery of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. The dispute arose from a routine commercial default: an enterprise registered under the Micro, Small and Medium Enterprises Development Act, 2006 obtained credit from NKGSB Co-operative Bank, slipped into arrears, and saw its account declared a non-performing asset. A demand notice issued on 13 May 2024 under Section 13(2) of the SARFAESI Act gave the borrower sixty days to make good the dues. Instead of responding, the borrower waited until the bank had already secured an order from the Magistrate under Section 14 for the appointment of a Court Commissioner—an order communicated on 18 June 2025—and then invoked the jurisdiction of the Supreme Court under Article 32 of the Constitution on 14 July 2025. The petition sought to restrain the bank from taking any further steps under the SARFAESI Act or related statutes, alleging that the entire course of action was vitiated by the bank's failure to follow the "Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises" issued by the Ministry of Micro, Small and Medium Enterprises on 29 May 2015.

Counsel for the borrower argued that the 2015 Framework obliges every secured creditor to identify incipient stress in an MSME account before classifying it as non-performing. Failure to discharge this duty, it was contended, renders the subsequent demand notice and all consequential steps ultra vires. The Framework, it was further submitted, is binding on banks by virtue of the MSME Development Act and prevails over the SARFAESI Act in case of conflict. Reliance was placed on the decision of a coordinate Bench in Pro Knits v. Canara Bank, where the Court had held that the Framework must be scrupulously followed, and any deviation imperils the classification itself. Finally, counsel insisted that the borrower is under no obligation to alert the bank to its own distress; the onus to ferret out incipient stress lies squarely on the creditor.

The Court declined to accept the petition at the threshold, finding no reason to issue notice to the respondents. In a brief but tightly reasoned exposition, the Bench harmonised the apparently competing regimes. The 2015 Framework, it observed, is not an unqualified fetter on a bank's power to brand an account non-performing. Paragraph 1 of the document speaks first of "Identification by Banks or Creditors", but immediately follows with "Identification by the Enterprise". Sub-paragraph 2 empowers the enterprise itself to trigger the process if it reasonably apprehends failure or inability to pay its debts before accumulated losses reach half its net worth. The application must be supported by an authorised affidavit, whereupon the lender is statutorily bound to constitute a committee and explore revival options. Read as a whole, the Framework presupposes a collaborative mechanism in which both lender and borrower have distinct but complementary roles.

To construe the document as imposing an absolute duty on banks to diagnose incipient stress in every case, irrespective of any signal from the borrower, would render the second limb of paragraph 1 nugatory. An MSME confronted with imminent default would be tempted to remain passive in the belief that the bank's failure to act precludes classification. Such a construction would not only distort the statutory scheme but would also encourage strategic inaction at the expense of secured creditors. The Court therefore held that a bank which possesses no conscious knowledge that the borrower is an MSME may proceed to classify the account and issue a demand notice under Section 13(2). The borrower retains the option, upon receipt of the notice, to assert its MSME status and seek the protection of the Framework in its response under Section 13(3-A). From that moment, the lender must pause, examine the claim on its merits, and, if the conditions of the Framework are met, steer the account into revival rather than enforcement.

The Bench underscored that the petitioner had never, at any stage prior to the Magistrate's order, intimated its desire to avail itself of the Framework. The belated invocation of the special dispensation, coupled with the unexplained delay in approaching the Court, cast doubt on the good faith of the enterprise. The decision in Pro Knits was distinguished: while it affirmed the binding nature of the Framework, it simultaneously stressed the enterprise's duty to come forward with authenticated material at the earliest opportunity. An enterprise that allows the enforcement process to run its full course, or challenges it unsuccessfully in other forums, cannot be permitted to resuscitate the plea of MSME status as a last-ditch manoeuvre.

Consequently, the Court dismissed the writ petition for want of merit and closed all pending applications. In doing so, it reaffirmed the constitutional limitation on the exercise of Article 32 jurisdiction: extraordinary writs are not a substitute for statutory appellate remedies. The petitioner was left free to pursue its grievance under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal. The judgment will serve as a sober reminder to MSME borrowers that statutory benevolence is not a cloak for indolence, and to lenders that the doors of the Framework swing open only when the borrower steps forward in time.

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