

\*- Obligation to identify “incipient stress” in loan account – Not solely on lending banks\*

– Terms of \*FRAMEWORK do not prohibit lending bank/secured creditor (assuming it has no conscious knowledge that defaulting borrower is MSME) to classify account of defaulting MSME as NPA\* and to even issue demand notice under Section 13(2) of SARFAESI Act without identification of incipient stress in account

– However, upon receipt of demand notice, \*if such borrower in its response under Section 13(3-A) of SARFAESI Act asserts that it is MSME and claims benefit of FRAMEWORK citing reasons supported by affidavit, lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under SARFAESI Act in abeyance\*.

**(i) Micro, Small and Medium Enterprises Development Act, 2006 – Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises – Notification dated 29.05.2015 – Obligation to identify “incipient stress” in loan account – Not solely on lending banks**

Notification detailing FRAMEWORK, more particularly paragraph 1 and its sub-paragraphs, have to be read together to make its terms effective and meaningful – Although in sequence of FRAMEWORK “Identification by Banks or Creditors” comes first, it is immediately followed by “Identification by the Enterprise” – In terms of sub-paragraph 2, any MSME may choose to voluntarily initiate proceedings under FRAMEWORK if it “reasonably apprehends failure of its business or its inability or likely inability to pay debts and before accumulated losses of enterprise equals to half or more of its entire net worth” – For initiation of proceedings under FRAMEWORK, application has to be verified by affidavit of authorised person. [Para 5]

**(ii) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Section 13(2), 13(3-A) – MSME Framework – Terms of FRAMEWORK do not prohibit lending bank/secured creditor (assuming it has no conscious knowledge that defaulting borrower is MSME) to classify account of defaulting MSME as NPA and to even issue demand notice under Section 13(2) of SARFAESI Act without identification of incipient stress in account – However, upon receipt of demand notice, if such borrower in its response under Section 13(3-A) of SARFAESI Act asserts that it is MSME and claims benefit of FRAMEWORK citing reasons supported by affidavit, lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under SARFAESI Act in abeyance. [Para 6]**

**(iii) MSME Framework – Interpretation – Cannot render obligation of**

## **lending banks absolute while making MSME's obligation redundant**

If accepted that every lending bank/secured creditor under SARFAESI Act would be obliged to find out in every event of continuing default whether borrower is MSME to which FRAMEWORK applies, this could not have been intention behind introduction of FRAMEWORK – If indeed it is only obligation of lending bank/secured creditor to identify incipient stress in account, sub-paragraphs 2 and 3 of paragraph 1 would be rendered redundant – Terms of FRAMEWORK to be read and interpreted harmoniously to ensure that right under MSME Act is not destroyed by SARFAESI Act or vice versa. [Para 6]

### **(iv) MSME Framework - Obligation of MSMEs - Vigilance required - Cannot claim benefit at belated stage**

It would be equally incumbent on part of MSMEs concerned to be vigilant enough to follow process laid down under said Framework, and bring to notice of Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get benefit of said Framework – If such Enterprise allows entire process for enforcement of security interest under SARFAESI Act to be over, or it having challenged such action of bank/creditor concerned in court of law/tribunal and having failed, such Enterprise could not be permitted to misuse process of law for thwarting actions taken under SARFAESI Act by raising plea of being MSME at belated stage – Following *Pro Knits v. Canara Bank*, (2024) 10 SCC 292. [Para 8]

### **(v) Constitution of India - Article 32 - Writ petition by MSME - Claim of Framework benefit at stage of Section 14 SARFAESI proceedings - Bona fides suspect**

Petitioning enterprise does not seem to have ever claimed benefit of terms of FRAMEWORK after demand notice under Section 13(2) of SARFAESI Act was issued – It is at stage of compliance with order passed by relevant Magistrate under Section 14 of SARFAESI Act that writ petition has been presented before Court claiming benefits of FRAMEWORK – Bona fides of petitioning enterprise found to be suspect – No case for interference under Article 32 of Constitution has been set up. [Para 7, 9]

[p25p2-pg-214-sarfaesiDownload](#)