

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 987 of 2025

M/s. Untag Fashions Private Limited & Ors.

vs.

UCO Bank & Ors.

With

CAN 1 of 2025

CAN 2 of 2025

For the Appellants

: Mr. Arindam Banerjee, Sr. Adv.,
Mr. Pratip Mukherjee
Mr. Emon Bhattacharya
Ms. Pooja Sah

For the Union of India

: Mr. Vipul Kundalia, Sr. Adv.,
Mr. Pradip Kumar Kundu

For the Respondent

Nos. 1 &2

: Ms. Aparajita Rao
Ms. Nabanita Dutta

For the Respondent No. 4

: Mr. Aman Agarwal
Mr. Debabrata Das
Mr. A. Sarkar
Mr. Pratik Acharjee

Heard & Judgment on

: July 25, 2025

DEBANGSU BASAK, J.:-

1. CAN 1 of 2025 is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 89 days in making and filing of the appeal.
2. Respondents are represented.
3. Considering the averments made in the application for condonation of delay and in the interest of justice, we deem it appropriate to condone the delay in making and filing the appeal. Delay in making and filing the appeal is condoned.
4. **CAN 1 of 2025** is allowed.
5. By consent of the parties, the appeal is taken up for final hearing.
6. Supplementary affidavit filed in Court be taken on record.
7. Appeal is at the behest of the writ petitioners and directed against an order dated February 28, 2025.
8. By the impugned order, learned Single Judge disposed of the writ petition of the appellants.
9. Learned Senior Advocate appearing for the appellants submits that the appellant no. 1 is a Micro, Small and Medium Enterprise (MSME) within

the meaning of The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. He submits that, there are guidelines/circulars issued by the Reserve Bank of India governing MSME. He submits that, such circulars/guidelines are binding of the Banks in view of Sections 21 and 35A of the Banking Regulation Act. He relies upon **2024 INSC 565 (M/s. Pro Knits vs. The Board of Directors of Canara Bank & Ors.)** in support of his contentions.

10. Learned Senior advocate appearing for the appellants draws the attention of the Court to the supplementary affidavit and to a letter dated August 26, 2019. He submits that, a proposal for rehabilitation was submitted to the bank for restructuring in terms of the guidelines issued by the RBI. He submits that the Debts Recovery Tribunal is not the appropriate forum to undertake a restructuring programme. The appellants and the Bank are governed by the guidelines of the RBI. An opportunity should be afforded to the appellants for restructuring.

11. Learned advocate appearing for the bank draws the attention of the Court to the contents of the letters relied on by the appellants. He submits that the first letter dated April 19, 2022 was addressed to the RBI and not to the bank. The supplementary affidavit contains a letter dated August 26, 2019 which speaks of a proposal to be submitted. Bank wrote at least three

- letters dated September 20, 2019, November 5, 2019 and December 16, 2019 calling upon the appellants to submit proposal which never came.
12. Learned advocate appearing for the bank draws the attention of the Court to the paragraph 17 of **M/s. Pro Knits** (supra). She submits that a recall notice was issued on August 1, 2018. Notice under Section 13 (2) of the Securitization and Reconstruction of financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was issued on December 13, 2018. Measures under Section 13 (4) of the Act of 2002 were taken. Thereafter, the appellants filed an application under Section 17 of the Act of 2002 challenging the action taken by the Bank under Act of 2002. Such Section 17 proceeding was disposed of in 2022. Being aggrieved by such decision of the DRAT, appellants filed an appeal under Section 18 of the Act of 2002 before the DRT which was disposed of on November 15, 2022. Thereafter, in 2025, the present writ petition was filed. She submits that in the facts and circumstances of the present case, the appellants fall within paragraph 17 of **M/s. Pro Knits** (supra).
13. Admittedly, the appellants before us are borrowers and guarantors of credit facilities which the appellant no. 1 enjoyed from the bank. Admittedly, a recall notice was issued in respect of such credit facilities on August 1, 2018 and a notice under Section 13 (2) of the Act of 2002 was

- issued on December 13, 2018. Measures under Section 13 (4) of the Act of 2002 were taken contemporaneously by the bank. Aggrieved by such measures being taken, an application under Section 17 of the Act of 2002 was filed by the appellants before the DRT in Kolkata. Such Section 17 proceedings are of the year of 2021. DRT disposed of such proceedings in 2022. Appellants approached the DRAT and in 2022 itself and Debt Recovery Appellate Tribunal (DRAT) disposed of the appeal in 2012 itself.
14. The appellants claimed that they acted in terms of the guidelines of the RBI relating to MSME, by a letter dated April 19, 2022. We find that such letter was issued to the RBI and not to the bank. Therefore, the appellants did not submit any proposal for reconstruction by such letter with the Bank.
15. There is a further claim by the appellants by way of supplementary affidavit that request to the bank to act in terms of the guidelines of RBI was made on August 26, 2019.
16. We find that such letter in the third last paragraph seeks holding of operation until a formal proposal along with the financial for restructuring is placed by the appellants. As on that date, therefore, there was no formal proposal placed before the bank for consideration.

17. In fact, from the documents placed before us, it appears that the bank called upon the appellants by letters dated September 20, 2019, November 5, 2019 and December 16, 2019 for restructuring of the credit facilities. Appellants did not avail of such facilities.

18. **M/s. Pro Knits** (supra) is of the view that guidelines issued by the RBI under Sections 21 and 35A of the Banking Regulation Act are binding upon the bank. While dealing with the framework for restructuring of MSME, vis-à-vis such MSME who suffered securitization proceeding, it observes as follows:-

“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.”

19. **M/s. Pro Knits** (supra) is of the view that where an MSME did not avail of the facilities and allowed the Act of 2002 to run its course, then it is not entitled to any protection.

20. In the facts and circumstances of the present case, we find that the appellants chose not to avail of the Circulars governing the field in relation to restructuring of credit facilities of MSME. They allowed the securitization proceeding to run its full course upto the DRAT stage. DRAT passed the order of dismissal of the appeal on November 15, 2022. Thereafter, the present writ petition was filed in 2025.

21. In such circumstances, we find no merit in the present appeal

22. **M.A.T. 987 of 2025** and the connected application being **CAN 2 of 2025** are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

23. I agree

S.D.

(Md. Shabbar Rashidi, J.)