NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 174 of 2026

[Arising out of Order dated 09.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Cuttack Bench), in C.P.(IB) No./18/CB/2024]

IN THE MATTER OF:

Sh. Jadabendra Pradhan,
S/o Laxrmikanta Pradhan,
At-Benuda, Po-Katisahi, via-Kamarda,
Dist-Balasore, Odisha-756035.
Suspended Director of:
M/S S.S Aluminium Private Limited,
At: Gobinda, Po-Haladipada,
Balasore, Odisha-756027. **...Appellant**

Versus

1. Canara Bank
112, J.C Road, Kumbaragundi,
Sampangi Rama Nagar, Bengaluru,
Karnataka-560002.
Through Chief Manager, Asset Recovery Branch,
Sur Market Complex, Mangalabag,
Cuttack-753001. **...Respondent No. 1**

2. Mr. Suresh Chandra Patnaik
Interim Resolution Professional of
M/s S.S Aluminium Private Limited,
Address: GKV-38, Gati Krushna Villa,
Tankapani Road, Bhubaneswar,
Odisha, Pin-751018
Email ID: suresh_pattanayak@yahoo.co.in **...Respondent No. 2**

Present:

For Appellant : CS Saroj Kumar Sahoo.

For Respondent : Mr. Sudeep Singh, Advocate.

J U D G M E N T

JUSTICE YOGESH KHANNA, OFFICIATING CHAIRPERSON

This appeal is filed against an impugned order dated *09.09.2025* passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Cuttack

Bench) in *C.P. (IB) No.18/CB/2024.* Vide the impugned order, the petition filed under Section *7* of the Insolvency & Bankruptcy Code, 2016 (for short the **"IBC"**) on 10.04.2024 was accepted and M/s. SS Aluminium Private Limited was admitted into insolvency for default of *Rs.15,88,33,394.26/-.*

2. As per the averments made in the application under Section *7* of the IBC, numerous credit facilities were given to the corporate debtor from time to time and the loan of the company was declared Non-Performing Asset (**"NPA"**) on 11.05.2021. Further, the recall notice was issued on 04.10.2021 for an outstanding amount of Rs.13,48,00,000/-. Thereafter a notice dated 17.05.2021 under Section 13(2) of the SARFAESI Act, 2002, was issued and the appellant had given the OTS dated 23.11.2021, 01.12.2021 and 13.01.2022 to the bank, but did not make any payment and ultimately on 23.12.2021, notice under Section *13(4)* of the SARFAESI Act, 2002, was issued and the proceedings were initiated against the asset of the corporate debtor.

3. The application under Section *7* of the IBC was contested by the appellant herein, *primarily*, on *2* grounds *viz.* ***(a)*** limitation and ***(b)*** the procedure under the Notification dated 29.05.2015 issued by the Ministry of Micro, Small and Medium Enterprises, annexed as Annexure A-2 to the appeal, was never followed. It was argued, as per the Notification, the banks were obliged to identify the incipient stress in the account of the Micro, Small and Medium Enterprises (**"MSME"**) and after identification of the MSME, could voluntarily initiate proceedings under this framework, if enterprise reasonably apprehends failure of its business or its inability or likely inability

to pay debts and before the accumulated losses of the enterprise equals to the half or more of its entire net worth. It was argued, it was never done and as such the petition under Section *7* of the IBC was *pre-mature* and ought to have been dismissed.

4. We have gone through the impugned order, which had dealt with the issue of limitation and had rejected such contention saying not only there were *3* OTS submitted by the appellant before the bank, but also on 13.07.2021, the appellant had executed an instrument of acknowledgement of debt. It was observed by the Ld. Adjudicating Authority that on multiple occasions, the settlement was sought by sending various OTS proposals and thus the appellant had admitted its liability towards debt and the existence of debt and default was purely established and the petition was within limitation. We agree with this finding.

5. On issue ***b)*** *viz.* the applicability of MSMED Act, 2006 and its Notification, the Ld. Adjudicating Authority held as under:

> *"12. The Tribunal observes that the respondent's claim of MSME status under the MSMED Act, 2006. was raised for the first time only in the Written Submissions and not in its Reply. It is a well-established principle of law that grounds not pleaded in the initial pleadings cannot be introduced at the stage of written submissions, as pleadings define the scope of adjudication. The plea now raised involves disputed questions of fact and has not been supported by any documentary evidence. Therefore. the contention of the Corporate Debtor regarding its MSME status and reliance on SO 1432(E) dated 29.05.2015 cannot be regarded as conclusive. Accordingly, the respondent's assertion that it is registered under the MSMED Act, 2006, and that the applicant has not followed the proceed. We outlined in the Judgement of the Hon'ble Supreme*

Court in Pro Knit (supra) fails, since the respondent has never informed this Tribunal that respondent was registered under the MSMED Act, 2006, during its reply nor has it produced any MSME registration certificate to support its own contention."

6. The learned counsel for the appellant has referred to the additional documents filed by him and referred to the *I.A. No.4708/2026* filed for taking on record the additional documents, wherein he annexed a letter dated 30.10.2023 written to General Manager, Canara Bank asking for revival of his sick unit under Rehabilitation Scheme and such letter was duly answered on 10.11.2023, wherein the District Industry Centre, Balasore had requested the General Manager, Canara Bank, Bhubaneswar to provide him cooperation and re-finance for sustainable revival of the unit under Sick Rehabilitation Scheme of RBI at the earliest. However, it was never done.

7. The said letters have been challenged by the learned counsel for the respondent as are produced in this appeal for the first time. Nevertheless, it was argued the MSME status of the appellant was valid only upto 31.03.2021 and thereafter the appellant ceased to be a MSME unit. It is also evident from the record, no application was filed under Section *13(3-A)* of the SARFAESI Act, 2002, asserting, it was an MSME or intending to claim benefit of framework. Further, if one peruse the Notification dated 29.05.2015, its paragraph *4* says an application needs to be filed by the MSME to the Committee for Stressed MSME, in the manner as may be specified by the Bank for a corrective action plan and terms thereof. No such application was ever filed when notice dated 17.05.2021 under Section *13(2)* of the SARFAESI was given. Rather no reply was ever given to such notice.

8. Even the impugned order shows, such a plea was never taken before the Court while arguing the matter and it was only in the written submissions the plea of it being MSME was taken for the first time.

9. In ***'Shri Swami Samarth Construction & Finance Solution & Ors.' Vs. 'The Board of Directors of NKGSB Co-op. Bank Ltd. & Ors.',*** reported in ***[MANU/SC/0997/2025],*** the Hon'ble Supreme Court has held:

> *"5. The Notification detailing the FRAMEWORK, more particularly paragraph 1 and its sub-paragraphs, have to be read together to make its terms effective and meaningful. Although, in the sequence of the 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 the FRAMEWORK if it "reasonably apprehends failure of its business or its inability or likely inability to pay debts and before the accumulated losses of the enterprise equals to half or more of its entire net worth" (emphasis ours). The obligation of the MSME does not end there. For initiation of proceedings under the FRAMEWORK, the application has to be verified by an affidavit of an authorised person and upon receipt of a request, the lending bank/ secured creditor is mandatorily bound to proceed in terms of the FRAMEWORK and to constitute a committee to identify incipient stress in the account.*
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> *6. The way Mr. Nedumpara urges us to read the Notification and the terms of the FRAMEWORK, if accepted, would lead to the conclusion that every lending bank/ secured creditor under the SARFAESI Act would be obliged to find out in every event of continuing default, likely to give rise to classification of the relevant account as NPA, whether the borrower is an MSME to which the FRAMEWORK applies, whether its business has failed or whether it is suffering from any disability to pay its debts; and upon receiving a response, to apply the terms thereof by, inter alia, including the account in the Special Mention Account for the claim for a corrective action plan to be considered by the Committee for stressed MSMEs. This could not have been the intention behind introduction of the FRAMEWORK to aid the MSMEs which, for*

reasons personal to them, is unable to clear its debt and require revival and rehabilitation that the FRAMEWORK envisages. If indeed it is only the obligation of the lending bank/secured creditor to identify incipient stress in the account, sub paragraphs 2 and 3 of paragraph 1 would be rendered redundant. An MSME, despite finding that its business is failing or that it is unable to pay its debts or accumulation of losses equals to half or more of its entire net worth and classification of its account as NPA is imminent, it would rest on its oars believing that it has no responsibility and that its account will not be classified as NPA because it is the entire obligation of the lending bank/secured creditor to do what the FRAMEWORK requires. We would read and interpret the seemingly confusing terms of the FRAMEWORK harmoniously to ensure that a right under the MSME Act is not destroyed by the SARFAESI Act or vice versa. 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 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."

10. As per judgement in ***'M/s. Pro Knits', [2024 INSC 565],*** at Para 16, the court records that the *stage* before the Loan turns NPA of MSME *is crucial* and it is incumbent upon the concerned MSME to produce authenticated and verifiable documents/material for substantiating its claim as being MSME. In Para *17* the Court further records on failure to bring to notice of banker that

the unit is MSME, then enterprise could not be permitted to thwart the action taken in SARFAESI at the belated stage.

11. Section 7 IBC, proceedings are primarily concerned with Debt and Default and the RBI circular which is applicable to SARFAESI Proceedings shall not stand as hurdle to decide the present applicationas held in ***'Amit Narang' Vs. 'Aditya Birla Finance Limited & Ors.' [(Para 20) (2024] 252 CompCas 781].***

12. The Adjudicating Authority had rather considered, the Debt & Default and Form C and Form-D of the NeSL Certificate and the loan account statements as maintained by the Respondent Bank. It found, the default exceeded Rs.one crore and the statutory threshold for initiation of proceedings under Section 7 had been satisfied. The Adjudicating Authority has expressly observed, the precise quantification of the claim may be examined by the Resolution Professional during CIRP.

13. Thus, considering the law stated above, we find no reason to upset a reasoned order passed by the Ld. Adjudicating Authority; *firstly* as the M/s. S.S. Aluminium Pvt. Ltd. had lost its status of MSME on 31.03.2021 and *secondly* it never send a response under Section *13(3A)* of SARFAESI Act for reconstruction of its debt and *thirdly* it was also the responsibility of the corporate debtor/appellant to apply in terms of notification dated 29.05.2025 at the earliest, which it never did. Thus, we are not inclined to interfere with the impugned order. Even the letters dated 30.10.2023 and dated 10.11.2023 (supra); relied upon by the appellant, were never produced before the Ld. Adjudicating Authority, hence no benefit *qua* such letters, even otherwise, be

given. Admittedly the loan account of the corporate debtor was declared NPA on 11.05.2021; was recalled on 04.10.2021 by notice and under Section *13(2)* on 17.05.2021; various OTS were given and never a benefit of the notification was claimed; hence these *2* letters filed by the appellant would not upset the entire proceedings under the IBC. More so, when the impugned order was passed, delay in refiling was allowed on 13.3.2026, Form-G published on 16.03.2026, last date of EOI was 31.03.2026, submission of plan was by 18.5.2026. The Tribunal itself has recorded in its order dated 14.05.2026 that there was no stay. Resolution Plan is filed and is awaiting approval of the Ld. Adjudicating Authority. Non-participation by the Appellant in the Resolution process evince casual nature of appeal. The appeal thus has no merit and is accordingly dismissed. Pending applications are also disposed of.

[Justice Yogesh Khanna]
Officiating Chairperson

[Barun Mitra]
Member (Technical)

[Ajai Das Mehrotra]
Member (Technical)

NEW DELHI

2nd November, 2026

Himanshu/bm