

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 25431 of 2024

Propello Innovations Private Limited & Anr.

Vs.

South India Bank Limited & Anr.

Mr. Deepan Sarkar

Mr. Shahrukh Raja

Ms. Deepti Priya

....For the petitioners.

Mr. Prabal Mukherjee, Sr. Adv.

Mr. Anirban Pramanick

Mr. Punarbasu Nath

Ms. Bhagyasree Dey

.... For the respondent bank.

Mr. Dilip Kumar Kundu

Mr. Arjun Basu

.... For R.B.I.

Hearing Concluded On : 02.02.2026

Judgment On : 26.02.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petition challenging an e-mail dated 5th July, 2024 and the notice dated 8th July, 2024, wherein and where under the bank has declared the account of the petitioner as Non-Performance Assets hereinafter referred to as “NPA”.
2. The petitioner company is a Micro, Small and Medium Enterprises hereafter referred to as “MSME”. In the year 2013, the petitioners availed credit facilities from the respondent bank for expansion of their business. On 7th March, 2020, the loans taken by the petitioners were restructured by the respondent bank and the pre-existing credit facilities in the accounts of the petitioner company were renewed. Soon after restructuring the whole world suffered due to COVID-19 pandemic, the petitioners could not revive its business despite of restructuring. In the meantime, several correspondences were made between the petitioners and the respondents.
3. On 19th June, 2024, the bank has issued an e-mail to the petitioners informing that the accounts of the petitioner company will be declared as NPA on 24th June, 2024, due to credit shortfall and also continuously overdrawn and pending overdue in respect of the four bank accounts of the petitioner company.
4. Mr. Deepan Sarkar, Learned Advocate, representing the petitioners submits that on 28th June, 2024, the petitioners received a WhatsApp message from the bank instructing the petitioners to deposit Rs.

40,000/- by the same day and an additional amount of Rs. 5,80,000/- by the next day so that the bank accounts of the petitioner company are not declared as NPA. As per instructions, the petitioners immediately deposited the said amount.

5. Mr. Sarkar submits that despite of depositing the said amount, on 30th June, 2024, an amount of Rs. 14,58,063/- was debited from the CCOL account of the petitioner company without any prior notice to the petitioners. The bank has further debited an amount of Rs. 1,03,287.56/- without any prior notice to the petitioners. He submits that when the petitioners enquired from the bank with regard to the deduction of the said amount, the bank informed the petitioners that the same was deducted as penal charges for delayed payment.
6. Mr. Sarkar submits that on 5th July, 2024, the petitioners received an e-mail wherein the bank has declared the account of the petitioners as NPA on 30th June, 2024. On 8th July, 2024, the petitioners also received a registered letter from the bank declaring the account of the petitioners as NPA. He submits that the bank has illegally deducted penal interest and additional interest without giving any prior intimation to the petitioners.
7. Mr. Sarkar submits that on 11th July, 2024, the petitioners have submitted new plan for restructuring but without considering the request of restructuring, the bank has issued a recall notice and guarantee invocation letter to the petitioners on 22nd July, 2024,

demanding payment of Rs. 92,017,526.20/-. On 7th August, 2024, the bank has also issued a notice under Section 13(2) of the SARFAESI Act, 2002 to the petitioner no. 1, thus the petitioners have filed the present writ petition.

8. During the pendency of the writ petition, the petitioners have sent an increased offer of compromise for One Time Settlement (OTS) and the same was accepted by the bank on 30th August, 2025 but the petitioners were some issues with regard to the conditions of the OTS. The petitioners have deposited an amount of Rs. 5,00,000/- on 31st August, 2025 and submitted a request for modification of the conditions in the OTS. The petitioners failed to pay the next instalment and due to which the bank has cancelled the OTS on 2nd January, 2026.
9. Mr. Sarkar has relied upon the judgment in the case of ***Olive Tree Retail Pvt. Ltd. and Another Vs. South Indian Bank Ltd. and Another*** reported in ***2023 SCC OnLine Cal 2397*** and submits that appropriate stage to move Tribunal having not yet been reached and it would be too early to move the Tribunal and the writ petition is the appropriate remedy. He submits that the bank has illegally classified the accounts of the petitioners as NPA and thus the same is not amenable to Section 17 of the SARFAESI Act, 2002.
10. Mr. Sarkar submits that the Reserve Bank of India circulars have statutory force and are binding upon the constituent banks and the

financial institutions who are under the statutory obligation to comply with the provisions of the circulars.

- 11.** Mr. Prabal Mukherjee, Learned Senior Advocate, representing the respondent bank submits that the petitioners have deposited certain amounts in each cash credit account but it was not within the limit of Rs. 06.50 crores till 28th June, 2024. He submits that on 29th June, 2024 and 30th June, 2024, interest were debited as a result the balance in the cash credit account as on 30th June, 2024, stood at Rs. 6,65,61,350.56 and the account was classified as NPA on 30th June, 2024.
- 12.** Mr. Mukherjee submits that the Reserve Bank of India had issued directions to levy of penal interest, which was laid down in para 5 of the Master Direction dated 3rd March, 2016. He submits that subsequently the said penal interest was deleted by way of an amendment on Fair Lending Practice–Penal Charges in Loan Accounts dated 18th August, 2023 and the directions were replaced.
- 13.** Mr. Mukherjee submits that as per Circular on Fair Lending Practice–Penal Charges in Loan Accounts dated 18th August, 2023, whenever reminders for non-compliance of material terms and conditions of loan are sent to borrowers, the applicable penal charges shall be communicated. Further, any instance of levy of penal charges and the reason therefor shall also be communicated.

- 14.** Mr. Mukherjee submits that as per Circular dated 29th December, 2023, REs shall ensure that the instructions contained in circular dated 18th August, 2023, are implemented in respect of all the fresh loan availed from 1st April, 2024 onwards, and in the case of existing loans, the switchover to new penal charges regime shall be ensured on the next review/ renewal date falling on or after 1st April, 2024, but not later than 30th June, 2024.
- 15.** Mr. Mukherjee submits that if the petitioners believe that their account has been wrongly classified as NPA, the petitioners can approach the RBI Ombudsman Scheme, 2021, which came into effect on 12th November, 2021.
- 16.** By an e-mail dated 5th July, 2024, the bank has informed the petitioners that the account of the petitioners became NPA on 30th June, 2024 and the petitioners were advised to regularize the account at the earliest. On 8th July, 2024, the bank by a registered letter also informed the petitioners about the classification of the account of the petitioners as NPA as on 30th June, 2024. In the said letter, it was also informed to the petitioners that since the status of the account is downgraded as NPA, the applicable effective rate of interest from the date of NPA along with additional penal interest will also be applicable. After classification of the account of the petitioners as NPA, the bank also issued a notice under Section 13(2) of the SERFAESI Act, 2002.

17. The petitioners have relied upon WhatsApp messages between the official of the bank and the petitioners dated 28th June, 2024, wherein as per the advice of the bank official, the petitioners have deposited the amount of Rs. 40,000/- and Rs. 5,80,000/- in between 28th June, 2024 and 29th June, 2024. After depositing the said amount, the bank has deducted an amount of Rs. 14,58,063/- on 30th June, 2024, being interest from 1st June, 2024 to 30th June, 2024 and Rs. 1,03,287.56/- on 30th June, 2024, being interest from 31st May, 2024 to 28th June, 2024. It is the contention of the petitioners that as per advice of the bank, the petitioners have deposited the said amount but without any prior notice to the petitioners, the bank has withdrawn the amount from the account of the petitioner company. The bank has verbally informed to the petitioners that the amount was deducted from the bank account of the petitioner company as the penal interest against the delay in payment.

18. Clause 2 of the Master Circular dated 1st April, 2022, reads as follows:

“2. Non-performing Assets (NPA)

2.1 Classification of Assets as Non-Performing

2.1.1 A non-performing asset is a loan or an advance where:

(i) Interest and/or installment of principal remain overdue for a period of more than 90 days in respect of a Term Loan.

(ii) The account remains ‘out of order’, in respect of an Overdraft/Cash Credit (OD/CC) and all other loan products being offered as an overdraft facility, including those not meant

for business purposes and/or which entail interest repayments as the only credits.

(iii) The bill remains overdue for a period of more than 90 days in the case of bills purchase and discounted.

(iv) In the case of direct agricultural advances as listed in Annex 1, the overdue norm specified at para 2.1.3 would be applicable. In respect of agricultural loans other than those specified in Annex 1, identification of NPAs would be done on the same basis as non-agricultural advances.

(v) Any amount to be received remains overdue for a period of more than 90 days in respect of other accounts.

(vi) In addition, an account may also be classified as NPA in terms of certain specific provisions of this Master Circular, including inter alia paragraphs 2.2.7 and clarifications provided under the frequently asked questions (FAQs) in Annex-4.

2.1.2 (A) *The exact due dates for repayment of a loan, frequency of repayment, breakup between principal and interest, examples of SMA/NPA classification dates, etc. should be clearly specified in the loan agreement and the borrower should be apprised of the same at the time of loan sanction and also at the time of subsequent changes, if any, to the sanction terms/loan agreement till full repayment of the loan.”*

- 19.** The Reserve Bank of India by a letter dated 18th August, 2023, issued instructions to all commercial banks and all financial institutions regarding Fair Lending Practice-Penal Charges in Loan Accounts. As per the said clarification, penalty, if charged, for non-compliance of materials terms and conditions of loan contract by the borrower shall be treated as ‘penal charges’ and shall not be levied in the form of

‘penal interest’ that is added to the rate of interest charged on the advances. There shall be no capitalization of penal charges i.e. no further interest computed on such charges. However, this will not affect the normal procedures for computing of interest in the loan account. The REs shall not introduce any additional component to the rate of interest and ensure compliance to these guidelines in both letter and spirit. It is also provided that the quantum of penal charges shall be reasonable and commensurate with the non-compliance of the material terms and conditions of the loan contract without being discriminatory within a particular loan/ product category. It is also provided that whenever reminders for non-compliance of material terms and conditions of loan are sent to borrowers, the applicable penal charges shall be communicated. Further, any instance of levy of penal charges and the reason therefor shall also be communicated.

- 20.** On 19th June, 2024, the bank has issued notice to the petitioners intimating that the accounts of your petitioners will slip to NPA on 24th June, 2024, due to credit shortfall and subsequently due to continuously overdrawn and pending over dues. In the said notice, it is mentioned that the cash credit limit is continuously overdrawn from 31st March, 2024 and has to be within limit by 28th June, 2024. Term Loan critical amount of Rs. 3.33 Lakhs on 29th June, 2024.
- 21.** The bank has issued a notice to the petitioners on 19th June, 2024, informing that the accounts of the petitioners will slip to NPA on 24th June, 2024 and by an email dated 5th July, 2024, it was informed to

the petitioners that the accounts of the petitioners turns NPA on 30th June, 2024.

- 22.** As per Master Circular, an account should be treated as 'out of order', if the outstanding balance in the cash credit or overdraft account remains continuously in excess of the sanctioned limit/ drawing power for 90 days.
- 23.** Any amount due to the bank under any credit facility, if not paid by the due date fixed by the bank, becomes overdue. The bank has issued the notice on 19th June, 2024, to the petitioners informing the over dues. In the said notice, it is categorically mentioned that the account of the petitioners will slip to NPA on 24th June, 2024, inspite of receipt of the said notice, the petitioners have not regularized the said account. The notice further reflects that the cash credit account of the petitioners, is continuously overdue from 31st March, 2024, thus the bank has rightly classified the account of the petitioners as NPA on 29th June, 2024 i.e. after 90 days.
- 24.** The petitioners have deposited the amount of Rs. 40,000/- and Rs. 5,80,000/- in the loan account on 28th June, 2024 and 29th June, 2024 and the bank has realized that the said amount as penal interest. In the notice dated 19th June, 2024, the bank has not informed about the levy of penal interest. The amount is deducted from the account of the petitioners as penal interest without any prior notice to the petitioners.

- 25.** As per Clause 3(vii) of the Fair Lending Practice-Penal Charges in Loan Accounts dated 18th August, 2023, the applicable penal charges, levy of penal charges and the reason therefor is to be communicated to the borrowers but in the present case, no such communication is made to the petitioners for levy of penal charges before deducting the amount from the account of the petitioners.
- 26.** This Court finds that the bank has violated the guidelines for Fair Lending Practice-Penal Charges in Loan Accounts by realizing the amount from the account of the petitioners as penal interest in violation of Clause 3(vii) of the guidelines issued by the Reserve Bank of India dated 18th August, 2023.
- 27.** The respondent bank has challenged the maintainability of the present writ petition but this Court finds that the petitioners have challenged the act of the bank on the allegation of violation of the conditions for Fair Lending Practice-Penal Charges in Loan Accounts issued by the Reserve Bank of India, thus this Court is of the view that the writ petition is maintainable.
- 28. W.P.A. No. 25431 of 2024 is disposed of.** Interim order is vacated.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)