

**23.03.2026**  
Court No. 12  
Item No. 04  
**Sandip**

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**F.M.A. 210 of 2026**  
**IA No : CAN 1 of 2026**

**The Branch Manager, Axis Bank Ltd.**  
**-Versus-**

**Khatu Shyam Trading Co., represented**  
**by its proprietor, Dipak Kumar**  
**Sonthalia alias Dipak Sonthalia & Ors.**

Md. Supratim Laha,  
Mr. Arijeet Doss Mullick,  
Mr. Subhasis Pyne,  
Ms. Pallabi Sardar,  
Mr. Nilavra Sen

.....for the appellant

Mr. Atarup Banerjee,  
Mr. Arindam Sen,  
Mr. Saurav Basu,  
Mr. Rajdeep Pramanik,  
Mr. Sumik Biswas

.....for the respondent no. 1

Mr. M. P. Gupta,  
Mr. Abhishek Sikdar,  
Ms. Moumita Dhar,  
Ms. Sahili Dey

....for the respondent nos. 3 & 4.

Ms. Suchishmita Ghosh

....for the respondent nos. 4 to 7.

- 1) Affidavit of service filed on behalf of the appellant is taken on record.
- 2) The petitioner is aggrieved by the judgment and order dated January 07, 2026 passed by the learned single Judge. By the order impugned the learned Court held that the petitioner was entitled to get refund of Rs. 7,82,282.02/- and Rs. 17,70,000/- from the appellant bank and such refund was directed

to be made within two weeks from the date of receipt of the copy of the Lordship's order.

3) The bank has preferred the appeal on various grounds. Firstly, that the circular of May 7, 2014 was not applicable. Secondly, the petitioner was a medium scale enterprise and not a small-scale enterprise. Thirdly, the learned single Judge failed to take into consideration the notification of August 2, 2019.

4) Mr. Banerjee, learned senior advocate appearing on behalf of the respondent no. 1 submits that although the loan was sanctioned for a working capital facility, the respondent no. 1 was an individual borrower as the business concern was a sole proprietorship business. He further submits that a MSME is also exempt from payment of foreclosure charges and penalties.

5) Ms. Ghosh, learned advocate for the respondent nos. 4 to 7 submits that the complaint of the respondent no. 1 was duly considered upon inviting the views of the bank. Upon consideration of the terms of the loan, and the purpose behind such sanction, it was found by the Ombudsman that there was no deficiency in service and the bank proceeded in accordance with the circulars.

6) Upon consideration of the memorandum of August 2, 2019 which clarifies the position and the earlier memorandum of May 7, 2014, we are of the view the writ petition should be heard afresh on its own merits independently. The notification of May 7, 2014 was clarified by the notification dated August 2, 2019 which

permitted the levy of foreclosure charges and penalty on any floating rate terms loan which had been sanctioned for the purpose of business. In this case, the respondent no. 1 had approached the bank with a request for sanction of credit facilities. Accordingly, the working capital facility was sanctioned in favour of the respondent no. 1. The terms and conditions under serial no.14 provide for prepayment penalty.

7) Clause A of 14 provides that in case of Micro and Small Enterprises (MSE borrowers), prepaying the loan amount from internal accruals / own fund and produce sufficient evidence of the same.

8) Clause B provides that prepayment premium shall be applicable as detailed in the column below, in all cases except A above. A above would mean in cases of Micro and Small enterprises (MSE borrowers). Thus, reading of this provision would indicate that Micro and Small enterprises would be exempted from prepayment premium under certain conditions, as per the terms and conditions of the Working Capital Facility sanctioned in favour of the appellant. The party has executed terms for working capital facilities. In this regard, clause 14 of the said terms described the prepayment penalty which reads as follows :-

14.	Prepayment penalty	<b><i>A: Prepayment without any prepayment premium in the following circumstances :</i></b>
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<b>No.</b>	<b>Circumstances</b>														
a.	In case of Micro and Small Enterprises (MSE borrower). Pre-paying the loan amount from internal accruals/Own Fund and produce sufficient evidence of the same.														
<p><b>B. Prepayment premium shall be applicable in all other circumstances (excluding A above) including prepayment out of own sources/Takeover of Loans by another Bank/FIs.</b></p>															
<table border="1"> <thead> <tr> <th data-bbox="901 827 1068 989"><b>Facility Type</b></th> <th data-bbox="1076 827 1206 989"><b>Prepayment within 12 months</b></th> <th data-bbox="1214 827 1328 989"><b>&gt;12 - 24 months</b></th> <th data-bbox="1336 827 1463 989"><b>&gt;24 months</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="901 989 1068 1150">Working Capital (On FB Sanctioned Limits)</td> <td data-bbox="1076 989 1206 1150">4% + applicable taxes</td> <td data-bbox="1214 989 1328 1150">3%+ applicable taxes</td> <td data-bbox="1336 989 1463 1150">2%+ applicable taxes</td> </tr> <tr> <td data-bbox="901 1150 1068 1311">Term Loan (On Principal Outstanding)</td> <td data-bbox="1076 1150 1206 1311">4%+ applicable taxes</td> <td data-bbox="1214 1150 1328 1311">3%+ applicable taxes</td> <td data-bbox="1336 1150 1463 1311">2%+ applicable taxes</td> </tr> </tbody> </table>	<b>Facility Type</b>	<b>Prepayment within 12 months</b>	<b>&gt;12 - 24 months</b>	<b>&gt;24 months</b>	Working Capital (On FB Sanctioned Limits)	4% + applicable taxes	3%+ applicable taxes	2%+ applicable taxes	Term Loan (On Principal Outstanding)	4%+ applicable taxes	3%+ applicable taxes	2%+ applicable taxes			
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<p><b>C. Notice for prepayment</b> 30 Business Days prior to the renewal due date</p> <p><b>D. Failed take over</b> In case of a failed takeover, Bank reserves the right to charge the Borrower 1% plus applicable taxes on the total limits sanctioned as failed takeover charges.</p>															

9) Prima facie, it appears that in the Udyam certificate of the respondent no. 1, the respondent no. 1 was described as a medium scale enterprise, when the facility was availed of.

10) His Lordship relied on a decision in **W.P No. 5521(W) of 2017 (Devendra Surana vs. Bank of Baroda and Ors.)** dated 12<sup>th</sup> December, 2018 passed by a learned Single Judge of the High Court. It was held that, by the Circular dated May 17, 2014, the Reserve Bank of India had advised the banks not to charge any foreclosure charges / prepayment penalty on floating rate term loans sanctioned

to individual borrowers with minimum effect. The Circular did not distinguish between individual borrowers who had obtained term loans for business exploitation or otherwise. This situation, in our prima facie view did not continue after the publication of the memo of the Reserve Bank of India dated August 2, 2019. The Bank had sanctioned overdraft credit loan facility to the tune of Rs. 5,00,00,000/- and term loan of Rs. 2,38,00,000/- lakhs by a letter dated August 30, 2024.

11) In our considered view, the decision of **Devendra Surana** (supra) would not be applicable as the respondent no. 1 was a medium enterprise when the Working Capital Facility was sanctioned as per the Udyam Certificate.

12) Thus, these issues need further consideration, especially in view of the circular/memo of the Reserve Bank of India dated August 2, 2019. The order impugned is thus, set aside. The writ petition should be heard afresh by the appropriate Court.

13) Accordingly, F.M.A. 210 of 2026 and the connected application are disposed of.

14) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Shampa Sarkar, J.)**

**(Ajay Kumar Gupta, J.)**