

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

WP(C) No. 1154/2025  
CM No. 2741/2025

**Mohd. Basharat**

.....Appellant(s)/Petitioner(s)

Through: Mr. R.K. Gupta, Sr. Advocate with  
Mr. Udhay Bhaskar, Advocate

**Vs**

**J&K Bank Ltd. & Ors**

..... Respondent(s)

Through: Mr. Akash Gupta, Standing Counsel  
Mr. Dewakar Sharma, Dy. AG

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**  
**ORDER**  
**(09.05.2025)**

- 01.** The petitioner-Mohd. Basharat, is a sole proprietor and promoter of an industrial enterprise/concern named M/s S&S Wood Industries, set up in Batote.
- 02.** The petitioner's said industrial enterprise/concern M/s S&S Wood Industries came to be registered by the District Industries Centre, (DIC) Ramban, J&K, vide a **Communication No. DIC/Rbn/793-94 dated 31.03.2021.** The petitioner's industrial enterprise/concern was to engage itself in the manufacturing of wood paneling of various categories.
- 03.** Pursuant to its registration with the District Industries Centre, DIC Ramban, the petitioner also got his said industrial enterprise/concern registered as a micro manufacturing enterprise under the aegis of the Micro,

Small and Medium Enterprises Development (MSMED) Act, 2006 (in short, 'the MSMED Act, 2006'), bearing registration No. **UDYAM-JK-17-0002573** dated **31.05.2022**, as is confirmed from annexure-III (page 29 of the paperbook).

- 04.** Being a micro manufacturing enterprise under the MSMED Act, 2006, the petitioner's said enterprise/concern became entitled to all the privileges and effects meant and reserved in terms of the MSMED Act, 2006.
- 05.** The case of the petitioner is that as micro enterprise under the MSMED Act, 2006, the petitioner came to avail financial assistance in the form of term loan as well as working capital facility for his said enterprise/concern from the respondent No. 1-J&K Bank Ltd. At the first instance, the expected extent of financial assistance did not come in favour of the petitioner to commission the industrial activity of his enterprise/concern but nevertheless the petitioner's enterprise/concern came to be financed by the respondent No. 1-J&K Bank on the basis of which the industrial enterprise/concern came to be set up and commissioned for the purpose of its manufacturing business.
- 06.** The petitioner is said to have availed term loan facility of Rs. 28.78 lacs, working capital of Rs. 15.00 lacs, additional financial assistance of Rs. 17.22 lacs and Rs. 14.60 lacs, thus, totalling bank investment in the petitioner's unit to be Rs. 75.62 lacs.
- 07.** The petitioner's said loan account is said to have come under stress and that resulted it into becoming non-performing asset NPA.

- 08.** On the record of the present writ petition, there is correspondence to and fro between the petitioner and respondent No. 1 communicating and confiding with each other the state of facts and circumstances in which the petitioner's industrial enterprise/concern has come to suffer setbacks in its business and the corresponding response from the J&K Bank-respondent No. 1 about the acts of omission or commission on the part of the petitioner in conducting the financial assistance rendered by the respondent No. 1.
- 09.** Be that as it may, the petitioner's grievance which has afforded the purported cause of action for him to come with the present writ petition is that the MSMED Act, 2006 envisages a legal regime meant for nurturing and protecting micro, small and medium enterprises so as to enable the enterprises not only to work to their full potential in terms of business and commerce but also in times of financial distress to earn helping hand from the stakeholders which includes the financial institutions financing the business of micro, small and medium enterprises.
- 10.** In this regard, the petitioner's submission is that notification **S.O. 1432(E) dated 29.05.2015 issued under section 9 of the MSMED Act, 2006 read with Reserve Bank of India's framework No. RBI/2015-16/338, FIDD.MSME & NFS.BC.No.21/06.02.2031/2015-16, dated 17.03.2016** are addressed to all scheduled commercial Banks to be carried into compliance without any fail. The regime, set up in terms of **S.O. 1432(E) dated 29.05.2015 read with circular No. RBI/2015-16/338, FIDD.MSME & NFS.BC.No.21/06.02.2031/2015-16, dated 17.03.2016 of Reserve Bank of India** is that every scheduled Bank is

supposed to set up a committee meant for attending stressed micro, small and medium enterprises.

11. The petitioner reckons that his industrial enterprise/concern M/s S&S Wood Industries, being a micro enterprise, is a stressed enterprise and therefore, was and is meant to be subjected to the treatment envisaged under **S.O. 1432(E) dated 29.05.2015 read with circular No. RBI/2015-16/338, FIDD.MSME & NFS.BC.No.21/06.02.2031/2015-16, dated 17.03.2016 of Reserve Bank of India**, but despite repeated urging by the petitioner unto the respondent No. 1-J&K Bank, the petitioner's case has not been recommended to the committee which is meant to be for the J&K Kashmir Bank Limited, in terms of **S.O. 1432(E) dated 29.05.2015** and instead petitioner has come to be confronted with impugned **Communication No. JKB/batote/2024-25-358 dated 06.03.2025** which exposes the petitioner's account for his micro enterprise M/s S&S Wood Enterprises again to relapse into NPA status which would be compounding the financial distress of the petitioner instead of enabling a revival thereof.

12. Mr. R.K. Gupta, learned Senior Advocate arguing for the petitioner draws the attention of this Court to a judgment of the Hon'ble Supreme Court of India in a case titled "**M/S Pro Knits vs. The Board of Directors of Canara Bank & Ors.**" reported in 2024 INSC 565, dated **01.08.2024** in which the legal regime adverted herein before has come to be dealt with and holding that the regime so envisaged and set up under **S.O. 1432(E) dated 29.05.2015 read with circular No. RBI/2015-16/338, FIDD.MSME & NFS.BC.No.21/06.02.2031/2015-16, dated 17.03.2016 of Reserve Bank of India**, cannot be bypassed.

- 13.** In this regard, reference is made to para Nos. 13,14 & 15, which are reproduced here :-

**“13. In view of the above, it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29th May, 2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as revised by the RBI Notification dated 17th March, 2016, and the Master Directions i.e. the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016, issued by the Reserve Bank of India in exercise of the powers conferred by Section 21 and 35(A) of the Banking Regulation Act, having statutory force, are binding to all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India, as stated in the said Directions. It cannot be gainsaid that the Banking Regulation Act 1949 basically seeks to regulate banking business and mandates a statutory comprehensive and formal structure of banking regulation and supervision in India. Section 21 and Section 35A of the said Act empower the Reserve Bank of India to frame the policy and give directions to the banking companies in relation to the advances to be followed by the banking companies. Such directions have got to be read as supplement to the provisions of the Banking Regulation Act and accordingly are required to be construed as having statutory force and mandatory.**

14. As transpiring from the said Instructions/Directions, the entire exercise as contained in the “Framework for Revival and Rehabilitation of MSMEs” is required to be carried out by the banking companies before the accounts of MSMEs turn into Non-Performing Asset. It is true that the security interest created in favour of any Bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter-III of the SARFAESI Act, and that as per Section 35 of the SARFAESI Act, the provisions of the said Act have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. However, pertinently the whole process of enforcement of security interest as contained in Chapter III of the SARFAESI Act, could be initiated only when the borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, in view of Section 13(2) of the said Act.

15. What is contemplated in the “Framework for Revival and Rehabilitation of MSMEs” contained in the Instructions/ Directions stated hereinabove, is required to be followed prior to the classification of the borrower’s account, (in

the instant case MSMEs loan account), as Non-Performing Assets. The said Instructions contained in the Notification dated 29.05.2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSME Act, followed by the Directions issued by the RBI in exercise of the powers conferred under Section 21 and 35A of the Banking Regulation Act, the Banking companies though may be 'secured creditors' as per the definition contained in Section 2 (zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.

14. *Prima-facie* case is made out.
15. Issue notice to the respondents in the main petition and in the CM as well. सत्यमेव जयते
16. Mr. Akash Gupta, learned Standing Counsel accepts notice on behalf of the respondents No. 1 to 4 and Mr. Dewakar Sharma, learned Deputy AG, accepts notice on behalf of the respondents No. 5 and 7.
17. Reply be filed in the main petition and in the CM bearing No. 2741/2025.
18. Notice to go to respondent No. 6 only.
19. Petitioner to furnish registered postal cover within a period of seven days for effecting service of the respondent No. 6.
20. List on **04.07.2025**.

21. In the meantime, operation and implementation of **Communication No. JKB/batote/2024-25-358 dated 06.03.2025** by the respondent No. 4-**Branch Manager, Jammu and Kashmir Bank Ltd. Main Bazar, Batote, J&K**, shall remain in abeyance till next date of hearing.
22. Further, given the fact that the petitioner is entitled to have his micro enterprise/concern to the protected treatment in terms of **S.O. 1432(E) dated 29.05.2015 read with Circular No. RBI / 2015-16 /338, FIDD.MSME & NFS.BC.No.21/06.02.2031/2015-16, dated 17.03.2016** of **Reserve Bank of India**, the respondent No. 1-**Jammu and Kashmir Bank Ltd. through its Chairman/Managing Director, M.A. Road, Srinagar-190001**, it is directed not to classify the petitioner's loan account as NPA account till next date of hearing. This direction is, however, subject to objections from the other side.



(RAHUL BHARTI)  
JUDGE

JAMMU  
09.05.2025  
SUNIL

OF JAMMU & KASHMIR AND LABOUR

सत्यमेव जयते