

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th September, 2010.

+ W.P.(C) 5631/2008

JASSUM INVESTMENTS P.LTD. PETITIONER

Through: Mr. Neeraj Grover, Advocate

Versus

RESERVE BANK OF INDIA RESPONDENT

Through: Mr. Ramesh Babu with Ms. Manisha
Singh & Ms. Swati Setia, Advocates.

AND

WP(C)5981/2008

GURIND TRADING P. LTD. PETITIONER

Through: Mr. Neeraj Grover, Advocate

Versus

RESERVE BANK OF INDIA RESPONDENT

Through: Mr. Ramesh Babu with Ms. Manisha
Singh & Ms. Swati Setia, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Both petitioners applied to the Reserve Bank of India (RBI) for registration as NBFC. Both applications were rejected by the RBI. The petitioners preferred appeals before the Appellate Authority for NBFC Registration Cases constituted under Section 45-IA (7) of the RBI Act,

1934. The said appeals were also dismissed. The present writ petitions were filed impugning the order of the Appellate Authority.

2. Notice of the petitions was issued.

3. The petitions came up before this Court on 26th July, 2010. It is *inter alia* the case of the petitioners also that in the long time since when the matter has been pending, there have been changes owing where to the petitioners are now in any case entitled to registration. In view of the said position, it was put to the counsel for the petitioners on 26th July, 2010 that since this Court in these petitions cannot in any case grant licenses sought by the petitioners and the matter in any case will have to be considered by the appropriate authority, why should the petitions be not disposed of, either by remand or by permitting the petitioners to apply afresh. The counsels had then sought time to take instructions as to the effects if any of either course being taken.

4. The counsel for the petitioners has today stated that the matters should be remanded either to the RBI or to the Appellate Authority for consideration afresh rather than the petitioners preferring a fresh application for registration. The counsel for the petitioners contends that unless the matters are so remanded, the business as NBFC carried on by the petitioners till 2008 when the Appellate Authority passed the order, would become illegal and may make the petitioners susceptible to prosecution.

5. The counsel for the respondent has drawn attention to the proviso to Section 45-IA(2) and contended that the permission therein to continue carrying on the business as an NBFC is only till the issuance of Certificate of Registration or rejection of the application for registration by the RBI and thus the petitioners were not entitled to continue carrying on the said

business after the rejection of their applications by the RBI and during the pendency of the appeal before the Appellate Authority.

6. The counsel for the petitioners has rejoined by referring to Section 45-IA(7) providing for an appeal against the order of the RBI rejecting the application for registration as NBFC. It is urged that it is only on the decision of the appeal that the order of rejection becomes final. The counsel for the petitioners contends that even though Section 45-IA(7) does not permit the applicant to continue carrying on the business during the pendency of appeal, as the proviso to Section 45-IA(2) does, but the appeal being a continuation of the proceedings, the permission granted to the applicant to continue carrying on business as NBFC during the pendency of application to the RBI shall continue during the pendency of the appeal also.

7. Needless to state that the counsel for the respondent controverts the aforesaid contention. He further contends that the claim of the petitioners for registration, now has to be considered in accordance with the prevalent norms and guidelines and unless a fresh application is made, the matter may not be considered correctly.

8. I have enquired from the counsels as to whether any prosecution has been initiated against the petitioners. Both counsels reply in the negative. The counsel for the respondent in fact states that it is not even known whether any case for prosecution exists.

9. In the aforesaid circumstances, need is not felt by this Court to in these proceedings adjudicate the aforesaid controversy. I am of the opinion that it will be appropriate that a fresh application for registration as NBFC giving all the necessary particulars as required to be furnished today be preferred by the petitioners; only then can the case of the petitioners for

grant of registration as NBFC be appropriately considered

10. In so far as apprehension expressed by the petitioners of prosecution is concerned, in the event of any prosecution being initiated against the petitioners, it shall be open to the petitioners to take the pleas as sought to be taken before this Court. Since the petitions have been disposed of in the aforesaid circumstances and without considering the same on merits, it shall also be open to the petitioners in the prosecutions, if any, to contend that the notice of the petitions had been issued and if the petitions had been considered on merits and allowed, the petitioners would not have been prosecuted.

11. The counsel for the petitioners at this stage states that there are no subsequent events vis-à-vis M/s Gurind Trading Pvt. Ltd., the petitioner in WP(C) No.5981/2008 and the said petition be heard on merits. Though the hearing till now had proceeded on the premise aforesaid in both the petitions but rather than getting into technicalities, the counsels have been heard on merits in WP(C) No.5981/2008.

12. The RBI vide order dated 8th January, 2003 dismissed the application of M/s Gurind Trading Pvt. Ltd. for registration as NBFC *inter alia* on the ground that the Balance Sheet as on 31st March, 2000 itself showed that loans and advances worth ₹69.28 lacs were shown as doubtful of recovery and no provision for the same had been made in the Balance Sheet. It was further held that after taking into account the provision for Bad and Doubtful debts, the Net Owned Funds of the said company as on 31st March, 2000 fell below the statutory requirement of ₹25 lacs for registration as NBFC. The said petitioner was thus held ineligible to be registered as NBFC. The Appellate Authority vide order dated 30th April, 2008 dismissed the appeal for the same reason.

13. The counsel for the petitioner has contended that the RBI and the Appellate Authority have wrongfully held the loans and advances of ₹69.28 lacs as doubtful of recovery. It is contended that interest on the said loans and advances had been received till 31st March, 1997; that the next interest was due on 31st March, 1998 and with effect wherefrom the interest was not paid; that Clause 2(1)(iv) of the Non Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 defines a “doubtful asset” *inter alia* as one which remains a sub-standard asset for a period exceeding 18 months; that Clause 2(1)(xvi) defines a “sub-standard asset” *inter alia* as one which has been classified as a non performing asset for a period not exceeding 18 months; that Clause 2(1)(xii) defines “non performing asset” *inter alia* as one on which interest has remained overdue for a period of six months or more. It is urged that since interest on the loans and advances of ₹69.28 lacs was due only on 31st March, 1998, the said loans and advances would become a non performing asset not before six months i.e. only in September, 1998 and a sub-standard asset only 18 months thereafter i.e. 31st March, 2000 and could not have been treated as doubtful of recovery in entirety on 31st March, 2000. It is urged that only 10% of the said ₹69.28 lacs could have been treated as doubtful and not the entire ₹69.28 lacs. Reference in this regard is made to Clause 8 of the Directions aforesaid. It is urged that if only 10% of ₹69.28 lacs had been treated as doubtful of recovery, inclusive of the balance thereof, the net owned funds of the company were in excess of ₹25 lacs. It is also stated that the said loans and advances have since been recovered by the company. Lastly, it is contended that no opportunity was given to the petitioner to explain the said aspect and the Appellate Authority has mechanically reproduced the reasoning given by the RBI.

14. Per contra, the counsel for the respondent inviting attention to

Balance Sheet filed by the petitioner itself has contended that when the petitioner itself in the Balance Sheet as on 31st March, 2000 had shown the said loans and advances of ₹69.28 lacs to be ‘unsecured, unconfirmed, considered doubtful’, it cannot be heard to the contrary. It is contended that the Clause 8 of the Directions relied on by the counsel for the petitioner of treating only 10% of the loans and advances as doubtful in the first year applies only when there is a doubt whether the asset is “doubtful asset or not” and does not apply when the company in its own Balance Sheet has declared the asset as doubtful. It is urged that the entire loans / advances of ₹69.28 lacs being declared in the Balance Sheet of the petitioner as doubtful, the net owned funds of the petitioner were below ₹25 lacs. The counsel for the respondent has further urged that since the loans / advances of ₹69.28 lacs are claimed to be to shareholders and Directors of the company, there was no occasion for not believing the Balance Sheet. The counsel for the respondent has further urged that the petitioner company had forfeited the share application money also and the amount whereof was not entitled to be included in the net owned funds but even if the same were to be included, the net owned funds of the petitioner did not reach the required level of ₹25 lacs. However, since the counsel for the petitioner has not addressed any argument on this aspect of the matter, need is not felt to deal therewith. The counsel for the respondent has lastly urged that the present parameters for registration as NBFC are entirely different and the application of the petitioner cannot be directed to be considered on the parameters as prevalent 10 years ago.

15. The argument of the counsel for the petitioner of the loans and advances of ₹69.28 lacs having been subsequently recovered holds no water. The position has to be considered in the light of the position as on 31st March, 2000 and not in the light of the subsequent events.

16. I may also add that this Court in writ jurisdiction would be loath to

interfere with the orders of experts such as the RBI and the Appellate Authority in such matters. Registration as NBFC entitles a company to carry on business of receiving deposits under any scheme or arrangement or in any other manner or lending in any manner. Experts in the field of finance as the RBI and the Appellate Authority have been entrusted with the task of screening the applicants as an NBFC. Needless to add that any error in such screening can have repercussions on members of the public from whom deposits may be received by such NBFC and which deposits may be jeopardized if the screening is not proper. This Court is ill equipped to screen the applicants. Thus this Court would interfere in the decision of the experts only when an apparent case for interference is being made out.

17. The counsel for the petitioner also admits that its Balance Sheet as on 31st March, 2000 showed the loans and advances of ₹69.28 lacs as “unsecured, un-confirmed, considered doubtful”. The only question is whether the entire loans and advances of ₹69.28 lacs was to be treated as doubtful asset or only 10% of it. Clause 8 of the directions aforesaid requires provision to be made for recognition of sub-standard, doubtful and lost assets after taking into account the time lag from the date it becomes non performing. Depending upon the period for which the asset has remained doubtful, provision to the extent of 20% to 50% of the secured portion i.e. the estimated realisable value of outstanding is to be made.

18. However, in the present case, the Balance Sheet as on 31st March, 2000 of the petitioner itself treats the loans and advances of ₹69.28 lacs as unsecured, unconfirmed and considered doubtful. Thus there was no question of computing the realisable value of the outstanding, as provided in Clause 8 of the Directions. Clause 8 is intended for cases where it cannot be said whether the asset is doubtful or not. For such situations, provision has been made by providing the percentage depending upon the time lag.

However, when the company itself is declaring the asset as doubtful, the occasion for applying the percentage principle in Clause 8 of the Directions would not arise. There is thus no merit in the contention of the counsel for the petitioner. There is also merit in the contention of respondent that significance has to be attached to the company declaring loans / advances to its own Directors / shareholders to be doubtful.

19. Axiomatically, there is no error capable of interference in the order impugned in WP(C) No.5981/2008.

20. In accordance with the reasons in paras 1 to 10, WP(C) No.5631/2008 is disposed of. WP(C) No.5981/2008 is dismissed on merits for the reasons stated in paras 11 to 18 herein above. I refrain from imposing any costs.

SEPTEMBER 15, 2010
'gsr'.

RAJIV SAHAI ENDLAW, J