

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

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Date of decision: 21st April, 2016

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W.P.(C) No.6775/2011

**ONICRA CREDIT INFORMATION COMPANY
LIMITED**

..... Petitioner

Through: Mr. Rajeeve Mehra, Sr. Adv. with Mr.
Amish Tandon, Ms. Shruti Aggarwal
and Ms. Lipika, Advs.

versus

RESERVE BANK OF INDIA

..... Respondent

Through: Mr. Suhail Dutt, Sr. Adv. with Mr.
Kuldeep Parihar, Mr. H.S. Parihar and
Mr. Sankalp Goswami, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 10th March, 2016 the following order was passed:-

“1. The petition impugns the order dated 17th July, 2009 of the respondent Reserve Bank of India (RBI) under Section 5(2) of the Act rejecting the application of the petitioner for Certificate of Registration as a Credit Information Company (CIC) as well as the order dated 1st June, 2011 of the Appellate Authority under Section 7 of the Credit Information Companies (Regulation) Act, 2005 dismissing the appeal preferred by petitioner thereagainst.

2. The petition was entertained and pleadings have been completed.

3. Hearing was commenced and the senior counsel for the petitioner has been partly heard and the provisions of the Act perused.

4. *It is inter alia the case of the petitioner that in pursuance to the Act aforesaid of the year 2005, the respondent RBI had in the year 2007, for the first time, invited applications for registration under Section 3 as a CIC and the petitioner had applied thereunder but was wrongfully rejected and the statutory appeal preferred by the petitioner was also dismissed.*

5. *However, on going through the provisions of the Act, Rules and Regulations, it appears that there is no requirement of the respondent RBI inviting applications for registration and the position is that as and when any person desirous of carrying on business of credit information applies to the respondent RBI for registration, the respondent RBI is required to consider the said application on its merits and as per the conditions prescribed and pass an order thereon and against which order an appeal lies to the Appellate Authority under Section 7 of the Act.*

6. *Being of the view that even if merit was to be found in the case of the petitioner, of the petitioner having been wrongfully denied registration way back in the years 2007-2008, a direction today to the respondent RBI to register the petitioner cannot be given, without the respondent RBI satisfying itself that the petitioner as of today i.e. after nearly ten years continues to meet the requisite parameter, I have enquired from the senior counsel for the respondent RBI as to why a fresh application of the petitioner cannot be considered for registration.*

7. *The senior counsel for the petitioner in this regard has also drawn attention to the order dated 13th August, 2015 recording the statement of the senior counsel for the petitioner to write to the Chief General Manager of the*

respondent RBI in this regard for consideration. The senior counsel for the petitioner states that though such a representation was made but no action has been taken thereon.

8. Though the senior counsel for the respondent RBI has drawn attention to Section 5(3) of the Act empowering the RBI to determine the total number of CICs which may be granted Certificate of Registration and also empowering the RBI to review the said decision from time to time and the senior counsel for the respondent RBI has drawn attention to page 154 of the paper book recording the statement of the Finance Minister that in the beginning he expected three to four such CICs but it appears that the same is not a determination under Section 5(3) of the Act. Moreover, even if it were such a determination, determination of the year 2007 cannot today i.e. after nine years therefrom, cannot be a determination of requirement today, especially when the mode of carrying on business and the business through Foreign Direct Investment (FDI) has been increased manifold in the said nine years.

9. It thus appears that rather than deciding the petition on merits, unless there is a bar to consideration of applications for registration as and when made or to the number of CICs, if there is any such determination, the petition should be disposed of with a direction to the respondent RBI to consider the application to be now made by the petitioner as a fresh application and in a time bound manner.

10. The counsel for the respondent RBI to, on the next date of hearing, inform, (I) whether there was any determination under Section 5(3) of the Act at the time of inviting application till the year 2007 and if so, why it

was not specified in the notice inviting applications that only three or four companies have to be granted registration; (II) whether thereafter any fresh determination, in accordance with the needs as of today, has been made; and (III) what bars the respondent RBI from considering the application of the petitioner for registration today.

11. Unless there is any such bar or something major flaw, the petition shall be disposed of as aforesaid.

12. An affidavit on all the aforesaid aspects of a responsible officer of the respondent RBI be filed before the next date of hearing.

13. List on 21st April, 2016.”

2. The senior counsel for the respondent Reserved Bank of India (RBI) states that though the affidavit in terms of the aforesaid order could not be filed but is ready and the same is permitted to be handed over in the Court and is taken on record.

3. The respondent RBI in the said affidavit, with respect to the queries raised in para 10 of the aforesaid order has stated:-

A. that before issuing the Press Release dated 18th April, 2007, the respondent RBI had not made a determination as contemplated under Section 5(3) of the Credit Information Companies (Regulation) Act, 2005;

- B. that no fresh determination or review has been made by the respondent RBI thereafter also as referred to in proviso to Section 5(3) of the Act on the total number of credit information companies;
- C. that any fresh consideration by the respondent RBI of the applications for setting up additional credit information companies has to be preceded by a determination by the respondent RBI of the total number of credit information companies needed as of today; if based on such a determination it is concluded that additional credit information companies are needed as of today, the respondent RBI would invite applications for the same, and the petitioner as well as others who may be desirous can apply for grant of certificate of registration. It is further stated that it is only on satisfaction of there being a need to review existing number of credit businesses of credit information and potential and scope for expansion of existing credit information companies can respondent RBI review the total number of credit information companies already existing and since there is no satisfaction of

the respondent RBI that the total number of credit information companies currently in existence need any further review so as to invite fresh applications, there cannot be consideration of any fresh applications.

4. The respondent RBI additionally in the said affidavit has contended that there is no right conferred in any person to start business of credit information nor any right to be considered therefor in the absence of any satisfaction of the respondent RBI of there is a need for review of the number of existing credit information companies. It is further contended that the application of the petitioner alone cannot be considered as the respondent RBI would not be able to make a comparative assessment of the petitioner company vis-à-vis other eligible companies as of today. It is yet further contended that since the challenge by the petitioner in the petition was only to the rejection of the earlier application made by the petitioner in the year 2007, without setting aside the said rejection, no other relief can be granted to the petitioner.

5. The senior counsel for the respondent RBI has additionally argued that the entire scheme of the Act is indicative of none having a right to be even considered for functioning as a credit information company and it

being the sole prerogative of the respondent RBI when to invite applications therefor.

6. Having considered the response of the respondent RBI, I am unable to concur that none has a right even to be considered for being authorised to function as a credit information company as of today. The same would have been true had the respondent RBI done determination under proviso to Section 5(3) of the Act and having laid down the periodicity at which such determination was to be done and the maximum number of credit information companies so determined being already available. The only inference which can be drawn from the respondent RBI having not felt the need in the last about eleven years since when the Act has been in force, to determine the total number of credit information companies which may be granted the certificate of registration, is that respondent RBI is open to consider the applications as and when made and cannot refuse such consideration.

7. The Credit Information Companies Act supra, (i) vide Section 3 thereof prohibits commencing or carrying on business of credit information [defined in Section 2(d)] without obtaining a certificate of registration from RBI; (ii) vide Section 4 requires a company intending to commence business

of credit information, to make an application in the form and manner as may be specified by regulations, to the RBI; (iii) vide Section 5(1) prescribes the conditions which the RBI, for grant of certificate of registration, may require an applicant to satisfy; (iv) vide Section 5(2) provides that RBI, upon being so satisfied “may” grant certificate of registration on such conditions as it may specify and vide proviso thereto prescribes that no application shall be rejected unless the applicant has been given opportunity of being heard; (v) vide Section 5(3) empowers the RBI to, having regard to the available business of credit information, the potential and scope of existing credit information companies and other relevant factors, determine the total number of credit information companies which may be granted registration and vide proviso thereto enables RBI to, on being satisfied that there is change in available business of credit information, potential and scope of expansion of existing credit information companies and other relevant factors, review the total number of credit information companies to whom certificate of registration is to be granted. The Credit Information Companies Rules, 2006 framed by Central Government in exercise of Rule making power under Section 36 of the Act are not found to deal with the registration of credit information companies. The Credit Information Companies

Regulations, 2006 framed by RBI in exercise of powers under Section 37 of the Act (a) vide Regulation 4 prescribes the form in which application for grant of certificate of registration is to be made and the office of RBI to which it is to be submitted; (b) vide Regulation 5 prescribes the manner of consideration of application by RBI and of grant of certificate of registration.

8. Neither the Act nor the Regulations are found to provide that application for registration as credit information company can be made only when invited by RBI or at any specified time or for consideration thereof on comparative merit. In the absence of any determination by the RBI under Section 5(3) of the maximum number of companies to whom certificate of registration for carrying on business of credit information is to be given, RBI cannot also refuse to consider an application on the ground of four companies having already been granted certificate of registration.

9. The contention of the respondent RBI of no applications for registration being maintainable without the respondent RBI inviting the same cannot thus be accepted.

10. As far as the contention, of the application of the petitioner alone being not entitled to be considered, though as aforesaid, there is no provision

for comparative assessment of applications but if the respondent RBI feels that an opportunity should be given to others as well and to invite applications, the petitioner cannot possibly have any objection thereto.

11. Though the senior counsel for the respondent RBI during the course of hearing has also suggested that the respondent RBI does not feel the need for any more credit information companies for the time being but the deponent of the affidavit handed over today has shied away from saying so and the “feel” of the RBI cannot be a substitute for the determination under Section 5(3) of the Act and which admittedly has not been done. If at all respondent RBI even now decides to carry out the same, it cannot be a ground for the respondent RBI to till the time the said determination has not been done, not considering any further application.

12. The senior counsel for the petitioner has expressed apprehension that the rejection of the earlier application of the petitioner and which is challenged in this petition may come in the way of consideration of the fresh application to be filed by the petitioner.

13. This Court having not felt the need to go into the question of validity of the earlier rejection, all that can be observed is that the respondent RBI while considering the fresh application of the petitioner would not be

influenced in any manner whatsoever by the rejection of the earlier application of the petitioner as well as the rejection of the appeal preferred by the petitioner thereagainst.

14. The senior counsel for the petitioner has also contended that the fresh application of the petitioner be considered on the same parameters as were advertised in the year 2007.

15. I am afraid it cannot be so directed. If the respondent RBI during the functioning of the four credit information companies in the last several years has felt the need for any change in parameters, the respondent RBI cannot be prohibited from applying the same while considering the fresh application of the petitioner. All that can be observed in this regard is that the respondent RBI in considering the fresh application of the petitioner should not be vindictive and/or should not devise a criteria which is not being applied to the existing credit information companies or which is not intended to be applied vis-a-vis application if any of any other applicants.

16. The senior counsel for the respondent RBI has again contended that time be given to the respondent RBI to carry out determination under the proviso to Section 5(3) prior to consideration of fresh application of the petitioner.

17. I am afraid that also cannot be permitted. The respondent RBI having not felt the need to carry out any fresh determination till now cannot be permitted to use the same as a ground for ousting the petitioner. If the respondent RBI, as was empowered by the statute, felt the need for any determination of the maximum number of companies to whom certificate of registration for carrying on credit information business is to be granted, it would have done the same before inviting the applications in the year 2007. The respondent RBI at that point of time having not put any limitation on the number of credit information companies and was willing to register as many credit information companies as then found eligible. Though the senior counsel for the respondent RBI has stated that at that time also the respondent RBI had asked for recommending upto five applications but admittedly the same was not a determination within the meaning of Section 5(3) and in the face of the statutory provision any order not in compliance therewith cannot take the place of statutory determination.

18. As far as the contention, of the petitioner in the petition having not sought the relief of consideration of fresh application, is concerned, this Court has already in the order dated 10th March, 2016 reproduced hereinabove observed that owing to passage of time it was felt that no

purpose would be served in pronouncing on the validity of the earlier rejection as it would not be appropriate to in the year 2016 direct a certificate of registration to be issued to the petitioner on the parameters of the year 2007-2008. This Court can always mould the relief and the relief as is being granted is found to be within the ambit of the petition and the jurisdiction of this Court.

19. In fact I have enquired from the senior counsel for the RBI the logic of having more than one credit information company. To me it *prima facie* appears that a single entity would best serve the purpose of disseminating credit information under the Act. The senior counsel for the RBI fairly states that he has not obtained instructions on this aspect and cannot himself think of any advantage of multiple companies.

20. Accordingly, the petition is disposed of with the following directions:-

- (i) The petitioner to on or before 28th April, 2016 make a fresh application to the respondent RBI for registration in terms of Section 4 of the Credit Information Companies (Regulations) Act, 2006.

- (ii) The respondent RBI to on or before 20th August, 2016 as requested, consider and communicate its decision on the said application to the petitioner.
- (iii) The aforesaid consideration and decision shall be uninfluenced by the rejection of the earlier application of the petitioner and dismissal of the appeal preferred by the petitioner thereagainst.
- (iv) The respondent RBI independently of the aforesaid, if so deems necessary would be entitled to invite applications from others and to also initiate the process of determination under Section 5(3) of the Act.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

APRIL 21, 2016

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