19

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23.08.2016

W.P.(C) 160/2016 & CM 694/2016

M/S COMFORT INTECH LIMITED ..... Petitioner

Through: Mr Sandeep Sethi, Sr. Advocate with Mr Seshagiri Vadlamani and Mr Alok Tiwari, Advocates.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr Vikram Jetly and Mr R. M. Tripathi, Advocates for UOI/R-1.
Mr Parag Tripathi, Sr. Advocate with Mr Ramesh Babu M.R., Ms Manisha and Ms Swati Setia, Advocates for RBI/R-2.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India prays as follows:-

> "(a) this Hon'ble Court may kindly be pleased to declare that the Impugned Order in *ultra vires* the provisions of the Act and *void ab initio*;

(b) this Hon'ble Court may kindly be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Articles 226 and 227 of the Constitution quashing and setting aside the Impugned Order dated 30.11.15 the consequential directions and proceedings initiated against the Petitioner;

(c) this Hon'ble Court be pleased to grant costs; and

(d) for such further and other reliefs as the nature and circumstances of the case may require in the interests of justice, equity and good conscience."

2. The order essentially impugned in the present petition is dated 24.09.2014 whereby the certificate of registration issued to the petitioner, which is a non-banking financial company, was cancelled by the Reserve Bank of India (RBI), respondent No.2 herein.

3. Without going into the merits of the controversy, from a plain reading of the order dated 24.09.2014, it is observed that the impugned order was passed without affording an adequate opportunity of hearing to the petitioner.

4. It is trite to say that an administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin

maxim *audi alteram partem*. This principle of natural justice is firmly entrenched in our jurisprudence from the time of the decision of the House of Lords in the landmark case of ***Ridge v. Baldwin*: (1963) 1 ALL ER 66**, which has been followed by the Supreme Court of India in ***State of Orissa v. Binapani Dei*: AIR 1967 SC 1269**; ***Menka Gandhi v. UOI*: AIR 1978 SC 597**; ***State of Haryana v. Ramkishan*: AIR 1988 SC 1301**.

5. The Supreme Court in ***Neelima Misra v. Harinder Kaur Paintal*: (1990) 2 SCC 746**, in para 23 of the report held as under:

> "**23.** The shift now is to a broader notion of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See : *Keshav Mills Co. Ltd.* v. *Union of India* [(1973) 1 SCC 380, 387: (1973) 3 SCR 22, 30] ; *Mohinder Singh Gill* v. *Chief Election Commissioner* [(1978) 1 SCC 405, 434: (1978) 2 SCR 272] ; *Swadeshi Cotton Mills* v. *Union of India* [(1981) 1 SCC 664: (1981) 2 SCR 533] and *M.S. Nally Bharat Engineering Co. Ltd.* v. *State of Bihar* [(1990) 2 SCC 48] .) For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have lis inter partes. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter partes. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or

> prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept."

6. In view of the foregoing and the peculiar facts and circumstances of the present case, the impugned order dated 24.09.2014 passed by the RBI and the consequential order dated 30.11.2015 rendered in appeal by the Appellate Authority for NBFC Registration Cases under Section 45-A(7) RBI Act, 1937, are unsustainable and liable to be set aside and quashed on the ground that no opportunity of a formal hearing was given to the petitioner before passing of the impugned order dated 24.092014.

7. Accordingly, the aforesaid impugned orders dated 24.09.2014 and 30.11.2015 are set aside. Liberty is, however, reserved to the RBI to proceed further with the show-cause notice dated 05.02.2014, issued to the petitioner, in accordance with law, after affording a hearing to the petitioner.

8. The said personal hearing shall take place at Conference Hall Central Office, RBI, Mumbai, at 11:00 AM on 01.09.2016. The petitioner is directed to remain present in person or through its authorised representative at the appointed time and place.

9. The RBI shall, within four weeks after the conclusion of the personal hearing, render an order in accordance with law under intimation to the petitioner. The RBI is directed to adhere to the time limits imposed by virtue of this order without demur.

10. Although the impugned orders have been set aside, the petitioner is restrained from transacting any business as a non-banking financial company till the expiry of seven weeks from today, unless an order is served upon them to the contrary by the official respondents in the meantime.

11. The writ petition is disposed of accordingly.

12. A copy of this order be given *dasti* under signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL, J

AUGUST 23, 2016
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