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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 09.11.2017

Order passed on: 24.11.2017

Company Petition No.02 of 2004

Reserve Bank of India, a body established under Reserve Bank of India Act, 1934, having its Central Office at Central Office Building, Shaheed Bhagat Singh Road, Fort, Mumbai-400 001 and Regional Office at Hoshangabad Road, Bhopal

---- Petitioner

Versus

Samruddhi Saving & Investment (I) Ltd. A company registered under the Companies Act, 1956 and having Registered Office at B-4/B-5 "Garchaz Complex", Jail Road, Raipur, Chhattisgarh, and Corporate Office at 181, Gotmare Complex, North Bazar Road, Gokulpeth, Nagpur-10

---- Respondent

For Petitioner	: Dr.N.K.Shukla, Senior Advocate with Ms Ayetri Sen Gupta, Advocate
For Respondent	: Mr.Neelesh M. Gaidhane and Mr.Pravesh Sharma, Advocate

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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Reserve Bank of India/petitioner herein which is a body corporate established under the Reserve Bank of India Act, 1934 (hereinafter called as "the Act of 1934") having its Central Office at Mumbai has filed this company petition under Section 45-MC of the Act of 1934 read with Part VII of the Companies Act, 1956 (hereinafter called as "the Act of 1956") for winding up of the respondent Company namely

Samrudhhi Saving & Investment (I) Ltd., a company registered under the Act of 1956.

2. The essential facts necessary to adjudicate the lis pending between the parties are as under:-

2.1 The petitioner/RBI claiming to be statutory regulating authority for Non-Banking Financial Companies (NBFCs) empowered under Chapter III B of the Act (as amended by the Reserve Bank of India (Amendment) Act, 1997) for issuing certificate of registration to NBFCs, prescribing Prudential Norms, issuing Directions, prohibiting NBFCs from accepting deposits, filing winding up petitions etc. has filed this company petition under Section 45-MC of the Act of 1934 read with the provisions of the Act of 1956 for winding up of the respondent Company stating inter-alia that the respondent Company is a Non-Banking Financial Company (NBFC) as defined under the Act of 1934 and is bound by the provisions of the Act of 1934 and the Directions issued by the RBI thereunder. The respondent Company has been carrying on the business of receiving deposits under different schemes and was classified by the RBI as a Residuary Non Banking Company (RNBC). The respondent Company has been issued with a memo dated 19th December, 1992 advising the company of its classification as a RNBC and requiring it to comply with the RBI directions contained in Residuary Non Banking Companies (Reserve Bank) Directions 1987.

2.2 It has been pleaded that Section 45-1A of the Act of 1934 (as amended by the Reserve Bank of India (Amendment) Act, 1997) requires Non Banking Financial Companies including the respondent Company to obtain a Certificate of Registration from the petitioner Bank to carry on or commence the business of Non Banking Financial Institution, pursuant to which, the respondent Company submitted an application dated 4th July, 1997 to the petitioner Bank for grant of registration certificate acknowledging itself to be a RNBC, on which the petitioner Bank conducted a Special Audit of the company with reference to its balance sheet and after giving an opportunity of hearing the said application was rejected by the petitioner Bank vide order dated 26.10.1990. Though the respondent Company has challenged the same in appeal, but nothing has been brought on record to show that the order of the petitioner Bank rejecting the application for grant of registration certificate has been interfered with by the appellate authority.

2.3 It is further case of the petitioner Bank that the respondent's net owned fund was revealed negative in the inspection conducted in the month of November, 2001 and as such, the respondent Company is disqualified to carry on the business of Non Banking Financial Company under Section 45-IA of the Act of 1934 and consequently, prohibitory order dated 14.10.1998 was issued prohibiting the respondent Company from accepting deposits from any person in any form whether by way of fresh deposits or renewals or otherwise, yet, the respondent Company further deposited and increased its deposit liability, which shows that continuation of the respondent Company is detrimental to the public interest and to the interest of depositors of the company. Therefore, the petitioner Bank has filed this company petition under Section 45-MC of the Act of 1934 read with the provisions of the Act of 1956 as in the interest of justice the respondent Company be directed to wound up as per direction of the Supreme Court in the matter of **Joseph Kuruvilla Vellukunnel Vs. Reserve Bank of India and others**[1] and under the provisions of clauses (a) to (d) of sub-section (1) of Section 45-MC of the Act of 1934.

2.4 This company petition was filed way back on 27.1.2004. This Court by its order dated 6.4.2004 issued notice to the respondent Company. In response to the notice issued by this Court, the respondent Company has filed written objection on 3.8.2017 and has taken specific objection that entire property of the respondent Company has been attached by the Government of Maharashtra under the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter called as "the Act of 1999") and criminal

[1] AIR 1962 SC 1371

action has also been taken against Chairman and Directors of the Company and the Sub Divisional Magistrate, Nagpur/competent authority has control over the properties attached of the said financial establishment and the matter is pending before the Special Court constituted under the provisions of the Act of 1999 and notification in that respect has also been issued on 5.5.2005 by the Home Department, Government of Maharashtra and therefore, the company petition as framed and filed deserves to be dismissed.

2.5 No rejoinder to the said written objection has been filed by the petitioner Bank.

3. Dr.N.K.Shukla, learned Senior Counsel along with Ms Ayetri Sen Gupta, learned counsel appearing for the petitioner, would submit that the petitioner Bank being a Statutory Regulatory Authority for Non Banking Financial Companies is empowered by virtue of the provisions contained in Section 45-MC of the Act of 1934 to file petition for winding up of the respondent Company as the petitioner Bank is satisfied that continuation of the respondent Company as Non Banking Financial Company is detrimental to public interest and to the interest of the depositors of the company as despite prohibitory order issued by the petitioner Bank on 14.10.1998 the respondent Company collected further deposits and increased its deposit liabilities and as such, the respondent Company has violated the prohibitory order

issued by the petitioner Bank. Therefore, continuation of the respondent Company as Non Banking Financial Company is detrimental to public interest and to the interest of the depositors of the company and therefore, the company petition be admitted for further proceedings.

4. Mr.Neelash M. Gaidhane, learned counsel appearing for the respondent, would submit that the respondent Company is not Non Banking Financial Company as per provisions contained in the Act of 1934, therefore, this company petition under Section 45-MC of the Act of 1934 for winding up of the respondent Company is not maintainable at all as the respondent's application for grant of certificate of registration has been rejected by the petitioner Bank on 28.10.1999 and therefore, the present company petition as framed and filed is liable to be dismissed. He would further submit that prior to filing of this company petition the property held by the respondent Company has already been attached by the Government of Maharashtra in exercise of powers conferred under the Act of 1999 by issuing notification dated 5.5.2009 and attachment proceedings and criminal proceedings are pending before the jurisdictional civil and criminal Court constituted under the Act of 1999, therefore, the company petition as framed and filed is not maintainable.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

6. “The Bank” has been defined under Section 2 (aii) of the Act of 1934 which reads as under:-

> “(aii)” “the Bank” means the Reserve Bank of India constituted by this Act.”

Definition of the RBI has not been defined in the Act of 1934, but it has been defined under Section 5 (b) of the Banking Regulation Act, 1949 (hereinafter called as “the Act of 1949”) which means the Reserve Bank of India constituted under Section 3 of the Act of 1934 and “banking company” has been defined in Section 5 (1) of the Act of 1949 which means the RBI constituted under Section 3 of the Act of 1934. Likewise, the Act of 1949 defines “banking” under Section 5(b) of the Act of 1949 and “banking company” under Section 5(c) of the Act of 1949. Section 22 of the Act of 1949 provides that no company shall carry banking business in India unless it holds a license issued in that behalf by the Reserve Bank of India and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose. Proceeding of granting license or rejection of license is provided under Section 22 of the Act of 1949. Therefore, it is clear that by virtue of the provisions of the Act of 1949, all the banking companies are brought under the direct control of the Reserve Bank of India and no banking company shall conduct a business without license of the RBI. The provisions of the Act of 1949 shall be in addition to, and not, save as hereinafter expressly provided in derogation of the Act of 1956 and any other law for the time being in force. Therefore, no company whether incorporated or unincorporated can undertake a business in banking without license from the RBI.

7. At this stage, it would be appropriate to notice Section 45-MC of the Act of 1934 which provides power to Bank to file winding-up petition which reads as under:-

> "**45-MC. Power of Bank to file winding- up petition**.-(1) The Bank, on being satisfied that a non-banking financial company—
> (a) is unable to pay its debt; or
> (b) has by virtue of the provisions of Section 45-IA become disqualified to carry on the business of a non-banking financial institution; or
> (c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or
> (d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company,
>
> may file an application for winding up of such non-banking financial company under the Companies Act, 1956 (1 of 1956).
>
> (2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any to its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.
>
> (3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.
>
> (4) All the provisions of the Companies Act, 1956 (1 of 1956) relating to winding-up of a company shall apply to a winding-up proceeding initiated on the application made by the Bank under this provision."

8. A focused glance of the aforesaid provision would show that the RBI is entitled to invoke Section 45-MC of the Act of 1934 on being satisfied that particular company is Non Banking Financial Company and in that case all the provisions of the Act of 1956 relating to winding up of a company shall apply

to a winding up proceeding initiated on the application made by the Bank under this provision.

9. Section 45-I of the Act of 1934 defines meaning of “business of a Non-Banking Financial Institution” which states as under:-

> “45-I (a) ''business of a non-banking financial institution ” means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f)”

Section 45-I(f) of the Act of 1934 defines Non-Banking financial company, but registration of a Non-Banking Financial Company has been made imperative by incorporating the provisions contained in Section 45-IA (1) and (2) of the Act of 1934 which states as under:-

> “**45-IA. Requirement of registration and net owned fund**.-(1) Notwithstanding anything contained in tis Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without-
> (a) obtaining a certificate of registration issued under this Chapter, and
> (b) having the net owned fund of twenty-five lack rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify:
>
> (2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:
>
> Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.”

10. A studied perusal of the aforesaid provision would show that any company to be a Non-Banking Financial Company can undertake the activities as prescribed in Section 45-I (f) of the Act of 1934 and it must be registered with the RBI as per Section 45-IA of the Act of 1934.

11. At this stage, it would also be appropriate to notice the meaning of non-banking financial companies defined in the master circular dated 2nd July, 2012 issued by the RBI which states as under:-

> "1.1 Terminology
>
> (a) 'NBFCs' means the Non-Banking Financial Companies registered with Department of Non-Banking Supervision of Reserve Bank of India.
>
> (b) Residuary Non-Banking Financial Companies (RNBCs) are the companies classified and registered with Department of Non-Banking Supervision of Reserve Bank of India as such."

The definition incorporated in the Master Circular and direction issued would show that Non-Banking Financial Company is a company registered under the Act of 1956, which has been granted certificate of registration by the Bank under Section 45-IA of the Act of 1934 and consequence of non complying the mandate of Section 45-IA of the Act of 1934 has also been provided in the Act of 1934 and contained in sub-section (4-A) of Section 58B of the Act of 1934. Sub-section (4-A) of Section 58B of the Act of 1934 reads as under:-

> "(4-A) If any person contravenes the provisions of sub-section (1) of Section 45-IA, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than

> one lakh rupees but which may extend to five lakh rupees."

Thus, non-adherence and non-compliance of the provisions contained in Section 45-IA (1) of the Act of 1934 is punishable with imprisonment and fine by the provisions contained in sub-section (4-A) of Section 58B of the Act of 1934.

12. After having examined the scope and ambit of the legal provisions involved herein, reverting back to the facts of the present case, it is quite apparent that the respondent Company is Non-Banking Financial Company in terms of Section 45-I (f) of the Act of 1934, but application filed by the respondent Company for grant of certificate of registration under Section 45-IA (1) (a) of the Act of 1934 was rejected by the petitioner Bank on 28.10.1999. Therefore, the respondent Company was not entitled to commence or carry on the business of a Non-Banking Financial Institution as barred under Section 45-IA of the Act of 1934 and in order to to file winding up petition under Section 45-MC of the Act of 1934, the petitioner Bank is required to establish that the company is a Non-Banking Financial Company.

13. In the present case as held hereinabove, though the petitioner Bank is under obligation to grant registration certificate under the provisions contained in Section 45-IA (1) (a) of the Act of 1934, but the respondent's application for grant of registration has been rejected by express order of the RBI (petitioner Bank) on 28.10.1999, thus, it would not satisfy the meaning of Non-Banking Financial Company for

the purpose of Section 45-MC of the Act of 1934. The company petition can be filed under Section 45-MC of the Act of 1934 only against a Non-Banking Financial Company by the petitioner Bank if the RBI is of the opinion that the grounds mentioned in clauses (a) and (d) of sub-section (1) of Section 45-MC of the Act of 1934 are available.

14. Since the petitioner Bank has failed to establish that the respondent Company is Non-Banking Financial Company within the meaning of Section 45-I (f) read with Section 45-MC of the Act of 1934 who has been granted certificate of registration, therefore, the company petition as framed and filed under Section 45-MC of the Act of 1934 read with the provisions of the Act of 1956 relating to winding up of the respondent Company would not be maintainable.

15. As a fall out and consequence of the above-stated discussion, the company petition as framed and filed is not maintainable and is accordingly dismissed at the admission stage leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-