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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 28.09.2020

Pronounced on: 23.10.2020

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W.P. (C) 3515/2020

JEEWAN HOLDINGS PRIVATE LIMITED

& ANR.

..... Petitioners

Through: Mr. Anuj Singh, Ms. Rashmi
Singhee and Ms. Mrinal Kanwar,
Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ruchir Mishra, Mr. Mukesh
Tiwari and Mr. Ramneek Mishra,
Advocates for R-1.
Mr. Ramesh Babu, Ms. Nisha
Sharma and Ms. Tanya
Chowdhary, Advocates for R-
2/RBI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Reserve Bank of India (RBI) has cancelled the Certificate of Registration issued to Petitioner No.1 vide order dated 14.09.2018, which is impugned in the present petition along with the order passed by Respondent No. 1/Union of India dated 09.04.2020 affirming the said order in Appeal. Alternatively a direction is sought to Respondent No. 1 to consider the representation dated 10.05.2018 and condone the delay in

meeting the threshold limit of Rs. 200 Lakhs, a condition for grant of Certificate of Registration.

2. Facts as set out in the petition and necessary for adjudication of the issues involved can be captured as under :-

- a. Petitioner No. 1 (hereinafter after referred to as 'Company') is a Company within the meaning of the Companies Act, 1956 and has been registered as a Non Banking Financial Company (NBFC) under the provisions of Section 45-IA of the Reserve Bank of India Act, 1934. Petitioner No. 2 is one of the Directors of Petitioner No. 1. Petitioner No. 1 is a closely held Company and its shareholdings are held with family and close Associates of Petitioner No. 2.
- b. The Company being an NBFC was issued a Certificate of Registration (hereinafter referred to as 'CoR') dated 15.09.2003 by the RBI under provisions of Section 45-IA of the RBI Act.
- c. It is an admitted position that no NBFC could carry on its business as a Non Banking Financial Institution without having the Net Owned Fund (hereinafter referred to as 'NOF') of Rs. 100 Lakhs at all material times, prior to 27.03.2015.
- d. On 27.03.2015 in terms of Revised Regulatory Frame Work for NBFCs, RBI issued a Notification, specifying that a sum of Rs. 200 Lakhs as NOF shall be required by any NBFC to commence or carry on business as a NBF Institution. The Notification further provided that all NBFCs already holding the CoR issued by RBI and having NOF less than Rs. 200

Lakhs would be permitted to carry on business provided they achieve the NOF of Rs. 200 Lakhs before 01.04.2017.

- e. Company achieved the NOF in excess of Rs. 70 Lakhs as on 27.03.2015 and continued to carry on its business till 01.04.2017 with an object of enhancing the NOF to the desired limit under the new Notification.
- f. Petitioners aver that immediately after coming to know of the Revised Regulatory Frame Work on 27.03.2015 the Company took steps for selling its own agricultural land valued in excess of Rs. 300 Lakhs and also found a buyer and prepared a draft Agreement of Sale. Unfortunately the transaction did not materialise and the Company could not achieve the minimum threshold of NOF upto the cut-off date i.e 01.04.2017.
- g. In view of the inability of the Company to raise the required NOF by 01.04.2017, RBI, vide a show-cause notice dated 02.05.2018 called upon the Company to submit its reply to show cause why the CoR should not be cancelled in terms of Sections 45-IA (6)/58B of RBI Act. The Company filed its reply on 10.05.2018 stating therein that it was desirous of raising its NOF far in excess of Rs. 200 Lakhs but was in a difficulty on account of the inability to sell its land. It was mentioned that subsequently it had been able to achieve the NOF in excess of Rs. 200 Lakhs by 28.03.2018 and all necessary documents had been filed with the ROC. A request was made to condone the delay in achieving the NOF to the desired threshold limit.

h. Anticipating that an opportunity of being heard shall be provided to the Company, Petitioners were surprised to receive a communication dated 14.09.2018 from RBI intimating the cancellation of the CoR. The said order was taken up in Appeal but the Appellate Authority affirmed the cancellation order vide its order dated 09.04.2020.

3. Counsel for the Petitioners assailed the impugned orders by arguing that the Company in its reply to the show cause had specifically intimated the RBI that it was able to achieve the required NOF of Rs. 200 Lakhs by 28.03.2018 and once the condition was satisfied, though belatedly, the same should be favorably considered by the RBI and the cancellation withdrawn. It was also argued that no opportunity of hearing was given after the receipt of reply while the Statute mandates providing an opportunity of personal hearing before taking the action of cancellation of CoR. This is violation of principles of natural justice and has resulted in the Company suffering loss of business and there is financial crunch for the other Petitioners.

4. It is next contended that Section 45-IA (3) provides three years time from the commencement or such further period as the bank may, after recording reasons in writing, for doing so, extend, for the existing NBFCs to fulfill the requirement of NOF and the upper time limit can be extended to 6 years in aggregate.

5. Counsel for Petitioners next contends that even if there is a breach of the Notification dated 27.03.2015 and the provision of Section 45-IA of the RBI Act, the Proviso to Section 45-IA (6)(iv) of the RBI Act

provides for an opportunity to the Company for taking necessary steps to comply with the provision and/or fulfill the condition and therefore the Legislature envisages that the default is curable. In the present case the CoR was cancelled since the Petitioner failed to comply with the condition subject to which the CoR was issued and therefore the cancellation is presumed to be under Section 45-IA (6) (ii) which clearly attracts the Proviso permitting the Company to rectify the default.

6. Learned counsel in support of the arguments relies on the following judgements:-

- 1. *Peerless General Finance and Investment Co. Ltd and Ors. vs. Reserve Bank of India and Ors.* (1992) 2 SCC 343.**
- 2. *Dominion of India vs. Shrinbai A. Irani*, AIR 1954 SC 596.**
- 3. *AG Varadarajulu vs. State of Tamil Nadu*, AIR 1998 SC 1388.**
- 4. *Maru Ram Etc vs. Union of India & Anr.*, AIR 1980 SC 2147.**
- 5. *Aswini Kumar Ghose & Ors. vs. Aravinda Bose & Ors.*, AIR 1953 SC 75.**
- 6. *Labour Commissioner, MP vs. Burhanpur Tapti Mill*, AIR 1964 SC 1687.**
- 7. *Pesara Pushpamala Reddy vs. G. Veera Swamy*, (2011) 4 SCC 306.**

8. *Jaywant S Kulkarni Vs. Minochar Dosabhai Shroff,*
AIR 1988 SC 1817.

7. Mr. Ramesh Babu learned counsel for the RBI per contra contends that the contention of the Petitioner that the cancellation of the CoR is illegal, is totally misconceived and based on a wrong interpretation of the provisions of the Statutory provisions. He argues that in terms of the Revised Regulatory Frame Work for NBFCs dated 10.11.2014 an NBFC failing to achieve the prescribed NOF within the stipulated time is not eligible to hold the CoR and therefore the RBI was right in cancelling the CoR of the Company. Vide Notification dated 27.03.2015 a Revised Regulatory Frame Work was issued requiring the NBFCs to achieve minimum Rs. 200 Lakhs as NOF. However, for NBFCs holding a CoR permission was granted to carry on business with a caveat that they should achieve the NOF before 01.04.2017. Sufficient time was thus granted to the existing Companies like the Petitioner to comply with the requirement. Admittedly Company did not comply with the requisites of the Notification and therefore a show cause was issued. The reply received was found unsatisfactory and considering all the factors the CoR was cancelled.

8. It is submitted that RBI is a Statutory Body constituted under Section 3 of the RBI Act to regulate the banks with a view to secure monetary stability in the country. The necessity of having a regulatory mechanism arose as it was noticed that NBFCs not covered by the Banking Regulations Act, 1949 started accepting deposits from the public on a large scale and in the absence of any regulation regarding acceptance of deposits, several malpractices surfaced during 1960s. These

Companies started soliciting huge deposits from the public offering high rates of interest but without divulging any information regarding their financial positions. A lot of genuine depositors fell prey to the malpractices and it was thus felt that these Institutions should not have unlimited access to public funds and for this purpose the RBI Act was amended in 1963. A new Chapter-III B was inserted under which powers were conferred on the RBI for regulating and monitoring the deposit acceptance activities as also to issue directions to the NBFCs. It is in this background that Section 45-IA was enacted and in order to further regulate, Notification dated 21.04.1999 followed by the Notifications dated 10.11.2014 and 27.03.2015 were published.

9. Mr. Babu argues that once the Company could not achieve the minimum NOF as on 31.03.2017 and the NOF was only Rs. 70.70 Lakhs, on the relevant date, it could not be permitted to continue its business and the CoR was liable to be cancelled. As per Section 45-IA (1) of the RBI Act, no NBFC can commence or carry on its business unless it satisfies two conditions viz. (a) having a Certificate of Registration issued by RBI and (b) having minimum NOF as specified by RBI. The Company was granted exemption being an existing NBFC holding a CoR and was permitted to continue its business but with a caveat that it was bound to achieve the NOF by 31.03.2017. It is also argued that sufficient time of two years from the date of Notification was given to the Company to achieve the required NOF.

10. The next contention is that the decision to increase the requisite NOF was made applicable uniformly to all NBFCs and there is no challenge before this Court to the Notification in the present petition. It is

a policy decision taken in its prudence and based on public interest. No leeway can be granted as that would have implications on the financial stability of commercial market and prejudice the tax revenue collection of the Government.

11. With regard to the allegation that no opportunity of hearing was given to the Petitioners, counsel for the RBI argued that a show cause notice was given to the Company to file its reply but the Company could not give a satisfactory reply. Opportunity of hearing does not necessarily mean a personal hearing as held by the Supreme Court in *Union of India vs. Jesus Sales Corporation, (1996) 4 SCC 69*.

12. Counsel for RBI further contends that even the argument of the Company that they should have been granted opportunity to rectify the default under Proviso to Section 45-IA (6) is misconceived. Under the Proviso, opportunity is to be granted only in cases of cancellation of CoR for failure to comply with provisions of Clauses (ii) & (iii) of Section 45-IA (6). In the present case the cancellation is for not achieving the required NOF and is thus under Clause (iv) (a) which stipulates failure to comply with any direction issued by the Respondent under RBI Act and therefore the Company cannot invoke the Proviso. It is also argued that the Appellate Authority has considered all the grounds raised by the Petitioners and keeping in background the Notification and its provisions as well as the provisions of the RBI Act it has upheld the decision of the RBI and no fault can be found.

13. Counsel for RBI placed his reliance on the following judgements to support the arguments:-

- a. Shakun Holdings Private Limited v. Union of India and Ors. being CWP No. 1667 of 2020, decided on 22.07.2020.*
- b. The Regional Director, Reserve Bank of India and Ors. vs. Nahar Finance & Leasing Limited and Ors., (2019) 5 MLJ 334.*
- c. Namaste Management Pvt Ltd & Anr. vs. Reserve Bank of India & Anr. being GA 1219 of 2019 decided on 02.07.2019.*
- d. M&M FINSEC Private Limited vs. Reserve Bank of India, being W.P.(C) 5085/2020, decided on 15.09.2020.*

14. I have heard the learned counsels for the parties and examined their rival contentions.

15. The fulcrum of the argument of the Petitioners is that the CoR of the Petitioner No.1 was cancelled since it had failed to comply with the condition subject to which this CoR was issued and the Company was permitted to continue its business. As such CoR has to be presumed to have been cancelled under Section 45-IA(6)(ii) of the RBI Act. Cancellation under the said provision attracts the proviso to the Section and therefore the Company is entitled to be provided with an opportunity for taking necessary steps for fulfilling the conditions and since the Company was able to achieve the NOF, though belatedly, the breach should be condoned and CoR restored. Respondent No.2 on the other hand rebuts the submission on the ground that cancellation of the CoR was done by invoking Section 45-IA(6)(iv) and the proviso is not applicable and hence no opportunity can be granted to the Petitioners to

cure the breach and achieving the NOF after the deadline is of no consequence.

16. Counsel for Respondent No.2 has labored to explain the reason for issuance of the Notification in question. The NBFCs which were not covered by the Banking Regulation Act, 1949, started accepting deposits from the public at large. In the absence of any regulation on the acceptance of deposits by such Companies several unhealthy practices had come to surface during the early 1960s. The Companies were soliciting deposits from the public offering high rates of interest but without divulging information regarding their financial positions. Consequently, a lot of investors felt prey to the modus operandi for augmentation of deposits. In public interest, it was decided to have a regulatory mechanism and to confer on the RBI, statutory powers, enabling it to supervise and regulate acceptance of deposits by such Institutions. With this background the RBI Act was amended in 1963 and eventually it led to several provisions being enacted including compulsory registration of NBFCs with the Reserve Bank and stipulation of minimum NOFs under Section 45 IA. In furtherance of this, Notification dated 21.04.1999 was issued stipulating the minimum NOF requirement for new Companies applying for grant of CoR to commence business of NBFC and subsequently the RBI issued a Revised Regulatory Framework for NBFCs on 10.11.2014 laying down timelines for all existing NBFCs to achieve NOF of Rs.200 lakhs. The NOF of Rs.200 lakhs was to be achieved by the end of March, 2017. The RBI thereafter issued a Notification dated 27.03.2015 specifying Rs.200 lakhs as

minimum NOF for all NBFCs, both new and existing. Existing NBFCs holding a CoR were however allowed to continue carrying on business on the condition that they would achieve minimum NOF of Rs.100 lakhs by 31.03.2016 and Rs.200 lakhs by 31.03.2017.

17. Counsel has also explained that the rationale behind increasing the NOF to Rs.200 lakhs was based on recommendations made by the working group on “Issues and concerns in NBFC Sector” and the “Committee on Comprehensive Financial Services for Small Businesses and Low-Income Household”.

18. It is an admitted position by the Petitioners that the Company was unable to achieve the requisite NOF by the deadline i.e. 31.03.2017 and could achieve the threshold only by 28.03.2018. Petitioners neither dispute nor contest the power of the RBI to fix the monetary limit of NOF and there is no challenge to the Notification or fixing the cut-off date. The power of the RBI as is evident is clearly traceable to Section 45 IA(1)(a) & (b) of the RBI Act.

19. The questions that arise before this Court can be formulated as follows :

- (a) Whether Respondent No.2 was justified in cancelling the CoR of the Petitioner No.1 for non-compliance of the requirement of NOF, within the time stipulated in the Notification?

(b) Whether this Court can within the scope of its powers of judicial review direct Respondent No.2 to condone the delay in achieving the NOF?

(c) Can it be held that the proviso to Section 45 IA (6)(ii) of the RBI Act would be attracted in the present case mandating RBI to look into the belated compliance of NOF and condone the delay?

20. In order to answer these questions, court would need to examine the provisions of Section 45 IA of the RBI Act which read as follows:

“45-IA. Requirement of registration and net owned fund.

(1) Notwithstanding anything contained in this 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 lakh rupees or such other amount, not exceeding hundred crore rupees, as the Bank may, by notification in the Official Gazette, specify:

Provided that the Bank may notify different amounts of net owned fund for different categories of non-banking financial companies.

(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.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twenty five lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a nonbanking financial institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend, subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this subsection shall in no case exceed six years in the aggregate.

(4) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled: —

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.

(5) The Bank may, after being satisfied that the conditions specified in subsection (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) *The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company—*

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the Bank under the provisions of this chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may

specify for taking necessary steps to comply with such provision or fulfillment of such condition;

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

(7) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

Explanation. – For the purposes of this section,–

(I) “net owned fund” means–

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting therefrom–

- (i) accumulated balance of loss;*
- (ii) deferred revenue expenditure; and*
- (iii) other intangible assets; and*

(b) further reduced by the amounts representing–

(1) investments of such company in shares of–

- (i) its subsidiaries;*
- (ii) companies in the same group;*
- (iii) all other non-banking financial companies; and*

(2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with, –

(i) subsidiaries of such company; and

(ii) companies in the same group,

to the extent such amount exceeds ten per cent of (a) above.

(II) “subsidiaries” and “companies in the same group” shall have the same meanings assigned to them in the Companies Act, 1956.”

21. Reading of the provisions of Sub-Section (6) of Section 45-IA of the RBI Act, leaves no doubt that Sub-Section (6)(ii) enables the bank to cancel the CoR granted to a NBFC if it fails to comply with any condition subject to which the CoR had been issued to it. The Proviso clearly applies where the CoR has been cancelled on account of failure to comply with the provisions of Clause (ii) or on failure to fulfill any of the conditions in Clause (iii). In the present case the Petitioner failed to achieve the minimum prescribed limit of NOF within the period stipulated in the Notification and thus failed to comply with the directions issued by the Bank under provisions of Chapter III B of RBI Act. The conclusion, in my view, that is inevitable, after carefully perusing the Provisions, Notification and the Show cause notice, is that the CoR was cancelled by taking recourse to section 45 IA(6)(iv) and not under 45 IA(6)(ii), as sought to be contended by the Petitioners. The Proviso would not be attracted in the present case and therefore it cannot be held that the Petitioner was entitled to condonation of delay in achieving the NOF and curing the default. The clock in such matters cannot be put back.

22. Counsel for Respondent No.2 is right in his submission that in taxation and financial Legislations the requirement of meeting the fixed criteria is absolute. Any leeway in this regard shall cause prejudice to the Government in collection of revenues and make it difficult for the RBI to maintain stability in the financial and commercial markets. It needs no emphasis that any latitude shown by the Court in this regard will cause serious destruction in the financial and borrowing markets. The Court cannot overlook the avowed and solemn objective of enactment of these provisions and Amendment to the RBI Act viz. to regulate and curb the unhealthy practices of the NBFCs so that genuine depositors do not fall prey to the temptation of high interest and in the bargain lose their savings by investments in Companies who seek deposits only with an intent to defraud.

23. It is a settled law that when a Statute prescribes a procedure which is required to be followed then the said procedure has to be followed only in the manner laid down and in no other manner. In this context I may allude to the judgments of the Supreme Court in ***A.R.Antulay vs. Ramdas Srinivas Nayak And Another*, (1984) 2 SCC 500** and ***Bar Council of India vs. High Court of Kerala*, (2004) 6 SCC 311**.

24. It is equally settled that in matters of policy decisions and economic tests, the scope of judicial review is extremely limited. Unless the decision is shown to be contrary to the Statutory provisions or the Constitution of India, Courts should not interfere with the economic decisions of the State. As held by the Supreme Court in ***Villianur Iyarkkai Padukappu Maiyam vs. Union of India*, (2009) 7 SCC 561** the

Court cannot examine the relative merits of different economic policies and strike it down on the ground that another policy would have been better. The contention of the Petitioner that since the Petitioner achieved the NOF, though belatedly, direction should be issued to Respondent No.2 to condone the act and restore the CoR, will amount to the Court amending the Statute and the Notification in question and framing a new policy regime, which is a path on which the Court cannot tread.

25. I may now refer to a judgment of the Division Bench of the Madras High Court in *The Regional Director, Reserve Bank of India and Ors. vs. Nahar Finance & Leasing Limited and Ors. (supra)* where a similar issue had arisen before the Court. In the said case the CoR granted to the Respondents therein was cancelled on the ground that the required NOF had not been achieved in terms of Section 45-IA of the RBI Act. A writ petition was filed before the learned Single Judge to quash the Order as well as to extend the time to comply with the requirements of achieving the NOF. The Single Bench issued a direction to the RBI to extend the time limit in favour of the Writ Petitioners and the order was carried in appeal by the RBI. Examining the Notification and the provisions of the RBI Act, the Division Bench held as under :-

“28. The next contention we propose to consider is whether in all cases of violation of the directions of the Reserve Bank of India whether it should be visited with the penalty of cancellation of CoR.

29. Sub-Section (6) of Section 45-IA of the RBI Act states that the Reserve Bank of India may cancel a CoR granted to an NBFC under Section 45-IA, if the company ceases to

carry on business of a non-banking financial institution in India or has failed to comply with any condition subject to which the CoR has been issued to it or fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-Section (4) of Section 45-IA of the RBI Act or fails to comply with any direction issued by the Reserve Bank of India under the provisions of Chapter III-B or fails to maintain accounts in accordance with the requirements or fails to submit or offer for inspection of books of accounts and other relevant documents or has been prohibited from accepting deposits by an order of the Reserve Bank of India.

30. The RBI Act was enacted as an Act to constitute the Reserve Bank of India to regulate the issue of bank notes and keeping of reserves with a view to securing monetary stability in the country and generally operate the currency and credit system of the country to its advantage. Given the scope of the RBI Act, there is a little room for discretion to be read into the statutory provision. This is more so because, Section 45-IA of the RBI Act falls in Chapter III-B exclusively devoted to NBFCs. Thus, the Writ Court cannot substitute the decision of the financial experts on such issues especially when, the purpose of fixing higher NOF has been explained by the appellants. Thus, it is expected that the appellants exercise their powers in a judicious manner and take a decision in accordance with law.

31. The finding of the learned Single Bench is that the decision of the appellants in rejecting the explanation given by the respondents to the show cause notice and cancelling the CoR has not been judiciously done. The reply to the show cause notice commences by admitting the mistake and seeking for extension of time. The only plea raised is with regard to demonetization and implementation of the Goods and Service Tax Act. The appellants would contend that demonetization took place on 08.11.2016 whereas, the last date fixed for achieving 100 lakhs of rupees limit of NOF was 01.04.2016 much prior to the said date. Further, it is submitted that the Goods and Service Tax Act, 2017, was

came into force on 01.07.2017, i.e., much after 01.04.2017, the date fixed for achieving 200 lakhs of rupees limit of NOF. Therefore, the appellants would contend that this is hardly a reason which would merit consideration.

32. Thus, we are of the clear view that the rejection of the reply given by the respondents/writ petitioners cannot be stated to be an exercise which was not done in a judicious manner, going by the stand taken by the respondents in the reply to the show cause notice admitting their default. The respondents cannot take a stand that the requirement to fix the NOF is not in public interest and we are convinced to say so in the light of the stand taken by the appellants in the counter affidavit filed in the writ petitions.....”

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37. In the preceding paragraphs, we have held that sub-Section (3) of Section 45-IA can have no application to the facts of the present case. If such is the position, the statute nowhere provides for extension of time. In such scenario, the Writ Court could not have granted time till 31.03.2019. ...”

26. A similar plea was rejected by a Co-ordinate Bench of this Court in ***M&M Finsec Private Limited (supra)*** and by a Bench of the Calcutta High Court in ***Namaste Management (supra)***. Relevant para of the Calcutta High Court in ***Namaste Management (supra)*** is as follows :-

“Hearing the learned senior counsel for the appellant and the learned senior counsel for the Reserve Bank of India, we have noticed that the salient features of facts, as noted above, are not disputed. The fact of the matter remains that the appellant had a subsisting registration as NBFC in terms of Chapter 3B of the Reserve Bank of India Act till the cancellation of such registration. Whether or not the eligibility to continue to operate as an NBFC ceased with the non-adherence to the

condition of Rs.2 crores as NOF may be an issue for consideration. The question whether Reserve Bank of India or any other appellate authority including the Central Government would come to the aid of the appellant by condoning the delay in attaining the benchmark of Rs.2 crores NOF is also a matter to be left to the domain of the Reserve Bank of India and the further administrative controls, if any, among the higher-ups in that regard. This is all the more so because bereft of public law being available, it will not be possible for the Writ Court to consider the issue of cancellation of the licence of the NBFC in the above-noted fact situation. It will also not be open to the High Court in Writ Jurisdiction to adjudicate on the sufficiency or otherwise of the case of prayer for condonation of delay and accepting any modality of permitting the appellant to operate as an NBFC in terms of Chapter 3B of the Reserve Bank of India Act. We are in agreement on this issue with the judgement of the Division Bench of the Madras High Court dated 22.04.2019 rendered in W.A.No.940 of 2019 [The Regional Director, Reserve Bank of India & Ors. vs. M/s. Nahar Finance & Leasing Limited].”

27. Learned counsel for the Petitioners had also argued that the time can be extended by virtue of sub-Section (3) of Section 45-IA of the RBI Act. The said provision, as is evident, begins with a non-obstante clause stating that notwithstanding anything contained in Sub-Section (1) an NBFC in existence on the commencement of the RBI (Amendment) Act, 1997 and having NOF of less than Rs.25 Lakhs may for enabling such Company to fulfill the requirement of NOF, continue to carry on the business of NBFC for three years from such commencement or for such further period as the Bank may allow. The same argument came up for consideration before the Division Bench of the Madras High Court in **Regional Director (supra)** and the Court interpreting the said provision held that the provisions of sub-Section (3) cannot be made applicable to

the case where the cancellation of CoR is under 45-IA(6)(iv) and that sub-Section (3) was a standalone provision inserted by Act 23 of 1999 with effect from 09.01.1997 to deal with a particular situation which was prevailing at the relevant time.

28. In so far as the contention of the Petitioner that no personal hearing was given before cancelling the CoR is concerned, suffice would it be to note that the statutory framework does not mandate an opportunity of personal hearing. The second proviso to Sub-Section (6) of Section 45-IA provides that before cancelling the CoR a reasonable opportunity of being heard shall be given to the company. In several judgments it has been held that principles of natural justice are not a straight-jacket formula and their application will depend upon the relevant statute and the facts and circumstances of the case. Even this question was considered by the Madras High Court in *The Regional Director, Reserve Bank of India (supra)* and after examining the provision of 45-IA it was held that the Statute does not connote that an opportunity of hearing meant personal hearing. The Court also observed that a Show Cause Notice was given to the Writ Petitioners therein to which they had filed a reply and the grant of personal hearing would have made no difference as all they would have pleaded was their failure to comply under the Notification and given a justification. It would have been merely an empty formality to provide an opportunity of personal hearing. Relevant para is as follows :-

“35.Be that as it may, the respondents/writ petitioners did not seek for any opportunity of personal hearing and have not stated as to how they were prejudiced in not being heard in person when admittedly in the reply to the show

cause notice, they have candidly admitted that they have not fulfilled the NOF requirement before the cut of date April 1, 2017. Thus, in our considered view, no useful purpose would have been served, if the respondents/writ petitioners had been granted an opportunity of personal hearing, as nothing more could not have been pleaded by them having accepted their failure to comply with the requirements under the notification dated 27.03.2015. Therefore, the appellants were justified in stating that it would be an empty formality to provide an opportunity of personal hearing. If it had been a case where technical issues were involved on account of Court orders or any other circumstances or vis majeure or force majeure conditions prevailed, then probably, such persons would be in a position to explain better the factual matrix in a personal hearing. The cases before us cannot be placed in the said pedestal, since the respondents/writ petitioners have admitted non-compliance. The respondents should bear in mind that they are engaged in the business of financing. Therefore, it would be not acceptable for such a finance company to plead that they are unable to achieve the NOF. It may be a different matter, if the line of business was something other than financing. Thus, the very right of the respondents/writ petitions to operate is based on a licence issued under Section 45-IA of the Act. The licence comes with conditions. In terms of Section 45-IA of the RBI Act, it is the duty of the respondents to furnish the statements, information or particulars called for and to comply with any direction given to it under the provisions of Chapter III-B of the RBI Act. Therefore, there is no escape from the statutory requirement. The respondents can claim no vested right to carry on business without complying with the condition of licence or the directions issued by RBI.”

29. In the present case the Show Cause Notice was served on the company on 02.05.2018, to which a reply was filed. The principal ground

raised in the reply was that Petitioners were unable to sell the agricultural land and therefore could not achieve the NOF within the timelines mandated under the Notification. In my view, a personal hearing would not have made any difference to the case of the Petitioners and as held by the Madras High Court would only have been an empty formality. I may also notice at this stage that the Notification was issued on 27.03.2015 and nearly a period of two years was granted to the Company to achieve the NOF. Therefore enough time was granted to achieve the NOF and the action of Respondent No.2 cannot be termed as unfair or unreasonable or violative of the principles of natural justice.

30. For all the aforesaid reasons, I find no merit in the petition and the same is accordingly dismissed.

JYOTI SINGH, J

OCTOBER 23rd, 2020

yo/sr/yg