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

+ W.P.(C) 5085/2020, CM APPL. 18340/2020, CM APPL. 18341/2020
& CM APPL. 18342/2020

M&M FINSEC PRIVATE LIMITED

..... Petitioner

Through: Mr. H.L. Tiku, Senior Advocate with
Ms. Yashmeet Kaur, Advocate.

versus

RESERVE BANK OF INDIA

..... Respondent

Through: Mr. Ramesh Babu, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **15.09.2020**

The hearing was conducted through video conferencing.

1. The petitioner is aggrieved by the cancellation of its licence as an NBFC by Reserve Bank of India's order dated 12.09.2018 and by the rejection of its appeal by order dated 15.04.2020, by the Central Government.
2. Mr. Tiku, the learned Senior Advocate for the petitioner, submits that the petitioner never borrowed a single rupee from the public, therefore, in reality, public interest was never prejudiced. The requirement was to have a Net Owned Fund (NOF) of at least Rs. 2 crores as of 31.03.2017. The petitioner was able to meet the criteria only about 15 months later, on 27.06.2018.
3. The RBI was of the view that since the minimum requirement was not met, the petitioner had ceased to qualify to be so certified or be

eligible to be considered as an NBFC. The decision was upheld by the Central Government by its order of 15.04.2020.

4. The petitioner contends that the cancellation of the certificate is an extreme step, instead the Government should have considered an ameliorative measure, either by way of a penalty or some other less precipitate step which would not necessarily result in the cancellation, but would have ensured that the larger objective of the statute and of the scheme of granting licences to NBFCs is kept alive. He refers to the proviso of section 45 I A of the RBI Act, 1934. The proviso reads *inter alia* as under:

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

(6)....

(v)....

(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;

....”

5. The petitioner further submits that the aforesaid proviso gives ample latitude to the RBI to impose conditions, which can make the company compliant but not necessarily result in the cancellation of the certificate.
6. Mr. Babu, the learned counsel for the RBI, submits that in taxation and financial legislation, the requirement is of meeting fixed criteria is

absolute. Any leeway in this regard will cause immense prejudice to the State in terms of collection of revenues and for the RBI in maintaining the health of financial and commercial markets. Therefore, no such latitude cannot be read into the provision because on the requisite date i.e. 31.03.2017, the petitioner ought to have had, at least, the minimum required NOF of Rs.2 crores. The petitioner was registered as a company in 1998. By the notification dated 27.03.2015, its initial NOF of Rs.25 lacs was to be raised to Rs.2 crores 31.03.2017. Effectively it was given 2 years to meet the requirement. This requirement was applicable to all existing NBFCs. Those who did not meet the criteria, their licences were cancelled. It I emphasized that if any latitude is shown in this case, it will cause a serious disruption in the financial and the borrowing markets.

7. In view of the above, the reliefs sought cannot be granted. No further orders are required.
8. The writ petition, alongwith pending applications, is dismissed.
9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

SEPTEMBER 15, 2020

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