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

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Date of Decision: 01.09.2021

% **LPA 299/2021**

JEEWAN HOLDING PRIVATE LIMITED & ANR..... Appellants

Through: Mr. Arvind Kumar Srivastava,
Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advocates for
respondent/ UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

VIPIN SANGHI, J. (ORAL)

CM APPL.28832/2021

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

LPA 299/2021 & CM APPL.28833/2021

3. The appellants have preferred the present appeal to assail the judgment dated 23.10.2020 passed by the learned Single Judge in W.P.(C.) No. 3515/2020 titled "*Jeewan Holdings Private Limited & Another Vs.*

Union of India & Another". The said writ petition had been preferred by the appellants being aggrieved by the cancellation of the Certificate of Registration issued in favour of appellant No.1, by the Reserve Bank of India (RBI) vide order dated 14.09.2018, as well as the order passed by the Union of India (UOI) dated 09.04.2020 affirming the order passed by the RBI, in appeal. The appellants/ petitioners, alternatively sought a direction to the UOI to consider their representation dated 10.05.2018 and condone the delay in meeting the threshold limit of Rs.200 Lakhs – a condition for grant and continuation of Certificate of Registration as a Non-Banking Financial Company with the RBI.

4. We shall refer to the appellants as petitioners hereinafter. The relevant facts have been taken note of in the impugned judgment, and since there is no dispute on facts, we extract the factual narration contained in the impugned judgment itself.

"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.”

5. By the impugned judgment, the learned Single Judge dismissed the writ petition upon not finding merit in the petitioners’ case. The reasoning found in the impugned judgment reads as follows:

“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 nonbanking 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 subsection (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 subSection (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.”

6. The submission of learned counsel for the petitioners is that the respondent/ RBI has incorrectly applied the provision contained in Section 45-IA(1), Section 45-IA(3) and Section 45-IA(6) of the Reserve Bank of India Act, since insufficient time – contrary to the statute, was granted to increase the Net Owned Fund (NOF), and the petitioner was also denied the opportunity of being heard in terms of Section 45-IA(3)(ii) and Section 45-IA(6) of the said Act.

7. The submission of the petitioners is that the RBI notification dated 27.03.2015 – published on 11.03.2016, is not in accord with Section 45-IA(3) of the RBI Act. The time prescribed in the RBI Act to enhance/ achieve the NOF, according to the petitioners, is six years (3+3 years), but the time given to the petitioners to achieve the NOF of Rs.200 Lakhs was only two years and four days. The petitioners raised a grievance that the RBI notification enhancing the NOF was gazetted in the Official Gazette only on 11.03.2016, i.e. after a delay of 11 months and 14 days from the date of its issuance on 27.03.2015.

8. Having heard learned counsels, and perused the impugned judgment, in our view, the only issue that needs examination in the present appeal, is the interpretation of Section 45-IA of the RBI Act, which has been quoted in

the extracted portion from the impugned judgment hereinabove.

9. At the outset, we may note that Section 45-IA was inserted in the Reserve Bank of India Act, 1934 vide Act 23 of 1997 on 09.01.1997.

10. Sub-Section (1) of Section 45-IA mandates that no non-banking financial company shall commence or carry on the business of a non-banking financial company without, *inter alia*, having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify. It is by resort to this provision [Section 45-IA(1)(b)] that the notification dated 27.03.2015 – Gazetted on 11.03.2016, was issued by the RBI raising the requirement of NOF to rupees two hundred lakh, to commence or carry on the business of a non-banking financial company. However, with a view to provide time to the existing non-banking financial companies to achieve the enhanced threshold of NOF of rupees two hundred lakh, the said notification provided time in the following manner:

“Provided that a non-banking financial company holding a certificate of registration issued by the Reserve Bank of India and havng net owned fund of less than two hundred lakhs of rupees, may continue to carry on the business of non-banking financial institution, if such company achieves net owned fund of, –

- i. one hundred lakhs of rupees before April 1, 2016; and*
- ii. two hundred lakhs of rupees before April 1, 2017.”*

11. Sub-Section (2) of Section 45-IA obliges every non-banking financial company to make an application for registration to the RBI in the specified

form. Insofar as the existing non-banking financial companies were concerned, such an application for registration was required to be made within six months from the commencement of the RBI (Amendment) Act, 1997, which was 09.01.1997. Such non-banking financial companies were permitted to carry on their business until a Certificate of Registration is issued, or rejection of application for registration is communicated to it.

12. Sub-Section (3) of the said Section provides that “*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 fulfill the requirement of net owned fund, continue to carry on its business for a period of three years from such commencement, i.e. up to 09.01.2000; or such further period as the RBI may, after recording the reasons in writing for so doing, extend. This was subject to the condition that such company, within three months of fulfilling the requirement of the net owned fund, shall inform the Bank about such fulfillment. The further proviso reads that the period allowed to continue business under this Sub-Section shall, in no case, exceed six years in the aggregate.

13. A bare reading of Sub-Section (3) of Section 45-IA would show that the law provided time till 09.01.2000 to non-banking financial companies to achieve the NOF of Rs.25 Lakhs – the amount specified in Section 45-IA(1)(b). The Reserve Bank could further extend the period for attainment of NOF of Rs.25 Lakhs after recording reasons in writing, such that, “*the*

period allowed to continue business under this subsection shall in no case exceed six years in the aggregate. ”. This only means that to attain NOF of Rs. 25 Lakhs, the RBI could grant an extension, at the most, for reasons to be recorded, up to 09.01.2003.

14. The submission of learned counsel for the petitioners is that the RBI could have, and should have, similarly granted a period of three years to the petitioners to attain the NOF of Rs.200 Lakhs from the time the notification dated 27.03.2015 was gazetted, which could further be extended by a period of three years, for reasons to be recorded.

15. We do not find any merit in this submission of the petitioner. It is clear on a reading of Sub-Section (3) of Section 45-IA, that the said Sub-Section deals only with the situation as it arose upon enactment of Act 23 of 1997, whereby Section 45-IA was introduced for the first time. Sub-Section (3) of Section 45-IA has, therefore, exhausted itself out and it cannot be invoked in respect of subsequent enhancement of NOF requirement in terms of the Section 45-IA(1)(b). The notification in question was issued by the RBI after 18 years of the enactment of Act 23 of 1997, (whereby Section 45-IA was inserted in the RBI Act). By then, Sub-Section (3) had already worked itself out. The petitioners have not brought to our notice any provision in the Act which stipulates the minimum time period that the RBI was obliged to grant to non-banking financial companies to achieve the enhanced NOF. In the absence of any statutorily prescribed period, the RBI could grant any reasonable time for attainment of the NFO of Rs. 200 lakhs.

16. As noticed above, the RBI adopted a graded plan for achievement of

NOF of Rs.200 Lakhs by 01.04.2017, by stipulating that such companies should attain NOF of Rs.100 Lakhs before 01.04.2016; and, Rs.200 Lakhs before 01.04.2017. Even if the submission of learned counsel for the petitioners that this notification dated 27.03.2015 became effective only upon it being gazetted on 11.03.2016 were to be accepted, the fact remains that the petitioners had nearly a year to attain the NOF of Rs.200 Lakhs. Unfortunately, the petitioners, admittedly, did not attain the NOF of Rs.200 Lakhs on or before 01.04.2017, and even according to the petitioner, they had attained the said NOF only on 28.03.2018, i.e. a year after the deadline.

17. The respondent/ RBI was, therefore, empowered to cancel the Certificate of Registration of the petitioners under Sub-Section (6) of Section 45-IA.

18. The grievance of the petitioners that the petitioners were not granted a reasonable opportunity of being heard before the petitioners were visited with the cancellation order, is also meritless. The respondent issued a show-cause notice to the petitioners calling upon the petitioners to show-cause as to why its registration should not be cancelled, since it had not achieved the NOF of Rs.200 Lakhs by 01.04.2017. This show-cause notice was issued on 02.05.2018. This show-cause notice was replied to by the petitioners, and only after consideration thereof, the petitioners were visited with the impugned order of cancellation of the petitioners' registration as a non-banking financial company by the RBI.

19. A reading of Section 45-IA(6) prescribes that "*before making any order of cancellation of certificate of registration, such company shall be*

given a reasonable opportunity of being heard.”. This reasonable opportunity of being heard need not necessarily be by way of an oral hearing. Since the petitioners were given a show-cause notice, and were called upon to respond to it – which they did, in our view, the petitioner stood afforded the reasonable opportunity of being heard, as contemplated under Section 45-IA(6) of the RBI Act.

20. Moreover, the petitioners have also availed of the appellate remedy before the Central Government and, there again, after considering the petitioners’ appeal, the same has been dismissed.

21. For the aforesaid reasons, we do not find any error in the impugned judgment calling for our interference. The appeal is, accordingly, dismissed.

VIPIN SANGHI, J.

JASMEET SINGH, J.

SEPTEMBER 01, 2021

B.S. Rohella