03.08.2022
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Sl. No. 02
Ct. No. 05

WPA 11661 of 2022

Snapshot Distribution Pvt. Ltd. & Anr.
-Versus-
The Appellate Authority for Non Banking Financial Company & Ors.

Ms. Manju Bhuteria
Mr. Rites Goel
…..for the petitioners
Mr. Dilip Kumar Kundu
Mr. Arjun Basu
….for the respondent Nos. 2 & 3
Mr. S. Bera
….for the respondent No. 4

The petitioner no. 1 is engaged in the business of a Non-Banking Financial Institution. The petitioner no. 2 is a director of the petitioner no. 1 company. The petitioners seek setting aside of an order dated 13th November, 2018 of the Regional Director and an order dated 29th May, 2020 passed by the Appellate Authority under Section 45-IA(7) of The Reserve Bank of India Act, 1934. The petitioners, through their learned counsel, claim that the impugned order of the Appellate Authority has been passed in breach of the principles of natural justice as the petitioners were not given a hearing under the provisions of the 1934 Act.

Learned counsel appearing for the Reserve Bank of India (RBI) places a Notification dated 27th March, 2015 issued by the RBI under the powers conferred by Section 45-IA(1)(b) of the Act and in supersession of an earlier Notification dated 20th April, 1999. By the 2015 Notification, two hundred lakhs rupees was specified as the net owned fund required for a Non-Banking Financial Company (NBFC) to commence or carry on the business of NBFC. Counsel submits that the petitioner no. 1 has admittedly failed to fulfill the limits recommended by the 2015 Notification.

Upon hearing learned counsel the primary question which is to be decided is whether the impugned order passed by the Appellate Authority dated 29th May, 2020 was passed in violation of principles of natural justice. The second paragraph of the impugned order states that the petitioners were not represented during the hearing and that the case of RBI was presented by its representative being an Assistant Legal Advisor. The specific statement is; *"The appeal was, therefore, heard ex-parte"*. However, the following lines appear in paragraph 6 of the impugned order:

> *"...The legal arguments put forth by the appellant are not tenable. As regards contention of the appellant that grant of personal hearing is mandatory before cancellation of CoR, it is observed that a reasonable opportunity of being heard does not necessarily mean an opportunity of personal hearing."*

The above recording is clearly inconsistent with the statement made in paragraph 2 of the impugned order where the appeal was apparently heard in the absence of the representatives of the petitioners. The inconsistency between the two recordings shows a clear non-application of mind on the part of the Appellate Authority. A similar view was taken by a Coordinate Bench in *Dhingra Lease Finvest Private Limited vs. The Appellate Authority for Non-Banking Financial Company, Govt. of India; WPA No. 2000 of 2021* where the impugned order by the Appellate Authority was set aside on similar facts.

Section 45-IA(6) of The Reserve Bank of India Act, 1934 provides for cancellation of a certificate of registration on certain conditions. The second *proviso* to Section 45-IA(6) stipulates that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard. Section 45-IA(7) gives an option to the company aggrieved by the order of cancellation of the certificate of registration to prefer an appeal within a certain time frame with the *proviso* that before making any order of rejection of any appeal, such company shall be given an opportunity of being heard. There is hence no doubt that the petitioners should have been given an opportunity of hearing before rejection of the appeal by the Appellate Authority. The observation in the impugned order that reasonable opportunity of being heard does not necessarily mean an opportunity of personal hearing is meaningless when impugned order was passed *ex-parte*. As stated above, the recording that the legal argument of the petitioners (appellant before the Appellate Authority) is not tenable, is also a factually incorrect statement.

In view of the above finding, this Court sees no basis to sustain the impugned order dated 29th May, 2020 passed by the Appellate Authority under the RBI Act.

The decision relied on by counsel appearing for the RBI in *The Regional Director, Reserve Bank of India vs. Nahar Finance & Leasing Limited; (2019) 5 MLJ 334* does not assist the case of the respondents since the Division Bench of this Court noted that the writ petitioners in that case did not seek any opportunity of personal hearing. The Court was also of the view that the petitioners failed to discharge the onus of proving a prejudice suffered from such denial. Moreover, the petitioners in that case had challenged the orders of the Regional Director, RBI and not the order of the Appellate Authority.

It should be stated that the Appellate Authority was served at least three times but failed to appear in the present proceeding. The affidavit-of-service corroborates this fact. The RBI, represented through counsel, has urged the points in opposition to the writ petition.

WPA 11661 of 2022 is accordingly allowed and disposed of by setting aside the impugned order dated 29th May, 2020. The Appellate Authority is directed to consider the matter afresh upon hearing the representatives of the writ petitioners. The Appellate Authority shall make an effort to complete the entire exercise within eight weeks from the date of communication of this order.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after fulfillment of the requisite formalities.

(Moushumi Bhattacharya, J.)