IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11300 OF 2022

Rupee Co-op. Bank Ltd. ..... Petitioner
Vs.
The Union of India & Ors. ....Respondents

WITH
WRIT PETITION NO.11318 OF 2022

Rupee Sangharsh Samiti ...Petitioner
Vs.
Reserve Bank of India and Ors. ...Respondents

....

Mr. Pratap Patil with Ms. Vishakha Shelar for the Petitioner in WP 11300/2022.
Mr. Avinash Fatangare i/by Ms. Archana Shelar for Petitioner in WP 11318/2022.
Mr. Parag A. Vyas with Ms. Karuna Yadav for Respondent No.1-UOI in WP/11300/2022.
Smt. M.S.Srivastava AGP for State for Respondent Nos.4 and 5 in WP 11300/2022.
Mr. Venkatesh Dhond Senior Adv. With Mr. Prasad Shenoy with Mr. Parag Sharma with Ms. Aditi Phatak with Ms. Kirti Ojha with Mr. Vijay Salokhe i/by BLAC and Co. for Respondent No.1 in WP 11318/2022.

CORAM: SANDEEP K. SHINDE, J.

RESERVED ON : SEPTEMBER 21, 2022
PRONOUNCED ON: SEPTEMBER 22, 2022

P.C.

1. These Petitions were heard on 21st September, 2022 and listed on today's board for pronouncing the order at 2.30 p.m.

2. In the first session, Mr. Dhond, learned Senior Counsel appearing for the RBI brought to the notice of this Court that the order impugned being passed under the Banking Regulation Act, 1949, the learned Single Judge does not have the power to dispose of the petitions in terms of Chapter 17 Rule 18 of the Bombay High Court Appellate Side Rules, 1960. Mr. Dhond, thus, suggested that petitions may lie before the Division Bench. Mr. Patil, learned counsel appearing for the Bank relied on Rule 18(3) of the Chapter 17 of the Bombay High Court Appellate Side Rules, 1960, to submit that the learned Single Judge of this Court can entertain the petition against the order passed under the Banking Regulation Act, 1949.

3. Registrar (Judl) of this Court was requested to examine, whether petitions would lie before the Division Bench or Single Judge. Accordingly, Registry opined that in terms, of the Sub-rule (3) of Rule 18 of Chapter 17 that Petition challenging the order passed by the authority under the Banking Regulation Act, 1949 can be disposed of finally by the learned Single Judge. Accordingly, Petitions are entertained.

4. The licence issued to the Petitioner-Bank to carry on banking business in India, under Section 22 read with Section 56

of the Banking Regulation Act, 1949 was cancelled by the Reserve Bank of India vide order dated 8th August, 2022.

5. The RBI recorded its' satisfaction stating, that (i) though the bank was put under all inclusive directions in February, 2013 and had ample time and opportunity for its revival, the Bank's financials continued to be precarious; (ii) the merger proposals of other urban co-operative banks either did not materialise or found not acceptable by the DICGC or viable; (iii) the Task Force for Co-operative Urban Banks (TAFCUB) recommended for cancellation of licence of the bank. (iv) the gross NPA of bank were as high as 98.44% as on 31st March, 2021. (v) the erosion in the deposit assessed, as on 31st March, 2021 was 41.49%; whereas net worth was (-) 537.97 Crores.

. Thus, concluded that efforts made by the bank were not sufficient to justify continuation of its operation.

6. It is a matter of record that the Bank employees' union, Pune and Mr. Naresh Vasant Raut had challenged the show-cause notices dated 2nd June, 2014 and 22nd June, 2017 respectively in Writ Petition No. 2938 of 2014 and Writ Petition No.9286 of 2017 respectively and requested the Court to direct

RBI not to proceed for cancellation of licence based on show-cause notices. The Division Bench of this Court vide order dated 12th September, 2017 disposed of the petitions. The operative part of the order reads as under;

> *"(i) The Petitioners in both the Petitions are at liberty to give reply to the Reserve Bank of India to the impugned show-cause notice within four weeks from today.*
>
> *(ii) The Reserve Bank of India shall consider the reply of the Chairman, Board of Administrator, Rupee Co-operative Bank Ltd., as well as both the Petitioners in the above Petitions and pass appropriate orders after hearing the Board of Administrator of Rupee Co-operative Bank as well as the Petitioners in the above Petitions within eight weeks from the date of receipt of the reply.*
>
> *(iii) In the event, the order of the Reserve Bank of India pursuant to the impugned notice is adverse to the interest of the Petitioners as well as the Board of Administrator of Rupee Co-operative Bank Ltd., the same shall not be implemented for a period of 6 weeks from the date of communication thereof on the advocate for the Petitioners and Board of Administrator of Rupee Co-operative Bank."*

7. Pursuant to order, the RBI issued notices to the Petitioners in the above two Writ Petitions giving them opportunity to file Written Statement to the show-cause notices.

8. It appears, replies of the petitioners in the above two writ petitions were carefully examined by the RBI, however, replies were not containing a concrete proposal, for revival of the bank nor any steps were suggested for turning negative turnover of the bank, positive

9. In any case, the order dated 8th August, 2022 cancelling the banking business licence was carried in appeal under Section 22(5) of the Banking Regulation Act, 1949 before the Appellate Authority, Department of Financial Service (Banking Division) Ministry of Finance, New Delhi.

10. Pending appeal, vide Interim Application No.1 of 2022, petitioner-bank requested, to suspend the operation of the order dated 8th August, 2022.

11. The Appellate Authority vide order dated 19th September, 2022 found no reason to interfere with the impugned order and thus, the prayer for interim relief was declined.

12. The order dated 19the September, 2022 is challenged by the Bank and Rupee Sangharsha Samiti, an Association of Depositors of the Rupee Bank, in these Petitions.

13. In so far as the Writ Petition No.11318 of 2022, filed by Rupee Sangharsh Samiti is concerned, apparently, petitioner does not have locus to challenge the order dated 19th September, 2022 passed by the Appellate Authority, reason being Rupee Sangharsha Samiti was not an Appellant before the Appellate Authority. Petition also questions legality of the order dated 8th August, 2022 passed by the RBI. However, it is brought to my notice by Mr. Dhond, learned Senior Counsel for the Respondents that the Rupee Sangharsh Samiti has independently challenged the order dated 8th August, 2022 before the Division Bench. Mr. Phatangare appearing for Rupee Sangharsh Samiti does not dispute this fact. For all these reasons, I am not inclined to entertain the petition filed by Rupee Sangharsh Samiti.

14. In so far as the Writ Petition filed by the bank is concerned, Mr. Patil, learned counsel contended that the Appellate Authority has not recorded its’ independent finding

while declining the interim relief. Mr. Patil submitted that the Appellate Authority, simply accepted and upheld the reasons recorded by the Reserve Bank of India. Nextly, he submitted that the proposal of the group of investors to convert bank into Small Finance Bank (SFB) with infusion of capital has not been considered by the Reserve Bank of India while passing the impugned order. Mr. Patil further, submitted that statutory appeal is scheduled for hearing on 17th October, 2022. He, submitted that if order dated 8th August, 2022, passed by the Reserve Bank of India is not stayed, the statutory appeal, which is a substantive right of the Petitioners will be frustrated. Mr. Patil, therefore, urged that till the disposal of the statutory appeal, operation of order dated 8th August, 2022 be suspended.

15. Mr. Dhond, learned counsel appearing for the RBI, would submit that having regard to the fact, that deposit erosion at 85.93% as on March 31, 2022 and gross NPA of the Bank at Rs.285.42 Crores and further, there was no improvement in financial position even after passage of nine years from the imposition of operational instructions, this Court may not interfere with the impugned order. Mr. Dhond, on instructions, submitted that Petitions were also moved before the Division

Bench of this Court by the Sangharsha Samiti bearing Writ Petition No.11096 of 2022, two Petitions by Bank Employees Union on 20th September, 2022 before the Division Bench. Mr. Dhond submitted, the Division Bench did not interfere in the order dated 8th August, 2022 although order of the Appellate Authority, declining interim relief was placed before the Bench. The learned counsel further submitted that submissions of Sangharsha Samiti before the Division Bench were not considered and, therefore, the Samiti ought not to have filed the second petition before this Court. Mr. Dhond, learned Senior Counsel, on instructions, submitted that RBI did not receive any proposal from investors, as contended by Mr. Patil, learned counsel for the Petitioner-Bank.

16. The conclusion of the RBI that if the petitioner is allowed to carry on its' business any further, would adversely affect the public interest, is founded on the facts and figures set out in paragraph 5 of the order dated 8th August, 2022. In context of this fact, reliance placed on the ruling of the Apex Court in the case of **Peerless General Finance and Investment Co. Ltd. and Anr. v. Reserve Bank of India (1992) 2 SCC 343** that it is not function of the Court to sit in the

judgment over matters of economic policy and it must necessarily be left to the expert bodies, equally applies herein. In any case, the RBI before cancelling the licence had examined revival and merger proposals. In view of these facts, I am not inclined to interfere with the order dated 8th August, 2022 on merits and that is left open for Appellate Authority to examine in Appeal. However, since the statutes has provided for substantive appeal under Section 22(5) of the Banking Regulations Act, 1949 and further the appeal is scheduled for hearing on 17th October, 2022 in the interest of justice, if the operation of RBI's order dated 8th August, 2022 is not suspended, until the disposal of the statutory appeal, the appeal itself would be rendered infructuous at this stage. Moreover, it could be seen from the impugned order that the Appellate Authority has directed the respondents therein to file counter affidavit within two weeks, giving liberty to the Bank to file rejoinder thereto. The next hearing is fixed on 17th October, 2022 through video conference. In consideration of this fact, I deem it appropriate to suspend the order dated 8th August, 2022, passed by the RBI till the conclusion of Bank's appeal pending before the Appellate Authority.

17. In consideration of the facts of the case, the Appellate Authority shall endeavour to conclude the hearing of the appeal on the scheduled date and under no circumstances, shall adjourn the proceedings either on the request of the appellant or of the respondents.

18. Thus, the following order;

(i) Pending appeal F.No.14/06/2022-AC of 2022 before the Appellate Authority-Respondent No.2, operation of the impugned order dated 8th August, 2022 shall remain suspended.

(ii) The Appellate Authority shall dispose of the appeal positively on 17th October, 2022 in accordance with law.

(iii) It is clarified that this Court has not expressed any opinion either on merits and pleas of Bank and respondent are kept open.

19. Writ Petition No.11300 of 2022 is disposed of. Writ Petition No.11318 of 2022 be placed before the appropriate Bench as per the roaster.

(SANDEEP K. SHINDE J.)