$~45

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

% ***Date of decision: July 11, 2024***

\+ **W.P.(C) 1804/2021 & CM APPL. 5195/2021**

HINDON MERCANTILE LIMITED .....Petitioner

Through: Mr. Kamal Kumar Baid, Mr. Rahul Baid, Mr. Sukumar, Mr. Ronak Baid, Mr. Nirbhay Tiwari and Mr. Rajeev Kumar Trivedi, Advocates

V

THE GOVERNMENT OF INDIA AND ANOTHER .....Respondents

Through: Mr. Vineet Dhonda, CGSC with Mr. Abhishrut Singh and Mr. Abhijit Singh Kadyan, Advocates for UOI Ms. Nisha Sharma, Ms. Manisha Singh and Mr. Rohan Srivastava, Advocates for R-2

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (*oral*)

1. The present petition is filed under Articles 226 and 227 of the Constitution for issuance of directions to the respondents for restoration of the Certificate of Registration (CoR) issued by the

respondent no.2 under Section 45–IA of the Reserve Bank of India Act, 1934 (hereinafter referred to as the '**RBI Act**'). The petitioner has made the following prayers.

> **(i) by issue of writ of certiorari or any appropriate of like nature, the Hon'ble Court may be pleased to quash and set aside the order of Cancellation of Registration dated 25.04.2018 and also Order of the Appellate Authority dated 13.04.2020 passed· in File No.25/279/2019/BOA-II;**
>
> **(ii) by issue of writ of mandamus or any appropriate writ of like nature, the Hon'ble Court may be pleased to direct the Respondents, particularly Respondent No.2 to restore the Registration of the Petitioner Company, in the interest of justice; and/or**
>
> **(iii) pass such other and further order(s) as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the present case.**

2. The petitioner was granted CoR to carry on the business of non-banking financial institution (NBFI) without accepting the public deposit subject to the conditions as mentioned in the CoR which was issued on 20.04.1998.

3. The respondent no.2/ Reserve Bank of India (RBI) vide notification bearing no. DNBS(PD) No. CC.10/02.59/98-99 dated 20.04.1999 prescribed the minimum Net-Owned Fund (NOF) for the existing as well as new NBFIs at Rs.200 Lakhs. A subsequent notification dated 27.03.2015 issued by the respondent no. 2/RBI also

prescribed NOF requirement which was stipulated at Rs.200 lakhs to be achieved as per the following schedule.

- Rs.100 Lakhs by the end of the March 2016
- Rs.200 Lakhs by the end of March 2017

4. The petitioner could achieve the minimum requirement of Rs.200 lakhs only by 04.05.2018.

5. The respondent no.2/ RBI issued a show-cause notice dated 25.04.2018, whereby the petitioner was asked to show-cause as to why CoR issued to them should not be cancelled as per Section 45IA(6) of the RBI Act. The relevant portion of the show cause notice dated 25.04.2018 is reproduced as under:

> **4. As such your company has acted in violation of the aforementioned directions issued by the Reserve Bank in exercise of its powers under Chapter III B of the RBI Act while conducting its business as a non-banking financial institution. You are, therefore, called upon to show cause within 15 days of the receipt of this order as to why the Certificate of Registration issued to your Company should not be cancelled under Section 45-IA (6) of RBI Act and penal action be not initiated against the company for the offences punishable under Section 58 B of the RBI Act. In case, you fail to show cause against the proposed action on or before the said date, it shall be presumed that you have no cause to show against the proposed action and the Reserve Bank will be constrained to proceed accordingly against your company as per law.**

6. The petitioner vide reply dated 08.05.2018 replied the show

cause notice dated 25.04.2018. The relevant portion of the reply dated 08.05.2018 is reproduced as under:

> **1. The Company has increased the paid up capital of the company by Rs.1,02,00,000/- (Rupees One Crore Two lac only) on 4th May, 2018 and complied with the provisions of the Companies Act, 2013, thereby increasing the NOF to the level of Rs.200 lacs as required by regulatory framework for NBFCs (RBI/2014-15/520 DNBR (PD) CC No.24/03.10.001/2014-15) read with Notification No.DNBR.007/CGM (CDS)-2015 dated March 27, 2015.**
>
> **As replied to you earlier, there has been delay in increasing the NOF due to the company being exclusively listed on Ludhiana Stock Exchange and has opted for the exit option. Now the company got delisted and hence the paid up capital of the company is increased.**
>
> **You are hereby requested to take into account the genuine reason due to which there was delay in increasing the NOF of the company and not to take any penal action against the company.**
>
> **Hoping you will find all the documents and reply in order. If you require any further information or clarification, we are ready to provide the same.**

7. The respondent no.2/ RBI vide order dated 02.07.2018 cancelled the CoR. The petitioner being aggrieved filed an appeal under section 45–IA(7) of the RBI Act which was ordered to be dismissed vide order dated 13.04.2020. The relevant portion of the impugned order dated 13.04.2020 is reproduced as under:

6. After going through the records and hearing the arguments put before me, it is observed that RBI vide Circular dated 10th November, 2014 read with notification dated 2ih March, 2015 has clearly prescribed an NOF of Rs.200.00 lakhs to be achieved before 1st April, 2017 for NBFCs to commence or carry on the business of an NBFI. It was also stated in the circular NBFCs failing to achieve the prescribed ceiling within the stipulated time period shall not be eligible to hold the CoR as NBFCs and RBI will initiate the process for cancellation of CoR against such NBFCs. During the hearing, RBI informed that the NOF of the appellant company stood at Rs.107.33 lakhs as on 31st March, 2016 and Rs.106.55 lakhs as on 31st March, 2017. Thus, it is clear that the appellant company had failed to achieve the prescribed NOF of Rs.200.00 lakhs before 1st April, 2017 which is a statutory requirement for an NBDC to carry on the business of an NBFI. The Respondent has also submitted that the appellant infused additional capital during 2016 but did not inform its inability to achieve the minimum prescribed NOF of Rs.200.00 lakhs and reasons thereof before 31st March, 2017. As regards, the contention of the Appellant Company that it was not granted opportunity to take necessary steps to fulfill the condition under Section 45-IA(6) of the Act. RBI has contended that the cancellation of the CoR of the appellant company is under Section 45-IA(6) which includes sub-section (iv) amongst other provisions i.e. failing to comply with any direction. It is observed that RBI has followed due process of law in the matter.

7. Having heard both the parties and keeping in view the facts and circumstances of the case, I have no reason to disagree with the views of RBI in cancelling the CoR of the Appellant M/s. Hindon Mercantile Limited. The appeal being devoid of merit, hereby rejected with no order as to costs.

8. The counsel for the petitioner argued that the petitioner had

achieved the target of Rs. 200 lakhs before the passing of the cancellation order by the respondent no. 2 and the respondent no. 2 in similarly placed cases, has condoned the delay in achieving the target of Rs. 200 lakhs. He placed reliance upon the following judgments:

i. Judgement dated 23.09.2022 passed by the Gujarat High Court in R/Special Civil Application No. 16918 of 2021 titled '**Kandla Finance Limited V Reserve Bank of India.**'

ii. Order dated 29.01.2021 passed by the Division Bench of this Court in W.P.(C) 2384/2020 titled **'Shubh Lakshmi Capital Limited V Reserve Bank of India and Anr.**'

iii. Judgment dated 23.10.2019 passed by the Division Bench of this Court in W.P.(C) 9702/2019 titled '**M/s Juhie (India) Private Limited V Reserve Bank of India and Anr.**'

9. The counsel for the respondent no.2/ RBI after referring to the judgment dated 08.11.2023 passed by another Coordinate Bench of this Court in W. P. (C) 11016/2022 titled as '**Premier Capital and Securities Private Limited V Union of India and Anr.**', and judgment dated 01.02.2024 passed by this Court in W.P. (C) 6391/2020 titled as **Zeel Fincap Services Private Limited V The**

Secretary to Government of India Ministry of Finance Appellate Authority for Registration & Anr. stated that as the petitioner achieved a target of Rs. 200 lakhs before passing of cancellation order by the respondent no. 2, as such the case can be remanded back to the respondent no.2/ RBI for reconsideration of restoration of CoR but in accordance with the existing regulation and including amendments subject to placing formal proof that the petitioner had achieved the target of Rs. 200 lakhs before passing of the cancellation order by the respondent no. 2.

10. The counsel for the petitioner stated that he does not have any objection if the present case of the petitioner for restoration of CoR is remanded back for reconsideration by respondent no.2/ RBI as per the existing guidelines including subsequent amendments and also after placing the necessary proof of achieving the target of Rs. 200 lakhs before passing of the cancellation order by the respondent no.2. However, he has further stated that the respondent no.2/ RBI be directed to decide the claim of the petitioner within a time bound manner preferably within a period of two months, which may be extended by another one month.

11. After considering all the facts and circumstances related to the present petition, the present petition is accordingly disposed of with the following directions:

i. The order dated 02.07.2018 cancelling the CoR passed by the respondent no.2/RBI and the order dated 13.04.2020 passed by the Appellate Authority i.e respondent no.1 are set aside.

ii. The matter is remanded back to the respondent no.2/ RBI for afresh consideration and the respondent no.2 is directed to take fresh decision on the basis of pleas and contentions as mentioned in the present petition which may be treated as representation with liberty to the petitioner to file additional representation/ document in support of its claim within 15 days from today.

iii. The respondent no.2 is directed to decide afresh the issue pertaining to the restoration of CoR to the petitioner preferably within a period of two months after the receipt of representation which may be extended, depending upon the facts and circumstances, for another one month. The respondent no.2/ RBI is also directed to communicate the final outcome to the petitioner preferably within two weeks thereafter.

iv. The respondent no.2/ RBI is also directed to decide the issue of restoration of CoR to the petitioner as per the existing guidelines including the amendments subsequent to the cancellation of CoR.

v. The respondent no.2/ RBI shall also be at liberty to give personal hearing to the petitioner, if required, before arriving at the final conclusion.

12. The present order is passed without prejudice to the rights and contentions of the parties.

13. The present petition stands disposed of.

14. The copy of this order be given *dasti* to the petitioner as well as to the respondent no. 2/ RBI for necessary compliance.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JULY 11, 2024
N/AM