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

% *Date of decision: February 01, 2024*

+ **W.P.(C) 6391/2020 & CM APPL. 22578/2020**

ZEEL FINCAP SERVICES PRIVATE

LIMITED

..... Petitioner

**Through: Mr. Rajesh Yadav, Sr. Adv
with Mr. Ninad Dogra, Mr.
S. Aggarwal and Ms. Sakshi
Garg, Advs.**

versus

**THE SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF FINANCE APPELLATE AUTHORITY
FOR REGISTRATION & ANR. Respondents**

**Through: Ms. Monika Arora, Mr.
Subhrodeep Saha, Mr.
Kushal, Mr. Ranjit Kumar,
Advs for Respondent/ UOI.
Mr. Ramesh Babu, Sr. Adv
with Ms. Manisha Singh, Ms.
Nisha Sharma, Ms. Tanya
Chowdhary and Ms. Jagriti
Bharti, Advs 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 Article 226 and Article 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.

“a) a writ of Certiorari or a writ, direction or order in the nature of Certiorari or any other appropriate writ, direction or order under Articles 226 and 227 of the Constitution of India thereby quashing the proceedings of cancellation of Certificate of Registration of the Petitioner Company;

b) writ of mandamus or a writ, direction or order in the nature of mandamus or any other appropriate writ, direction or order under Articles 226 and 227 of the Constitution of India directing the Respondents to restore the Certificate of Registration of the Petitioner Company to its original number and place.

c) for a Writ of prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 and 227 of the Constitution of India ordering and directing the respondents to permanently refrain from in any manner giving effect to the order of cancellation of the Certificate of Registration;

d) for costs, and”

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 22.08.2001.

3. The respondent no.2/ Reserve Bank of India (RBI) vide notification bearing no. DNBR(PD) CC. No. 002/03.10.001/2014-15 dated 10.11.2014 prescribed the minimum Net-Owned Fund (NOF)



for the existing as well as new NBFC's at Rs.200 Lakhs . The notification also prescribed NOF requirement which was stipulated at Rs. 200 lakhs to be achieved as per the following schedule.

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

4. The petitioner could achieve the minimum requirement of Rs. 200 lakhs only by 22.05.2018 as reflected from Form PAS-3 (Return of Allotment).

5. The respondent no.2/ RBI issued a show-cause notice dated 01.06.2018, whereby, the petitioner was asked to show-cause as to why CoR issued to them should not be cancelled as per Section 45–IA(6) of the RBI Act. The relevant portion of the show cause notice dated 01.06.2018 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 58B of the 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 03.07.2018 replied the show



cause notice dated 01.06.2018, wherein, it was mentioned that at present i.e. on the date of reply, the company had issued equity shares to its holding company by conversion of its loan amount borrowed and accordingly minimum NOF requirement has been complied with. The relevant paragraph of the reply dated 03.07.2018 is reproduced as under:

“Further, we would like to submit that at present, the Company has issued the equity shares to its holding company by conversion of its loan amount borrowed and accordingly the minimum NOF requirement has been complied with. The copy of the current master data has been attached herewith for reference. The copy of the Statutory Auditor Certificate to be issued thereafter shall be submitted to your good office at the earliest.

The management of the Company assures you that the Company will continuously maintain the minimum required NOF in Future and will abide by all the regulations, guidelines, notifications, circulars issued from time to time by the RBI.”

7. The respondent no.2/ RBI vide letter dated 02.08.2018 cancelled the CoR and advised the petitioner to surrender the original CoR dated 22.08.2001 immediately to the Bank on receipt of letter dated 02.08.2018.

8. 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 07.02.2020 which was sent to the petitioner vide covering letter dated 11.02.2020. The relevant portion of the impugned order dated 07.02.2020 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 27th March, 2015 had clearly prescribed a NOF of Rs. 200.00 Lakh to be achieved before 1st April, 2017 for NBFCs to commence or carry on the business of NBFI. It was also stated in the circular that 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 has informed that the JOF of the appellant company stood at Rs. 67.40 lakh and Rs. 63.52 as on 31st March, 2016 and 31st March, 2017 respectively as against the NOF of Rs. 100.00 lakh and Rs. 200.00 lakh as prescribed vide RBI letter dated 27th March, 2015. Thus, it is clear that the appellant has failed to achieve the NOF of Rs. 200.00 lakh before 1st April, 2017. The company, in its replies to the SCN, has accepted that as per the Statutory Audit Certificate (SAC) for the financial year ended 31st March, 2017 and 2018, the NOF of the company was less than Rs. 200.00 lakh because the company has taken unsecured loan from its holding company and provided loan to its group company in excess of 10% of its owned fund, which in turn reduced the NOF. The company also informed that it has issued equity shared to its holding company by conversion of its loan amount borrowed and accordingly the minimum NOF requirement has been complied with as on 22nd May, 2018. The appellant company has further submitted that it has duly replied to the SCN vide letter dated 03rd July, 2018 wherein the Company had confirmed that it had raised its NOF to Rs. 200.00 lakh and has also assured to abide by the directions of the Reserve Bank of India. The appellant has claimed that it had necessary funds but



the said notification missed the attention of the Directors because of which they could not achieve the prescribed NOF as on 31st March, 2017. Once they realized, the paid up capital of the company was raised and it achieved the NOF of Rs. 200.00 lakh as on 22nd May, 2018.

7. The reason put forth by the appellant for not achieving the NOF cannot be taken as a valid reason for not achieving a statutory requirement. As regards the contention of the appellant company that it was not provided opportunities under provisos to 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. Since the directions of RBI on achieving the prescribed NOF by the specified date, issued vide notification dated 27th March, 2015, were not complied with, the respondent is within its rights to cancel the CoR. It is observed that RBI has followed due process of law in the matter. 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.”

9. The petitioner argued that the petitioner had achieved the target of Rs. 200 lakhs before the issuance of show cause notice and the respondent no.2 in the similarly placed cases has condoned the delay in achieving the target of Rs. 200 lakhs. The petitioner has also 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.**'

10. 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 '**Premier Capital and Securities Private Limited V Union of India and Anr.**', stated that as the petitioner achieved a target of Rs. 200 lakhs before the issuance of show cause notice, 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 present existing regulation and including amendments subject to placing the formal proof that the petitioner had achieved the target of Rs. 200 lakhs before issuance of show cause notice dated 01.06.2018.

11. 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 issuance of show cause notice dated 01.06.2018.



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.

12. 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 02.08.2018 cancelling the CoR passed by the respondent no.2/RBI served upon the petitioner on 13.08.2018, and the order dated 07.02.2020 passed by the Appellate Authority i.e respondent no.1 are set aside.

ii. The matter is remitted 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.

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

14. The present petition stands disposed of.

15. 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)

FEBRUARY 01, 2024

AKS/SD