



2024:DHC:6521-DB



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

+ W.P.(C) 10690/2021 & CM APPL. 32959/2021

MORGAN ASIA LIMITED

...Petitioner

Through: Mr. J.M. Kalia, Mr. Dhruv Kalia and
Mr. Siddharth Shukla, Advocates.

versus

RESERVE BANK OF INDIA & ANR.

...Respondents

Through: Mr. Ramesh Babu with Mr. Manish
Singh, Ms. Tanya Choudhary and
Ms. Jagriti Bharti Advocates for
Respondent-1/RBI.
Mr. Ripu Daman Bhardwaj, CGSC
for UOI.

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Date of Decision: 20th August, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J:

1. Present petition has been preferred by the petitioner, *inter alia*, seeking declaration of notification no. RBI/2014-15/299 dated 10th November, 2014, bearing no. DNBR(PD) CC No. 002/03.10.001/2014-15 issued by the respondent/Reserve Bank of India (for short “RBI”) as *ultra vires* of section 45-IA (3) of Reserve Bank of India Act, 1934 (for short “RBI Act”) and also a declaration that proviso clause attached to section 45-IA(6) as *ultra vires* the Constitution, being discriminatory and violative

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of Article 14 of the Constitution of India apart from other provisions of the RBI Act. Simultaneously, the petitioner also seeks to set aside order of cancellation of the Certificate of Registration (for short “CoR”) issued by the respondent bearing no.1402/CAMS/05.08.000/2018-19 dated 12th September, 2018 along with the corresponding order of the Adjudicating Authority of the respondent, and in consequence thereof, to set aside the order of the Appellate Authority dated 15th April, 2020.

2. The petitioner company is a non-deposit accepting Non-Banking Financial Company (for short “NBFC”), duly incorporated on 18th September, 1981, under the Companies Act, 1956. The petitioner was granted a CoR bearing No.14.00178 dated 3rd March, 1998, by the RBI under the provisions of section 45-IA of the RBI Act, to carry on the business of a Non-Banking Financial Institution (for short “NBFI”) subject to fulfilling the requirements under Chapter III-B of the RBI Act and complying with the directions, regulations, including prudential norms issued by the respondent/RBI from time to time as also the terms and conditions under which the said CoR was issued to it.

3. Provisions of section 45-IA(1)(b) of the RBI Act stipulate that no NBFC can carry on the business of a NBFI without having a Net Owned Fund (for short “NOF”) of Rs.200.00 lakhs or such other amount, not exceeding Rs.200.00 lakhs, as the RBI may, by notification in the Official Gazette, specify. In terms of the notification issued by RBI being No.DNBS.132/CG(VSNM)-99 dated 20th April, 1999, the requirement of minimum NOF for new companies applying for the grant of CoR to commence business of an NBFC was raised from Rs.25.00 lakhs to



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Rs.200.00 lakhs. However, the minimum NOF for companies that were already in existence before 21st April, 1999, was retained at Rs.25.00 lakhs. Subsequently, respondent/RBI *vide* circular RBI/2014-15/520 DNBR (PD) CC.No.024 /03.10.001/2014-15 on Revised Regulatory Framework for NBFCs read with notification No.DNBR.007/CGM(CDS)-2015, both dated 27th March, 2015, specified Rs.200.00 lakhs as the NOF required for all NBFCs to commence or carry on the business of NBFIs. However, the NBFCs holding a CoR issued by the RBI and having NOF less than Rs.200.00 lakhs were permitted to carry on the business of NBFIs provided such companies achieve the NOF of Rs.200.00 lakhs before 1st April, 2017. As per para No.4.3 of the Revised Regulatory Framework for NBFC RBI/2014-15/299 DNBR (PD) CC. No.002/03.10.001/2014-15 dated 10th November, 2014, the NBFCs failing to achieve the prescribed ceiling within the stipulated time period shall not be eligible to hold the CoR as NBFCs and the respondent/RBI would initiate the process for cancellation of CoR against such NBFCs.

4. Though the petitioner was holding a CoR issued by respondent/RBI on the date of issuance of the aforementioned directions, yet it failed to comply with the requirement of NOF of Rs.200.00 lakhs by the end of March, 2017 and was alleged to be in violation of the directions issued by RBI. Accordingly, the petitioner was called upon *vide* letter No.DNBS.ND.No.4116/CMS/05.08.000/2017-18 dated 25th May, 2018, issued by respondent/RBI, to show cause, within fifteen (15) days of the receipt of the said notice, as to why the CoR issued to it should not be cancelled under section 45-IA(6) of the RBI Act. The petitioner replied to



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the said Show Cause Notice (for short “SCN”) *vide* letter dated 09th June, 2018. Since, the said reply was not found to be satisfactory, the Adjudicating Authority of the respondent/RBI had cancelled the CoR of the petitioner *vide* order dated 12th September, 2018, in exercise of its power conferred under section 45-IA(6) of the RBI Act.

5. Subsequent thereto, the petitioner filed a statutory appeal impugning the order of the Adjudicating Authority of the respondent/RBI. However, the said appeal was also rejected *vide* order dated 15th April, 2020.

6. Consequently, aggrieved by the action of the respondent/RBI cancelling the CoR and questioning the orders of the Adjudicating Authority as well as that of the Appellate Authority and simultaneously challenging the constitutionality of the relevant part of section 45-1A of the RBI Act and notification dated 10th November, 2014, petitioner company prefers the present petition.

CONTENTIONS ON BEHALF OF THE PETITIONER:-

7. Mr. J.M. Kalia, learned counsel for the petitioner challenges the *vires* of the notification dated 10th November, 2014, issued by the respondent/RBI whereby the NBFCs were required to attain a minimum NOF of Rs.200 lakhs by the end of March, 2017 on the ground that the RBI as a delegatee could not have issued such notification for lack of legislative competence and as such, ought to be struck down. He states that the subject matter of the notification dated 10th November, 2014 is already covered under the statute in sub section (3) of section 45-IA of the RBI Act and as such, the notification issued is an exercise beyond the purview and



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jurisdiction of the respondent/RBI. The respondent/RBI being a delegatee cannot arrogate to itself the power of the Legislature. The RBI having done so by issuance of the said notification has acted beyond its powers and as such, the said notification ought to be quashed.

8. He states that the non-compliance of the provisions of clause (iv)(a) of sub section (6) of section 45-IA of the RBI Act entails cancellation of the CoR of an NBFC without any recourse to remedial measure for rectifying such non-compliance by such NBFC. He states that in contradistinction to the aforesaid, non-compliance of clauses (ii) and (iii) of sub section (6) of section 45-IA of the RBI Act by NBFC could entail an opportunity on terms as the RBI may deem fit, to take necessary steps to comply with such provision or fulfillment of such condition. He submits that the lack of similar remedial measure in the case of NBFCs falling within clause (iv)(a) of sub section (6) of section 45-IA of the RBI Act, is discriminatory and thus, violative of provisions of Article 14 of the Constitution of India. He states that by virtue of the aforesaid enactment, the Legislature has created an artificial divide in the case of NBFCs, by providing remedial measures in case of one set of NBFCs in contradistinction to another set of NBFCs who are not provided any remedial measure at all. He states that there is no rationale or any nexus much less any intelligible differentia on the basis whereof such distinction has been drawn within the same category of NBFCs. He states that as a consequence, clause (iv)(a) of sub section (6) of section 45-IA of the RBI Act along with its proviso ought to be declared *ultra vires* the Constitution of India.



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9. Learned counsel for petitioner invites attention to the definition of “*Financial Institutions*” contained in sub section (c) of section 45-I of the RBI Act to submit that the petitioner does not fall within the said definition and as such, the provisions of Chapter III-B of the RBI Act as also the notification dated 10th November, 2014, cannot be made applicable to it. He states that the petitioner is not carrying on the business of financing, whether by way of making loans or advances or otherwise, of any activity other than its own. He states that the petitioner is neither advancing any loans nor receiving any public deposits and is an entity which is indulging in such activities only with its sister companies. As a consequence, he states that the petitioner would not fall within the aforesaid definition. In support of the aforesaid submissions, learned counsel for petitioner also invites attention to clause (ii) of sub section (f) of section 45-I of the RBI Act to submit that the petitioner does not fall within the definition of NBFC as defined thereunder. The thrust of the learned counsel is that the petitioner does not fall within the definition of NBFC as stipulated in section 45-I of the RBI Act and thus, cannot be compelled to comply with the directions contained in the notification dated 10th November, 2014.

10. As a sequitur to the aforesaid argument, learned counsel for petitioner states that if the aim of prescribing NOF for NBFCs is to ensure liquidity which the NBFC has to maintain to repay the public deposit, the same cannot be made applicable to the present petitioner since the petitioner, though being an NBFC had voluntarily not obtained any certificate authorizing it to accept public deposits in the first place. He thus submits that the present petition be allowed and the notification dated 10th



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November, 2014 and the clauses of section 45-I of the Act be declared unconstitutional.

CONTENTIONS ON BEHALF OF THE RESPONDENT:-

11. *Per contra*, Mr. Ramesh Babu, learned Standing Counsel for the respondent/RBI refutes the contentions of the petitioner. He states that the notification dated 10th November, 2014 has been issued by the respondent/RBI in exercise of the powers conferred upon it by virtue of section 45-I and 45-J of the RBI Act and as such, cannot be challenged on the grounds of unconstitutionality or lack of competence. He submits that the provisions of the aforementioned sections manifestly empower the RBI to not only supervise but also regulate the NBFCs. He states that the bogey of lack of competence or unconstitutionality has been raised by the petitioner after having availed of the efficacious remedy provided under section 45-I of the RBI Act and failed thereunder.

12. Learned counsel for respondent submits that this Court in ***Jeevan Holding Pvt. Ltd. and Ors. Vs. Union of India and Ors. 283 (2021) DLT 579***, has already considered the very same provisions challenged in the present writ petition, and though the constitutionality of the said provisions was not in issue, yet, has found them to be in consonance with the other provisions of the RBI Act. Though not in issue, yet, no repugnancy was found either. He specifically relies upon paragraph 5 of the said judgement wherein the Coordinate Bench had extracted the paragraphs from the learned Single Judge's order, in support of his contentions.

13. He also submits that the petitioner is covered within the definition of



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NBFC as stipulated in clause (ii) sub section (f) of section 45-I under Chapter III-B of the RBI Act and as such, it cannot be contended that the petitioner is not bound by the provisions thereunder. He submits that the petitioner has been granted the CoR under Chapter III-B of the RBI Act and has been conducting its business operations by virtue thereof at least from the year 1998. He also states that thus, the petitioner is bound by the terms of the CoR, one of which is to comply with the notifications/circulars issued by RBI from time to time. He states that having availed of the CoR to conduct its business, it does not lie in the mouth of the petitioner to contend that the provisions of section 45-I of the RBI Act or the notification dated 10th November, 2014 is unconstitutional. He states that in any case, the petitioner cannot complain that the principles of natural justice or that its fundamental rights have been violated. In order to buttress his arguments, learned counsel for the respondent/RBI relies upon the judgement in the case of *Jeevan Holding (supra)*, to submit that the reasonable opportunity of being heard does not necessarily mean an “*Oral Hearing*” and the same is held to be duly complied with, if the aggrieved is provided with an opportunity to file its reply to the SCN and the same has been considered while passing the order. In the same breath, he submits that even in the present case, there is no violation of the principles of natural justice since the petitioner was, (i) issued a show cause notice under section 45-IA(6)(i-v); (ii) reply to the same accepted by the Competent Authority; (iii) considered and rejected in accordance with the law. Thereafter, the petitioner even availed of the statutory appeal which was dismissed with a reasoned and speaking order. He states that the present



writ petition is nothing but an abuse of the process of law and ought to be dismissed with costs.

ANALYSIS & CONCLUSIONS:-

14. We have heard Mr. J.M. Kalia, learned counsel for the petitioner, Mr. Ramesh Babu, learned Standing Counsel for respondent/RBI, perused the record and considered the relevant judgments relied upon.

15. Since the petitioner has challenged the *vires* of the notification dated 10th November, 2014 as also clause (iv)(a) of sub section 6 of section 45-IA of the RBI Act, it would be appropriate to first examine the scope and jurisdiction of a Constitutional Court while examining the constitutionality of a particular provision of a Statute. In this regard, it would be enriching to consider the judgment of the Supreme Court in ***Peerless General Finance and Investment Co. Limited vs. Reserve Bank of India, (1992) 2 SCC 343.***

The relevant paragraphs of the same are reproduced as under:-

“48. However, there is presumption of constitutionality of every statute and its validity is not to be determined by artificial standards. The Court has to examine with some strictness the substance of the legislation to find what actually and really the legislature has done. The Court would not be over persuaded by the mere presence of the legislation. In adjudging the reasonableness of the law, the Court will necessarily ask the question whether the measure or scheme is just, fair, reasonable and appropriate or is it unreasonable, unnecessary and arbitrarily interferes with the exercise of the right guaranteed in Part III of the Constitution.

49. Once it is established that the statute is prima facie unconstitutional, the State has to establish that the restrictions imposed are reasonable and the objective test which the Court is to employ is whether the restriction bears reasonable relation to the authorised purpose or is an arbitrary encroachment under the garb of any of the exceptions envisaged in Part III. The reasonableness is to the necessity to impose restriction; the means adopted to secure that end as well as the procedure to be adopted to that end.



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51. *This Court in Joseph Kuruvilla Vellukunnel v. Reserve Bank of India AIR 1962 SC 1371 held that the RBI is "a bankers" bank and lender of the last resort". Its objective is to ensure monetary stability in India and to operate and regulate the credit system of the country. It has, therefore, to perform a delicate balance between the need to preserve and maintain the credit structure of the country by strengthening the rule as well as apparent creditworthiness of the banks operating in the country and the interest of the depositors. In underdeveloped country like ours, where majority population are illiterate and poor and are not conversant with banking operations and in underdeveloped money and capital market with mixed economy, the Constitution charges the State to prevent exploitation and so the RBI would play both promotional and regulatory roles. Thus the RBI occupies place of "pre-eminence" to ensure monetary discipline and to regulate the economy or the credit system of the country as an expert body. It also advises the government in public finance and monetary regulations. The banks or non-banking institutions shall have to regulate their operations in accordance with, not only as per the provisions of the Act but also the rules and directions or instructions issued by the RBI in exercise of the power thereunder. Chapter 3-B expressly deals with regulations of deposit and finance received by the RNBCs. The directions, therefore, are statutory regulations."*

(emphasis supplied)

16. In the same light, it would also be apposite to consider another judgment of the Supreme Court in *Public Services Tribunal Bar Association vs. State of U.P. and Another, (2003) 4 SCC 104*. The relevant paragraphs of the same are reproduced as under:-

"26. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In State of A.P. v. McDowell & Co. (1996) 3 SCC 709 this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds.

27. Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 41 confers upon a State



*Legislature the power to make State Public Services; State Public Services Commission. Under this entry, a State Legislature has the power to constitute State Public Services and to regulate their service conditions, emoluments and provide for disciplinary matters etc. The State Legislature had enacted the U.P. Public Services Tribunals Act, 1976 in exercise of the power vested in it by Entry 41 of List II of the Seventh Schedule. Power to enact would include the power to re-enact or validate any provision of law in the State Legislature provided the same falls in an entry of List II of the Seventh Schedule of the Constitution with the restriction that such enactment should not nullify a judgment of the competent court of law. The legislative competence of the State to enact the U.P. Public Services Tribunal has not been questioned in these appeals. **The challenge put forth to various amendments made is that the same are violative of Articles 14 and 16 of the Constitution being arbitrary as they are onerous and work inequitably. In the present appeals legislative action of the State is under challenge. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances it is imperative upon the courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional courts under our Constitution to declare a law enacted by Parliament or the State Legislature as unconstitutional when Parliament or the State Legislature had assumed to enact a law which is void, either from want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.***

(emphasis supplied)

17. It is trite that there is a presumption of constitutionality of a particular statute and no Court would easily infer that a particular provision of law is unconstitutional for the mere asking. The grounds of challenge to such constitutionality are within a narrow prism, in that, as laid down by the aforesaid judgments i.e., (i) lack of legislative competence and (ii) violation of any fundamental right guaranteed under Part III of the Constitution of India, 1950. It is also a settled law that the onus to disprove is upon the person challenging it. In *Peerless's* case (*supra*), the Supreme



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Court was dealing with a challenge to the constitutionality of directions issued by the RBI to certain Public Sector Banks and residuary non-banking companies. While considering the challenge to the constitutionality, the Supreme Court had observed that in the context of the Indian Economy, the Constitution charges the State to prevent exploitation and concluded that the RBI would play both promotional and regulatory roles. The RBI is considered to occupy a place of “pre-eminence” to ensure monetary discipline and to regulate the economy or the credit system as an expert body. The RBI also advises the Government in Public Finance and Monetary Regulations. It is a well known fact that the banks and non-banking institutions shall have to regulate their operations in accordance with not only the Act but also the Rules, directions or instructions issued by the RBI. The Supreme Court appears to suggest that the directions issued by the RBI under the RBI Act are in the nature of Statutory Regulations. The same were also held to be incorporated and become part of the Act itself. The conclusion appears to be that while testing the challenge of constitutionality to the directions issued by RBI, it needs to be looked at as if the same is a challenge to the *vires* of the statute itself. Given this background, we need to test the challenge laid.

18. Apart from contending that the RBI is a delegatee and lacks the competence to issue such directions as contained in the notification dated 10th November, 2014, neither any demonstrable material nor even a shred of evidence or any compelling argument has been put across by the petitioner to convince us of any challenge at all, much less a demonstrable challenge. Keeping in view the fact that the Supreme Court in ***Peerless***



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(*supra*) has categorically repelled a similar challenge to the directions passed by the RBI, we see no reason, much less any cogent reason or a ground raised by the petitioner to doubt the presumption of constitutionality of the directions in the said notification. Besides, in *Peerless (supra)*, the Apex Court had already upheld the competence of the RBI to issue notifications and other necessary directions to both, Banks and NBFCs in furtherance of the aims and objects of the Act. Thus, the question of lack of competence is no more *res integra*.

19. The other ground urged by learned counsel was in respect of an imaginary violation of fundamental rights as also the principles of natural justice. This was in the context of the comparison between the effect of non-compliance of provisions of clause (iv)(a) of sub section 6 of section 45-IA on the one hand and clauses (ii) and (iii) of sub section 6 of section 45-IA of the RBI Act on the other. Learned counsel sought to demonstrate that in case an action against an NBFC is contemplated under clause (iv)(a), no opportunity to rectify such non-compliance is stipulated, whereas non-compliance of clauses (ii) and (iii) entail an opportunity to take steps to comply with the provision or direction given by the RBI. Though learned counsel has raised this ground, we find from the facts obtaining on record that the RBI had, admittedly, issued a SCN invoking, primarily, non-compliance under clause (ii) of sub section 6 of section 45-IA of the RBI Act. That apart, an opportunity to reply was also afforded to the petitioner. Moreover, the petitioner had also challenged the order arising from the SCN before the Appellate Authority as contemplated by the proviso to the aforesaid clause. It is this order of the Appellate



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Authority which is being challenged here.

20. It is apparent from the aforesaid undisputed and admitted facts that the RBI had not only complied with the principles of natural justice as also the statutory requirements of the regulations and the Act but also unquestionably not violated any Fundamental Right as envisaged in Part III of the Constitution of India of the petitioner. Thus, even this submission fails. In view of the above, we hold that the petitioner has been unable to successfully lay a challenge to the *vires* of either the notification dated 10th November, 2014 or even provisions of the RBI Act.

21. With respect to the submission regarding the petitioner not falling within the definition of “*Financial Institutions*” as stipulated in sub-section (c) of section 45-I of the RBI Act, we find that the petitioner would fall squarely within the meaning of “*Non-Banking Financial Company*” as defined in sub section (f) of section read with clause (i) of sub section (c) of section 45-I and sub section (e) of section 45-I of the RBI Act. Having regard to the aforesaid, it is unfathomable as to on what basis the petitioner claims to be not an NBFC falling within the definitions contained in Chapter III-B of the RBI Act. The contention of the learned counsel that since the petitioner voluntarily does not accept public deposit, such non acceptance would automatically extricate it from the definitions so contained in the Act is concerned, suffice it to state that no such embargo is discernible either from the provisions of the Act or from the CoR issued to the petitioner. To be more clear, the conditions of the CoR as annexed in the present petition at page 38, are reproduced hereunder:-



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-In vernacular-	<i>1. The Certificate of Registration or a certified copy thereof shall be kept displayed at the Registered Office and other offices, branches, if any, of your company.</i>
-In vernacular-	<i>2. The Certificate of Registration is issued to your company subject to your continued adherence to all the conditions and parameters stipulated under Chapter III B of the Reserve Bank of India Act, 1934.</i>
-In vernacular-	<i>3. Your company shall be required to comply with all the requirements of the Directions, guidelines / instructions, etc. issued by the Bank and as applicable to it.</i>
-In vernacular-	<i>4. If your company desires to indicate directly or indirectly in any advertisement. etc. that the company is having a Certificate of Registration issued by the Reserve Bank of India. such advertisement should invariably contain a statement as under :- "The company is having a valid Certificate of Registration dated 3.3.1998 issued by the Reserve Bank of India under section 451A of the Reserve Bank of India Act, 1934. However, the Reserve Bank of India does not accept any responsibility or guarantee about the present position as to the financial soundness of the company or for the correctness of any of the statements or representations made or opinions expressed by the company and for repayment of deposits / discharge of liabilities by the company."</i>
-In vernacular-	<i>5.* Your company must not accept any public deposit for the time being. After the company has been in operation for a period of two years, if it intends to raise public deposits, it may approach the Bank with the audited Balance Sheets for two years and a credit rating for fixed deposits from one of the recognized rating agencies. Your company will accept public deposit only after obtaining specific approval from us.</i>
-In vernacular-	<i>6. The date when your company has commenced business as a non-banking financial institution may be advised to the Bank.</i>
-In vernacular-	<i>* Applicable to new companies incorporated on or after January 9, 1997.</i>

(emphasis supplied)

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22. It is apparent from the perusal of the CoR that the embargo, if any, contained in para 5 of the conditions was only till two years of the commencement of the operations of the petitioner. Thereafter, the petitioner could, if so desired, approach the RBI for approval to accept public deposits. Thus, the aforesaid submission is noted only to be rejected.

23. We have also examined the provisions of section 45-JA of the RBI Act and find that the legislature has vested/conferred statutory power upon the RBI, in public interest, to determine the policies or to regulate the financial system of the country and to prevent the affairs of any NBFC being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the NBFC. Thus, the legislature seems to have conferred ample powers and jurisdiction upon the respondent/RBI to take all steps necessary to safeguard the financial interests of the country.

24. No other ground of challenge was either raised or addressed by learned counsel for the petitioner.

25. In view of the above, we are of the considered opinion that the present writ petition is devoid of any merit and is dismissed alongwith applications, though without any order as to costs.

TUSHAR RAO GEDELA, J

ACTING CHIEF JUSTICE

August 20, 2024/rl/aj

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