IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.11218 of 2025
and
WMP.Nos.12658, 12661 & 12662 of 2025

1.Federation of Indian Asset Financiers Associations,
Represented by its Secretary General Mr.Dinesh Kothari,
'Nahar Hall', Desabandhu Plaza, 1 Floor,
47, Whites Road, Royappettah, Chennai - 600 014.

2.Jay Mittal ... Petitioners

Vs

1. Reserve Bank of India,
Represented by its Chief General Manager,
Central Office Building,
Shahid Bhagat Singh Marg Fort,
Mumbai - 400 001.

2. Union of India,
Through Ministry of Finance,
North Block,
New Delhi - 110 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records contained in Circular dated 22.10.2021 issued by the 1st respondent bearing reference RBI/2021-22/112 DOR.CRE.REC.No.60/03.10.001/2021-22 and quash the same and all directions consequential thereto, as arbitrary, illegal and unjust.

For Petitioners	:	Sathish Parasaran Senior Counsel assisted by Arun Karthik Mohan
For R1	:	Mr.C.Mohan Senior Counsel assisted by Rexy Josephine Mary for King & Partridge
For R2	:	Mr.AR.L.Sundaresan ACGSG

ORDER

The writ petition is filed to call for the records contained in the circular dated 22.10.2021, issued by the 1st respondent, bearing reference RBI/2021-22/112 DOR.CRE.REC.No.60/03.10.001/2021-22, and to quash the same.

2. Heard Mr.Sathish Parasaran, learned Senior Counsel representing the petitioner, and Mr.Mohan, learned Senior Counsel for the Reserve Bank of India and Mr. AR.L.Sundaresan, the learned Additional Solicitor General of India for the second respondent.

3. Upon hearing all the Learned Counsel and reviewing the affidavit

and the case materials, it is noted that the petitioner is the Federation of the Associations of NBFCs. In this case, the petitioner represents NBFCs that do not accept any deposits but have a customer base. After the introduction of Chapter III -B to the Reserve Bank of India Act, 1934, the first respondent began regulating these entities. In accordance with Section 45-IA, the net owned fund for all these smaller-scale NBFCs was initially set at Rs 2,00,00,000/-. However, by the impugned circular dated 22.10.2021, this amount was increased to Rs. 5,00,00,000/- within a period and further to Rs. 10,00,00,000/-. This circular took effect from 01.10.2022, and the time granted to these NBFCs to increase their net owned fund upto Rs. 5,00,00,000/- is now set to expire on 31.03.2025.

4. The grievance expressed by *Mr Sathish Parasaran*, the learned Senior Counsel representing the petitioner, is that when the RBI classified NBFCs into four types, the members of the petitioners' association comprise the base layer with an asset size of less than 1,000 crores. Within this layer, these NBFCs do not accept deposits, nor do they utilise any public funds. Therefore, they do not pose any systemic risk. He would submit that the circular is in the nature of paternalistic legislation seeking to protect the NBFCs. When the NBFCs were categorised considering the factor of systemic

risk, they were grouped into one category that accepts deposits and another that do not accept deposits but utilises public funds along with a customer base. According to the learned Senior Counsel, the RBI did not keep in mind that there is a third category of NBFCs that have a customer base but neither accept deposits nor operate on public funds. They did not consider that this category that does not pose any systemic risk and therefore should not be equated with other categories that operate with public funds. Treating unequals as equals and imposing such a significant burden would effectively drive these smaller players out of business, thus failing the test of proportionality and violating Article 14 of the Constitution of India. The petitioner has continuously made representations immediately after the issuance of the circular. To date, despite requests for information under the Right to Information Act, there has been no positive response from the first respondent, the RBI. Therefore, he submits that from 31.03.2025, since many members of the petitioner association will go out of business, this Court should entertain the writ petition and grant urgent interim reliefs. The Learned Counsel would also rely upon the judgment in ***Internet and Mobile Association of India -Vs- Reserve Bank of India (2020 10 SCC 274)*** for the proposition that the measures taken by RBI should pass the test of proportionality.

5. Per contra, *Mr C. Mohan*, the learned counsel appearing on behalf of the Reserve Bank of India, submits that the circular was issued as early as 2021 and came into force in 2022. When the representations were made, the officials also met with the members of the petitioner association. It is true that subsequently, no decision was expressly taken and communicated; however, at the same time, the petitioner and the affected members could have approached this Court at an earlier point. They are approaching in the ninth hour. The learned counsel also opposes the maintainability of the writ petition through the association. It is submitted that when the experts, taking into consideration the relevant factors and have fixed the quantum of the net owned fund, this Court cannot substitute its wisdom for that of the experts and interfere in the issue. The entire exercise is within the policy realm of the Reserve Bank of India. The learned counsel would also rely upon the judgment in ***Deccan Chronicles Holdings Ltd -Vs-Union of India (2014 3 CTC 321)*** for the proposition that the writ petition filed by the association may not be entertained by this Court.

6. *Mr AR.L. Sundaresan*, learned Additional Solicitor General of India, appearing on behalf of the second respondent, would reiterate the

objection to maintainability and submit that the petitioners have approached at the very last minute. Furthermore, he would argue that the impugned circular is of the nature of subordinate legislation and is, therefore, usually passed after wide consultation with stakeholders and consideration of ground situations, etc.

7. I have considered the opposing submissions made by both sides and reviewed the material records of the case.

8. To determine the validity of the circular, this court must grant the respondents an opportunity to file their counter. Only then can the contentions raised by the petitioner be addressed. Similarly, this applies to the preliminary objections raised by the respondents as well, including the issue regarding maintainability. In view of the grave urgency pleaded, this Court will not examine the merits of the various grounds presented to challenge the Circular or its validity, nor will it consider the objections by the respondents. The sole consideration is based on the assertion made by the learned Senior Counsel that many of these small players will exit the business effective from 01. 04. 2025, which necessitates urgent attention.

9. In light of this argument, this court directed the learned counsel for the Reserve Bank of India to obtain instructions as to the authority who shall

consider the representation and could provide a hearing to the petitioner Association regarding their grievances. Since the representations remain unresolved, this authority may also dispose of the representation according to the law. When the matter was taken up for hearing again in the afternoon, *Mr C. Mohan*, the learned Counsel representing the first respondent, on instructions stated that the Chief General Manager of the relevant department would grant an opportunity of hearing to the office bearers of the association or its members, preferably limited to 2 to 4 individuals, and their representation would be considered by 30.04.2025.

10. In view thereof, this writ petition is disposed of on the following terms :

(a)Given the significant urgency pleaded, the petitioner Association may approach the concerned authority as soon as possible with a request for any extension of time, which shall also be considered on its own merits by the Chief General Manager;

(b) The Chief General Manager shall grant an opportunity of hearing to the officer bearers of the petitioners/its members as stated above and consider the concerns expressed by the petitioner association/its members as per their representation dated 17/02/2021 and the subsequent representations and pass orders thereon in accordance with law on order before 30/04/2025;

(c) The petitioners will also be entitled to make such requests for any interim relief to them, including extension of time, which shall also be considered by the same authority;

(d) It is clarified that this Court has not delved into the issue, and this writ petition is disposed of solely to address the urgent concerns raised by the petitioner. Both parties retain the right to reassert their respective grounds should the above exercise not yielding satisfactory results.

(e) The parties shall act based on the web copy of this order without waiting for a certified copy;

(f) No costs. Consequently, the connected miscellaneous petitions are closed.

27.03.2025
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Neutral Citation: Yes/No

To

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   Represented by its Chief General Manager,
   Central Office Building,
   Shahid Bhagat Singh Marg Fort,
   Mumbai - 400 001.

2. Union of India,
   Through Ministry of Finance,
   North Block,
   New Delhi - 110 001.

D.BHARATHA CHAKRAVARTHY, J.

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