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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2026

CORAM

THE HON'BLE MR.SUSHRUT ARVIND DHARMADHIKARI,

CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

WP No. 35400 of 2019

Case QR

CNR:{HCMA012222822019}

A.Joseph Sagayaraj,
34/ 1, Saffa Arcade, First Floor, Convent Road,
Cantonment, Trichy - 620001 Tiruchirappalli Petitioner

Vs

1. The Ministry of Finance,
North Block, New Delhi, Chennai

2.Reserve Bank Of India,
Department of Non Banking Regulation, Central
Office, 2nd Floor, Centre, World Trade Centre, Cuffe
Parade, Mumbai 400005

3.State of Tamil Nadu,
Rep.by its Finance Secretary,
Finance Department, St. George Fort, Chennai Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing respondents 1, 2 to regulate the lending activities of the Non Banking Financial Institutions and private money lenders falling under the direct control and supervision of the respondents 1, 2 regarding the gold loan business and its auction procedures.

For Petitioner M.J.Jaseem Mohamed

For Respondents R1-- No Appearance

Mr.Chevanan Mohan,
for Ms.A.Rexy Josephine Mary

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for M/s King and Partridge for R2

Mr.L.Gokulraj,
Addl. Gov. Pleader, for R3

ORDER

(Order of the Court was made by G.Arul Murugan, J.)

This writ petition styled as a public interest litigation seeks a direction to respondents 1 and 2 to regulate the lending activities of the non-banking financial institution and private money lenders falling under the direct control and supervision of respondents 1 and 2 regarding gold loan business and its auction procedures.

2. In response to the allegations raised in the writ petition, a detailed counter-affidavit has been filed by the Reserve Bank of India setting out the various regulatory guidelines and measures taken to safeguard the interest of individual customers under Section 45(L) of the RBI Act. Paragraphs 12 to 19 of the counter-affidavit are usefully extracted below:

> *"12. It is submitted that RBI, in exercise of the powers conferred under Section 45L of the RBI Act and of all the powers enabling it in this behalf, vide Circular DNBS(PD)CC No. 80/03.10.042/2005-06 dated September 28, 2006 prescribed the broad Guidelines on Fair Practices that are to be framed and approved by the Board of Directors of all Non- Banking Financial Companies. RBI also directed that Fair Practices Code*

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so framed and approved by the Board of Directors should be published and disseminated on the web-site of the company, if any, for the information of the public. The Guidelines, inter alia, covered general principles on adequate disclosures on the terms and conditions of a loan and also adopting a non-coercive recovery method. The original guidelines issued on September 28, 2006 was revised in view of the developments within the sector including creation of new category of NBFCs viz; NBFC-MFI and also the rapid growth in NBFCs lending against gold jewellery. Accordingly, revised circular was issued on March 26, 2012. Reserve Bank vide its Master Circular on Fair Practices Code- DNBR (PD) CC.No.054/03.10.119/2015-16 dated July 01, 2015 issued detailed guidelines on Fair Practices Code to NBFCs while dealing with lending against collateral of gold jewellery. Para 2C ofthe Master Circular on Fair Practices Code reads as follows:

"C. Lending against collateral of gold jewellery

While lending to individuals against gold jewellery, NBFCs shall adopt the following in addition to the general guidelines as above.

(i) They shall put in place Board approved policy for lending against gold that should inter alia, cover the following:

a. Adequate steps to ensure that the KYC guidelines stipulated by RBI are complied with and to ensure that adequate due diligence is carried out on the customer before extending any loan.

b. Proper assaying procedure for the jewellery received,

c. Internal systems to satisfy ownership of the gold jewellery,

d. Adequate systems for storing the jewellery in safe custody, reviewing the systems on an on-going basis, training the concerned staff and periodic inspection by internal auditors

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to ensure that the procedures are strictly adhered to. Normally, such loans should not be extended by branches that do not have appropriate facility for storage of the jeyvellery,

e. The jewellery accepted as collateral should be appropriately insured,

f. Transparent auction procedure in case of non-repayment with adequate prior notice to the borrower. There should be no conflict of interest and the auction process must ensure that there is arm's length relationship in all transactions during the auction including with group companies and related entities.

g. The auction should be announced to the public by issue of advertisements in at least two newspapers, one in vernacular language and another in national daily newspaper,

h. As a policy, the NBFCs themselves should not participate in the auctions held.

i. Gold pledged will be auctioned only through auctioneers approved by the Board,

j. The policy shall also cover systems and procedures to be put in place for dealing with fraud including separation of duties of mobilization, execution and approval.

(ii) The loan agreement shall also disclose details regarding auction procedure."

XX. It is submitted that these guidelines have now been subsumed at para 45.14 of Master Direction - Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 dated October 19, 2023 (Annex-1).

XX. Further instructions were issued to NBFCs lending against the security of gold jewellery taking into consideration the recommendations of the "Working Group to Study the Issues Related to Gold Imports and Gold Loans NBFCs in India" vide

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circular dated September 16, 2013. The instructions inter alia stipulated detailed guidelines regarding dos and don'ts in respect of gold loan and auction sale of pledged gold. These instructions were incorporated in the Master Directions - DNBR.PD.007 /03.10.119 / 2016-17 and DNBR.PD.008/03.10.119/2016-17 dated September 1, 2016. With regard to auctions, Paras 27(4) ofthe Master Directions reads as follows:

(4) Auction

(a) The auction shall be conducted in the same town or taluka in which the branch that has extended the loan is located. NBFCs can however pool gold jewellery from different branches in a district and auction it at any location within the district, subject to meeting the following conditions :

(i) The first auction has failed.

(ii) The NBFC shall ensure that all other requirements of the extant directions regarding auction (prior notice, reserve price, arms-length relationship, disclosures, etc.) are met.

Non-adherence to the above conditions will attract strict enforcement action.

(b) While auctioning the gold the NBFC shall declare a reserve price for the pledged ornaments. The reserve price for the pledged ornaments shall not be less than 85 per cent of the previous 30-day average closing price of22 carat gold as declared by the Bombay Bullion Association Ltd. (BBA) or the historical spot gold price data publicly disseminated by a commodity exchange regulated by the Forward Markets Commission and value of the jewellery of lower purity in terms of carats shall be proportionately reduced.

(c) It shall be mandatory on the part of the NBFCs to provide full details of the value fetched in the auction and the outstanding dues adjusted and any amount over and above the

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loan outstanding shall be payable to the borrower.

(d) NBFCs shall disclose in their annual reports the details of the auctions conducted during the financial year including the number of loan accounts, outstanding amounts, value fetched and whether any of its sister concerns participated in the auction.

XX. It is submitted that these guidelines have now been subsumed at para 37.4 of Master Direction - Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 dated October 19, 2023 (Annex-2).

13. It is submitted that the guidelines on Disbursement of loans including changes in terms and conditions and general matters were initially issued vide para A.(iv).(c) of circular DNBS.CC.PD.No.266/ 03.10.01/2011-12 dated March 26, 2012 and subsequently included in Master Circular on Fair Practices Code- DNBR (PD) CC.No.054/ 03.10.119/ 2015-16 dated July 01, 2015. The paras 2A(iii) and (iv) of the Master Circular on Fair Practices Code dated July 01, 2015 read as follows:

"(iii) Disbursement of loans including changes in terms and conditions

(a)The NBFCs should give notice to the borrower in the vernacular language or a language as understood by the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.

(b) Decision to recall / accelerate payment or performance under the agreement should be in consonance

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with the loan agreement.

(c) NBFCs should release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled/ paid

(iv) General

(a) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of the loan agreement (unless information, not earlier disclosed by the borrower, has been noticed).

(b) In case of receipt of request from the borrower for transfer of borrowal account, the consent or otherwise i.e. objection of the NBFC, if any, should be conveyed within 21 days from the date of receipt of request. Such transfer shall be as per transparent contractual terms in consonance with law.

(c) In the matter of recovery of loans, the NBFCs should not resort to undue harassment viz; persistently bothering the borrowers at odd hours, use muscle power for recovery of loans etc: As complaints from customers also include rude behaviour from the staff of the companies, NBFCs shall ensure that the staff are adequately trained to deal with the customers in an appropriate manner.

(d) As a measure of customer protection and also in order to bring in uniformity with regard to prepayment ofvarious loans by borrowers of banks and NBFCs, it is advised that NBFCs shall not charge foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to individual

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borrowers, with immediate effect."

14. It is submitted that these guidelines have now been subsumed at para 45.4 and para 45.7 of Master Direction - Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 dated October 19, 2023 (Annex- 3).

15. It is submitted that the guidelines regarding interest rates charged by NBFC, were initially issued vide circulars DNBS.PD/CC.No.95/ 03.05.002/2006-07 dated May 24, 2007 on 'Complaints about excessive interest charged by NBFCs' and DNBS (PD) C.C.No.133/03.10.001/ 2008-09 dated January 2, 2009 on 'Regulation of excessive interest charged by NBFCs' and have been subsumed at Para 45.11 and para 45.12 Master Direction - Reserve Bank ofIndia (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 dated October 19, 2023. The said Para 45.11 and Para 45.12 reads as follows:

45.11 Regulation of excessive interest charged by NBFCs

45.11.1 The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as cost of funds, margin and risk premium and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.

45.11.2 The rates of interest and the approach for gradation of risks shall also be made available on the website of the companies or published in the relevant newspapers. The -51- information published on the website or otherwise published shall be updated whenever there is a change in the

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rates of interest.

45.11.3 The rate of interest must be annualised rate so that the borrower is aware of the exact rates that would be charged to the account.

45.12 Complaints about excessive interest charged by NBFCs

45.12.1 The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFC. Though interest rates are not regulated by the Reserve Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. 45.12.2 Boards of NBFCs shall lay out appropriate internal principles and procedures in determining interest rates and processing and other charges. In this regard, the guidelines indicated in the Fair Practices Code about transparency in respect ofterms and conditions of the loans are to be kept in view.

16. It is submitted that RBI has issued a circular recently on 'Fair Lending Practice - Penal Charges in Loan Accounts' dated August 18, 2023 (Annex- 4) where Regulated Entities have been advised that;

(i) There shall be no capitalisation of penal charges i.e., no further interest computed on such charges. However, this will not affect the normal procedures for compounding of interest in the loan account.

(ii) The REs shall not introduce any additional component to the rate of interest and ensure compliance to these guidelines in both letter and spirit

(iii) The REs shall formulate a Board approved policy on penal charges or similar charges on loans, by whatever name called.

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(iv) The quantum of penal charges shall be reasonable and commensurate with the noncompliance of material terms and conditions of loan contract without being discriminatory within a particular loan /product category.

(v) The quantum and reason for penal charges shall be clearly disclosed by REs to the customers in the loan agreement and most important terms & conditions /Key Fact Statement (KFS) as applicable, in addition to being displayed on REs website under Interest rates and Service Charges.

17. It is submitted that RBI vide its circular DoR.MCS.REC.61/01.01.001/2023-24 dated December 29, 2023 (Annex-5) directed the Regulated Entities that "they shall ensure that the instructions are implemented in respect of all the fresh loans availed from April 1, 2024 onwards. In the case of existing loans, the switchover to new penal charges regime shall be ensured on the next review/ renewal date falling on or after April 1, 2024, but not later than June 30, 2024".

18. It is therefore submitted that RBI issued instructions to NBFCs to adopt Fair Practices Code (FPC) and to adopt an interest rate model taking into account relevant factors and determine rate of interest to be charged for loans and advances. The rate of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in newspapers. RBI has not prescribed any interest rate to be charged by NBFCs and it is left to the agreement executed by both parties. RBI however issued instructions to NBFCs to adopt Fair Practices Code (FPC) and to adopt an interest rate model taking into account relevant factors and determine rate of interest to be charged for loans and advances. The loan agreement shall also disclose details regarding auction procedure.

19. It is submitted that RBI has formulated detailed

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guidelines regarding dos and don'ts in respect of gold loan and auction sale of pledged gold from time to time which is binding on the part of the NBFCs. All the instructions of RBI regarding the Fair Practices Code were consolidated in the form of Master Circular- Fair Practices Code, which were updated from time to time. These guidelines have now been subsumed at Chapter VII of Master Direction - Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 dated October 19, 2023. It is submitted that the Master Directions have been issued by the Reserve Bank exercising supervisory and regulatory power on NBFCs under the RBI Act and the NBFCs are required to follow the said guidelines. (Based on comments of DoR we have included the details of all the Circulars/Master Directions. DoR may verify the same modify the same if required)".

3. Learned Standing Counsel appearing for the second respondent submitted that RBI has issued circular dated 15.04.2024, wherein further guidelines have been issued, which takes care of interest of all the parties concerned.

4. It is also to be noted that the non-banking financial institutions function under the regulatory guidelines of the RBI and they have to strictly follow the guidelines and instructions issued by the RBI under Chapter 3B of the RBI Act.

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5. In view of the aforesaid, we are inclined to close the writ petition. There will be no order as to costs. Consequently, WMP No.36233 of 2019 is closed.

6. It is open to the petitioner to bring it to the notice of the authorities, if there are any specific instances where guidelines have been breached or flouted.

(SUSHRUT ARVIND DHARMADHIKARI, CJ.) (G.ARUL MURUGAN, J.)
04.11.2026

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN, J.

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To

1. The Ministry of Finance,
North Block, New Delhi, Chennai

2.Reserve Bank Of India,
Department of Non Banking Regulation, Central Office, 2nd Floor, Centre, World Trade Centre, Cuffe Parade, Mumbai 400005

3.The Finance Secretary,
Finance Department, St. George Fort,
Chennai

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