

M/S B. H. C. Finance And Leasing Pvt. Ltd vs Union Of India & Ors on 8 August, 2022

Author: Sanjeev Narula

Bench: Sanjeev Narula

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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5991/2020 & CM APPL. 21647/2020.

M/S B. H. C. FINANCE AND LEASING PVT. LTD.

Through: Mr. Akshay Ma
with Ms. Pavi
Sudeshna Sing

versus

UNION OF INDIA & ORS.

Through: Mr. Ramesh Ba
Singh, Ms. Ni
Sanya Panjwan
3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 08.08.2022

1. The Petitioner, a Non-Banking Financial Company ['NBFC'] has approached this court seeking directions against:- (a) the cancellation of the Petitioner's Certificate of Registration to carry on its business as a Non- Banking Financial Institution (NBFI) vide order dated 28th November 2018 passed by the Regional Director, Reserve Bank of India ['RBI'] under Section 45-IA of the Reserve Bank of India Act, 1934 [hereinafter, 'RBI Act'], and

(b) order dated 29th June 2020 passed by the Appellate Authority¹ rejecting the appeal against the said cancellation order [hereinafter collectively referred to as the 'Impugned Orders'.] Under Section 45-IA(7) of the RBI Act.

2. Mr Akshay Makhija, Senior Counsel for Petitioner, submits that in terms of the notification dated 27th March 2015 issued by RBI, 2 every NBFC had to meet the prescribed Net Owned Fund ['NOF'] requirement of 'two hundred lakhs of rupees before April 1, 2017'. The Petitioner vide letter dated 22nd June 2018 issued to the Department of Non-Banking Supervision, RBI, submitted the relevant Statutory Auditor Reports, Audited Financial Statements and the Statutory Auditor Certificate qua NOF for financial years 2015-16, 2016-17 and 2017-18. These communications confirmed the NOF of Rs. 445 lakhs for the Petitioner as on 31st March 2018, which is more than the requirement

prescribed in the RBI notification.

3. Notwithstanding, RBI issued a show cause notice on 13th July 2018 in exercise of its power under Section 45-IA(6) of the RBI Act for cancellation of the 'Certificate of Registration' of the Petitioner. The Petitioner vide reply dated 25th July, 2018, prayed for a condonation of delay given that the NOF of the Petitioner were admittedly below the NOF requirement before 1st April 2017. The subsequent proceedings, and the appeal thereto, culminated in the Impugned Orders.

4. During the course of hearings conducted on 1st August 2022, Mr. Makhija had relied upon a decision of the Division Bench of the Madras High Court,³ rendered in an appeal preferred by RBI assailing the order of a Single Judge which extended the time for compliance with the NOF requirement. The Division Bench allowed the appeal, holding that the order of the aforesaid Single Judge was without jurisdiction. However, at the same time, the Notification No. DNBR.007/ CGM (CDS) -2015.

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petitioners were permitted to file statutory appeal under Section 45-IA(7) of the RBI Act. The Special Leave to Appeal preferred by Nahar Finance & Leasing Limited before the Supreme Court, against the afore-noted order, was dismissed with the following observation: 4 "Since the petitioner has been relegated to the statutory remedy of filing the appeal, the observation made by the High Court shall not come in the way of the petitioner."

5. The Court is informed that when the said Petitioner filed its statutory appeal, the Appellate Authority, vide order dated 11th February 2021, directed the RBI to review its order dated 8th June 2018 cancelling the 'Certificate of Registration' of the Petitioner. Pursuant thereto, RBI revoked the cancellation order.

6. In light of the above, Mr. Ramesh Babu M.R., counsel for Respondent No. 3-RBI, on instructions and without prejudice to rights and contentions, states RBI shall re-examine the issue in case the matter is remanded back to them.

7. In view of afore-noted stand, Mr Makhija states that Petitioner is agreeable to RBI re-examining the issue raised in the present petition.

8. Accordingly, the Impugned Orders, i.e. the order dated 28th November 2018 passed by RBI, and order dated 29 th June 2020 passed by the Appellate Authority, are set aside. The matter shall now be considered afresh by the RBI in light of the current position of law and the judgments of the court.

9. Considering the fact that the matter will be considered afresh, Petitioner is permitted to file additional representation along with documents, if any, within a period of two weeks from today, and a decision thereon will be taken Order dated 29th July 2019 in Special Leave to Appeal (C)

No(s).17243-17245/2019.

within a period of six weeks thereafter.

10. The Court has not expressed any opinion on the merits of the case. All rights and contentions of the parties are left open. In the event the decision is passed against the Petitioner, they shall be at liberty to take re-course against the same in accordance with law.

11. With the above directions, the petition is disposed of, along with pending application.

SANJEEV NARULA, J AUGUST 8, 2022 as