

Nirma Credit And Capital Pvt. Ltd vs Union Of India (Ministry Of Finance) & ... on 16 August, 2022

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3637/2020

NIRMA CREDIT AND CAPITAL PVT. LTD.

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Through: Mr. Ramesh Singh, Senior Advoc

with Ms. Monisha Handa, Mr.

Anubhav Sharma and Mr. Mohit D

Ram, Advocates.

versus

UNION OF INDIA

(MINISTRY OF FINANCE) & ANR.

Through: Mr. Ramesh Babu MR, M

Singh and Ms. Nisha S

Advocates for RBI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 16.08.2022 CM APPL. 35382/2022 (u/Sec. 151 of the Code of Civil Procedure, 1908 on behalf of Petitioner seeking early hearing of the captioned matter)

1. For the grounds and reasons stated in the application, the same is allowed.
2. With the consent of counsel for the parties, the instant petition is taken up for hearing today itself.
3. The application stands disposed of.

W.P.(C) 3637/2020 & CM APPLs. 12971/2020, 43476/2021 (seeking interim reliefs)

4. 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 ["CoR"] to carry on its business as a Non-Banking Financial Institution ["NBFI"] vide order dated 17th December, 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 17th April, 2020 passed by the Appellate Authority,¹ rejecting the appeal against the said cancellation order [hereinafter collectively referred to as the "Impugned Orders"].

5. Mr. Ramesh Singh, 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'. He states that NOF of the Petitioner as on the date of the Notification was Rs. 45.19 Crores and as on date of the show cause notice ["SCN"] dated 27th April, 2018, it was Rs. 75.16 Crores. For a period where the Petitioner granted a short-term loan of Rs. 350 Crores to a company - the quantum of the said loan had to be deducted in the calculation of the NOF and thus, for a brief period, the NOF requirement could not be met. Immediately on the repayment of the said loan by the company, the NOF of Petitioner was Rs. 7281.21 lakhs i.e., more than the requirement prescribed in the afore-said Notification.

6. Notwithstanding, RBI issued a SCN in exercise of its power under Section 45-IA(6) of the RBI Act for cancellation of the CoR of the Under Section 45-IA(7) of the RBI Act.

Notification No. DNBR.007/ CGM (CDS) -2015.

Petitioner. The Petitioner vide reply dated 14th May, 2018 submitted the Certificates of Auditors certifying the NOF requirement and informed that the short-term loan granted was subsequently received back with interest in July 2017. The subsequent proceedings, and the appeal thereto, culminated in the Impugned Orders.

7. Mr. Singh has relied upon a decision of the Division Bench of this Court in W.P.(C) 2384/2020 dated 29th January, 2021 [Shubh Lakshmi Capital Ltd. v. Reserve Bank of India and Anr.], where the Petitioner could not meet the NOF requirement as on 31st March, 2017 but subsequently, prior to issuance of SCN, met the requirement (on 31st March, 2018). The Division Bench set-aside the impugned decision of the Appellate Authority and remanded the matter back for fresh reconsideration, holding as under: -

"In the aforesaid circumstance, in our view, the learned Appellate Authority should have considered the submissions of the petitioner with due application of mind whether the stand of the petitioner's original Auditor - on the basis of which the petitioner believed that it met the NOF requirement of Rs. 200 Lakhs, was correct or not, and; even if not correct, whether the petitioner was deserving of such a drastic action of cancelling its Certificate of Registration for a minor shortfall - which was in any event made up as on 31.03.2018, should have received due consideration by the Appellate Authority. That apart, the petitioner is also entitled to expect similar treatment at the hands of the Authorities, including the Appellate Authority, as was meted out to other NBFCs who had suffered similar cancellation of their Certificate of Registration as NBFCs, and whose cancellation was directed to be reviewed by the Appellate Authority or recalled by the RBI itself.

We, accordingly, set aside the order passed by the Appellate Authority dated 18.11.2019 and remand the matter back to the Appellate Authority to reconsider the matter in the light of our observations hereinabove. The parties will appear before the Appellate Authority on 22.02.2021 for fixing a date for hearing."

8. Further Mr. Singh has also relied on a decision of the High Court of Madras,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 afore-said Single Judge was without jurisdiction. However, at the same time, the Petitioners therein were permitted to file statutory appeal under Section 45-IA(7) of the RBI Act. The SLP preferred before the Apex Court by Nahar Finance & Leasing Ltd. against the afore-noted order was dismissed, ⁴ with the following observations: -

"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."

9. When Nahar Finance & Leasing Ltd. 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.

10. Mr. Ramesh Babu M.R., counsel for RBI, does not dispute that the facts in the instant case are similar to the one which this Court has recently had an occasion to consider in W.P.(C) 5991/2020 [M/s B. H. C. Finance and Leasing Pvt. Ltd. v. Union of India & Ors.] wherein this Court had set-aside the impugned orders therein and remanded the matter for fresh consideration.

The Regional Director, Reserve Bank of India and Ors. v. Nahar Finance & Leasing Limited and Ors., 2019 SCC OnLine Mad 38923.

Vide Order dated 29th July 2019 in SLP (C) No(s).17243-17245/2019.

11. Since the facts of the present petition are similar to the decision of this court in B. H. C. Finance and Leasing (supra), in the opinion of the court, the same course of action would be appropriate. Mr. Singh states that Petitioner is agreeable to RBI re-examining the issue raised in the present petition.

12. Accordingly, the Impugned Orders i.e., the order dated 17th December, 2018 passed by RBI, and order dated 17th April, 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.

13. Considering the fact that the matter will be considered afresh, Petitioner is permitted to file additional representation along with document(s), if any, within a period of two weeks from today, and a decision thereon will be taken within a period of six weeks thereafter.

14. 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.

15. With the above directions, the instant petition is disposed of, along with pending applications.

16. The next date of hearing i.e., 27th September, 2022 stands cancelled.

SANJEEV NARULA, J AUGUST 16, 2022 d.negi