

Shubh Lakshmi Capital Limited vs Reserve Bank Of India And Anr on 29 January, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Rekha Palli

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2384/2020 & CM APPL. 8323-8324/2020

SHUBH LAKSHMI CAPITAL LIMITED

Through: Mr. K.C. Mittal with Mr.
Mittal & Mr. Amit P Sha

Versus

RESERVE BANK OF INDIA AND ANR.

Through: Mr. Gopal Jain, Sr. Adv
Mr. Ramesh Babu & Ms. J
Bharti, Advs. for RBI
Mr. Anil Dabas, Adv for

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 29.01.2021 The petitioner has preferred the present writ petition to assail the order dated 23.10.2018, passed by the respondent No.1/ Reserve Bank of India (RBI) cancelling its registration as a Non-Banking Financial Institution (NBFI).

Under the impugned order, the petitioner's certificate of registration has been cancelled on the ground that it had failed to fulfil the conditions referred to in Clauses (a-g) of sub-section 4 of Section 45-IA of the Reserve Bank of India Act, 1934 having failed to achieve the Net Owned Fund (NOF) of Rs. 200 Lakhs (Rs. 2 Crores) before 01.04.2017.

The petitioner had then preferred an appeal before the Appellate Authority to assail the said decision, which was rejected by the Appellate Authority by the second impugned order dated 18.11.2019. In the appeal, it was contended by the petitioner that it had, in any event, met the NOF requirement of Rs. 200 Lakhs as on 31.03.2018.

Mr. Mittal submits that before issuing the cancellation order, the respondent/RBI had issued a Show-Cause Notice to the petitioner on 12.07.2018, requiring it to show cause as to why action be not initiated against the petitioner for not meeting the NOF requirement of Rs. 200 Lakhs as on

31.03.2017. The petitioner had sent a response to the said notice on 20.07.2018, wherein the petitioner had inter alia stated as under :-

"2. Net owned fund means the paid up Share Capital and Reserve. Reserve includes Capital reserve and Revenue Reserve. As per the balance sheet as at 31/03/2017 the company SHUBH LAKSHMI CAPITAL LIMITED has paid up capital of Rs 12801640, Capital Reserve is Rs 7181360 Security premium is Rs 60 and the Statutory Reserve is Rs 281284. The total sum is Rs 20224344 which is above Rs 2,00,00,000/- Profit and Loss account for the financial year ending as on 31st march,2017 is Rs 1010422 (loss) but this balance will fluctuate every year so it will be difficult to include the profit and loss account for the calculation of net wealth every year. In current year the balance of profit and loss account is expected to Rs 210000/-.

In view of the fact cited above, we request you to kindly drop the above said notice against the company and do not remove company's name from your records and do not cancel the Registration Certificate of the company as the company's Net wealth is above 2 crores."

Mr. Mittal submits that the respondent, however, did not accept the explanation offered by the petitioner in its reply dated 20.07.2018 and proceeded to cancel the registration by the impugned order dated 23.10.2018.

The petitioner then preferred the appeal, as aforesaid, before the Appellate Authority and contended that though it had achieved the required NOF as on 01.04.2016, but could not achieve the same as on 31.03.2017, only due to its Auditor's irregularities. Before the Appellate Authority, the petitioner also placed the position of its NOF as on 31.03.2018 as certified by its Chartered Accountant to show that it clearly met the NOF requirement of Rs. 200 Lakhs on the said date. However, in the impugned order dated 18.11.2019 none of these aspects have been considered by the Appellate Authority.

Mr. Mittal submits that the appellate order suffers from non application of mind to the petitioner's submissions, and the approach of the Appellate Authority has not been consistent as the petitioner's appeal has been rejected without assigning any reason whatsoever. He draws our attention to an order passed by the same Appellate Authority in case F.No.25/204/2018/BOA, in the case of M/s Countwell Management Services Private Limited v. RBI. In the said case, the appellant therein/NBFC admittedly did not meet the NOF requirement of Rs. 100 Lakhs as on 31.03.2016 - on which date its NOF was Rs. 89.72 Lakhs, and did not meet even the NOF requirement of Rs. 200 Lakhs as on 31.03.2017 - on which date its NOF was only Rs. 91.82 Lakhs. Mr. Mittal, thus, submits that there was a much greater shortfall vis a vis the minimum NOF requirement by the appellant therein when compared to the case of the petitioner where the shortfall as on 31.03.2017 - even according to the respondent/RBI, was about Rs. 8.43 Lakhs. Mr. Mittal further submits that in the said case, the plea offered by the appellant therein that it had failed to achieve the NOF requirement as on 31.03.2017 which it subsequently achieved on 14.06.2017, was on account of its Managing Director having been taken ill, which explanation was accepted by the Appellant Authority.

Consequently, the RBI was directed to review its order cancellation the certificate of registration of M/s Countwell Management Services Private Limited, there appellant therein.

In the present case, neither the explanation offered by the petitioner that it had acted as per the advice of its Auditor who had opined that the petitioner met the NOF requirement of Rs. 200 Lakhs as on 31.03.2017 (though not accepted by the RBI), nor the updated position that the petitioner had in any event, met the said requirement as on 31.03.2018 was considered by the Appellant Authority.

Mr. Mittal, has also placed before us the order passed by this Court in W.P.(C) 9702/2019 entitled M/S Juhie (India) Private Limited v/s Reserve Bank of India and Anr. The petitioner therein had also assailed a similar order of cancellation passed by the RBI under Section 45-IA of the RBI Act. He submits that during the pendency of the said petition, the RBI itself reconsidered the matter and decided that it was not necessary to cancel the Certificate of Registration issued to the petitioner therein. He therefore contends that neither the RBI nor the Appellate Authority have been acting consistently in the matter of cancellation of registration of certificate under Section 45-IA of the RBI Act.

On the other hand, Mr. Jain submits that the requirement of meeting the NOF benchmarked of Rs. 100 Lakhs by the cut-off date of 31.03.2016 & of Rs. 200 Lakhs by the cut off 31.03.2017 are sacrosanct and the period for meeting the requirement cannot be extended.

In the present case, we find that the petitioner's stand that it met the NOF requirements as on 31.03.2017, was not accepted by the RBI. Before the Appellant Authority the petitioner sought to explain that it was on the advice of its Auditor that it was under a bonafide impression that it met the requirement of maintaining a NOF of Rs. 200 Lakhs as on 31.03.2017 and that in any case, it met the said requirement as on 31.03.2018. We also find that even if the figures worked out by the RBI accepted, the shortfall in NOF as on 31.03.2017 is only of Rs.8.43 Lakhs.

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.

VIPIN SANGHI, J REKHA PALLI, J JANUARY 29, 2021 kk