

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.18225, 21092, 21993 and 25143 of 2018
W.M.P.Nos.21531, 24753, 25786 29213 and 29214 of 2018

M/s.Nahar Finance and Leasing Limited
rep. By its Managing Director
Mr.Navratanmull Nahar,
No.19/20, G.M.M. Street,
3rd Floor, Sowcarpet,
Chennai-600 079.

.. Petitioner in W.P.No.18225/2018

M/s.Lodha Finance India Limited
rep. By its Managing Director
Mr.L.Gothamchand Lodha,
No.44, Whites Road, Royapettah,
Chennai-600 014.

.. Petitioner in W.P.No.21092/2018

Valluvar Development Finance Pvt Ltd.,
rep. By its Managing Director,
S.Chinnappan,
Kalvikendra Complex,
No.341, Salai Agaram via Koliyanur,
Villupuram-605 103.

.. Petitioner in W.P.No.21993/2018

M/s.Senthil Finance Private Limited
rep. By its Managing Director
Mr.K.Srinivasan,
No.45/165B, West Car Street,
Chidambaram-608 001.

.. Petitioner in W.P.No.25143/2018

Vs.

1. The Regional Director,
Reserve Bank of India,
Department of Non-Banking Supervision,
Regional Office Fort Glacis,
16, Rajaji Salai,
Chennai-600 001. .. Respondent No.1 in W.P.
Nos.18225, 21092 & 25143/18
Respondent in W.P.No.21993/18
2. The General Manager,
Reserve Bank of India,
Department of Non-Banking Supervision,
Regional Office Fort Glacis,
16, Rajaji Salai,
Chennai-600 001.
3. The Assistant General Manager,
Reserve Bank of India,
Department of Non-Banking Supervision,
Regional Office Fort Glacis,
16, Rajaji Salai,
Chennai-600 001. .. Respondents 2 and 3 in W.P.
Nos.18225, 21092 & 25143/18

Prayer in W.P.No.18225/2018 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of the first respondent of the order passed in the matter of Nahar Finance & Leasing Limited issued by the third respondent in his letter DNBS(Che)No.1941/13.23.279/2017-18, dated 08.06.2018, received on 12.06.2018 and quash the same as illegal, contrary to the provisions of the RBI Act and against the principles of natural justice and fair play.

Prayer in W.P.No.21092/2018 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for

the records on the file of the first respondent of the order dated 04.06.2018 passed in the matter of Lodha Finance India Limited issued by the third respondent in his letter DNBS(Che) No.1886/13.23.229/2017-18, dated 05.06.2018 and quash the same as illegal, contrary to the provisions of the RBI Act and against the principles of natural justice and fair play.

Prayer in W.P.No.21993/2018 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records in relation to the order dated 26.07.2018 cancelling the Certificate of Registration No.B-07.00236, dated 05.07.2017 and quash.

Prayer in W.P.No.25143/2018 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of the first respondent of the order dated 25.05.2018 passed in the matter of Senthil Finance Private Limited issued by the third respondent in his letter DNBS(Che) No.1846/13.23.364/2017-18, dated 25.05.2018 and quash the same as illegal, contrary to the provisions of the RBI Act and against the principles of natural justice and fair play.

* * *

For Petitioners in : Mr.T.Pramod Kumar Chopda
all W.Ps

For Respondents : Mr.Chevanan Mohan
in all W.Ps assisted by Ms.A.Rexy Josephine Mary
and Mr.P.Ponappa Bharathi
for M/s.King and Patridge

COMMON ORDER

The challenge in these writ petitions is to the cancellation of the Certificate of Registration issued by the Reserve Bank of India in favour of the petitioners.

2. The writ petitioners are all Non-Banking Financial Companies (in short, "NBFC") and it is their claim that they have been complying with all the statutory regulations and regularly filing various returns and furnishing the required information before the Registrar of Companies. The petitioner companies claim that they are assessed to income tax. These companies claimed that they have also obtained Certificate of Registration (in short, "CoR"), after the amendment of the Reserve Bank of India Act, 1934 (in short, "RBI Act"), which was brought into force with effect from 09.01.1997.

3. There was a prohibition for an NBFC to commence or carry on the business, unless it has a Net Owned Fund (in short, "NOF") of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Reserve Bank of India (in short, "RBI") may, by notification in the Official Gazette, specify. The RBI, by

notification No.DNBR.007/CGM(CDS)-2015, dated 27.03.2015, specified two hundred lakhs rupees as the NOF required for an NBFC to commence or carry on the business. It further provided that an NBFC holding a CoR and having NOF of less than two hundred lakhs of rupees may continue to carry on the business, if such company achieves the NOF of one hundred lakhs or rupees before 01.04.2016 and two hundred lakhs of rupees before 01.04.2017.

4. The second respondent issued separate Show Cause Notices (in short, "SCN") dated 23.04.2018 to the petitioners proposing to cancel the CoR issued under Section 45-IA(6) of the RBI Act and also to initiate penal action under Section 58 B of the said Act for non-compliance of the revised regulatory framework for NBFCs issued on 27.03.2015.

5. The said SCNs were responded to by the petitioners by their respective replies dated 27.04.2018, 27.04.2018, 02.05.2018 and 28.04.2018 contending that they had NOF of Rs.104.50 lakhs, Rs.34.19 lakhs, Rs.79.50 lakhs and Rs.135 lakhs as on 31.03.2017. The petitioner in W.P.No.21993 of 2018 sent a reply stating that they had achieved the required NOF on 23.10.2017 and sent a

communication to the respondent attaching a certificate from the statutory Auditor to support their claim on 24.10.2017 itself. However, the other petitioners submitted that due to significant change in the economy and also the policy of the Government of India during the Financial Years 2016-17 and 2017-18 like de-monetization, implementation of Goods and Services Tax Act, 2017 (GST Act), etc., the entire working of the industry was affected throughout the country, in particular, the finance sector and hence, sought for extension of time till 31.03.2019 to comply with the requirement of enhanced NOF, as per the revised guidelines issued by the RBI.

6. Despite extension of time is sought, without considering the same, the impugned orders were passed by the third respondent/ respondent cancelling the CoR issued in favour of the petitioners, which are now under challenge.

7. The petitions were resisted by the respondents relying upon the amended provision of Section 45-IA of the RBI Act to contend that the petitioners failed to comply with the condition of having the required NOF, as notified by the RBI.

8. The learned counsel for the petitioners challenges the impugned orders firstly on the ground of violation of principles of natural justice. For better appreciation of the case, it would be useful to extract the amended provision of Section 45-IA of the RBI Act as hereinbelow :

"45-IA. Requirement of registration and net owned fund -

(1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without—

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:

Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twentyfive lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a nonbanking financial institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend,

subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this subsection shall in no case exceed six years in the aggregate.

(4) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled: -

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.

(5) The Bank may, after being satisfied that the conditions specified in subsection (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company-

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails-

(a) to comply with any direction issued by the Bank under the provisions of this chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfillment of such condition;

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

(7) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

Explanation. -"

9. The proviso to Section 45-IA(6) specifically states that before the cancellation of the CoR on the ground that the NBFC failed to comply with the provisions of Clause (ii) of Sub-section (6), the company shall be given an opportunity on such terms as the RBI may specify for taking necessary steps to comply with such provision or fulfillment of condition. The second proviso provides for a reasonable opportunity of being heard to be given to NBFC.

10. In these petitions, all these companies were served with the SCNs dated 23.04.2018, wherein, time limit is given for these companies to enhance their NOF. The reason given in the SCN is that the petitioners' companies did not have the required NOF of two hundred lakh of rupees as on 01.04.2017, which is in violation of the provision under which, the companies were permitted to continue their non-banking business. The SCN granted 15 days time to furnish their explanations. The explanations were given by these companies disclosing their NOF and also explaining their financial constrain due to various fluctuations in the Indian economy, in particular, demonitization and also implementation of GST Act. Though the petitioners have given explanation for the SCNs, without affording

them any opportunity of being heard, as contemplated under the proviso to Section 45-IA(6), the impugned orders have been passed cancelling the CoR of the petitioners companies.

11. It is argued that though there is an appellate remedy provided to the Central Government against the cancellation of CoR, as per Section 45-IA(7), the petitioners have chosen to invoke Article 226 of the Constitution of India before this Court contending violation of principles of natural justice.

12. When the statute specifically provides for an opportunity of personal hearing, besides calling for explanation, the respondents ought to have afforded an opportunity, especially, when the petitioners' companies have submitted their explanations in response to the SCNs. The amended provision is very particular that opportunity of being personally heard is mandatory, as the very amendment relates to finance companies, which are already carrying on business also. Non-affording an opportunity of personal hearing and the sudden cancellation of the CoR would cripple the business of the petitioners. In fact, Section 45-IA(7) of the RBI Act, which is an appellate provision, also contemplates personal hearing.

13. The second contention of the learned counsel for the petitioners was that the amended section itself provides for the NBFCs to enhance their NOF by giving them sufficient time to continue to carry on the business and comply with the notification that may be issued by the respondents/RBI.

14. Section 45-IA(3) provides three years time from the commencement or such further period as the Bank may after recording reasons in writing for doing so extend, for the then existing NBFCs to fulfill the requirement of NOF. The upper limit to extend the time should not exceed six years in the aggregate. Admittedly, all the petitioners had NOF above twenty-five lakh of rupees. Their challenge was on account of the notification issued by the RBI on 27.03.2015 requiring the NBFCs to have one hundred lakh of rupees as on 01.04.2016 and two hundred lakh of rupees as on 01.04.2017. The SCNs were issued on 23.04.2018 only. When the notification specifically prescribes the NOF of one hundred lakh of rupees as on 01.04.2016, the respondents had given the NBFCs time to enhance the NOF. On 01.04.2017, the petitioners' companies ought to have the NOF of two hundred lakh of rupees. On the date of the amended

provision, that is 09.01.1997, the NBFCs were required to have the CoR and to have NOF of not less than twenty-five lakh of rupees to commence or carry on business. The RBI was empowered to raise the NOF to two hundred lakh of rupees. Those NBFCs, who were already registered with the RBI, were also directed to apply for a fresh registration. The NBFCs, whose NOF was less than twenty-five lakh of rupees as on 09.01.1997, were allowed to continue their business for a period of three years from such commencement. Thereafter, at the request of the NBFCs, the Bank may extend the time by recording reasons in writing. However, such extension of time should not exceed six years in aggregate.

15. When admittedly the petitioners' companies were registered and they had been having the required NOF till the notification that was issued on 25.03.2015, the renewed period of six years would commence only from the said date. The first three years, as contemplated under Section 45-IA(3)(i) would come to an end on 31.03.2018. In fact, the petitioner in W.P.Nos.18225, 21092 and 25143 of 2018 in their replies to the SCNs had explained their predicament and sought for extension of time till 31.03.2019, as the proviso permits the NBFCs to continue their business for a period of six

years in the aggregate, subject to the extension of time by the Bank. The respondents/RBI, instead of considering and extending the time, had cancelled the CoR on the ground that the petitioners' companies had failed to achieve the specified NOF in violation of the condition mentioned in the notification. The impugned orders further states that the petitioners' companies had not furnished the statements, etc. as required by the Bank as per Section 45 M of the Act. The impugned orders though state that reasonable opportunity to make submissions to the Bank was given to the companies and its Directors, it is not so.

16. Be that as it may, when the replies to the SCNs specifically seek extension of time by an year from the expiry of three years, the respondents/RBI had not considered the same. The statute had given six years only considering the nature of business to pump-in the NOF. The aggregate of six years given would only indicate that the power to extend vests with the Bank has to be exercised judiciously. But in the cases on hand, the respondents Bank have not considered the request of the petitioners' companies and had blindly issued the impugned orders cancelling the CoR without application of mind.

17. For the afore-stated reasons, the impugned orders need interference. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Resultantly, the respondents are directed to restore CoR to the petitioners and also extend time to the petitioners to comply with the requirement under Section 45-IA of the RBI Act till 31.03.2019. If the petitioners fail to comply with the said requirement within the period extended above, it is open to the respondents to take action in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.01.2019

Speaking / Non-speaking Order
Index : Yes/No
Internet : Yes
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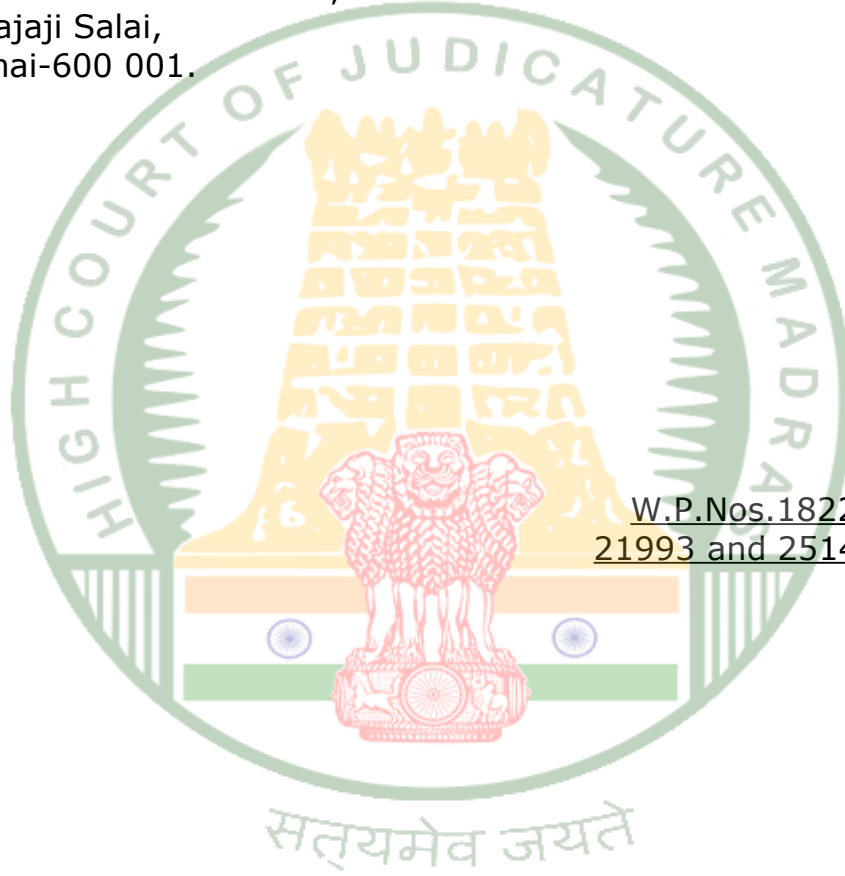
To

1. The Regional Director,
Reserve Bank of India,
Department of Non-Banking Supervision,
Regional Office Fort Glacis,
16, Rajaji Salai, Chennai-600 001.
2. The General Manager,
Reserve Bank of India,
Department of Non-Banking Supervision,
Regional Office Fort Glacis,
16, Rajaji Salai, Chennai-600 001.

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3. The Assistant General Manager,
Reserve Bank of India,
Department of Non-Banking Supervision,
Regional Office Fort Glacis,
16, Rajaji Salai,
Chennai-600 001.



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