(2007) 08 DEL CK 0102

In the Delhi High Court

Case No : Writ Petition (C) 8976 of 2005

Excel Business Links P. Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45IA, 45IA(3)

Citation : (2007) 08 DEL CK 0102

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Upamanyu Hazarika and D. Phookan, for the Appellant; Ramesh Babu M.R., Manisha Singh and Srinjoy Banerjee, Rajiv Mehra, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Rule. Mr. Ramesh Babu, Mr. Srinjoy Banerjee and Mr. Rajiv Mehra waive notice of rule. With consent of parties, the matter was heard finally.

2. The petitioner seeks a direction for quashing of decisions of the Reserve Bank of India (RBI) dated 4th September, 2000 and an order of the Appellate Authority constituted under the Reserve Bank of India Act dated 13th February, 2003.

3. The appellant is a non-banking financial institution. After the amendment of the Reserve Bank of India (Amendment) Act, 1934, by Act 23 of 1997 (which was brought into force on 09.01.97), non-banking financial institutions were prohibited from conducting business without obtaining certificate of registration under Chapter III B of the Act. One of the condition was that the institution should have had a net owned fund of Rs. 25 lakhs or such other amount not exceeding Rs. 200 lakhs as the RBI notified. This condition was to an extent relieved by a "window" provision, namely, Section 45IA(3) that allowed existing non-banking financial institutions with net owned fund of less than Rs. 25 lakhs to function for three years from 09.01.97 provided that such company, within

three months of fulfilling the requirement of possessing net owned fund informed RBI for that purpose.

4. It is not disputed that the petitioner applied for the grant of license in terms of Section 45IA on 5th July, 1997. Its application continued to remain pending. It is claimed that on 2nd January,2000 the petitioner informed the RBI that it had "almost" achieved the maximum NOF required for grant of certificate.

5. Mr. Hazarika, learned Counsel relied upon on the copy of a subsequent letter dated 20th April, 2000 of the petitioner. It was claimed that on 26th May, 2000 the Bank was informed that the net owned fund (NOF) stipulated under the Act i.e. Rs. 25 lakhs had been achieved. A certificate was requested for. Learned Counsel also relied upon copies of inter se correspondence between the petitioner and the Bank by which the RBI had sought for details such as audit balance sheet and other particulars, in support of the petitioners'' claim that its institution had achieved the stipulated conditions.

6. Learned Counsel contended that the petitioner was not afforded a reasonable opportunity of hearing before the RBI issued the rejection order on 04.09.2000. Counsel contended that the petitioner''s office had shifted and the respondent was duly informed about that. The order was appealed against. Counsel contended that the Appellate Authority was informed about the change of address of the petitioner on 5th December, 2003. Nevertheless, the Appellate Committee proceeded and made the impugned order rejecting the appeal without affording a reasonable opportunity.

7. Learned Counsel for the RBI resisted the petition. He relied upon the text of Section 45IA and contended that the three year period expired on 8th January, 1997. Counsel contended that the letter dated 02.01.2000 relied upon was not part of the RBI record and has been produced in these proceedings for the first time. He, however, did not dispute that the subsequent letter dated 26th May, 2000 was received by the respondent and some inter se correspondence was exchanged between the parties. Nevertheless, counsel contended that in terms of Chapter III B, there was an absolute bar in consideration of the such application since admittedly it recorded that the requisite condition had not been achieved within the time. The NOF was allegedly achieved after the expiry of the three years period.

8. Section 45IA, to the extent it is relevant is extracted as below:

45IA. 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 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 the 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 twenty-five lakh rupees may, for the purpose of enabling such company to fulfill the requirement of the net owned fund, continue to carry on the business of a non-banking 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 fulfillment:

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

9. The above provision was inserted by an amendment made in 1997; the amendment was brought into force on 09.01.97. The object of inserting Chapter III B was apparently to bring within the fold of RBI regulation all non-banking financial institutions and ensure their accountability to depositors. Section 45IA is a non obstinate clause and enacts an absolute bar in respect of functioning of non-banking financial institutions which do not possess NOF of less than Rs. 25 lakhs. That bar is lifted to an extent in the case of NBFCs in what is termed a window period of three years. That window period expired on 08.01.2000. In this case, the claim of the petitioner is that it achieved the stipulated condition of having a NOF of Rs. 25 lakh sometime in January, 2000. Even if the text of that letter were to be taken into consideration - although the document is disputed - the claim is not that the NOF achieved was Rs. 25 lakhs, but that the petitioner had attained "almost" Rs. 25 lakhs. In these circumstances, the petitioner''s claim of being eligible u/s 45IA(3) as an existing NBFC entitled to carry on its business itself is rather vague. As far as the issue as to whether the Bank was obliged to consider the request for certificate is concerned, it is not disputed that the documents admitted by the Bank relate to the period May, 2000 onwards. The mere circumstance that the Bank engaged in certain correspondence did not,

in my opinion, itself entitle the petitioner to claim that the RBI was obliged to permit it to function beyond the window period. As far as the application of the proviso is concerned, facially it carves out a qualification as it permits functioning of NBFCs which apply within the time period indicated (three years, before 08.01.2000) for a maximum period of six years. The petitioner clearly did not fit that description.

10. As regards the complaint of violation of principles of natural justice is concerned, I am of the opinion that the allegations in that regard are vague and unspecific. No date has been mentioned as to when the petitioner had shifted the office. A bland allegation has been made that the appellate body did not give sufficient opportunity. On the other hand, a plain reading of the order would indicate that a notice had been issued on 04.08.03. For the above reasons, the claim in these proceedings cannot succeed.

11. The petition is dismissed as unmerited. No costs.

