
(2003) 07 CAL CK 0011
In the Calcutta High Court
Case No : C.P. No. 342 of 2002

Prudential Capital Markets Ltd.

APPELLANT

Vs

Reserve Bank of India

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45IA, 45MC

Citation : (2004) 2 BC 88 : (2003) 3 CALLT 333 : (2005) 123 CompCas 764 : (2004) 55 SCL 591

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Soumen Sen, for the Appellant; Pratap Chatterjee and Jishnu Saha, for the Respondent

Judgement

A.K. Banerjee, J

1. This winding up petition was filed by Reserve Bank of India (hereinafter referred to as "RBI") u/s 45MC of the Reserve Bank of India Act, 1934 (hereinafter referred to as the "said Act") inter alia, praying for winding up of Prudential Capital Markets Ltd. (hereinafter referred to as the "said company"). The said company was incorporated in March, 1987 and became a public limited company in January, 1991. The main objects of the said company of the said company are as follows: -

"1. To carry on the business of an investment trust company and to underwrite, sub-underwrite, to invest in and acquire and hold, sell, buy or otherwise deal in shares, debentures, debenture-stocks, bonds, units, obligations and securities, issued or guaranteed by Indian or foreign Governments, State, Dominions, Sovereigns, Municipalities or Public Authorities or Bodies and shares, stocks, debentures, debenture-stocks, bonds, obligations and securities issued and guaranteed by any company, Corporation, firm or person whether incorporated or established in India or elsewhere.

2. To act as financial, consultants, management consultants and provide, advice services, consultancy in various fields, general administrative secretarial, commercial, financial, legal, economic, labour, industrial, public relations, scientific, technical, direct and indirect taxation and other levies, statistical, accountancy, quality control and data processing.

3. To take part in the formation, supervision or control of the business of operations of any Company or undertaking and for that purpose to act as an issue House, Registrars and Share Transfer Agents, Secretaries, Financial Advisers or Technical Consultants or in any other capacity and to appoint and remunerate any directors, administrators or accountants or other experts or agents.

4. To receive money on deposits at interest or otherwise for fixed periods, and to lend money on any terms that may be thought fit and particularly to customers or other persons or corporations having dealings with the Company. The Company shall not carry on any business of banking as defined by the Banking Regulation Act, 1949, or any statutory modification thereof.

5. To manage investment pools, mutual funds, syndicates in shares, stocks, securities, finance and real estate."

2. As the said company was a non banking financial company it was to obtain necessary licence from RBI u/s 45IA of the said Act. The company applied for licence from RBI for carrying out its business activities as a non-banking financial company.

3. On an inspection caused by RBI it was found that it had violated the various provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 as on 31st March, 1996. RBI issued show cause notice on 14th July, 1998. RBI, by a letter dated 30th October, 1998 rejected the application of the company for a certificate and registration u/s 45IA of the said Act, 1934. The said order was communicated to the company by a letter RBI dated November 6, 1998.

4. Being aggrieved by the said order of RBI an appeal was preferred by the said company to the Appellate Authority under the said Act. The appellate authority by its order dated 25th May, 2001 dismissed the appeal as appears from the xerox copy of the order filed in Court by the petitioner in course of hearing.

5. Since the company was not having any licence to carry out its commercial activity u/s 45MC of the said Act the present application was made by RBI inter alia praying for winding up of the company.

6. The company in its Affidavit-in-Opposition filed on 30th January, 2003 opposed the said prayer for winding up. The principal contentions of the company were as follows: -

(i) Since the application for registration was rejected by RBI and an appeal was

pending from the said order of rejection this Court should wait till the disposal of the appeal.

(ii) Even if the company ceased to be a non-banking financial company in absence of a proper registration it was entitled to carry on other business activities in terms of the Memorandum of Association.

(iii) There had been some proceedings initiated before Company Law Board wherein the company was directed to make repayment of the deposits made by various depositors in instalment. Pursuant to such order the company was collecting money from its various debtors and were paying to the depositors. Order of winding up would forestall such process.

7. For proper appreciation of fact and law involved herein Section 45MC and 45IA of the said Act, 1934 being relevant herein are quoted herein below: -

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

(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 or 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, fulfillment 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, after being satisfied that the conditions specified in Sub-section (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 canceling 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 fulfill any of the conditions referred to in Clause (iii) the Bank, unless it is of the opinion that the delay in canceling 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 provisions 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.--For the purposes of this section. -

(1) "Net owned fund" means -

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom -

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing-

(1) investments of such company in shares of -

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other non-banking financial companies; and

(2) The book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with -

(i) subsidiaries of such company; and

(ii) companies in the same group. to the extent such amount exceeds ten per cent of (a) above.

(II) "Subsidiaries" and "companies in the same group" shall have the same meanings assigned to them in the Companies Act, 1956"

45MC. Power of Bank to file winding up petition - (1) the Bank, on being satisfied that a non-banking financial company, -

(a) is unable to pay its debt: or

(b) has by virtue of the provisions of Section 45-IC become disqualified to carry on the business of a non-banking financial institution; or

(c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

(d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of the depositors of the company.

may file an application for winding up of such non-banking financial company under Companies Act, 1956.

(2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under Sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision."

In view of the aforesaid provision RBI is entitled to maintain winding up application against a Non-Banking Financial Company in four eventualities: -

(i) Company is unable to pay its debts.

(ii) Company becomes disqualified to carry on business as a Non-Banking Financial Institution by virtue of provision of Section 45-IA.

(iii) Company is prohibited by RBI from receiving deposits by any order that is in force for a period not less than three months.

(iv) Existence of the said company is detrimental to public interest or to the interest of the depositors.

8. In the instant case RBI made investigation and ultimately found that the company was not entitled to carry on business as Non-Banking Financial Company and as such registration was refused. Since the registration was refused by RBI the company became disqualified to carry on business as Non-Banking Financial Company in terms of Section 45-IA. An appeal was preferred by the company which stood dismissed in 2001. The company accepted the order of the appellate authority by not taking any step for quashing the said order. Hence, as on date, company is disqualified to carry on Non-Banking Financial Business. Hence, no fruitful purpose would be served to give this company permission to carry on its business activities.

9. It was strenuously argued on behalf of the company that even if the company ceased to carry on Non-Banking Financial Business they could carry on other activities in terms of the other objects of the company. The main objects of the company would appear from the Memorandum and Articles of Association annexed to the petition as well as in the Affidavit-in-Opposition. I have perused the objects for which the said company was incorporated. On a plain reading of the objects and taking a sum total of it, it would appear that the said company was nothing but an investment company. The principal business of the company was to borrow money from public by accepting public deposits and to invest the same in shares and in other form. The said business activity, in my view, squarely comes within the mischief of Section 45-IA of the said Act, 1934. Hence, once the company becomes disqualified to carry on Non-Banking Financial Business there could be no other activity left open to the company to carry on. From the records annexed to the pleadings it would appear that the RBI was compelled to take such action on the basis of complaints made by various depositors with regard to repayment of public deposits. The company themselves admitted the factum of non-payment of deposits that had resulted in protracted litigation before the Company Law Board. Hence, in my view, existence of the company in the commercial world would be contrary to public interest.

10. It was also contended on behalf of the company that in case an order of winding up is passed it would disturb the regular process of repayment of the deposits in terms of the order of Company Law Board. In my view, once the company is wound up u/s 45MC of the said Act, 1934, the general provision relating to winding up provided in the Companies Act, 1956 would come into operation and repayment of liability of the company after winding up has already been provided for in the said Act of 1956. Hence, such submission on behalf of

the company is also not tenable.

11. Since the order of the appellate authority was not brought in by the parties the matter was time to time adjourned by me. Ultimately learned counsel appearing for the petitioner filed the order of the appellate authority. Hence the ground that this Court should not dispose of the matter till the disposal of the appeal pending before the appellate authority is also not tenable.

12. In the result, the application succeeds. The Prudential Capital Markets Limited having its registered office at Tobacco House, 2nd Floor, 1 & 2, Old Court House Corner, Kolkata is wound up by this Court under the provision of Section 45MC of the said Act, 1934 read with the provisions of the Companies Act, 1956. The Official Liquidator attached to this Court is directed to take charge of the assets of the said company forthwith. RBI is also directed to render necessary assistance through its competent representatives to the Official Liquidator in taking possession of the assets of the company as well as for collecting the book debts of the company.

Since the winding up proceeding is disposed of by the foregoing Judgment and order the interim application being CA No. 361 of 2000 is also disposed of without passing any order on the same.

There would be, however, no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.