IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.989 of 2013

Arshdeep Finance Ltd. represented by its Zonal Manager Syed Shahnawaz Warsi …… Petitioner

Versus

1. The State of Jharkhand
2. The Deputy Commissioner, Koderma
3. Sub-Divisional Officer, Koderma
4. Registrar of Companies, National Capital Territory of Delhi and Haryana, Government of India, Ministry of Corporate Affairs
5. Reserve Bank of India, Department of Non Banking Supervision, New Delhi Regional Office
6. Securities and Exchange Board of India (SEBI), Eastern Region, Kolkata (West Bengal)
7. Reserve Bank of India through its Regional Director Office, Patna

……. Respondents

with

W.P.(C) No.1154 of 2013

Oak India Multistate Credit Cooperative Society Ltd. through its Director Mriganka Sekhar Chakraborty …… Petitioner

Versus

1. The State of Jharkhand through Deputy Commissioner, Dhanbad
2. Sub-Divisional Officer, Dhanbad
3. Superintendent of Police, Dhanbad
4. Union of India through Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation, New Delhi
5. Central Registrar of Cooperative Societies, National Cooperative Union of India, New Delhi
6. Regional Manager, Eastern Regional Office, Kolkata, West Bengal
7. Reserve Bank of India through its Regional Director, Regional Office Patna

……. Respondents

with

W.P.(C) No.1160 of 2013
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1. Basil International Limited represented by its Regional Manager Anand Kumar Mishra
2. Anand Kumar Mishra
3. Kamlesh Kumar Tiwary …… Petitioners

Versus

1. The State of Jharkhand
2. Sub-Divisional Officer, Dhanbad
3. Deputy Superintendent of Police, Dhanbad
4. Circle Officer, Nirsa, Dhanbad

5. Officer Incharge, Nirsa, Dhanbad
6. Union of India through Ministry of Corporate Affairs through its Secretary at New Delhi
7. Registrar of Companies Cum Official Liquidator (Bihar + Jharkhand) Ranchi
8. Securities and Exchange Board of India through its Assistant General Manager, Investment Management Department, New Delhi ……. Respondents

with

W.P.(C) No.1196 of 2013

Oak India Multistate Credit Cooperative Society Ltd. through its Director Mriganka Sekhar Chakraborty …… Petitioner

Versus

1. The State of Jharkhand through Deputy Commissioner, Jamtara
2. Sub-Divisional Officer, Jamtara
3. Superintendent of Police, Jamtara
4. Union of India through Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation, New Delhi
5. Central Registrar of Cooperative Societies, National Cooperative Union of India, New Delhi
6. Regional Manager, Eastern Regional Office, S.E.B.I., L&T Chambers Kolkata, West Bengal
7. Reserve Bank of India, through its Regional Director, Regional Office Patna ……. Respondents

with

W.P.(C) No.1479 of 2013

Dhanolty Developers Limited through one of its Director Shri Sanjay Walia …… Petitioner

Versus

1. The State of Jharkhand
2. The Deputy Commissioner, Deoghar
3. The Sub Divisional Officer, Deoghar
4. Union of India, through Secretary, Ministry of Corporate Affairs, New Delhi
5. Registrar of Companies-cum-Official Liquidator (Bihar and Jharkhand)
6. S.E.B.I. through its Regional Manager, Regional Office, Kolkatta
7. Reserve Bank of India, through its Regional Director, Regional Office, Patna ……. Respondents

with

W.P.(C) No.1912 of 2013

Rainbow Multistate Credit Co-Operative Society Limited through its President Shri Dhiren Rawani …… Petitioner

Versus

1. The State of Jharkhand through its Chief Secretary, Project Building, Dhurwa, Ranchi
2. The Department of Agriculture & Co-operation, Ministry of Agriculture, Government of India, New Delhi
3. The Joint Secretary, Department of Institutional Finance & Programme Implementation Limited, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi
4. The Securities & Exchange Board of India through its Chief General Manager, Kolkata
5. The Reserve Bank of India, through its General Manager, Adharshila Complex, Gandhi Maidan, Patna
6. The Inspector General of Police (Economic Offences), C.I.D., Jharkhand Ranchi
7. The Deputy Commissioner, Dhanbad
8. The Additional Collector (Law & Order), Dhanbad
9. The Senior Superintendent of Police, Dhanbad ……. Respondents

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CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioners : Mr. Indrajit Sinha, Advocate
: Mr. Arpan Mishra, Advocate
: Mr. Rahul Lamba, Advocate
: Mr. Mahesh Tiwari, Advocate
: Mr. Sachin Kumar, Advocate
For the Resp.-State : Mr. D.C. Mishra, AC to Sr. SC-III
: Mr. Prabhat Kr. Sinha, SC-IV
For the Resp.-S.E.B.I. : Mr. Anil Kr. Sinha, Sr. Advocate
For the Resp.-R.B.I. : Mr. Pandey Neeraj Rai, Advocate
: Mr. Rohit Ranjan Sinha, Advocate

09/10.02.2020 In these batch of writ petitions since involved similar issue, as such, the same have been ordered to be heard together, accordingly, the matters are heard and are being disposed of by this common order.

2. Learned counsel for the petitioners in each cases have advanced their arguments.

3. Learned counsels appearing for the respondent-State, respondent-Securities and Exchange Board of India in short 'S.E.B.I.' and respondent-Reserve Bank of India, have been heard at length.

4. The prayers made in these writ petitions are for direction in the nature of writ of mandamus and prohibition to handover the key of the office of the petitioners and to allow the petitioners to continue its lawful financing business from the concerned officer and not to

interfere with in any manner in continuing the lawful financing business from the office of the petitioners which had been sealed by the concerned authority without serving any proper notice and without giving any opportunity to the representative of the petitioners to place their defence.

5. The brief facts of the case as per the pleading made in the writ petitions are required to be enumerated herein which reads as hereunder:-

The petitioners' companies herein are doing the business i.e., fixed deposit scheme, issuance of debenture and other financing scheme by following the lawful financing procedure from all their branches, zonal and corporate offices.

The petitioner's unit i.e. Arshdeep Finance Ltd.(in W.P.C. No.989 of 2013) has got certificate of registration (CoR) from the Reserve Bank of India, Department of Non-banking supervision, New Delhi, wherein the Reserve Bank of India in exercise of power conferred under Section 45-IA of the Reserve Bank of India Act, 1934, has been granted such certificate to carry out the business of non-banking financial institution.

The petitioners after getting necessary licenses and permissions from the competent authorities for carrying out the business in pursuance to the memorandum and articles of associations have started the financing business but without any complaint whatsoever and without providing opportunity of hearing to the petitioners, the authorities have taken restrainment measures by sealing the office and restraining the petitioners' units in carrying out their business and therefore, the writ petitions have been filed.

6. It has been contended by the learned counsel appearing for the petitioners that in absence of any complaint from any quarter, the action which has been taken by sealing the office, is not proper and such decision has been taken without providing any opportunity of hearing to the petitioners, hence, the action of the respondents being arbitrary, therefore, the direction may be passed for allowing the writ petitioners to carry out their business.

7. The State of Jharkhand, Reserve Bank of India and Securities and Exchange Board of India have put their appearance through their counsels.

8. The State of Jharkhand has filed affidavit, wherein *inter-alia* stand has been taken by making reference about the decision of Department of Institutional and Finance and Programme Implementation, Government of Jharkhand, Ranchi by issuing the guideline to all the Deputy Commissioners of the District for general supervision and inspection of the companies which are engaged in receiving deposits from general public on the ground of paying interest or in lieu of selling land to the depositors and also for doing financial business.

The officers, of the different districts in pursuance to the said guideline, has initiated an inquiry by issuing notice upon the respective companies to appear before the concerned authorities along with the documents but no such documents have been provided, however, reply to the show cause notice which has duly been considered by the concerned authority, reports were submitted before the Deputy Commissioner, of the concerned districts, in return, Deputy Commissioner has submitted a final inquiry report before the Commissioner North Chotanagpur Division, Hazaribagh but in some of the cases, the Deputy Commissioner after inquiry has directed to seal the outlets of the companies and thereafter FIRs were lodged against the companies.

Further, stand has been taken that the business of receiving money from the general public was being done to misappropriate the public money by misleading them.

The respondent-Securities and Exchange Board of India (S.E.B.I) has also filed affidavit (in W.P.(C) No.989 of 2013), wherein the stand has been taken to the effect that according to the S.E.B.I., *prima-facie* it appears that there is violation of S.E.B.I. Act, 1992 but final decision could only be taken after production of relevant document and for which, notices have been issued to the petitioners on 23.04.2013.

The respondent-Reserve Bank of India has filed affidavit (in W.P.(C) No.989 of 2013) stating *inter-alia* therein that the petitioners'

companies have violated several provisions of the R.B.I. Act and directions/guidelines issued therein including unauthorized acceptance of public deposits. The petitioners' companies, therefore, have prohibited from acceptance of public deposits selling or transferring its property and assets in any manner under Sections 45MB(1) and 45MB(2) of the R.B.I. Act w.e.f. 7th December, 2012. The prohibitory order has been advertised in the local print media of Ranchi on 16th June, 2013 and also states where the petitioners' companies have been found to be collecting public deposits. An inquiry into the affairs of the petitioners' companies were conducted by Kolkata Office of R.B.I., wherein it has been reported that the petitioners' companies have violated the instructions contained in para-3 of Notification No.DNBS (PD) 208/CGM(ANR)-2009 dated 17th September, 2009 which requires prior written approval of R.B.I. before any takeover or acquisition of control of a deposit taking Non-Banking Financial Companies(NBFCs). Instead of seeking prior approval for change in management, the companies sent a copy of an advertisement published in Jansatta & Financial Express dated 23rd September, 2011 regarding the same on 16th October, 2012.

The Reserve Bank of India has also taken ground about issuance of show cause notice asking reply about cancellation of certificate of registration but no satisfactory reply was provided. It has also been stated that the R.B.I. has not accorded permission to the petitioners' companies to open any outlet nor it has got any statement in lieu of advertisement (SILA) approved by the Bank to accept public deposits. The petitioners' companies had issued advertisements for raising public deposits and since the petitioners' companies were not authorized to open outlets outside Delhi, it violated instructions contained in para-4A of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998. Further, it did not get any SILA approved from the Bank, thereby violating Para-4(13)(ii) of above notification. The companies have also not furnished necessary information as required in terms of para-4(13)(i) of the above directions.

Further, reference about prohibitory order dated 07.12.2012 prohibiting it from acceptance of deposits and alienation of assets, have been made.

Further submission has been made about issuance of show cause notice asking as to why certificate of registration (CoR) issued to the companies should not be cancelled.

9. Rejoinder has been filed on behalf of the petitioners denying the ground taken in the respective affidavits filed by the respondents.

10. This Court has heard the learned counsel for the parties at length and after appreciating their arguments have found the fact which is admitted to the extent that the petitioners' are claiming to allow them to carry out the business of financial transaction by accepting the deposits in the nature of fixed deposit scheme, issuance of debenture and other financing scheme.

11. It has further been found about the registration of certificate issued by the Reserve Bank of India as under Section 45-IA of the R.B.I. Act, 1934 and therefore, reference of provision of Section 45-IA of the R.B.I. Act, is required to be made which reads as hereunder:-

"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 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 fulfilment:

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 interests 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 and economic growth 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 interests of the depositors.

(5) The Bank may, 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 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 term as the Bank may specify for taking necessary steps to comply with such provision or fulfilment 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."

It is evident from the aforesaid provision which contains certain pre-conditions granting certificate of registration for running of Non-Banking Financial Company i.e., obtaining a certificate of registration issued under this Chapter and having the net owned fund of twenty-five lakh rupees or such other notification in the Official Gazette, specify, every non-banking financial companies shall make an application for registration to the Bank in such form as the bank may specify, also with the provision to cancel a certificate of registration as under the provision of 45-IA(6), if such companies ceases to carry on the business of a non-banking financial institution in India or has failed to comply with any condition subject to which the certificate of registration had been issued to it or at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4) or fails to comply with any direction issued by the bank under the provisions of this Chapter or 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 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 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.

12. It requires to refer herein the objects and intents of the Reserve Bank of India, Act 1934 which is an Act to constitute a Reserve Bank of India to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in (India) and generally to operate the currency and credit system of the country to its advantage.

The amendment Act has come in the year 1997 being Amendment Act 23 of 1997 keeping the objects and reasons to regulate the activities of the non-banking institutions and unincorporated bodies receiving deposits are regulated in terms of the provisions of Chapters III-B and III-C of the Reserve Bank of India Act, 1934 respectively.

Further by way of the Reserve Bank of India (Amendment) Ordinance, 1997 which provides several safeguards for Non-Banking Financial Companies (NBFCs) so as to ensure their viability. These include compulsory registration of the NBFCs with Reserve Bank of India (RBI), stipulation of minimum net owned funds requirement, creation of reserve fund and transfer of certain percentage of profits every year to the fund and prescription of liquidity requirement. R.B.I. has also been vested with powers to issue guidelines encompassing aspects such as income recognition, accounting standards, provision for bad and doubtful debts, capital adequacy, etc., which are intended to ensure sound and healthy operations and the quality of assets of these companies. The R.B.I. is also empowered to issue directions to the auditors of NBFCs, to order special audit of NBFCs, prohibit acceptance of deposits by NBFCs, and to make application for winding up of NBFCs.

13. The reference of the Securities and Exchange Board of India Act, 1992 is also required to be made herein which has been enacted in

order to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

The legislation has been made by way of amendment being Amendment Act 59 of 2002 with the objects and reasons for establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

14. This Court, therefore, is of the view after going through the objects and intents of the Reserve Bank of India Act, 1934 which stipulates about the operation of the non-banking institutions and unincorporated bodies receiving deposits are regulated in terms of the provisions of Chapters III-B and III-C while on the other hand, the objects and intents of the Securities and Exchange Board of India Act, 1992 is to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto, meaning thereby, if any non-banking financial companies have been created that must be within the scope of the Reserve Bank of India Act, 1934 and only after its creation in terms of the provision of Reserve Bank of India Act, 1934, the question of protecting the interests of the investors in securities and to promote the development, will come into play.

15. This Court, on the basis of the aforesaid legal position has proceeded to examine the factual aspects in order to come to the conclusion about the legality and propriety of the impugned decision of the authorities, therefore, this Court is of the opinion to first look into the creation of the petitioners' companies as to whether the same have been created in pursuance to the provision of Reserve Bank of India Act, 1934 or not?

16. It is evident from the material available on record in connection with W.P.(C) No.989 of 2013, wherein it has been stated that the petitioner company has violated several provisions of the Reserve

Bank of India Act, 1934 and directions/guidelines issued thereunder including unauthorized acceptance of public deposits.

It has also been referred that the petitioner company has violated the instructions contained in para-3 of Notification No.DNBS (PD) 208/CGM(ANR)-2009 dated 17th September, 2009 which requires prior written approval of R.B.I. before any takeover or acquisition of control of a deposit taking NBFC but instead of seeking prior approval for change in management, the company sent a copy of an advertisement published in Jansatta & Financial Express dated 23.09.2011 regarding the same on 16.10.2012.

The petitioner company has filed response to the aforesaid counter affidavit but no rebuttal reply to the statement at para-4 has been made, therefore, this Court is of the view that guidelines/instructions issued by the Reserve Bank of India has seriously been flouted and hence, the operation of the financial company cannot be said to be legal and in that pretext if any prohibitory decision has been taken, the same according to the considered view of this Court cannot be said to be faulted with.

17. So far as the writ petitions being W.P.(C) No.1160 of 2013 and W.P.(C) No.1479 of 2013 are concerned, it would be evident from the stand taken in the counter affidavit filed by the respondent-Reserve Bank of India, wherein the petitioners' companies have not been registered as required to be registered under the provision of Section 45-IA of the Act, 1934 and therefore, acceptance of any deposits by the investors will be said to be in violation of the provision of Reserve Bank of India Act, 1934.

18. So far as the writ petitions being W.P.(C) No.1154 of 2013 and W.P.(C) No.1196 of 2013, it would be evident from the counter affidavit filed on behalf of the respondent-Reserve Bank of India that the certificate of registration has not been obtained under the provision as contained under Section 45-IA of the Reserve Bank of India Act, 1934 rather the companies have been registered under the Society Registration Act and therefore, this Court is of the considered view that in absence of any certificate of registration(CoR) under the

Reserve Bank of India, Act 1934, these financial institutions cannot be allowed to run the activities by accepting the deposits etc.

19. So far as W.P.(C) No.1912 of 2013, it appears from the counter affidavit filed on behalf of the respondents that the said company is also not registered under the provision of Section 45-IA of the Reserve Bank of India Act, 1934.

20. Mr. Anil Kumar Sinha, learned senior counsel appearing for the respondent-S.E.B.I. has submitted that since these financial institutions are not running in pursuance to the provision of Reserve Bank of India Act, 1934, therefore, keeping the objects and intents of the Securities and Exchange Board of India Act, 1992, even if any inquiry would be conducted the factual scenario pertaining to non-registration under the Reserve Bank of India Act, 1934, will not be changed.

21. This Court after considering the aforesaid submission is in agreement thereto as because so long as these institutions are not registered under the provision of Reserve Bank of India Act 1934, there cannot be any meaning of regulating by virtue of S.E.B.I. Act, 1992.

The reason being that when the constitution of the financial company itself *dehors* the rule, there is no question of regulating it under the S.E.B.I. Act, 1992.

It has also been informed that with respect to the affairs of these companies, FIRs have been instituted and now the matter is being looked into by the Central Bureau of Investigation.

22. This court in view of the entirety of the facts and circumstances and as per the discussion made hereinabove, is of the considered view that the prohibitory order passed by the authority in pursuance to the inquiry conducted by the concerned authority and if such decision has been taken, the same cannot be faulted with.

23. In view of such finding, this Court is not inclined to pass any positive direction.

24. Accordingly, these writ petitions fail and are dismissed.

(Sujit Narayan Prasad, J.)

Rohit/-