

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 16604 of 2020**

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THE KAMDHENU FINANCE COMPANY PRIVATE LIMITED  
Versus  
UNION OF INDIA

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Appearance:

YUVRAJ G THAKORE(7785) for the Petitioner(s) No. 1

MR AMAR N BHATT(160) for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 07/12/2022****ORAL ORDER**

1.Heard learned advocate Mr. Yuvraj G. Thakore  
for the petitioner and learned advocate  
Mr. Amar N. Bhatt for respondent No.2.

2.By this petition under Articles 226 and 227  
of the Constitution of India, the petitioner  
has challenged the order dated 19.07.2018  
passed by respondent No.2-Reserve Bank of  
India under section 45-IA of the Reserve Bank  
of India Act, 1934 ['RBI Act' for short] on  
failure of the petitioner to achieve the Net  
Owned Fund ['NOF' for short] of Rs. 200 lakhs

by 30.03.2017 as well as the order dated 29.04.2020 passed by respondent No.1-Union of India, Ministry of Finance upheld the proceedings confirming the order of the Reserve Bank of India.

3. Brief facts of the case are as under:

3.1 The petitioner company - Kamdhenu Finance Company Private Limited was originally incorporated on 08.07.1997 as Vidyasagar Fincap Private Limited with the Registrar of Companies, Madhya Pradesh. Thereafter the Registered Office of the petitioner company was shifted from Madhya Pradesh to Gujarat and the petitioner company was allotted new registration number being CIN-U67120GJ1997PTC075327. The name of the petitioner company was changed from Vidyasagar Fincap Private Limited to The Kamdhenu Finance Company Private Limited on 2.12.2013 and fresh Certificate of

Incorporation was issued to the petitioner by the RoC, Gujarat.

3.2 The petitioner company at present is having its registered office at 115, Shri Mahavir Cloth Market, Near Hirabhai Marg, Diwan Ballubhai Mark, Kankaria, Ahmedabad. The petitioner company is a RBI registered Non-Deposit Taking NBFC (technically called a Category-B NBFC) and is having RBI Certificate of Registration No.01.00524 dated 11.12.2013 which was issued against the earlier CoR No. 03.00093 dated 13.10.1999.

3.3 It is the case of the petitioner company that the central office of respondent no.2 - Reserve Bank of India (RBI) issued Circular No. DNBR(PD) CC. No. 002/03.10.001/2014-15 dated 10.11.2014 for the proposed increasement of the net owned

fund of the NBFCs wherein it is stated that it shall be mandatory for all the NBFCs to attain NOF of Rs. 200 lakh by the end of March, 2017 and NBFCs failing to achieve the prescribed ceiling within the stipulated time period shall not be eligible to hold CoR as NBFCs. Respondent no.2 thereafter issued Circular No. RBI/2014-15/520/DNBR(PD)CC No.024/ 03.10.001/2014-15 read with Notification No. DNBR.007/CGM (CDS)- 2015 dated 27.03.2015 which was notified in the Official Gazette on 11.03.2016 inter-alia stating that in exercise of the powers under clause(b) of sub-section (1) of section 45-IA of the Reserve Bank of India Act, 1934 and all the powers enabling it in that behalf, the Reserve Bank of India in supersession of Notification No. 132/CGM(VSNM)-99 dated April 20,1999 hereby specifies two lakhs rupee as the net owned fund required for a non banking financial company to commence or carry on the

business of non-banking financial institution.

3.4 Respondent No.2 had issued its Master Direction bearing no. DNBR.PD.007/03.10.119/ 2016-17 Dated 01.09.2016 inter-alia stating that a non banking financial company holding a Certificate of Registration issued by the bank and having NOF of less than two hundred lakhs of rupees, may continue to carry on the business of non-banking financial institution, if such company achieves NOF of two hundred lakhs of rupees before 01.04.2017 and NBFCs failing to achieve the prescribed level within the stipulated period shall not be eligible to hold the CoR as NBFCs.

3.5 It is the case of the petitioner company that the respondent no.2 never had sent hard copy of its circular or

notification or master direction and due to lack of communication from respondent no.2, the directors of the petitioner company could not convince and motivate the existing shareholders and others and therefore, failed to achieve the increased Net Owned Fund of Rs. 200 lakh before 01.04.2017.

3.6 It is the case of the petitioner that before consolidation of Certificate of Registration (CoR) by the respondent No.2-RBI, the petitioner was having Net Owned Fund [NOF] of above Rs. 107 lakh for the financial year ending on 31.03.2016 and Rs. 118 lakh for the financial year ending on 31.03.2017. However, the financial statement/balance-sheet for the year ending on 31.03.2017 demonstrates long term borrowings and short term borrowings which are loan from the directors/share holders which could be easily converted into equity capital of the Company.

Considering such long term and short term borrowings from the directors/share holders it was the case of the petitioner, the owned fund of the company were more than Rs. 200 lakh on 31.03.2017.

3.7 Respondent no.2 issued show-cause notice dated 27.04.2018 to the petitioner which was replied by the petitioner vide reply dated 25.05.2018.

3.8 It is the case of the petitioner that the directors of the petitioner company had achieved the Net Owned Fund upto Rs. 200 lakh on May 11, 2018 by way of allotment of shares and filled Form No. PAS-3 with the Registrar of Companies Gujarat on 21.05.2018. The Statutory Auditor/ Chartered Accountant also verified the position of the Net Owned Fund as on 31.03.2019.

3.9 It is the case of the petitioner that the paid up share capital plus reserve were Rs. 1.17 crore and Rs. 1.30 crore respectively as on 31.03.2017 and 31.03.2018 and the directors of the petitioner company had also given loans and advances for the business purposes and it were Rs. 79.45 lakh and Rs.75.66 lakh respectively as on 31.03.2017 and 31.03.2018.

3.10 It is the case of the petitioner that as on 31.03.2019, paid up share capital plus reserve of the company were Rs. 2.41 crore and the petitioner increased its Net Owned Fund upto prescribed level of Rs. 200Lakhs on May 11,2018.

3.11 It is the case of the petitioner that being aggrieved with the order of respondent no.2 RBI, the petitioner filed an appeal before respondent no.1 on 01.11.2018.

Thereafter, impugned order dated 29.04.2022 came to be passed by respondent No.2.

4. Learned advocate Mr. Thakore for the petitioner relied upon the certificate issued by Shah & Patel, Chartered Accountants dated 06.08.2020 wherein it is stated that the petitioner has achieved/enhanced its NOF of Rs. 200 lakhs on 11.05.2018 in the year ended on 31.03.2019 in conformity with the provision of section 45-IA(3) of the RBI Act.

4.1 Learned advocate Mr. Thakore submitted that on perusal of the financial statement/balance-sheet as on 31.03.2017, the NOF can be calculated as more than Rs. 200 Lakh considering the short-term and long-term borrowings from the directors/share holders of the petitioner-Company. It was submitted that as on 31.03.2017, the paid-up capital was Rs. 100 lakh, reserve was

Rs. 17.9 lakh, long term borrowing was Rs. 11.3 lakh and short term borrowing was Rs. 79.4 lakh and therefore, the total fund of the directors and share holders in the company was Rs. 208.6 lakh. It was therefore submitted that prima facie the NOF price of the petitioner-company was more than Rs. 200 lakh as on 30.03.2017 as the management of the petitioner-company could easily convert its loans to company comprising of long term and short term borrowing into equity by passing a resolution in the board meeting and by filing forms in compliance thereof.

4.2 It was submitted that the petitioner-Company is not given any opportunity of hearing and as such, the impugned orders is contrary to the principle of natural justice.

4.3 It was also pointed out that the appellate authority has also not considered

this aspect and confirmed the order passed by the respondent No.2 without considering the submissions made by the petitioner.

5. On the other hand, learned advocate Mr. Amar Bhatt for respondent No.2-RBI submitted that it is settled position of law that the decision arrived at by the expert body like the RBI on the facts of the case unless shown to be arbitrary or perverse is not to be interfered with and this Court may not be called upon to examine the detail factual aspects as an Appellate Court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5.1 It was submitted that admittedly, the petitioner has not achieved NOF of Rs. 200 lakh as on 31.03.2017 which is evident from the certificate of the Chartered

Accountant showing NOF of only Rs. 118 lakh as on 31.03.2017. It was therefore submitted that in view of the serious irregularity, non compliance by the petitioner in functioning of the NBFC as per the provisions of section 45-IA(1) of the RBI Act by not maintaining the stipulated NOF which is a *sine qua non* for any NBFC to commence and carry on the business of non-banking financial institution.

5.2 It was submitted that even prior to issuance of show-cause notice by the RBI on 27.04.2018, the petitioner did not have the NOF of Rs. 200 lakh and therefore the RBI, after affording adequate opportunity of hearing, had cancelled the COR of the petitioner. It was therefore submitted that the impugned order was issued in the public interest and after complying with the principle of natural justice.

5.3 Learned advocate Mr. Amar Bhatt thereafter referred to various circulars issued by the RBI from time-to-time for prescribing the limit of NOF and the time limit granted to NBFCs to comply with such limit of NOF of Rs. 200 lakh by April 1,2017.

5.4 It was further submitted that the petitioner has availed the remedy of appeal in terms of section 45-IA(7) of the RBI Act and appellate authority has also considered the facts in detail after hearing the petitioner and by reasoned order has confirmed the order of cancellation of COR passed by the RBI. In view of the findings of facts recorded by the appellate authority, no further interference may be made while exercising jurisdiction under Articles 226 and 227 of the Constitution of India.

5.5 Learned advocate Mr. Bhatt has also referred and relied upon the various decisions in support of his submissions as under:

- The Regional Director, Reserve Bank of India and ors vs. Nahar Finance & Leasing Limited and ors reported in Madras High Court (Writ Appeal No. 940 of 2019 and allied matters);
- Namaste Management Pvt. Ltd vs. Reserve Bank of India and ors [Calcutta High Court (W.P. No. 489 of 2018)];
- Shakun Holdings Private Limited vs. Union of India and ors [Himachal Pradesh at Shimla (CWP No. 1667 of 2020)];
- M & M Finsec Private Limited vs. Reserve Bank of India [Delhi High Court (W.P (C) 5085/2020)];

- Jeewan Holdings Private Limited vs. Union of India and anr [Delhi High Court, W.P.(C) 3515 of 2020)];
- Jeewan Holding Private Limited and ors vs. Union of India and ors [Delhi High Court, LPA 299 of 2021)].

5.6 Learned advocate Mr. Bhatt has also referred to and relied upon the averments made in the detailed affidavit-in-reply filed on behalf of the respondent No.2-RBI on merits as under:

"27. Without prejudice to the generality of the submissions made hereinabove, but relying upon the same, it is submitted that the averments and contentions in the Writ Petition are not correct and hence denied except to the extent specifically admitted herein.

28. With reference to the averments made in paragraph No. 1 (i) of the petition, I submit that the same are not pertaining to answering Respondent and therefore, the answering respondent has no comments to offer on the same.

29. With reference to the averments made in paragraph No. 1 (ii) of the petition, I submit that the same are not admitted and the Petitioner may be put to strict proof for the same. I further submit that the impugned order Dt. July 18, 2018 was passed by the answering respondent after complying with the principles of natural justice, as per the requirement of law and complying with the provisions of law as well as the RBI Circulars and Directions and after considering all the documents/ information provided by the petitioner as detailed in the above paragraphs and the same are not reproduced again for sake of brevity.

30. With reference to averment made in paragraph Nos. 2(i), 2(ii) and 2(iii), 2(iv), 2(v), 2(vi), 2(vii) and 2(viii) of the Petition, I submit that issues of consideration as pointed out in this petition are not admitted and are also not tenable as per the well-established statutory provisions. The Petitioner may be put to strict proof for all the issues of consideration. I also submit that the provision of Section 45 IA (3) of RBI Act, 1934 is not applicable to the Petitioner company. Section 45 IA (3) of the RBI Act provided for a contingency which prevailed on the date of commencement of the RBI (Amendment) Act, 1997 which for the first time, introduced a requirement of NOF for NBFCs. Thus, sub-Section (3) of Section 45-IA is a standalone provision inserted by Act 23 of 1999 with effect from 09.01.1997 to deal with a particular situation which was prevailing at the relevant time. The

case of the petitioner does not fall in this category. Hence, the contention of the petitioner that the provisions of Section 45 IA (3) is applicable to them is neither legally tenable nor true as it is against the provision of the section itself. It will not be out of place to mention here the observation of the Hon'ble Division Bench of Madras High Court at Annexure-B1 hereto.

"26. As mentioned earlier, sub-Section (3) commences with a non obstante clause and it provided for a contingency which prevailed on the date of commencement of 05-11-2020 the RBI (Amendment) Act, 1997 which for the first time, introduced a requirement of NOF for NBFCs. Thus, sub-Section (3) of Section 45-IA is a standalone provision inserted by Act 23 of 1999 with effect from 09.01.1997 to deal with a particular situation which was prevailing at the relevant time. Therefore, the respondents/writ petitioners cannot lay claim that their request for extension of time should have been considered in terms of sub-Section (3) of Section 45-IA of the RBI Act."

Similar view is expressed by the Hon'ble Delhi High Court in the judgement at Annexure-B5 hereto.

Further, the CoR was issued to the company subject to the company's fulfilling the requirements under Chapter III B of the RBI Act, 1934 and complying with all the

Directions, Regulation & Instructions issued by the Bank to NBFCs from time to time. All the Circulars, Notifications, Directions are issued by RBI under the provisions of RBI Act, 1934 and are available in public domain. These are statutory in nature as they are issued under the provisions of RBI Act and all the regulated entities are bound to adhere with them as per applicability and there cannot be any implied consent or estoppel in this regard. All updated information as well as RBI's Circular, Notifications, Directions can easily and conveniently be accessed on the website of the Bank ([www.rbi.org.in](http://www.rbi.org.in)). I submit that the Bank vide revised regulatory framework for NBFCs RBI/2014-15/520 DNBR (PD) CC.No.024/03.10.001/2014-15 read with Notification No.ONBR.007/CGM (COS)2015 both dated March 27, 2015, had specified & 200.00 lakh as the NOF required for all NBFCs to commence or carry on the business of NBFIs. However, the NBFCs holding a CoR issued by the Bank and having NoF less than Rs. 200.00 lakh were permitted to carry on the business of NBFIs provided such companies would achieve the NoF of Rs. 200.00 lakh before April 1, 2017. The NOF of the petitioner as on March 31, 2017, stood at Rs. 118.18 lakh as per Statutory Auditor's Certificate (SAC) dated October 24, 2018 which was less than the minimum prescribed limit of Rs. 200.00 lakh. The Petitioner has also

admitted in the reply to the SCN and the averments in this petition that is NOF was less than Rs. 200 lakhs as on April 1, 2017. Therefore, there could be no escape from statutory requirements."

31. With reference to averment made in paragraph Nos. 3(i) to 3(iii) of the petition, I submit that the same are questions of fact and the Petitioner may be put to strict proof for the same. As per the record available with the answering Respondent, I submit that the petitioner was a non-deposit taking non-banking financial company which was incorporated on July 08, 1997 under the Companies Act, 1956. The petitioner had submitted an application dated December 03, 2013 (Previous date of application November 16, 1998) to the Bank for CoR under the provisions of Section 45-IA of the RBI Act to carry on the business of non-banking financial institution. The said application was duly considered by the Bank and the CoR bearing No. 01.00524 dated December 11, 2013 was issued to the petitioner (In lieu of earlier CoR No. 03.00093 dated October 13, 1999 in the name of Vidyasagar Fincap Pvt. Ltd.) subject to its fulfilling the requirements under Chapter IIIB of the RBI Act and complying with the directions, regulations, including prudential norms issued by the Bank from time-to-time.

32. With reference to averment made in paragraph Nos. 3 (iv) to 3

(xviii) of the Petition, I submit that except for the matters of record all averments against the answering respondents are denied and the petitioner may be put to strict proof for the same. Further, the answering respondent relies on the submissions made above in above paragraphs and it is reiterated that the Circulars, Notifications, Directions issued by RBI are done under the powers provided by RBI Act and hence are statutory in nature and are available in public domain. I further submit that all the regulated entities are bound to adhere with the Instructions (as per their applicability) contained in the circulars, notifications, Directions issued by RBI. All updated information as well as RBI's Circular/Notifications/Master Directions can easily and conveniently be accessed on the website of the Bank ([www.rbi.org.in](http://www.rbi.org.in)). Hence, it cannot be pleaded that the Petitioner was not aware of statutory directions of RBI. I also submit that there is no mandatory provision to provide 3/6 years as contented by the Petitioner and as such this contention is only a wrong interpretation of clear statutory provision and hence legally untenable. It is again reiterated that the Petitioner and all other NBFC's were given sufficient time to achieve the prescribed NOF. I submit that the petitioner's NOF as on March 31, 2017 stood at Rs. 118.18 lakh as per Statutory Auditor's Certificate (SAC) dated October 24, 2018, which is less

than the minimum prescribed limit of Rs. 200.00 lakh. The Petitioner has also admitted in its reply to the SCN and in the averments of this Petition that its NOF was less than Rs. 200 lakhs as on April 1, 2017. The petitioner's failure to achieve the stipulated NOF is in violation of the condition subject to which the petitioner was permitted to continue to carry on the business of a non-banking financial institution and the same amounts to violation of the directions issued by the Bank under Chapter III- B of the RBI Act. The Petitioner after violating the conditions under which it was given COR as well as the statutory directions of RBI later on cannot contend that it reached the NOF of Rs. 200 lakhs subsequently.

33. With reference to averment made in paragraph Nos. 4 (A), 4(B), 4©, 4(d), 4(E), 4 (F), 4(G) and 4 (H) of the Petition, I submit that the Petitioner has reproduced statutory provisions of law, directions/notifications and that except these provisions, directions/notifications, the answering respondent denies all the averments made by the Petitioner and the Petitioner may be put to strict proof for the same. I further submit that the Petitioners interpretation of statutory provisions and RBI directions, notification, Circulars are not admitted. RBI reiterates the submissions made in above paras and the same are not being reproduced again for sake of brevity. I further submit that

the actions of RBI are in consonance with the provisions of RBI Act, 1934.

34. With reference to averment made in Grounds Nos. 5 (A), 5 (B), 5 (B) (a), 5 (B) (b), 5 (B) (c), 5 (B) (d) and 5 (B) (e) of the Petition, I submit that the Petitioners averments are not admitted and that the Petitioner has misinterpreted the statutory provisions of law in order to suit his case. Therefore, the Petitioners' interpretation of Section 45-IA (1) (b) and 45-1A(3) of RBI Act, 1934 are not in consonance of express statutory provisions mentioned in these Section and hence are denied. Also, the Pettoners arguments on monetary value of 25 lakhs to present time value appear to illusionary and are not having any scientific basis and hence cannot be accepted or legally tenable. The cut off dates for achieving the Net Owned Fund (NOF) as per RBI's Directions are uniform for all Non-Banking Financial Institutions and hence, there is no violation of Article 14 of the Constitution of India.

35. With reference to averment made in Ground 5C, 5D, 5E, SF, 5G, 5H, 5I, 5J, 5K, 5L and 5M, I submit that the Petitioners averments are not admitted. Therefore, the Petitioners' interpretation of Section 45-1A (6), 45-IA (7) and of RBI Act, 1934 are not in consonance of express statutory provisions mentioned in these Section and hence are denied. I submit that the

Petitioner's COR was cancelled only after issuing a Show-cause Notice and after considering the reply of the show cause Notice and hence it cannot be contended that the Petitioner was not provided any reasonable opportunity of being heard as provided on Section 45-IA (6) of RBI Act, 1934. In this regard, the Respondent relies upon the judgment of Hon'ble Supreme Court in Union of India vs. Jesus Sales corporation reported in (1996)4SCC69 where the Hon'ble Supreme Court has held as follows:

"5. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. ...But any order passed after taking into consideration the point raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."

Reliance is also placed on the judgment of Hon'ble The Supreme Court of India in the case of SBI Vs. Jah Developers (2019) 2 SCC 787 in this regard.

Moreover, without prejudice to the aforesaid contention, it is submitted that a reply to the show cause notice was submitted where the Petitioner admitted the fact that it was unable to achieve/ maintain the required limit of NoF by the cut-off date i.e. March 31, 2017. The Petitioner stated that inadvertently they could not increase the paid-up share capital within stipulated time period and stated that total NOF of company as on date is Rs. 238.59 lakh. However, the enclosed Statutory Auditors Certificate stated that NOF of the company was Rs. 233.67 lakh as on May 25, 2018 (unaudited). It is worth noting that the company made erroneous statement of its NOF as on May 25, 2018, which was based on unaudited figures. As the said reply was not found to be satisfactory, the Bank vide its order dated July 18, 2018 cancelled the CoR issued to the petitioner in exercise of its power conferred under Section 45-IA (6) of the RBI Act. Therefore, it was only after consideration of entire matter that the CoR of the Petitioner was cancelled by the Respondent. Therefore, it cannot be said that the Petitioner had in any manner prejudiced by non-grant of a "personal" hearing by the Respondent.

I submit that the petitioner's NOF as on March 31, 2017 stood at Rs. 118.18 lakhs. Thus, the failure to

achieve the specified NOF of Rs. 200.00 lakh was in violation of the condition subject to which the petitioner was permitted to continue to carry on the business of an NBFI and the same amounted to violation of directions issued by the Bank in exercise of its power under Chapter III B of the RBI Act and allowing a non-compliant company to operate as registered NBFC, would not serve any public interest. I submit that the action of RBI is in consonance with the provisions of Section 45-IA of the RBI Act, 1934 and the principles of natural justice. I submit that the Circulars & Notifications are issued by RBI under the provisions of RBI Act, 1934 and RBI is a statutory body, vested with the power to, inter alia, regulate the NBFI and all the Circulars/Notifications/Master Directions are available in public domain and all the regulated entities are bound to adhere

with the instructions contained therein as per their applicability. Non-compliance with the basic statutory requirement for carrying on NVFI business is a serious irregularity and in violation of the provisions of the RBI Act, the directions issued by RBI and the conditions subject to which the CoR was issued to the petitioner."

36. With reference to averment made in Ground 5N, I submit that the

allegation contained therein are vague and without any particulars. The Petitioner has not produced any documentary proof in that behalf. At any rate in light of the recent decision of the Hon'ble Delhi High Court clearly explaining the correct legal position, the Petitioner cannot rely upon the RTI reply, if any, to claim equality. It is a settled position of law that Article 14 of the Constitution of India does not envisage negative equality and that if persons have been granted some relief/benefit inadvertently or otherwise by such an order cannot confer any legal right to others to get the same relief as well particularly when subsequently the position of law is explained by various High Courts in their decisions making the previous orders relied upon by the Petitioners in respect of other persons inconsistent with High Court decisions. Therefore, the allegation of violation of Article 14 of the Constitution of India by RBI is misconceived and not tenable. At any rate and without prejudice it is submitted that RBI has considered and granted extension of time to achieve the required NOF (in cases of NBFCs which failed to achieve the required NOF by March 2017) in cases where applications for either change of shareholdings or seeking extension of time to bring additional funds to achieve the minimum NOF have been received by April 2018. The petitioner admittedly did not approach RBI for extension of time or for any other reason concerning meeting of NOF during the period April 1, 2017 to March

31, 2018. The Petitioner stated that inadvertently they could not increase the paid-up share capital within stipulated time period. Even the Appellate Authority, on its own, had not extended the timeline for achieving NOF in any cases. However, the Appellate Authority, while disposing of appeals filed by some NBFCs, had remanded those cases to RBI for review of its orders of cancellation of CoR. The RBI had considered those cases afresh on merits and in some cases passed orders restoring CoRs on merits of individual cases. The Petitioner cannot therefore claim parity with the cases relied upon by the Petitioner.

37. With reference to averment made in Grounds 5O, 5P, 5Q, 5R and 5S, I submit that all the averments in these grounds are denied and the answering respondent refers and relies on the submissions made above in this regard and the same are not reproduced again for sake of brevity. Also, I submit that just because the Petitioner would face financial difficulties is not a valid ground to allow a non-compliant company to continue and interfering with the decision of an expert body like RBI.

38. With reference to the averments made in grounds 5T, 5U, 5V, 5W and 5X, and Paragraph Nos. 6, 7 and 8 of the petition, I submit that the answering respondent does not agree with the interpretation made by the Petitioner

of the judgments/orders mentioned therein as well as its applicability in this case. At any rate and without prejudice to what is stated above, I submit that the orders at Annexure P-38 to P-39 are dated 08.08.2019 and 30.04.2020 respectively. I say that thereafter the Hon'ble Himachal Pradesh High Court judgement at Annexure-B3 and Delhi High Court judgement at Annexure-B5 hereto have Clearly explained the position of law and therefore the said orders relied upon by the Petitioner are not consistent with the position of law explained by various High Courts particularly vide judgements at Annexure-B3 and Annexure-B5.

39. With reference to the averments made in paragraph Nos. 9, 10, 11, 12 and 13, I submit that the same being formal legal submissions the answering respondent has no comments to offer on the same. However, I submit that the Petitioner may be put to strict proof for the documents he is relying upon. I further submit that the present petition is not bona-fide and filed to abuse the process of the Court."

5.7 It was therefore submitted that in view of the settled legal position as well as the facts of the case, the petitioner is not entitled to any relief as prayed for.

6. Having considered the rival submissions of the respective parties admittedly, the petitioner did not achieve the NOF of Rs. 200 lakh before 30.03.2017. The petitioner has not achieved the requisite limit of NOF even prior to the date of issuance of show cause notice by respondent No.2 on 29.07.2018.

7. Reliance placed by the advocate of the petitioner upon the decision of this Court in case of **Kandla Finance Limited vs. Reserve Bank of India** in Special Civil Application No. 16918 of 2021 rendered on 23.09.2022 is also not applicable. In the said case, the petitioner achieved the NOF of Rs. 200 lakh prior to the issuance of show-cause notice by the Reserve Bank of India for cancellation of CoR and in view of that fact, the petitioner was relegated before the RBI for reconsideration of its decision cancelling the CoR of the petitioner-company as the RBI

reviewed its decision in similarly situated case of M/s. Dhiraj Investment and Financial Consultancy Pvt. Limited. With regard to the contention raised by the petitioner for not granting reasonable opportunity of being heard is also merit-less. The RBI issued the show-cause notice to the petitioner calling upon to show cause as to why its registration should not be cancelled since it had not achieved the NOF of Rs. 200 lakh by 01.04.2017 which was replied by the petitioner and only after consideration thereof, the impugned order of cancellation of CoR was passed. The petitioner also was granted opportunity of hearing by the appellate authority and in view of the fact that the petitioner did not achieve the NOF of Rs. 200 lakh by 01.04.2017, the appeal was also rightly dismissed. On bare reading of section 45-IA(6) which prescribes that before making an order of cancellation of

certificate of registration, such company shall be given reasonable opportunity of being heard need not necessarily be by way of oral personal hearing as the petitioner have been called upon to respond to the show-cause notice and the petitioner has filed the reply, the same would be suffice of providing reasonable opportunity of being heard as contemplated under section 45-IA(6) of the RBI Act,1934.

8. This Court, in case of Kandla Finance Limited (Supra), has considered the legal position vis-a-vis the contention raised by the petitioner by considering the decision of the Apex Court in case of **SBI vs Jah Developers** reported in (2019) 6 SCC 787 wherein the Apex Court has held as under:

“(13.) The next question that arises is whether an oral hearing is required under the Revised Circular dated 01.07.2015. We have already seen that the said Circular makes a departure

from the earlier Master Circular in that an oral hearing may only be given by the First Committee at the first stage if it is so found necessary. Given the scheme of the Revised Circular, it is difficult to state that oral hearing is mandatory. It is even more difficult to state that in all cases oral hearings must be given, or else the principles of natural justice are breached. A number of judgments have held that natural justice is a flexible tool that is used in order that a person or authority arrive at a just result. Such result can be arrived at in many cases without oral hearing but on written representations given by parties, after considering which, a decision is then arrived at. Indeed, in a recent judgment in *Gorkha Security Services v. Govt. (NCT of Delhi) and Ors.*, (2014) 9 SCC 105, this Court has held, in a blacklisting case, that where serious consequences ensue, once a show cause notice is issued and opportunity to reply is afforded, natural justice is satisfied and it is not necessary to give oral hearing in such cases."

9. The Madras High Court in case of The Regional Director, Reserve Bank of India and ors vs. Nahar Finance & Leasing Limited and others (supra) has also held as under:

"33. The next aspect to be considered is whether an opportunity of personal hearing ought to have been granted to the respondents before the order impugned in the writ petitions were passed. Admittedly, the respondents have not sought for any personal hearing and had they done so, in all probabilities, personal hearing would have been offered, in the light of the stand taken by the respondents in the counter affidavit in paragraph 33. However, we are to examine the statutory framework as to whether the statute mandates an opportunity of personal hearing. The second proviso in sub-Section (6) of Section 45-IA of the RBI Act states that before making any order of cancellation of CoR, such company shall be given a reasonable opportunity of being heard. This expression has been subject matter of interpretation in several decisions, since the principles of natural justice is not a straight jacket formula as held by the Hon'ble Supreme Court in N.K.Prasada vs. Government of India reported in (2004) 6 SCC 299 and Union of India vs. Tulsiram Patel reported in (1985) 3 SCC 398."

10. The Division Bench of the Delhi High Court in case of **Jeevan Holdings Private Limited and anr vs. Union of India and anr** has held as under:

"15. We do not find any merit in this submission of the petitioner. It is clear on a reading of Sub-Section (3) of Section 45-IA, that the said Sub-Section deals only with the situation as it arose upon enactment of Act 23 of 1997, whereby Section 45-IA was introduced for the first time. Sub-Section (3) of Section 45-IA has, therefore, exhausted itself out and it cannot be invoked in respect of subsequent enhancement of NOF requirement in terms of the Section 45-IA(1)(b). The notification in question was issued by the RBI after 18 years of the enactment of Act 23 of 1997, (whereby Section 45- IA was inserted in the RBI Act). By then, SubSection (3) had already worked itself out. The petitioners have not brought to our notice any provision in the Act which stipulates the minimum time period that the RBI was obliged to grant to non-banking financial companies to achieve the enhanced NOF. In the absence of any statutorily prescribed period, the RBI could grant any reasonable time for attainment of the NFO of Rs. 200 Lakh.

16. As noticed above, the RBI adopted a graded plan for achievement of NOF of Rs.200 Lakh by 01.04.2017, by stipulating that such companies should attain NOF of Rs.100 Lakh before 01.04.2016; and, Rs.200 Lakh before 01.04.2017. Even if the submission of learned counsel for the petitioners that this notification dated 27.03.2015 became effective only upon it being gazetted on 11.03.2016 were to be

accepted, the fact remains that the petitioners had nearly a near to attain the NOF of Rs.200 Lakh. Unfortunately, the petitioners, admittedly, did not attain the NOF of Rs.200 Lakh on or before 01.04.2017, and even according to the petitioner, they had attained the said NOF only on 28.03.2018, i.e. a year after the deadline.

17. The respondent/ RBI was, therefore, empowered to cancel the Certificate of Registration of the petitioners under Sub-Section (6) of Section 45-IA.

18. The grievance of the petitioners that the petitioners were not granted a reasonable opportunity of being heard before the petitioners were visited with the cancellation order, is also meritless. The respondent issued a show- cause notice to the petitioners calling upon the petitioners to show- cause as to why its registration should not be cancelled, since it had not achieved the NOF of Rs.200 Lakh by 01.04.2017. This show-cause notice was issued on 02.05.2018. This showcase notice was replied to by the petitioners, and only after consideration thereof, the petitioners were visited with the impugned order of cancellation of the petitioners' registration as a non- banking financial company by the RBI.

19. A reading of Section 45-IA(6) prescribes that "before making any

order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.". This reasonable opportunity of being heard need not necessarily be by way of an oral hearing. Since the petitioners were given a show-cause notice, and were called upon to respond to it - which they did, in our view, the petitioner stood afforded the reasonable opportunity of being heard, as contemplated under Section 45-IA(6) of the RBI Act.

20. Moreover, the petitioners have also availed of the appellate remedy before the Central Government and, there again, after considering the petitioners' appeal, the same has been dismissed.

21. For the aforesaid reasons, we do not find any error in the impugned judgment calling for our interference. The appeal is, accordingly, dismissed."

11. The Apex Court in case of **Small Industries Development Bank of India vs. SIBCO Investment Private Ltd** reported in 2022 SC Online SC 5 has held that when the legality of the RBI notification is not under challenge, relief cannot be granted without

determining its legality. Admittedly, the petitioner has not challenged the legality of the notification issued by the RBI and therefore, the decision taken by the RBI as per the notification for achieving the NOF by 01.04.2017 cannot be interfered.

12. In view of the settled legal position, there is no error in the impugned order passed by the RBI as well as the appellate authority and accordingly, the petition is dismissed. Notice is discharged. It goes without saying that the petitioner is at liberty apply a fresh for certificate as NFBC in accordance with law.

JYOTI V. JANI

**(BHARGAV D. KARIA, J)**