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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1564/2024 & CM APPL. 6496/2024, CM APPL. 6497/2024

SAHARA INDIA FINANCIAL CORPORATION LTD ..... Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Gautam Awasthi, Mr. Ayush Choudhary, Mr. Devanshu Yadav, Ms. Chandni Sharma, Mr. Sahil Sharma & Ms. Monica Benjamin, Advs.
M: 9999393413

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Vijay Joshi and Mr. Mohit Joshi, Advocates for R-1.
Mr. Ramesh Babu, Ms. Manisha Singh, Ms. Jagriti Bharti & Ms. Tanya Chowdhary, Advs.
M: 9971671294

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 13.02.2024

CM APPL. 6497/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.

2. Application is disposed of.

W.P.(C) 1564/2024 & CM APPL. 6496/2024

3. The present petition has been filed seeking quashing of the order dated 17th May, 2023 passed by the learned Appellate Authority in appeal

filed by the petitioner under Section 45-IA(7) of Reserve Bank of India Act, 1934.

4. Learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the proviso of Section 45-IA(6) of the Reserve Bank of India Act, 1934. By reference to the aforesaid proviso, it is submitted that the statute itself provides that the company shall be given a reasonable opportunity of being heard before making any order of cancellation of Certificate of Registration.

5. Learned Senior Counsel also relies upon the order dated 24th February, 2015 passed by the Supreme Court, wherein there were specific directions by the Supreme Court that the petitioners shall be given a hearing. The same reads as under:

> *"xxx xxx xxx*
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> *In the circumstances, we allow Reserve Bank of India to initiate such action as may be otherwise legally permissible under the provisions of the Reserve Bank of India Act and the Regulations framed thereunder and to pass appropriate orders on the subject after hearing the parties. A copy of the order so passed shall be placed on record.*
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> *xxx xxx xxx"*

6. Thus, it is submitted that pursuant to the aforesaid directions of the Supreme Court, a Show Cause Notice dated 10th March, 2015 was issued by the respondent no.2-Reserve Bank of India ("RBI") to the petitioner. Pursuant thereto, the petitioner had filed its reply dated 28th April, 2015. Subsequently, hearing was granted to the petitioner on 9th June, 2015 by the official of the RBI, namely, Mrs. Meena Hemchandra.

7. Learned Senior Counsel appearing for the petitioner points out to this Court the order dated 3rd September, 2015 issued by the respondent no.2-RBI, which has been issued by another official, namely, Mr. N.S.

Vishwanathan. Thus, it is submitted that the hearing to the petitioner was granted by some other officer, while the order dated 3rd September, 2015 issued by the RBI, was by some other officer.

8. It is submitted that a statutory appeal was filed by the petitioner before the Appellate Authority, wherein the said ground was specifically raised.

9. Thus, it is submitted that on 17th May, 2023, the statutory appeal filed by the petitioner, came to be decided. By way of the impugned order, the learned Appellate Authority has given the finding as follows:

> *"xxx xxx xxx*
>
> *XI. Regarding the company's allegations about violation of the principles of natural justice at the stages of hearing and cancellation of CoR, it can be seen that hearing was done on 9.6.2015 and the company was allowed several opportunities by the RBI to submit further documents before a decision was taken by RBI. Also, since 2007, RBI gave advice to the company to change to a viable business model, to comply with the directions w.r.t. Directed Investments, to stop taking deposits and to bring ALD to zero. The decision of RBI cannot be inferred to be based on a single hearing of 9.6.2015. As such there is no reason to believe that there had been any violation of the principles of natural justice.*
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> *xxx xxx xxx"*

10. Thus, it is submitted that by perusal of the aforesaid, it is clear that the contentions as raised by the petitioner were not considered by the learned Appellate Authority.

11. Learned Senior Counsel for the petitioner also relies upon the judgment of the Supreme Court in the case of ***Gullapalli Nageswara Rao Verus Andhra Pradesh State Road Transport Corporation and Another, AIR 1959 SC 308***. He refers to Para 31 of the said judgment which reads as under:

"xxx xxx xxx

31. *The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.*

xxx xxx xxx"

12. Learned Senior Counsel for the petitioner further relies upon the judgment of the Supreme Court in the case of ***Automotive Tyre Manufacturers Association Versus Designated Authority and Others, (2011) 2 SCC 258***. He relies upon Para 83 and 84 of the said judgment, which read as under:

"xxx xxx xxx

83. *The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli [AIR 1959 SC 308] , if one person hears and other decides, then personal hearing becomes an empty formality.*

84. *In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be*

sustained. It is quashed accordingly.
xxx xxx xxx"

13. Thus, it is submitted that the impugned order dated 17th May, 2023, is liable to be set aside.

14. Per contra, learned counsel appearing for respondent no.2-RBI, submits that the present petition is not maintainable for want of territorial jurisdiction. Learned counsel relies upon the order dated 25th April, 2023 passed in *W.P.(C) No. 5294/2023*, which reads as under:

> *"1. This hearing has been done through hybrid mode.*
>
> *2. The present petition challenges the impugned order dated 13th March, 2023 passed by the Ld. Appellate Authority, Department of Financial Services, Ministry of Finance (hereinafter, "ld. Appellate Authority") in respect of the NBFC registration of the Petitioner. By the impugned order, the registration of the Petitioner has been cancelled by the ld. Appellate Authority.*
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> *3. Considering the ratio of the decision in **Sterling Agro Industries Ltd. v. Union of India, W.P.(C) 6570/2010**, this Court is of the opinion that since there is nothing more than the location of the appellate authority within the jurisdiction of this Court, the Petitioner ought to approach the appropriate jurisdictional High Court. In fact, in the first round at the interim stage, the Petitioner had approached the Hon'ble High court of Kerala which had also pass certain interim orders. The said judgment dated 2nd February, 2023 is annexed as annexure P-19 to this petition.*
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> *4. At this stage, Mr. Krishnendu Datta, ld. Sr. Counsel under instructions submits that he may be permitted to withdraw the present petition with liberty to approach the appropriate High Court. He, further, submits that in case the Hon'ble High Court of Kerala does not entertain the present petition, liberty may be granted to him to revive the present petition.*
>
> *5. Accordingly, the present petition along with all pending applications is dismissed as withdrawn. Liberty as sought, on both grounds, is granted."*

15. Learned counsel also relies upon the full bench judgment of this Court in the case of ***Sterling Agro Industries Ltd. Versus Union of India and***

Others, 2011 SCC OnLine Del 3162. Thus, in the light of this, it is submitted that the present petition is not maintainable here.

16. Learned counsel appearing for the respondent no.2-RBI also submits that the impugned order, against which the present petition has been filed, is of 17th May, 2023. He further submits that no action has been taken by the respondent no.2-RBI till date, since the petitioner company is undergoing liquidation proceedings before the High Court in Lucknow.

17. Issue notice. Notice is accepted by learned counsel appearing for respondent nos. 1 and 2.

18. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

19. Re-notify on 30th April, 2024.

MINI PUSHKARNA, J

FEBRUARY 13, 2024
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