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

% **Order reserved on: 26th September 2024**
**Order pronounced on: 23rd October 2024**

\+ W.P.(C) 9877/2024 & CM APPL. 40551/2024

EVAAN HOLDINGS PRIVATE LIMITED .....Petitioner

Through: Mr. Parag Tripathi, Sr. Adv. along with Mr. Anirudh Sharma, Mr. Srinivasan Ramaswamy, Ms. Harshita Choubey, Ms. Sonali Sharma & Ms. Vridhi Kashyap, Advs.

versus

RESERVE BANK OF INDIA AND ORS .....Respondents

Through: Mr. Avishkar Singhvi, Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Kshitij Joshi & Mr. Aryan Kumar, Advs. for R-2.
Mr. Sidharth Luthra, Sr. Adv. along with Mr. Dhruv Chawla, Mr. Yoganshi Singh, Mr. Ayush Agarwal.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**O R D E R**

**CM APPL. 46471/2024**

1. This order shall decide the issue of maintainability of the present writ petition preferred by the petitioner company invoking Article 226 of the Constitution of India, 1950, seeking issuance of directions to respondent No.1/RBI[1] to initiate action against respondent No.2 company i.e. Exclusive Capital Limited in terms of the provisions contained in Chapter IIIB of the Reserve Bank of India

Act, 1934 ["**RBI Act**"].

2. It should be noted that respondent No. 3 served as an independent director, while respondent No. 4 was an additional Director of respondent No. 2 company, and the latter ceasing to continue w.e.f 30.09.2023. The respondent No. 5 was the Business Head, and respondent No. 6 was the Company Secretary of respondent No. 2 company. Additionally, it is stated that respondent No. 2 was earlier known as UT Leasing Ltd., which was taken over by new promoters in September 2021. It commenced its operations as a registered NBFC[2] from 16.12.2021, and by its certificate it was prohibited from accepting any public deposits. Pursuant to a Resolution dated 21.09.2021, 31,50,00,000 CCPS were issued to Teesta Retail Pvt. Ltd. by respondent No. 2 company at face value of Rs. Ten each, along with 8% non-cumulative coupons per annum on each of the CCPS[3] by way of dividend from respondent No. 2. Furthermore, it is stated that Teesta amalgamated with Siddhant Commercials Pvt. Ltd. and on 21.05.2024 the petitioner company purchased the aforesaid number of CCPS from Siddhant.

3. Shorn of unnecessary details, the petitioner company states that it has substantial shareholding of Rs. 17,50,00,000/- in the nature of preference shares with respondent No.2 company, which is an NBFC having an aggregate value INR 175 crores, and it highlights certain alleged aspects of mismanagement and financial improprieties including misappropriation and siphoning off funds by respondent

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[1] Reserve Bank of India
[2] Non-Banking Financial Company

No.2 company through its Board of Directors, which presently comprises of Mr. Satya Prakash Bagla, Mr. Achal Jindal and Mr. Johnson Kallarachal Abraham. The petitioner company laments that despite lodging complaints dated 24.05.2024 and 21.06.2024 with the RBI, no action has been taken so far.

4. Learned counsel appearing for respondent No.2 has urged that the maintainability of the present writ petition was earlier addressed but the said issue was not decided by this Court while passing the earlier order dated 24.07.2024, and aggrieved thereof, they filed LPA[4] 742/2024 dated 09.08.2024, in which the following operative order was passed:

> "7. In our view, at the moment, the appeal is premature. The learned Single Judge has not ruled one way or the other, i.e., either on the preliminary objections concerning maintainability of the writ action or on the merits of the matter.
> 8. It is our sense that the observations are exploratory at this stage and do not advert to the final decision on the issues concerning preliminary objections or qua the merits.
> 9. The appeal is, accordingly, closed.
> 10. Needless to add, the parties will have their complete say before the learned Single Judge."

5. Mr. Parag Tripathi, learned Senior Counsel for the petitioner company, argued to sustain the maintainability of the instant writ by inviting attention of this Court to the provisions in Chapter IIIB of the RBI Act[5] and took this Court through the provisions of Section 45H, 45ID, 45MA and 45Q, reiterating what was urged and recorded by this Court in the earlier order dated 24.07.2024, heavily relying on the

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[3] Compulsorily Convertible Preference Shares
[4] Letters Patent Appeal
[5] Reserve Bank of India Act, 1934

decision by the Supreme Court in the case of **Nedum Pillai Finance Company Limited v. State of Kerala**[6], wherein it was held that role of RBI under the Scheme of Chapter IIIB of the RBI Act is to oversee functioning of the NBFCs since the time of their birth i.e. the date of registration till the time of their commercial death i.e. on being wound up.

6. Mr Tripathi, learned Senior Counsel for the petitioner company has urged that all the activities of the NBFCs automatically come under the scanner of the RBI and the aforesaid provisions are complete code in itself, which are not controlled by any other provision of law including the Companies Act, 2013. Insofar as proceedings before the NCLT[7], as well as NCLAT[8], learned Senior Counsel invited attention of this Court to the Status Report filed by the respondent No.1/RBI, wherein the supervisory concern of the RBI in the functioning of the respondent No.2 company are brought to the fore, upon which we shall delve into later on this order.

7. Further, it is pertinent to point out that learned counsel for the respondent No.1/RBI urged that statutory auditors have been appointed only recently and the financial accounts of the respondent No.2 company are likely to be finalized by 30.09.2024, and it is only thereafter that the RBI shall decide on action, if any, under Chapter III B.

8. It was urged by the learned Senior Counsel for the petitioner company that the aforesaid breaches committed by the Board of

[6] (2022) 7 SCC 394
[7] National Company Law Tribunal

Directors of respondent No.2 company are yet to be rectified and even after directions by the NCLT dated 15.05.02024, as well as the order of the NCLAT dated 31.05.2024, the Statutory Auditor has not been appointed in a lawful manner. It was, therefore, urged that not only the present writ petition is clearly maintainable, but the RBI should be directed to ensure that respondent No. 2 company should function under the supervision of the Administration, so as to ensure that its precious funds are not pilfered and/or wasted for personal consumption by its Board of Directors.

9. Mr. Sidharth Luthra, learned Senior Counsel for respondents No. 3 and 6 urged that the fact that the affairs of the respondent No.2 company are being mismanaged is evident from the fact that independent directors having vast experience of working with NBFCs have been removed and the control has been vested in inexperienced directors. It was pointed out that independent directors have been removed during the pendency of the petition before the NCLT despite operation of the restrain order, which fortifies the petitioner company's apprehension that the Board of Directors may take steps to prejudice and jeopardize the investment of the petitioner company, and therefore, appropriate measures are required to be taken by the respondent No.1/RBI under Section 45 (i) (e) of the RBI Act.

10. Learned Senior Counsel for respondents No. 3 to 6 also urged that the answering respondents were often informed of the transactions undertaken by the respondent No. 2 company only after these transactions had already been given effect to. Initially the answering

[8] National Company Law Appellate Tribunal

respondents did not raise any alarm and passed such decisions as routine business transactions. However, they later objected to several decisions made by the Board of Directors that were prejudicial and not in the best interest of the company. Emails dated 12.10.2023, 24.01.2024, 05.02.2024 and 06.02.2024, were written by the independent directors regarding these concerns, but no explanation were provided for the various acts, omissions and transactions by the respondent No.2 company, the shareholders, or even the Statutory Auditors. It was urged that the present management of the respondent No.2 company has been consistently breaching their financial duties as directors.

11. *Per contra*, Mr. Avishkar Singhvi, learned counsel for the respondent No.2 company, urged that the present petitioner has not approached the Court with clean hands inasmuch as the entire subject matter of the present writ petition is under consideration before the NCLT/NCLAT, and the Directors/management of the respondent No.2 company are not even made a party. It was pointed out that M/s. Teesta Retail Private Limited invested about Rs. 315 crores in lieu of issuance of optionally convertible debentures, which company merged with Siddhant Commercials, and since such transaction disturbed the leverage ratio of the respondent no. 2 company, which was required to be rectified. In the meanwhile, Ms. Kanta Aggarwal, who is the petitioner before the NCLT proceedings, along with one Suresh Aggarwal purchased 117325 equity shares from Mr. Sanjeev Kumar to become shareholders in respondent No.2 company and in order to

restore the leverage ratios, the said OCD[9]s were converted into CCPS *vide* resolution duly approved by General Body Meeting of the respondent No.2 company.

12. It is was vehemently urged that the in order to disturb the smooth functioning of the respondent No.2 company, the NCLT petitioner, who is a director in the petitioner company before this Court has launched ill motivated proceedings before the NCLT. Reference was made to the order passed by the NCLT dated 15.05.2024, and order dated 18.05.2024 passed by the NCLAT, whereby the order passed by the NCLT had been modified directing *status quo* and providing that the Administrator shall act as an Observer and shall verify the allegations *qua* the financial transactions including siphoning of funds. It was pointed out that NCLT petitioner is both a director and shareholder of the petitioner company in the present writ proceedings. Despite order dated 15.05.2024 passed by the NCLT, wherein the legality of the said CCPS was being questioned, the writ petitioner acting at the instance of NCLT petitioner purchased the CCPS. It was urged that a proxy litigation is being pursued by Smt. Kanta Aggarwal and Shri Sunil Aggarwal who themselves are in violation of RBI guidelines.

13. It is, therefore, urged that the allegations into the investment of Rs. 315 crores through OCD are *sub judice* before the NCLT/NCLAT and no parallel proceedings can be sustained. Much has been argued that the writ petitioners purchased the said CCPS in the respondent No.2 company from M/s. Siddhant Commercials Private Limited for a

[9] Optionally Convertible Debentures

sum of Rs. 175 crores, in order to further prejudice the respondent No.2 company and cause hindrance in the management functioning. During the course of arguments, learned Senior Counsel for the petitioner invited attention of this Court to the tabular presentation referring to the averments in the petition before the NCLT and the instant writ so to buttress the point that they are similar and gross abuse of the process of law.

14. Lastly, it was submitted that RBI is already seized of the matter and the proceedings, conducted in accordance with the law, cannot be hijacked. As an expert body, the RBI must be free to decide the issues uninfluenced by any pleadings or motivated claims of the parties involved. It was vehemently urged that there is no justification for any action against the respondent No.2 company based on the provisions of the RBI and, specifically, the RBI Master Directions, 2016 *vide* Regulation 61. It is vehemently urged that no breaches have been committed in the upper ceiling of leverage ratio and it is denied that conversion of OCD to CCPS is any where contrary to the guidelines of the RBI. Learned counsel for the respondent No.2 company relied on decisions in **Dr. Subramanian Swamy v. Union of India**[10] and decision by High Court of Gujarat at Ahemdabad in the case of **Krishan Krupa Owners Association v. RBI**[11] and lastly on the decision in the case of **Hoichoi Technologies Private Limited v. Reserve Bank of India**[12]**.**

**ANALYSIS AND DECISION:**

[10] 2024 SCC OnLine Del 5706
[11] Special Leave Application 233/2013 dated 09.12.2013

15. I have given my anxious consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have gone through the relevant record of this case as also the written submissions besides the case law placed on the record.

16. First things first, Chapter-III-B of the RBI Act provides a detailed mechanism that outlines the supervisory role for the RBI in overseeing the functioning of the NBFCs. As rightly pointed out by learned Senior Counsel for the petitioner, this supervisory role is continuous; it commences from the date of registration of the NBFCs and remains till the time of its commercial death by way of winding up. This aspect of the law has been clearly elucidated by the Supreme Court in the case of **Nedum Pillai Finance Company Limited** *(supra)*, wherein it was held that all activities of the NBFCs automatically come under the scanner of RBI and that the continuation of an NBFC in business would depend upon compliances with certain provisions found in the RBI Act as well as the circulars/directions issued by the RBI.

17. It would be expedient to refer to the observations of the Supreme Court while examining the provisions that are found under Chapter-III-B of the RBI Act which are summarized as under:-

> **"40.** After the amendment made to Chapter III-B by Act 23 of 1997, this Chapter has become a complete code insofar as NBFCs are concerned. This can be seen from various provisions of Chapter III-B, which is summarised in the form of a table for easy reference as follows:
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> | *Provision* | *Requirement* |
> |---|---|
> | *Section 45-IA* | *(i)* Certificate of registration mandatory for an NBFC to |

[12] 2024 SCC OnLine Cal 3569

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| | commence or carry on the business of a non-banking financial institution.<br>*(ii)* Such NBFC should have a net owned fund of Rs. 25 lakhs or such other amount not exceeding Rs. 100 crores, as RBI may prescribe.<br>*(iii)* The application for registration shall be considered by RBI subject to certain parameters prescribed in sub-section (4). |
| *Section 45-IB* | *(i)* NBFCs have to invest in unencumbered approved securities, such amount which shall not be less than 5% or such higher percentage not exceeding 25% prescribed by RBI.<br>*(ii)* Every NBFC should furnish a return to RBI, so as to ensure compliance with the provisions of this section.<br>*(iii)* Penal interest is liable to be levied if there was a shortfall in the investment. |
| *Section 45-IC* | *(i)* Every NBFC should create a reserve fund and transfer to the said fund a sum not less than 20% of its net profit every year. No part of the reserve fund shall be appropriated by the NBFC except for a purpose stipulated by RBI. |
| *Section 45-ID* | *(i)* RBI is entitled to remove the Director of an NBFC from office, if it is satisfied that it is necessary to do so in public interest or to prevent the affairs of an NBFC being conducted in a manner detrimental to the interest of the depositors or creditors or financial stability or for securing the proper |

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| | management of such company. |
| *Section 45-IE* | *(i)* RBI will have the power of supersession of the Board of Directors of an NBFC in public interest, etc. |
| *Section 45-J* | *(i)* RBI will have the power to regulate or prohibit the issue of prospectus or advertisement soliciting deposits of money. |
| *Section 45-JA* | *(i)* In public interest or for the regulation of the financial system of the country to its advantage or to prevent the affairs of any NBFC being conducted in a manner prejudicial to the interest of the depositors or prejudicial to the interest of the NBFC, RBI may determine the policy and give directions. |
| *Section 45-K* | *(i)* RBI may demand every non-banking institution to furnish such statements of information or particulars relating to or connected with the deposits received by the NBFCs. |
| *Section 45-L* | *(i)* RBI will have the power to require financial institutions to furnish such statements, information or particulars relating to the business of such financial institutions and to give such directions. |
| *Section 45-M* | *(i)* It shall be the duty of every NBFC to furnish the statements, information or particulars called for and to comply with any direction issued by RBI. |
| *Section 45-MA* | RBI will have the power to issue directions to the auditors of NBFCs relating to balance sheet, profit and loss account, disclosure of liabilities in the |

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| | books of accounts or any other matter. |
| *Section 45-MAA* | RBI can take action against the auditors who fail to comply with any of the directions. |
| *Section 45-MBA* | RBI may frame schemes providing for the amalgamation of NBFCs or the reconstruction of an NBFC, etc. if RBI is satisfied upon inspection of the books of accounts that it is in public interest or in the interest of financial stability to do so. |
| *Section 45-MC* | RBI will be entitled to move an application for the winding up of an NBFC, under certain circumstances. |
| *Section 45-N* | Power of inspection. |
| *Section 45-NAA* | RBI may at any time direct an NBFC to annex to its financial statements, such statements and information relating to the business or affairs of any group company of NBFC. |
| *Section 45-NC* | RBI may exempt an NBFC from the application of any or all of the provisions of Chapter III-B. |

18. Summarizing the aforesaid provisions, it was held by the Supreme Court that the power of the intervention available with the RBI over NBFCs is *from the cradle to the grave*. At this juncture, it is also pertinent to refer to one of the most important provisions in Chapter III-B Section 45-Q of the RBI Act, which reads as under:-

> "45-Q. Chapter III-B to override other laws.- The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

19. Thus, Section 45-Q which is extracted above confers an overriding effect upon Chapter-III-B over any other laws for the time being in force, including the Companies Act, 2013. That being the position in law, reverting back to the instant matter, it is the case of the petitioner company that the affairs of respondent No.2 company are being conducted in a manner, which is resulting in large scale siphoning of funds, violation of regulations issued by respondent No.1/RBI, so much so that the management is not fit and competent to run the business of the respondent No.2 company. The petitioner company has placed heavy reliance on two representations made to the respondent No.1/RBI dated 24.05.2024 and 21.06.2024 besides third one by the erstwhile independent Directors making a representation dated 15.03.2024 citing various allegations of violation of regulations by respondent No.2 which incidentally are highlighted in the Status Report of the RBI dated 12.08.2024.

20. The challenge mounted by the learned counsel for respondent No.2 company that the petitioner company has not come to this Court with clean hands *does not cut much ice*, since the petitioner company has made a clean breast of the proceedings pending before the NCLT, as well as NCLAT and it is pointed out that an application bearing IA No. 3852/2024 is already pending for consideration for its impleadment. Indeed, the proceedings before the NCLT have been initiated by the shareholders of respondent No.2 company, who, in another capacity, are also the Directors in the petitioner company, but it needs to be appreciated that they have two distinct legal status: one as the shareholders, and thus, airing grievances against the oppression

and mismanagement in the running of affairs by respondent No.2 company, for which the NCLAT is seized of the matter; and secondly, such shareholders are the Directors in the petitioner company, they have a different legal status but then it is the company which owns 17,50,000 CCPS issued by respondent No.2, having aggregate face value of INR 175 crores.

21. The bottom line is that it cannot be overlooked that the petitioner company, as a juristic person, has a legitimate expectation that its investment in respondent No.2 company will not go to waste and/or siphoned or pilfered away to its detriment, as well as that of respondent No.2 company. At this juncture, it would be relevant to refer to the supervisory concern of the RBI in functioning of the respondent No.2 company, which are spelled out in the Status Report dated 12.08.2024 as under:

> **"Breach of leverage ration:** RBI has defined leverage ratio as Total Outside Liabilities divided by Owned Funds and prescribed a limit of 7 as the upper ceiling for Base Layer NBFCs as per para 9.1 of Master Direction of RBI dated October 19, 2023 and para 6 of Master Direction DNBR.PD.007/03.10.119/2016-17 dated September 01, 2016. However, the leverage ratio of the company was 117.77 as of March 31, 2022. A copy of the Master Directions dated September 01, 2016 is enclosed herewith as **ANNEXURE R-10.**
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> **2.** Issue of OCDs of Rs 315 crore without permission of RBI and conversion of OCDs to CCPS' without prior approval of RBI: The company accepted optionally convertible debentures (OCDs) without the permission of RBI, which were classified as public funds under Para 3(xxvi) of Reserve Bank of India Master Direction - Non-Banking Financial Company – Non Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 dated September 0 l, 2016 (applicable at that time) breaching the upper ceiling of Leverage Ratio. Further, the said OCDs were converted into Compulsorily Convertible Preference Shares (CCPS), again in contravention of Para 61 of

Reserve Bank of India Master Direction - Non-Banking Financial Company - Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 dated September 01, 2016 (applicable at that time) which requires all applicable NBFCs to seek prior written permission from RBI for acquisition/transfer of control. These CCPS are non-cumulative and are convertible into equity shares within a period not exceeding 20 years from the date of conversion. As currently, maximum tenure of these CCPS is 20 years which is more than five years, these CCPS fall under the category of Public Fund in terms of para 5.1.27 of Master Directions, 2023 and will be reckoned for arriving at Leverage Ratio. Nonetheless, Ld. NCLT, New Delhi vide order dated 15.05.2024 has observed that

> *"The OCDs/CCPS issued by the Respondent No.1, in violation of the RBI regulations, shall stand cancelled and money, thereof, shall be returned to respective holders and necessary formalities in this regard would be completed ...*
> "

Ld. NCLAT, however, vide order dated 22.05.2024 has granted status quo with respect to the order dated 15.05.2024 of Ld. NCLT, New Delhi.

**3. Non-submission of essential returns/documents to RBI:** The company has not submitted essential returns/documents such as Balance Sheet, Profit & Loss account and Statutory Auditor Certificate for the financial year 2023-24 and Statutory Auditor Certificate for the financial year 2022-23.

**4. Complaint against the Managing Director:** There is a complaint against Mr Satya Prakash Bagla alleging that there are cases against Managing Director, Mr. Satya Prakash Bagla who has criminal antecedents and is subject to investigations by various authorities viz., the ORI, CBI, ED, BOW and other regulatory agencies. These allegations are yet to be verified. The answering Respondent has sent an email dated 09.08.2024 to the company asking for their comments on these as well as other allegations made in the complaint dated 07.08.2024 received from Shri Anuj Goenka, Director of Evaan Holdings Private Limited, within three days."

22. A *fortiori*, the Status Report indicates that the company accepted OCDs without the permission of respondent No.1/RBI, thereby breaching the leveraged ratio of the company beyond the acceptable level of 7th. Furthermore, it has been highlighted that It is

further brought to the fore the OCDs were converted into CCPS again without the permission of respondent No.1/RBI. Despite the long passage of time, no remedial measures have been undertaken coupled with the fact that respondent No.2 company has failed to submit timely returns as required by respondent No.1/RBI, and on inspection being carried out by the officials of the RBI, it was shocking that the material and essential records were not even found at the premises of respondent No.2 company.

23. Moreover, circumstances have arisen indicating that the management of respondent No. 2 company has been pilfering or siphoning of funds for the purchase of luxury cars and creating fictitious loan accounts, diverting the funds to of the company for matters which are *dehors* the ordinary course of business affairs of the respondent No.2 company, besides defaulting on payment of debts. Evidently, respondent No.2 company has not submitted essential returns/ documents such as balance sheet, profit and loss account and Statutory Auditors' certificate for Finance Year 2023-2024 and Statutory Auditors' certificate for the Financial Year 2022-2023. Despite the petitioner company and respondent No.3, the erstwhile independent Director of respondent no. 2 since, repeatedly raising concerns about the irregulates in managing the financial affairs of the company, there are grounds to suspect a deliberate attempt to withhold submissions and access to accounts. This raises serious concerns regarding the complete lack of transparency regarding the utilization of respondent No. 2 company's funds.

24. *A fortiori*, the aforesaid irregularities and the omissions which

have been pointed out in the Status Report cannot be brushed aside and respondent No.1/RBI is competent to inquire into such matters and take appropriate action in accordance with the law. There is no gain saying that the writ proceedings under Article 226 of the Constitution of India, 1950, can be instituted against an instrumentality of State, such as respondent No.1/RBI, when it is demonstrated that it is failing to exercise the power vested in it. Reference can be made to the decision by the Supreme Court in the case of **Destruction of Public and Private Properties v State of AP**[13] wherein it was observed as under:-

> "19. The situations in which a positive mandamus (*sic* may be issued) to do a particular act in a particular way, may be broadly classified in the following manner. First are the broad mandamus cases where this Court has held that the Court may issue a positive mandamus to enforce the law. Thus in *Vineet Narain* case detailed orders were passed for the investigation of the Hawala transaction cases. It is laid down that positive directions can be issued where there is a power coupled with a duty. The situations under which this can happen are numerous."
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> 20. In *Commr. of Police v. Gordhandas Bhanji* AIR at p. 27, quoting from *Julius v. Lord Bishop of Oxford* where the Court said : (*Julius case*, All ER p. 47 I)
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> > "… there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."
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> 21. In *Comptroller and Auditor-General of India v. K.S. Jagannathan* the Court also explored the need to issue a positive mandamus where a power was coupled with a duty : (SCC pp. 691-93, paras 18-20)

[13] 2009 5 SCC 212

"18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission—both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the fundamental rights conferred by Part III of the Constitution or for any other purpose. In *Dwarka Nath v. ITO* this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts 'to reach injustice wherever it is found' and '*to mould the reliefs to meet the peculiar and complicated requirements of this country*'. In *Hochtief Gammon v. State of Orissa* this Court held that the powers of the courts in England as regards the control which the judiciary has over the executive indicate the *minimum limit* to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers. (emphasis in original)

*19.* Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have

issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in *Mayor of Rochester v. R.* said : (ER p. 794)

'… But, were there no authority upon the subject, we should be prepared, upon principle, to affirm the judgment of the Court of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute; *Comyns's Diges*t, Mandamus (A). …

… Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.'

The principle enunciated in the above case was approved and followed in *R. v. Revising Barrister for the Borough of Hanley. In Hochtief Gammon case* this Court pointed out (at SCC p. 656) that the powers of the courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield v. Minister of Agriculture, Fisheries and Food* the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint

to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, 4th Edn., Vol. I, Para 89, it is stated that the purpose of an order of mandamus 'is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.'

*20.* There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power **to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.** In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

**{bold portions emphasized}**

25. Avoiding a long academic discussion, it is well ordained in law that a writ of *mandamus* lies where there is shown a failure to exercise

the powers vested in statutory authorities and delay in exercise of its powers might bring about irreparable injuries to statutory rights. Reference can be invited to **Hari Krishna Mandir Trust v. State of Maharashtra**[14] , wherein it was held as under:-

> **"100.** The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.
>
> **101.** In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.
>
> **102.** In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In *Director of Settlements, A.P.* v. *M.R. Apparao* Pattanaik, J. observed: (SCC p. 659, para 17)
>
> > "*17.* … One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. **In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, "mandamus" means a command.** It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including

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> administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition* (*see Kalyan Singh* v. *State of U.P.*). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law." (emphasis in original)
>
> **103.** The Court is duty-bound to issue a writ of mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of mandamus is that mandamus lies to enforce a legal duty. **This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through mandamus. Unless a statutory duty or right can be read in the provision, mandamus cannot be issued to enforce the same. {bold portions emphasized}**

26. In view of the foregoing discussion and for the reasons that the present management of the respondent No.2 company has been withholding relevant documents from the respondent No.1/RBI, it is but necessary to arrest any further misappropriation and pilfering of the funds of the respondent No.2 company, since any further delay might be too late to protect the interests of the stakeholders.

27. During the course of arguments, a report dated 01.07.2024 of Hon'ble Mr. Justice R.K. Gauba (Retired) was shown, who was appointed as an Administrator by the NCLT *vide* order dated 15.05.2024 and later has been made as an Observer by the NCLAT *vide* order dated 31.05.2024. The report would also go to suggest that despite directions of the NCLT/NCLAT, major policy decisions were taken without consulting him. It is revealed in the report that, although

no major policy decisions were made during the meeting held on 20.06.2024, the reply filed by respondent no. 2 company in this case shockingly states that Shri Sunil Kumar Sobti was appointed as an Additional Director, and M/s K. S. Oberoi & Co. was appointed as the Statutory Auditor of the respondent No.2 company. It is also brought to the fore that despite repeated reminders, the present management of respondent No.2 company has not shared several details in the nature of organizational structure of the respondent No.2 company, list of secretarial records, statutory compliances, detailed particulars of all the managerial personnel (current and former) scope of their respective roles/responsibilities along with the details of their remuneration/perks and benefits, in particular the *copies of the audited and unaudited financials of the company with schedule and trial balances* besides the list of list of receivables and payables besides list of secured and unsecured creditors, and such non-compliances assumes significance that all is not well in running the affairs of respondent no. 2 company by the present management.

28. Before concluding the discussion in the instant matter, it would be expedient to point out that the respondent no.2 company in its reply-cum-affidavit through Mr. Achal Kumar Jindal dated 25.09.2024, filed in response to the Status report filed by the respondent no.1/RBI dated 13.08.2024, has simply made bald denial with regard to the issues and concerns which have been raised by the respondent No.1/RBI. It is stated that in order to restore the leverage ratio, the OCDs were converted into the CCPS *vide* the resolution dated 27.09.2022. As regards the OCDs of ₹315 crores, having been

received without permission, it is sought to be canvassed that it neither qualifies to be a 'public fund' nor Regulation 61 of 2016 of the RBI Master Directions are applicable.

29. Reference is invited to the Rule XIII(c)(2) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, which excludes any amount received from another. This interpretation, however, is not accurate, as the term 'amount received' is entirely distinct from the concept of debentures under corporate law. As regards the conversion of OCDs into the CCPS, it is submitted that *ex post facto* permission was sought *vide* application dated 17.09.2024 from the respondent no.1/RBI.

30. Adverting to the issue of non-submission of audited balance sheets for the financial year 2023-24, an excuse is taken that the statutory Auditor M/s V. V. Kale has not deliberately filed the same and had been evading to carry out its statutory duties and eventually the said auditor has since resigned, after the order passed by the NCLAT dated 25.05.2024; and it is stated that thereafter M/s K. S. Oberoi & Co. has been appointed as the Statutory Auditor of the respondent No.2 company on 19.06.2024. That fact was refuted by the learned Senior Counsel for the petitioner stating that ,such auditor has not been appointed under the overall supervision of the administrator/observer.

31. Suffice to state that the issues and concerns which have been raised by the respondent no.1/RBI in its report dated 13.08.2024, have not been addressed, and there appears to be an attempt to brush these alarming issues under the carpet. As for the case law referred, the

decision of this Court in **Dr. Subramanian Swamy v. Union of India** (*supra)* was one where a petition under Article 226 of the Constitution of India was filed in the nature of public interest litigation for issuance of writ of mandamus to form a Committee consisting of experts in order to investigate the alleged fraudulent acts of M/s Max Life Insurance Company Limited. It is in the said context that this Court dismissed the writ petition holding that the High Court cannot act as a 'super regulator' and interfere in matters which the petitioner challenges being in the nature of private commercial transaction between commercial entity, considering that the shareholders of the public limited company had approved the transaction besides the fact that such transactions were being regulated by the insurance and banking sector as also by the SEBI and even the RBI were also seized of the controversy.

32. The decision in the case of **Krishnakrupa Owners Association v. Reserve Bank of India** was rendered in the context of decision taken by the RBI under Section 39A of the Banking Regulation Act, 1949, whereby certain conditions had been imposed on the petitioner including the restrictions, which restrained the respondent No. 3 from paying more than ₹10,000/- to its depositors. The High Court refused to exercise its jurisdiction and interfere in the banking affairs of the respondent No. 3 since it was held that the RBI, which was an expert body, was already seized of the matter.

33. Insofar as the decision in the case of **Hoichoi Technologies Private Limited v. Reserve Bank of India** (supra) is concerned, it was rendered in an altogether different context inasmuch as it was

pertaining to certain supervisory role of the RBI under the Payment and Settlement Systems Act, 2007, and the RBI being the regulatory and supervisory body, has been designated to regulate and supervise the payment systems to an entity based abroad under the aforesaid Act. The issue was whether a Google group of companies are operating as payment aggregator without being accredited/registered to do so on Indian soil. It is in the said context that it was decided that it should not interfere in the matter and it would be open to the parties including the RBI and the Competition Commission of India to adjudicate upon the issues involved on its own merits.

34. Therefore, finding no legally sustainable challenge to the maintainability of present writ petition, and given that it is evident that respondent No. 1/RBI has thus far failed to exercise its supervisory powers, it becomes imperative that certain directions be issued to respondent No.1/RBI to intervene in the matter and to ensure the enforcement of binding regulations provided under the RBI Act. There are cogent and ample material on the record that warrant full and thorough inquiry into the affairs of the respondent No.2 company. Therefore, considering the necessity to safeguard the interest of the investors of respondent No.2 company besides other stakeholders including the creditors, the following directions are passed:

(i) It is hereby directed that the Board of Directors of respondent no. 2 company shall remain suspended with immediate effect till further orders;

(ii) As a consequence, an interim arrangement is made appointing an Interim Committee of Administrators headed by Hon'ble Mr. Justice R.K. Gauba (Retired) [**Mobile No. 9650411919, email ID: rkgauba@gmail.com**] in order to protect any further pilfering, siphoning or misappropriation

of funds of the respondent No.2 company, with Mr. Mr. Mahesh Aggarwal as Chartered Accountant [**Member No. 085013, Mobile No.9871324000, email ID: ip1387ma@gmail.com**] and Mr. R. Maheswaram, a retired Banker [**email ID: maheswaramlalitha@gmail.com Mobile No. 9892182640**], as the financial expert and to perform all such duties which are required to be performed by or vested with the Board of Directors of the respondent No.2 company till such time the respondent No.1/RBI appoints Directors for running the affairs of the respondent No.2 company in terms of Section 45ID of the RBI Act;

(iii) In view of above (ii), the present Board of Directors shall submit all the records including the books of accounts besides all movable and immovable properties at the disposal of the Interim Committee of Administrator forthwith;

(iv) Further, as an interim measure Sabadra & Associates, Chartered Accountant firm (IBA no. 120 in the list) is appointed a statutory auditor to conduct special audit under Section 45MA of the RBI Act and conduct statutory audit under the Companies Act, 2013 to finalize the accounts of respondent No.2 company within a period of four weeks;

(v) The said statutory audit of respondent No.2 company shall be conducted for the financial years 2022-23 & 2023-24;

(vi) It is also provided that the respondent No.1/RBI shall be at liberty to appoint any competent person on its own in the interim committee of the Administrators.

(vii) A detailed report with regard to action taken by the Interim Committee of Administrators and respondent No.1/RBI shall be placed before this Court within five weeks from the date of this order;

(viii) Hon'ble Mr. Justice R.K. Gauba (Retired) shall be paid honorarium of Rs. 9,50,000/- per month. Likewise Shri Mahesh Aggarwal, Chartered Accountant shall be paid professional fees @ Rs.5,50,000/- per month; and Shri Mr. R. Maheswaran, a retired Banker, shall be paid professional fee @ 3,50,000/- per month. This shall be paid from the date of taking over charge of such duties. The Court Master of this Court shall send the contact details to Hon'ble Mr. Justice R.K. Gauba (Retired) along with a copy of this order.

(ix) Sabadra & Associates shall be paid a minimum fee of Rs.10,00,000/- for audit of the books of accounts as per the

financial year, and further fee if justified by the Interim Committee of Administrator or the Administrator appointed by the RBI, as the case may be.

35. The aforesaid directions are passed without prejudice to the rights and powers of the respondent No.1/RBI to take appropriate actions on finding out commission of any act of criminal nature or violation of other laws during the course of investigation by respondent No. 1/RBI in accordance with law.

36. A copy of this order be given *dasti* to all the concerned parties through their counsels under the signature of the Court Master for necessary compliance.

37. Re-notify for compliance on 02.12.2024.

**DHARMESH SHARMA, J.**

**OCTOBER 23, 2024/***Sadiq/sp*