

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 895 of 2023

IN THE MATTER OF:

Akhilesh Kumar

...Appellant

Versus

HDFC Bank Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Prakhar Mithal, Isha Virmani, Gaurav Raj, Adv.

For Respondents: Mr. Bheem Sain Jain, Adv. for R1
Mr. Khushboo Sharma, Nimita Kaul, S. Sinha, Adv. for R2/RP

ORDER
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain: (Oral)

06.03.2025: This appeal is directed against the order dated 05.07.2023 by which an application filed under Section 7 of the Code against the Appellant has been admitted.

2. At the time of preliminary hearing, this Court recorded following order on 18.07.2023 which is reproduced as under:-

Learned counsel for the Appellant submits that the Corporate Debtor is a Non-Banking Financial Company (NBFC) and an application being I.A. No. 3534/2023 was filed bringing on record the certificate and other relevant document, which however, on 11.07.2023 has been dismissed having become infructuous in view of order admitting Section 7 application. It is submitted that application filed by the HDFC Bank against the Corporate Debtor, which is a Non-Banking Financial Company (NBFC) could not have been entertained.

Issue notice. Requisites alongwith process fee be filed within three days. Let Reply be filed by the Respondents within three weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 31.08.2023.

In the meantime, impugned order dated 05.07.2023 shall remain stayed.

3. However, the appeal was dismissed by order dated 25.01.2024 because at that time the Appellant failed to prove that the Appellant is registered NBFC by the RBI. The order dated 25.01.2024 is also reproduced as under:-

“This appeal is directed against the order dated 05.07.2023, passed by the National Company Law Tribunal, New Delhi Bench in CP No. (IB)- 25(ND)/2023 by which an application filed by the HDFC Bank Ltd. (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short ‘Code’) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) against Madhuvan Tieup Pvt. Ltd. (Corporate Debtor) has been admitted.

2. In this appeal, the issue raised by the Appellant is that the appellant is a Non- Banking Financial Company (for short ‘NBFC’), therefore, the application filed under Section 7 is not maintainable against it. In this regard, Counsel for the Appellant has referred to a certificate of Registration attached as Annexure –A3, with the appeal, issued on 11.02.2003 at Kolkata by the Department of Non-Banking Supervision (Regional Office) of the Reserve Bank of India.

3. Counsel for the Respondent has challenged this contention and submitted that as per his information and research, the appellant is not a registered NBFC by the RBI albeit the Kolkata branch. In this regard, it is submitted that in the list of the Registered NBFC, issued by the RBI the name of the appellant is conspicuously absent.

4. The Appellant was afforded an opportunity to produce the original of Annexure-A 3 which has not been done. However, on 18.01.2024, the following order was passed by us which is reproduced as under:

“The Appellant was directed on 20.11.2023 to file the Registration Certificate issued by the RBI. No such certificate has been filed rather an Order of the Hon’ble Delhi High Court dated 08.01.2024 has been produced which is purported to have been passed in Writ Petition No. 298/2024.

Counsel for the Appellant has submitted that he has applied to RBI for Registration Certificate through email. On the other hand, Counsel for the HDFC has submitted that the name of the present Appellant is not in the list of NBFC maintained by the RBI. Counsel for the HDFC is directed to file an Affidavit to this effect that name of the Appellant was not there when the Order of Admission was passed. Adjourned to 25th January, 2024”.

5. Apropos the aforesaid order, affidavit dated 22.01.2024 has been filed by Mr. Ankush Saini, S/o Mr. S.S. Saini, Assistant Vice President, HDFC Bank Ltd. in which he has averred that the deponent has sought the information under the Right to Information Act, 2005 ('the Act') with a particular query which read as under:

“Was the Company by the name of Madhuvan Tie up Pvt. Ltd. (CIN No. U51909DL1996PTC264255), registered as NonBanking Financial Company (NBFC) with the RBI on 11.02.2003?

The RBI has answered this query in the following terms:

“The NBFC- Madhuvan Tie up Pvt. Ltd. (CIN No. U51909DL1996PTC264255) is not registered with RBI as an NBFC.”

“The list of NBFCs registered with RBI is available on the website and can be accessed using the link [https://rbi.org.in/Scripts/BS NBFCList.aspx](https://rbi.org.in/Scripts/BS%20NBFCList.aspx)”.

6. It is further submitted by the Respondent that the complete list running into almost thousand pages has also been placed on record in which the name of the Appellant as a registered NBFC by the RBI does not figure. On the basis of the aforesaid evidence, Counsel for the Respondent has submitted that the contention of the Appellant that it is a registered NBFC by the RBI is totally false.

7. Counsel for the Appellant has then submitted that the RBI has taken a decision on the basis of the list which has been released on the website whereas it has been submitted that the Appellant was listed at Kolkata and was transferred to Delhi and the Appellant has already approached the Hon'ble Delhi High Court in a writ petition in which the prayer has been made for a direction to

the RBI to issue the certificate in original to the Appellant. It is submitted that the said writ petition is still pending.

8. We have heard Counsel for the parties and perused the record with their able assistance. The issue involved in this case travels into a narrow compass because the only defence taken by the Appellant, to avoid CIRP, is that the Appellant is a NBFC Registered by the RBI. However, this contention is contrary to what the RBI has said while issuing the information to the Respondent under the Act and stating that the Appellant is not registered with the RBI as a NBFC. Moreover, the list of NBFC registered with the RBI, available on the Website, also does not show that the appellant is recorded as such.

9. In such circumstances, we hold that the appellant has failed to prove in this case that the appellant is a registered NBFC by RBI, therefore, the issue raised by the appellant is decided against the appellant.

10. In view of the aforesaid discussion, the present appeal fails and hence dismissed.”

4. Thereafter, the Appellant filed an I.A No. 1090 of 2024 under Rule 11 of NCLAT Rules, 2016 for recalling of the order dated 25.01.2024. In the said application, the order passed on 18.10.2024 is reproduced as under:-

“In this appeal, the Appellant has alleged that it is a Nonbanking financial company (NBFC), therefore, the application filed under Section 7 is not maintainable against it.

The Respondent produced the information derived under the Right to Information Act,2005 from the RBI, New Delhi according to which the Appellant is not registered as NBFC by the RBI and on the basis of which the appeal filed by the Appellant was dismissed.

The Appellant has now filed the application for recalling of the order dated 25.01.2024 by way of I.A. No. 1090 of 2024 and has submitted that pursuant to a writ petition filed by the Appellant before the Hon'ble Delhi High Court, the Reserve Bank of India, has handed over the certificate of the registration as NBFC of the Appellant dated 11.02.2003.

However, it transpired in the hearing dated 19.09.2024 as to whether the certificate appended by the Appellant as Annexure A3 was ever cancelled by the RBI?

Counsel for the Appellant has filed an affidavit dated 14.10.2024 of the appellant in which he has averred that the certificate of NBFC as Annexure A3 has never been cancelled by the RBI.

Since the issue involved in the main appeal as to whether the Appellant is a NBFC to whom the certificate has been issued by the RBI or not and there are two set of evidence before us one filed by the Respondent, obtained under the RTI from the RBI, New Delhi in which he has been informed that the Appellant is not a NBFC and on the other hand, the Appellant has produced the certificate as Annexure A3 which is alleged to have been given to the Appellant during the proceeding before the Hon'ble Delhi High Court, therefore, in order to arrive at a just conclusion about the aforesaid fact as to whether the Appellant was NBFC at the time when the application was filed under Section 7, it would be just and expedient to seek the information from the RBI itself, therefore, the registry is directed to send copy of this order to RBI, New Delhi through its regional director, office at, 6, Sansad Marg, New Delhi, 110001. The Reserve Bank of India is also requested to provide a concrete information in this regard, by recruiting some concerned official, on the next date of hearing. Adjourned to 29th November, 2024.”

5. In terms of the aforesaid order, a notice was issued to the RBI. The RBI had appeared through its counsel on the next date of hearing i.e. 29.11.2024 and submitted that the Appellant is a registered NBFC by RBI to whom a certificate was issued by it under Section 45-1A of the RBI Act, 1934. The application for recalling of the order dated 25.01.2024 was thus allowed. The order dated 29.11.2024 is also reproduced as under:-

“This order shall dispose of I.A No. 1090 of 2024 filed in CA (AT) (Ins) No. 895 of 2024 by which the Applicant/Appellant has requested for recalling of the order dated 25.01.2024 by which the aforesaid appal was dismissed.

2. Shorn of unnecessary details, the present appeal has been filed against the order dated 05.07.2023 by which the application filed

by HDFC Bank Limited under Section 7 of the Code has been admitted.

3. The positive case set up in this appeal by the Appellant is that the Appellant is the NBFC, therefore, the application under Section 7 was not maintainable. In order to prove the same, he has attached a certificate of registration (annexure A3) issued on 11.02.2003 at Kolkata by the Department of Reserve Bank of India (RBI).

4. However, the plea of the Appellant was not accepted by this Court on the ground that in an affidavit dated 22.01.2024, filed by AR of the HDFC Bank Limited it was contended that RBI has given information under the Right to Information Act, 2005 to the effect that:-

“Was the Company by the name of Madhuvan Tie up Pvt. Ltd. (CIN No. U51909DL1996PTC264255), registered as NonBanking Financial Company (NBFC) with the RBI on 11.02.2003?

The RBI has answered this query in the following terms: “The NBFC- Madhuvan Tie up Pvt. Ltd. (CIN No. U51909DL1996PTC264255) is not registered with RBI as an NBFC.

The list of NBFCs registered with RBI is available on the website and can be accessed using the link [https://rbi.org.in/Scripts/BS NBFCList.aspx](https://rbi.org.in/Scripts/BS%20NBFCList.aspx).”

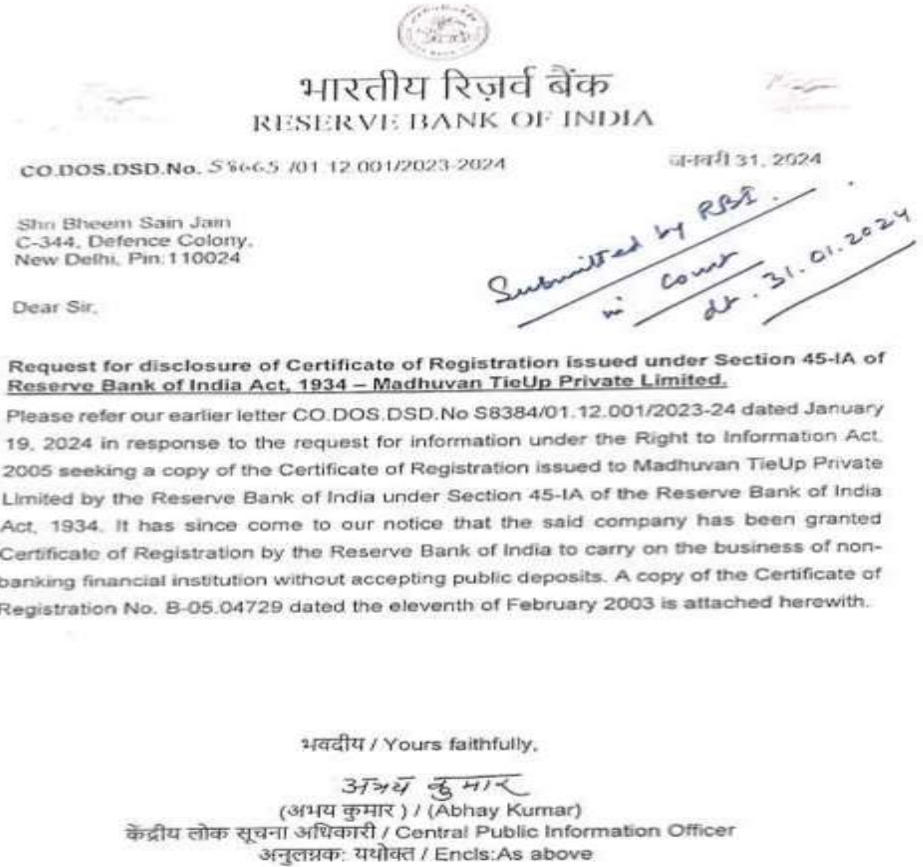
5. The Respondent had also attached a list of almost thousand pages in which the name of the Appellant as NBFC was conspicuously absent. As a result thereof, the appeal was dismissed.

6. In the present application, the appellant/applicant has averred that the certificate of registration as NBFC by the RBI was delivered pursuant to the order passed by the Hon'ble High Court of Delhi in Writ Petition No. 298 of 2024.

7. Since, there was an issue as to whether the Appellant was the NBFC at the time when the application was filed under Section 7, therefore, an order was passed on 18.10.2024 to seek information from the RBI itself in this regard. The order dated 18.10.2024 is reproduced as under:-

“In this appeal, the Appellant has alleged that it is a Nonbanking financial company (NBFC), therefore, the application filed under Section 7 is not maintainable against it. The Respondent produced the information derived under the Right to Information Act, 2005 from the RBI, New Delhi according to which the Appellant is not registered as NBFC by the RBI and on the basis of which the appeal filed by the Appellant was dismissed. The Appellant has now filed the application for recalling of the order dated 25.01.2024 by way of I.A. No. 1090 of 2024 and has submitted that pursuant to a writ petition filed by the Appellant before the Hon’ble Delhi High Court, the Reserve Bank of India, has handed over the certificate of the registration as NBFC of the Appellant dated 11.02.2003. However, it transpired in the hearing dated 19.09.2024 as to whether the certificate appended by the Appellant as Annexure A3 was ever cancelled by the RBI? Counsel for the Appellant has filed an affidavit dated 14.10.2024 of the appellant in which he has averred that the certificate of NBFC as Annexure A3 has never been cancelled by the RBI. Since the issue involved in the main appeal as to whether the Appellant is a NBFC to whom the certificate has been issued by the RBI or not and there are two set of evidence before us one filed by the Respondent, obtained under the RTI from the RBI, New Delhi in which he has been informed that the Appellant is not a NBFC and on the other hand, the Appellant has produced the certificate as Annexure A3 which is alleged to have been given to the Appellant during the proceeding before the Hon’ble Delhi High Court, therefore, in order to arrive at a just conclusion about the aforesaid fact as to whether the Appellant was NBFC at the time when the application was filed under Section 7, it would be just and expedient to seek the information from the RBI itself, therefore, the registry is directed to send copy of this order to RBI, New Delhi through its regional director, office at, 6, Sansad Marg, New Delhi, 110001. The Reserve Bank of India is also requested to provide a concrete information in this regard, by recruiting some concerned official, on the next date of hearing. Adjourned to 29th November, 2024.”

8. Pursuant to the aforesaid order, Mr. Ramesh Babu has appeared alongwith the officials of the RBI. Mr. Ramesh Babu has submitted that after the order dated 25.01.2024 was passed, the person who had sought the information, namely, Bhim Sain Jain was duly informed that the RBI had issued the certificate to the Appellant in terms of Section 45-1A of RBI Act, 1934. The Text of the said order is also reproduced as under:-



9. The Appellant has also attached with the application list of NBFC registered with the RBI as on 30.06.2024 dated 10.10.2024 in which the Appellant has been recorded as registered NBFC as serial no. 4697. The said entry is also reproduced as under:-

SR. No.	NBFC	Regional Office	Whether CoR for holding/accepting public deposits	Classification	Corporate Identification No.	Layer	Address	Email ID
4697	Madhuvan Tieup Pvt. Ltd.	Kolkata	No	ICC	UK190893L1996PTC304288	None	House No. 88, Pocket - I, Panchsiri Part, North West Delhi, New Delhi - 110063	madhuvan@tieup.com or tieup1172@gmail.com

10. Counsel for the Appellant has also submitted that since it is an error apparent on the face of record which has been caused due to wrong information supplied by Respondent on the basis of

information received from the RBI, therefore, the order can be recalled in terms of the order passed by this Court in Union Bank of India Vs. Mr Dinkar T. Venkata Subramanian Company Appeal (AT) (Insolvency) No.729 of 2020. 11. Counsel for Respondent as well as Counsel appearing for RBI have conceded the aforesaid facts and admitted that the appellant is a NBFC. 12. Thus, in view of the aforesaid facts and circumstances, the application is hereby allowed and the order dated 25.01.2024 is recalled, restoring the appeal no. 895 of 2023 to its original number alongwith interim order which was passed by this Tribunal on 18.07.2023 to the effect that impugned order shall remain stayed. 13. Since, we have disposed of the application, therefore, the RBI which is not a party in the appeal is hereby discharged. List this appeal for hearing on 11th December, 2024.”

6. Today, during the course of hearing, Counsel for the Appellant has submitted that the order in the application under Section 7 was reserved on 13.06.2023. The Appellant filed an application after the order was reserved on 03.07.2023 for brining on record the certificate of NBFC issued by RBI, however, the Tribunal allowed the application under Section 7 on 05.07.2023 without taking into consideration the certificate issued by the RBI to the Appellant.

7. Be that as it may, the fact remains that the issue as to whether the Appellant being a NBFC, as certified by the regulator, namely, RBI is saved from the proceedings of the Code? In this regard, Counsel for the appellant has submitted that no application under Section 7 can be filed against the CD. Thereafter, he has referred to various definitions in order to justify that the Appellant being a NBFC cannot be proceeded against in terms of Section 7 of the Code. In this regard, Counsel for the Respondent has submitted that Section 3(17) also provides that "financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator

which is of course the RBI in this case. It is further submitted that the appellant has to prove by leading evidence, if already not led, that whether it has, being authorised to act as NBFC, been engaged in the business of providing financial services.

8. We have heard Counsel for the parties and perused the record with their able assistance.

9. As a matter of fact, the issue regarding the appellant being NBFC and its effect has never been before the Ld. NCLT for the purpose of seeking dismissal of the application filed under Section 7 by the Respondent. There is no dispute that the appeal is a continuation of the original proceedings but since the Appellant has to prove, by leading evidence, if already not led, that it had been engaged in providing financial services, for challenging the application filed under Section 7, therefore, we find it just and expedient to set aside the impugned order and remand the matter back to the Ld. NCLT, keeping the issue open as to whether the application under Section 7 filed by the Respondent is maintainable against the present appellant in case the Appellant is a NBFC?

10. The parties shall appear before the Ld. NCLT on 28th March, 2025.

11. It is needless to mention that the Ld. NCLT shall provide at least two opportunities to the parties to lead evidence, if any, if it is not on record to prove their case that the Appellant has been engaged in the business of providing financial services as contemplated under Section 3(16 & 17) of the code.

12. With these observations, the present appeal is allowed and the impugned order is set aside. I.As, if any, are hereby closed.

13. Before parting, we also observe that while allowing this appeal, we have not touched the merit of the case in any manner.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

sc/rr