

**2003 (68) DRJ 348 (DB)**  
HIGH COURT OF DELHI  
Co. As. 3/2000 and 10/2002  
Rockland Leasing Ltd.....Appellant  
Versus  
Reserve Bank of India and another.....Respondents  
S.B. Sinha, C.J.  
A.K. Sikri, J.  
Decided on : September 21, 2002

**Company Law**

**Winding up—Acceptance of deposits—Company carrying on business of non-banking financial company (NBFC) and governed by existing directions of the Reserve Bank of India relating to such companies including the Non-Banking Financial Companies (Reserve Bank) Directions, 1997 as amended—Company voluntarily applying for registration as NBFC, not solvent and thousands of depositors knocking at the door of the courts for refund of the amounts deposited—Acceptance of deposits prohibited—Order of winding up by Company Law Board upheld—Companies Act, 1956, s. 10F—Reserve Bank of India Act, 1934, ss. 45B, 45DC, 45I, 45IA, 45QA.**

*Held : The Company has been under the jurisdiction of RBI ever since its inspection and it voluntarily applied for registration after amendment of the RBI Act. On such a plea that it had withdrawn the application it cannot avoid the rigours of law. It is also a matter of record that many other petitions for winding up were filed before the Company Judge. Notwithstanding the hyper technical submission made by the counsel for the appellant the state of affairs as prevailing could not be disputed by him. Harsh realities which exist today cannot be ignored. There are no premises of the company for functioning. It is not transacting any business. Its directors are either fleeing or are under arrest. The company cannot claim itself to be solvent while depending on lease business money which it was considering was difficult to recover. Only two properties, one in Bombay and the other in Goa are the company's corpus today which have no liquidity. On the other hand, hundreds and thousands of depositors are knocking at the door of the Courts for claiming their refund from the appellant. In such a situation, the appellant is making a tall claim of it being solvent. It also cannot be said that there are any chances of revival of*

such a company. In fact, as the company Judge has dealt with this aspect in substantial detail. There is no reason to differ.

**Cases referred**

*Allahabad High Court in RBI v. Krishi Export Com. Corporation Ltd.* 2001 CLC 150

*Dr. Pinna N.R. v. Commissioner of Police* Civil Writ Petition No.3249/98

*General Finance and Investment Co. Ltd. v. RBI* (1992) 2 SCC 344

*K.P. Mishra v. Medwin Laboratory P. Ltd.* (1988) 63 Company Cases 810

*MVI Ahmadur Rahman & Ors. v. Registrar of Companies* (1973) 43 Company Cases 522

*National Conduits (P) Ltd. v. S.S. Arora,* (1967) 37 Company Cases 786

Mr. M.L. Lahoty with Mr. P.K. Sharma, Advocates for the Appellant.

Mr. Rajiv Nayyar, Sr. Advocate with Ms. Manish Maya Menon, Advocate for the Respondent.

Mr. S.K. Luthra, Advocate for OL.

Mr. Deepak Khadania, Advocate for depositors.

**A.K. Sikri, J.**

1. The appellant in both the appeals is Rockland Leasing Ltd. against whom Company Petition 93/2001 was filed by Reserve Bank of India under the provisions of Section 45-DC of the Reserve Bank of India Act, 1934 (in short, the Act) for winding up the affairs of the appellant company. In another petition filed by certain persons under Section 45QA of the Act before the Company Law Board (CLB, for short). The CLB passed order dated 26.6.98 giving certain directions for repayment of deposits to the said applicants/depositors. The appellant filed Co.A. 4-B/98 under the provisions of Section 10F of the Companies Act, 1956 against said order dated 26.6.1998 passed by the CLB Company Petition 93/2001 was well as Co.A. 4-B/98 were heard together by the learned company Judge and a common judgment dated 5.12.2001 has been given. In the said judgment learned single Judge has allowed CP 93/2001 ordering winding up of the appellant company and dismissed Co.A.4-B/98 of the appellant.

2. Company Appeal 3/2002 is directed against the decision in CP 93/2001 and Co.A.10/2002 is against that part of the order by which the Company Judge has dismissed the Company Appeal 4-B/98. Both these appeals were heard together.

3. In his elaborate judgment covering various facets of the case, the learned Company Judge has taken note of the factual matrix of the matter and has also referred to the statutory provisions. It would, therefore be unnecessary to do this exercise all over again in detail. However, for the sake of clarity, wherever necessary, these facts and statutory provisions would be referred to and expanded.

4. It may be stated at the outset that all the parties before the learned Company Judge agreed that if the company petition filed by the Reserve Bank of India succeeds then the company appeal against the order of the CLB filed by Rockland would be infructuous. The learned Single Judge recorded:

"It stands to reason, and all learned counsel agreed that if the winding up petition filed by the RBI succeeds, then the appeal filed by Rockland and all other petitions and applications are really infructuous. It is on this basis that I have proceeded, making it necessary to first deal with the petition filed by the RBI".

5. Thus, in view of our aforesaid position prevailing even in these appeals it would be appropriate to take up Co.A.3/2002 challenging the order of winding up.

6. The appellant was incorporated on 14.3.84 and its registered office is in Delhi. Its objects amongst other included "undertaking business of finance, hire-purchase, leasing and to finance lease operations of all kinds". The case of RBI is that the appellant was carrying on business of non-banking financial company (NBFC, for short) as defined under Section 45-I(f) of Chapter III-B of the Act. This definition was incorporated in the Act by Reserve Bank of India (Amendment) Act, 1997 w.e.f. 9.1.1997. Thus the appellant came to be governed by the existing directions of RBI relating to such companies and these directions include the Non-Banking Finance Companies (Reserve Bank) directions, 1997 as amended.

7. The appellant applied to RBI on 3.7.1997 for certificate of registration under the provisions of Section 45-IA(2) of the Act as NBFC. The RBI in order to satisfy itself whether the appellant fulfills the condition for such a registration could inspect the books and inspection was undertaken between 12th and 22nd September, 1997 under the provision of Section 45B of the RBI Act. Additionally in exercise of power conferred by Section 45MA(3) Dewan & Gulati, CA were appointed by RBI to conduct special audit of the accounts of Rockland with reference to its financial position as on 31.3.1997 and to submit a report. Immediately thereafter the RBI also issued two directions both dated 2.1.1998 prohibiting all NBFCs from accepting deposits if they did not possess a credit rating of minimum 'A' from any approved credit rating agency. After these notifications the appellant wrote a letter dated 8.1.1998 to RBI stating that it had decided in favour of retaining the fee based activities of merchant banking and discontinue financing operations and it stopped all fund based operations as NBFC. By another letter dated 14.1.1998, it expressed its happiness over the directions regarding inspection of its records but still pressed for discharging the liability of public deposit within three years starting January, 1998 for repayment in the ratio of 40:30:30 corresponding to this period. However, RBI decided to go ahead with the said audit by Dewan & Gulati. It could not succeed as the appellant did not cooperate with the C.As. Thereafter on 10.2.1998 RBI sent a detailed notice to the appellant stating that in view of various factors its application for grant of certificate of registration for carrying on business of NBFC could not be granted. The appellant sent a detailed representation dated 19.2.1998 setting out its case and concluded by withdrawing its application dated 3.7.1997 for grant of certificate of registration. Notwithstanding the proposed withdrawal of application, RBI vide its reply dated 19.2.1998 communicated to the appellant that till the entire outstanding public deposit held by it were repaid in terms of RBI notification dated 31.1.1998, the appellant company will continue to fall within the RBI Regulation and cannot be allowed to withdraw its registration application at that stage. Thereafter the prohibitory order dated 9.6.1998 followed restraining the appellant from taking public deposits as it was noticed therein that by issuing advertisement in February 1998 the appellant solicited deposits from

public and further that RBI had received complaints from depositors in this behalf. It may be mentioned at this stage that the prohibitory order dated 9.6.98 was challenged by the appellant resorting to two remedies. In the first instance an appeal was filed under Section 45-IA(7) of the Act before the *Company Judge* and simultaneously a CW 3433/98 was also filed for quashing these orders. Both, the appeal and civil writ were dismissed in default 17.1.2001 and 1.1.2000 respectively.

8. That while all this was going on, some of the depositors approached CLB regarding non-payment of their deposits. Therein the appellant appeared and were heard on 9.6.1998. Thereafter it also filed a reply dated 18.6.1998 stating that in view of the mismatch in the cash flow resulting from RBI guidelines dated 31.1.1998 the appellant was repaying deposits in accordance with those guidelines. After hearing the appellant, the CLB passed an order dated 26.6.98 as already referred to above. In this order the following schedule of repayment was directed:

"(a) All deposits up to Rs.10,000/- to be repaid in full by 31.12.1998.

(b) all deposits exceeding Rs.10,000/- upto Rs.50,000/- to be repaid in two instalments namely 50% by 31.12.1998 and 50% by 31st December, 1999.

(c) all deposits above Rs.50,000/- to be repaid as under:

30% by 31-12-1998

30% by 31-12-1999

30% by 31-12-2000

(d) All requests for repayment on compassionate grounds shall be repaid within one month of the request in case the company is satisfied with regard to the grounds namely, serious illness, old age, marriage in the family and other pressing commitments.

(e) Interest of the deposits shall be continued to be repaid regularly as per the existing terms and conditions of deposits."

9. Against this order the appellant preferred Co.A. 4-B/98. When this appeal was pending and was being proceeded with in which various orders were passed from time to time as noted by the learned Single Judge in detail in his judgment. RBI also started receiving large number of complaints from various deposits alleging that neither CLB directions were complied with nor were they paid back their deposits. This moved the machinery of the RBI and it issued show cause notice on 15.6.99 to the appellant asking why penal should not be not taken against it. As the notices sent to the company and its directors came back undelivered with the remarks "intentionally avoided to take delivery" and "left" respectively, the RBI filed criminal complaint No.753/99 in the Court of Additional Chief Metropolitan Magistrate, New Delhi on 21-9-1999. The learned ACMM took cognizance of the offence on 9.9.1999 and summoned all the accused.

10. Thereafter in March, 2001, RBI filed a company petition 93/2001 for winding up the affairs of the appellant and took charge of its properties, assets and books of account etc. The aforesaid company petition and appeal have been disposed of by the learned Single Judge in the manner already mentioned above. Before we proceed to deal with the contentions raised by the appellant, it would

be apposite to summarise the discussion made by the learned Single Judge in the impugned judgment. We may mention that the main fact which influenced the Company Judge to pass the impugned order can be summarised as under:

- (a) During the pendency of the appeal against the order of CLB the Court gave a number of opportunities to the appellant to liquidate its debts and for payment to the depositors. The appellant has been making promise but had not been adhering to the same.
- (b) The appellant had given proposal for such deposits before CLB to RBI as well as in the Court at different times but always back-tracked.
- (c) That the assurance given by the Directors of the appellant to deposit certain amounts in the Court were also not adhered to.
- (d) The Court had given opportunity to the parties to sit together, negotiate and suggest the best way of protecting the interest of depositors and enabling the appellant to repay the debtors for which meeting was held in the chamber of Mr. Anoop Bagai Advocate at the direction of the Court but that also did not yield results.
- (e) The appellant had represented to the Company Court that they have immovable properties in Mumbai and Goa which could be sold off, for paying off the depositors. The Court appointed two advocates as Joint Commissioner to sell those properties but this proposal also could not materialise because of some or the other impediment in the way of the sale of the said property and for want of time.
- (f) The liabilities of the appellant was much more than its assets. The course of conduct had established that the appellant was unable to pay its debts. Consequently, the requirement of Section 45-MC of the Act stood satisfied.

11. The aforesaid conclusions were derived after narrating the facts in detail, the summary whereof is found in the following observation of the judgment:

"An effort was also made by this Court to resolve all problems between the parties and a meeting for this purpose was also held between all of them on 23.9.2000 in the Chamber of Mr. Anoop Bagai, Advocate. Certain decisions were taken at this meeting and J.M. Chawla also filed an affidavit agreeing to abide by the decisions taken in the meeting but all this was of no effect.

Learned counsel for Rockland time and again sought the indulgence of this Court to allow his clients an opportunity run their offices and to recover amounts allegedly due to them from their lessees to repay the debts to all the depositors. He squarely blamed the various directions of the RBI FOR THIS state of affairs. On 18.9.2000, an opportunity was given to Rockland despite the objections of the depositors. (this had resulted in the meeting held on 23.9.2000). The acceptance of the request, however, had not positive effect on the outcome of the proceedings. Further similar entreaties made by learned counsel for Rockland during the course of hearing had, quite naturally, to be rejected.

In the context of these submission of learned counsel for Rockland, it must be remembered that the Supreme Court has said in **General**

**Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 344** that the reasonableness of directions given by the RBI have to be looked at from the point of view of the depositors, for whose safeguard they have been issued. The reasonableness of the directions has to be looked at from the point of view of the company to whom such restrictions will be irksome and may, therefore, be regarded as unreasonable (paragraphs 19 and 20 of the report).

On a consideration of the various aspects of the case, I have no hesitation in concluding that Rockland is unable to pay its debts and its continuance is detrimental to the public interest or to the interest of the depositors of the company. The provisions of clauses (a) and (d) of Section 45-MC(1) of the RBI Act have been violated as contended by learned counsel for the RBI.

Rockland had applied for a certificate of registration on 3.7.1997 under the provisions of Section 45-IA(2) of the RBI Act. This application was rejected by the RBI on 9th June, 1998. An appeal preferred by Rockland against this order was dismissed on 17.1.2001 and CW referred in this Court was dismissed in default on 1st November, 2000. The order dated 9th June, 1998 has, therefore, attained finality. In terms of Section 45MC(1)(b) of the RBI Act, Rockland is disqualified from carrying on the business of an NBFC.

Finally, by the same order dated 9th June, 1998 Rockland was prohibited from receiving deposits for a period of not less than three months. The prohibition was, in fact, for six months and was later extended by an order dated 4th May 1999 by another six months. Whether the extension could have been granted or not, as contended by learned counsel for Rockland, is really of no consequence. The fact is that there was a prohibition against Rockland from receiving deposits for a period of not less than three months.

Consequently, RBI had more than enough material to conclude that Rockland has not satisfied the provisions of clauses (b) and (c) of Section 45-MC(1) of the RBI Act.

Looked at, therefore, from any point of view, there is no option but to order the winding up of the affairs of Rockland in terms of Section 45-MC of the RBI Act."

12. It may be mentioned at this stage that while passing winding up order, the Court was conscious of the predicament of the depositors to express its helplessness in coming to the aid of gullible depositors and concluded that it had no other option but to pass the order of winding up. For taking recourse to this action, the Company Judge also relied upon the judgment of Andhra Pradesh High Court dated 13.12.1999 in the case of **Dr. Pinna N.R. v. Commissioner of Police Hyderabad in Civil Writ Petition No.3249/98** as well as that of **Allahabad High Court in RBI v. Krishi Export Com. Corporation Ltd., 2001 CLC 150**.

13. Mr. Lahoti learned counsel for the appellant submitted that the appellant was neither a financial company nor NBFC and therefore the provisions of Section 45(c) & (f) were not applicable. In that view of the matter RBI had no jurisdiction

over the appellant company and thus it could not give any directions or file any company petition. It was further submitted that the appellant had all the intention to pay to the depositors and only for this reason it had made proposal on 14.1.1998 before the CLB and even the RBI was informed about the payment which the appellant proposed to make to the depositors in three years in the ratio of 40:30:30 although RBI guidelines had not come into existence at that time which were issued on 30.1.1998. It was further submitted that even in reply to show cause notice the appellant had expressed its intention to pay the depositors. Learned counsel further referred to leasing assets from whom money was to be recovered and tried to demonstrate therefrom that once this money is recovered the appellant would be in a position to pay its debtors particularly when the appellant was in a possession of certain properties as well for which it was making genuine attempts to sell the same. It was also argued that the appellant was still a solvent company as is clear from its balance sheet and it had sufficient assets to repay the debtors. He tried to buttress his submission by pointing out that on 31.3.97 the dues payable were 20.96 crores which had come down to Rs.3.6 crores on 26.7.2001. The amounts paid during this period were also highlighted. He further submitted that straightway passing a winding up order was in violation of Rules 24 and 29 of the Company Court Rules. In support of his submission, judgment in the case of **K.P. Mishra v. Medwin Laboratory P. Ltd. (1988) 63 Company Cases 810**, **National Conduits (P) Ltd. v. S.S. Arora,, (1967) 37 Company Cases 786** and **MVI Ahmadur Rahman & Ors. v. Registrar of Companies, (1973) 43 Company Cases 522** were cited.

14. In **K.P. Mishra** (supra) Madhya Pradesh High Court held that appointment of a provisional liquidator is a drastic measure and should not be resorted to except in special circumstances. It further held that both on authority and on principle a provisional liquidator is not in general, appointed before the hearing of the petitioner for winding up unless the company is shown to be insolvent or unless the petition is prosecuted by the company itself or shown to be unopposed. In the present case as we have already held, the company Judge heard the petition for winding up in detail and after being satisfied that the company has become insolvent order of winding up was passed and a liquidator appointed and therefore this judgment is of no help to the appellant.

15. In **National Conduits (P) Ltd.** (supra) the Supreme Court was construing Rules 24 and 29 of the Company Court Rules. That was a case where winding up petition filed by the respondent therein was dismissed by the Company Judge holding that the said petition was filed to prejudice the interest of the shareholders of the company. The respondent having set up a rival factory in the name of his son for manufacturing conduit pipes. The learned Judge ordered that the petition may not be advertised and be dismissed. In appeal the D.B. held that under the Company Court Rules once a petition is admitted to file Court was bound to advertise the petition. It was in this context that Supreme Court while reversing the decision of the D.B. observed:

Page 788 "a person for winding up cannot be placed for hearing before the Court unless the petition is advertised; that is clear from the terms of Rule 24(2). But that it is not to say that as soon as the petition is admitted, it must be advertised. In answer to a notice to show cause why a

petition for winding up be not admitted, the company may show cause and contend that the filing of the petition amounts to an abuse of the process of the Court. If the petition is admitted, it is still open to the company to move the Court that in the interest of justice or to prevent abuse of the process of the Court, the petition be not advertised."

16. To the same effect is the judgment of Gujarat High Court in the case of **MVI A. Rehman** (supra). Obviously, these judgments do not apply to the fact situation obtaining in the instant case.

17. He submitted that attempt of the Court should be to rehabilitate the company and winding up order should be passed only as a last resort.

18. In a nutshell, it may be stated that the contention of the appellant was threefold: (a) RBI had no jurisdiction in the matter inasmuch as the appellant was not NBFC; (b) the appellant had all the intentions to pay its debtors and was still a solvent company and therefore the order of winding up should not have been passed; and (c) such orders were passed contrary to the provisions of the Company Court Rules.

19. Learned counsel for the respondent, including Mr. Luthra appearing for the Official Liquidator, countered the aforesaid submission with much vehemence heavily relying upon various observations made by the Company Judge wherein reference has been made to various directions issued by CLB, RBI and various orders passed in the proceedings before the Company Judge and it was argued that the company was not in a position to pay its debtors. It was further submitted that hundreds of depositors had complained to RBI, many approached CLB and many had even filed winding up petitions in this Court as they were not repaid their deposits. It was also submitted that audited balance-sheets of the appellant for the period ending 31.3.1997 clearly showed that its net worth was less than its liabilities.

20. Mr. Luthra also submitted that there was no office of the appellant company as it had vacated all the premises long ago, its directors had fled away, there was no business conducted by the company and the company had also not filed any statement of affairs. It was not rendering any cooperation. Corpus of the company was in the form of two properties - one at Bombay and another at Goa - worth of which was not more than 30-40 lakhs and even for that buyers could not be found. This situation clearly establishes that the winding up order was rightly passed.

21. Mr. Rajeev Nayyar, learned Sr. counsel for RBI submitted that the company was incorporated in 1984 and was classified as equipment leasing company by the RBI. Ever since then it was under the control of RBI. After amendment in the provision of the RBI Act, the appellant had made application on 3.7.97 to the RBI. Pursuant thereto RBI had inspected the appellant company and found irregularities including serious irregularities to the effect that no reserve for bad debts was maintained. The company could not withdraw the application on its pleasure. In any case, RBI had the right to force the company to pay all the depositors. As the directions were not complied with it was appropriate for the RBI to file a company petition for winding up.



22. Insofar as the argument that the appellant is not NBFC, we may notice that the Company Judge has rejected this argument in the following manner:

"It was contended by the learned counsel for Rockland that his client was not an NBFC in view of the provisions of Section 45-I of the RBI Act. This argument needs to be summarily rejected. There is nothing to suggest that Rockland was not carrying on any business of financing or that it was not a financial institution. On the contrary, these facts are not doubted. Furthermore, it was discovered by the RBI that even after the Board of Directors of Rockland had resolved in January, 1998 not to accept fresh deposits, Rockland continued to do so. The fact that Rockland was a Merchant Banker recognised by the SEBI at the relevant time also, does not detract from the conclusions arrived at. It is possible that a Merchant banker, Rockland was not entitled to function as an NBFC-but that it unabashedly chose to do so, cannot be used by it to its advantage. Similarly, the contention of learned counsel for Rockland that due to the provisions of Section 2(c) (xvi) of the Industrial Development Bank of India Act, 1964, his client cannot be classified as a financial institution or an NBFC has only to be stated for outright rejection. There can, therefore, be no doubt that the writ petition filed by the RBI against Rockland is maintainable."

23. We are in agreement with the aforesaid observations. Coupled with the fact the Company has been under the jurisdiction of RBI ever since its inspection and it voluntarily applied for registration after amendment of the RBI Act. On such a plea that it had withdrawn the application it cannot avoid the rigours of law. It is also a matter of record that many other petitions for winding up were filed before the Company Judge. Notwithstanding the hyper technical submission made by the counsel for the appellant the state of affairs as prevailing could not be disputed by him. Harsh realities which exist today cannot be ignored. There are no premises of the company for functioning. It is not transacting any business. Its directors are either fleeing or are under arrest. The company cannot claim itself to be solvent while depending on lease business money which it was considering was difficult to recover. Only two properties, one in Bombay and the other in Goa are the company's *corpus* today which have no liquidity. On the other hand, hundreds and thousands of depositors are knocking at the door of the Courts for claiming their refund from the appellant. In such a situation, the appellant is making a tall claim of it being solvent. It also cannot be said that there are any chances of revival of such a company. In fact, as already noted above, the company Judge has dealt with this aspect in substantial detail. There is no reason for us to differ. While commenting on CA 550/2001 filed by the appellant, the company Judge further observed:

"Reference was made, on occasion, to CA 556/2001 in the Company Appeal. This application was filed on 7-4-2001 by Rockland, which briefly summarizes its grievance, namely, that the order of the CLB was contrary to the directions of the RBI which allowed time to all NBFCs to repay the three years time, reducing its liability by 1/3rd every year and that the schedule of payments was highly onerous as it envisaged 70% of the payment in the first year itself. The application then sets out the

various proceedings and steps taken by Rockland to liquidate its debts. Eventually, in para 24 of the application, Rockland asks for rescheduling the payments to the depositors on certain lines.

Given the conduct of Rockland and its Directors, there is nothing to suggest that the application was made *bona fide* it appears to have been a last ditch attempt to further buy time. Rockland took no concrete steps during the pendency of the application to show that it really meant to fulfill its "commitments". The application does not deserve to be entertained and is rejected. It is so ordered."

24. This examined the entire length and breadth of the matter and going into the nitty gritty thereof the Company Judge was constrained to order the liquidation.

25. In view thereof we do not find any merit in these appeals which are accordingly dismissed.

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