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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK AGARWAL**

**ON THE 21<sup>st</sup> OF DECEMBER, 2023**

**WRIT PETITION No. 15838 of 2020**

**BETWEEN:-**

**BHARAT FINANCIAL INCLUSION LIMITED (FORMERLY KNOWN AS INDUSIND FIANANCIAL INCLUSION LIMITED), A COMPANY INCORPROATED UNDER COMPANIES ACT,2013, HAVING ITS REGISTERED OFFICE AT ONE INDIABULLS CENTRE, TOWER 1,, 8TH FLOOR 841 SENAPATI BAPAT MARG, ELPHINSTONE, MUMBAI - 400 013 AND HAVING A BRANCH OFFICT AT M. N. 84, DATTA TOWNSHIP, IN FRONT OF SPORTS CLUB, BARELA WITH BRANCH CODE 28:06, JABALPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI BRIAN D'SILVA - SENIOR ADVOCATE ASSISTED BY SHRI AVIRAL SAHAI - ADVOCATE AND SHRI DARSHAN PATANKAR - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY, FINANCE DEPARTMENT, MANTRALAYA, BHOPAL (MADHYA PRADESH)**
- 2. JOINT DIRECTOR, INSTITUTIONAL FINANCE, MADHYA PRADESH, C WING, FIRST FLOOR VINDHYACHAL BHAWAN BHOPAL (MADHYA PRADESH)**
- 3. DISTRICT COLLECTOR JABALPUR COLLECTOR OFFICE, SOUTH CIVIL LINES JABALPUR (MADHYA PRADESH)**
- 4. SUPERINTENDENT OF POLICE JABALPUR SUPERINTENDENT'S OFFICE POLICE LINES, SOUTH CIVIL LINE JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI SUBODH KATHAR - GOVERNMENT ADVOCATE)***

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*This petition coming on for hearing this day, the court passed the following:*

**ORDER**

This petition is filed by the petitioner-company being aggrieved of order dated 26/08/2020 (Annexure-P/10) passed by the Joint Director, Institutional Finance, Vindhyachal Bhawan, Bhopal wherein it is noted that in terms of RBI circular No.RBI/2016-17/306 DBR.No.BAPD.BC.69/22.01.001/2016-17, May 18, 2017 in Clause-3.1.1 there are provisions in regard to banking outlet. The petitioner company is not entitled to carry on any of the banking activities, but in violation of the RBI guidelines since petitioner has indulged in banking transactions, thus appropriate action be taken against the petitioner company under the provisions of Criminal Procedure Code and Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (hereinafter referred to as the 'Act of 2000' for short).

2. It is submitted that as the petitioner is a company involved in non-banking transactions, therefore, it is submitted by Shri Brian D'Silva, learned senior counsel that earlier petitioner-company was registered as NBFC with RBI. It is a wholly owned subsidiary of IndusInd Bank Limited, which is a Scheduled Bank.

3. A Scheme of Amalgamation was submitted to the National Company Law Tribunal for amalgamation of the petitioner-company with IndusInd Bank Limited wherein it is shown that Bharat Financial Inclusion Limited is an Amalgamating Company whereas IndusInd Bank Limited is Amalgamated Company. After amalgamation of Bharat Financial Inclusion Limited with IndusInd Bank Limited, IndusInd Bank Limited transferred its business correspondent business to transferee company namely IndusInd Financial

Inclusion Limited on slump basis. Thereafter with a view to use goodwill of the petitioner-company, IndusInd Financial Inclusion Limited has been renamed as Bharat Financial Inclusion Limited.

4. It is submitted that Bharat Financial Inclusion Limited is a public company and consequent to amalgamation, it started looking after non-banking business. Attention is drawn to the RBI circular dated June 24, 2014 bearing No.RBI/2013-14/653 DBOD. No.BAPO.BC.122/22.01.009/2013-14. It is submitted that as per this circular, scope of activities are defined as under :

**" Scope of Activities**

The scope of activities may include (i) identification of borrowers; (ii) collection and preliminary processing of loan applications including verification of primary information/data; (iii) creating awareness about savings and other products and education and advice on managing money and debt counselling; (iv) processing and submission of applications to banks; (v) promoting nurturing and monitoring of Self Help Groups/Joint Liability Groups/Credit Groups/others; (vi) post-sanction monitoring; (vii) follow-up for recovery; (viii) disbursal of small value credit; (ix) recovery of principal/collection of interest; (x) collection of small value deposits; (xi) sale of micro insurance/mutual fund products/pension products/other third party products and (xii) receipt and delivery of small value remittances/other payment instruments."

5. It is submitted that petitioner being a BC i.e. Business Facilitator/Correspondent, certain transactions were put through them in terms of para-10 of the said circular which reads as under :

**"Transactions put through BC.**

As engagement of intermediaries such as Business

Facilitators/Correspondents involves significant reputational, legal and operational risks, due consideration should be given by banks to those risks. The banks should adopt technology-based solutions for managing the risk, besides increasing the outreach in a cost effective manner. The transactions should normally be put through ICT devices (handheld device/mobile phone) that are seamlessly integrated to the Core Banking Solution (CBS) of the bank. The transactions should be accounted for on a real time basis and the customers should receive immediate verification of their transactions through visuals (screen based) or other means (debit or credit slip).

In formulating their schemes, banks may, inter-alia, be guided by the recommendations made at Chapter III of the Khan Group Report as also the outsourcing guidelines released by Reserve Bank of India on November 3, 2006 (available on RBI website: [www.rbi.org.in](http://www.rbi.org.in)). The arrangements with the BC shall specify:

- i) suitable limits on cash holding by intermediaries as also limits on individual customer payments and receipts;
- ii) cash collected from the customer should be acknowledged by issuing a receipt on behalf of the bank;
- iii) that all off-line transactions are accounted for and reflected in the books of the bank by the end of the day; and
- iv) all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BC."

6. Thus, it is submitted that since petitioner is not collecting any amount from the customers under any scheme, therefore, order (Annexure-P/10) being contrary to the definition of the Financial Establishment given in Section 2(c) of the M.P. Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000, respondents were not entitled to issue said order causing inconvenience to the petitioner.

7. Petitioner's counsel states across the bar that he is not challenging the FIRs which are enclosed along with the petition as Annexure-P/8 and P/9 inasmuch as in one of the FIRs Police has filed closure report.

8. At this stage, Shri Subodh Kathar, learned Govt. Advocate, submits that in one of the FIRs, investigation is complete and charge sheet has been filed and in another case though closure report has been filed, but it is not accepted by the concerned Court.

9. Shri Brian D'Silva, learned senior counsel, at this stage, submits that para-12 and 13 of the RBI circular as contained in Annexure-P/3 provides for consumer protection measures and redressal of grievances. Therefore, in any case, complainant was not required to approach the Police but was required to approach the Grievance Redressal Authority or use the machinery for redressal of his grievances as is provided under RBI circular.

10. After hearing learned counsel for the parties and going through the record, firstly definition of "Financial Establishment" as given in the Act of 2000 is required to be reproduced for its better appreciation, which reads as under :

**"2(c)** "Financial establishment" means an individual, an association of individuals or a firm or a company incorporated under the Companies Act, 1956 (1 of 1956) receiving deposits under any scheme or arrangement or in any other manner but does not

include, a Corporation or a Co-operative Society owned or controlled by the State Government or the Central Government, or a Banking Company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (No.20 of 1949)."

**11.** Though Shri Brian D'Silva, learned senior counsel, submits that no payment is accepted by the petitioner under any scheme, therefore, it will not be included within the definition of "Financial Establishment", hence, impugned order (Annexure-P/10) is required to be set aside, but, when these aspects are examined, then on a closer examination, para-3.1.1 of RBI circular dated May 18, 2017 as reproduced in the impugned order provides that "A. 'Banking Outlet' for a Domestic Scheduled Commercial Bank (DSCB), a Small Finance Bank (SFB) and a Payment Bank (PB) is a fixed point service delivery unit, manned by either bank's staff or its Business Correspondent where services of acceptance of deposits, encashment of cheques/cash withdrawal or lending of money are provided for a minimum of four hours per day for at least five days a week. It carries uniform signage with name of the bank and authorisation from it, contact details of the controlling authorities and complaint escalation mechanism. The bank should have a regular off-site and on-site monitoring of the 'Banking Outlet' to ensure proper supervision, 'uninterrupted service' except temporary interruptions due to telecom connectivity, etc. and timely addressing of customer grievances. The working hours/days need to be displayed prominently.

**12.** Though word "Scheme" is not defined in the RBI circular as pointed out by Shri Brian D'Silva, learned senior counsel, but a reference to Black's Law Dictionary, Ninth Edition by Bryan A. Garner, Editor in Chief defines

"Scheme" as A Systemic Plan; a connected or orderly arrangement, esp. of related concepts < legislative scheme > 2. An artful plot or plan, usually to deceive others < a scheme to defraud creditors >.

**13.** When this aspect is taken into consideration, then admittedly in terms of the RBI circular of 2014, "scope of activities" includes recovery of principal/collection of interest, collection of small value deposits, sale of micro insurance/mutual fund products/pension products/other third party products and receipt and delivery of small value remittances/other payment instruments and when examined in light of transactions put through BC, then the transactions carried out by the petitioner are admittedly covered under the "scope of activities" contained in Annexure-P/3 and transactions which are put through BC. When these two are examined in light of definition of "financial establishment" and the meaning of word "scheme" mentioned in the Black's Law Dictionary coupled with fact that word 'or' is disjunctive or conjunctive as per the usage, then use of words "receiving deposits under any scheme or arrangement or in any other manner" will have to be given a conjunctive meaning, meaning thereby that any arrangement whereby any amount is collected which is mentioned in para-4 and 10 of Annexure-P/3, it cannot be said that petitioner was not giving services of an outlet, then petitioner being covered by the definition of "Banking Outlet" be it full-time or part-time as defined in clause-3.1, issuance of the order (Annexure-P/10) to protect the interest of the consumer especially looking to the fact that aim and object of the Act of 2000 is to protect interest of small consumers, issuance of the impugned order cannot be said to be arbitrary or illegal.

**14.** Viewed from another aspect, agreement (Annexure-P/1) which was executed between IndusInd Bank Limited and IndusInd Financial Inclusion

Limited, clearly makes a mention of the fact that "this stamp paper forms part and parcel of the Business Correspondent Agreement". Annexure-I to the agreement deals with scope of services. Scope of the services include the following clause; namely "the Bank and the Service Provider" shall agree on a detailed agenda for the extension of credit and other financial services to the borrowers formed and recognised by the Service Provider. The Service Provider shall assist Bank in administrating the extension of finance to the borrowers and in collecting repayment from them. The bank shall advance financial assistance to the borrowers on the basis of applications made by the borrowers and scrutinised and recommended by the Service Provider and finally approved by the Bank. Thus, it is evident that Service Provider has been given work of collecting repayment from the borrowers. Clause-3 of Annexure I reads as under :

"3. The Service Provider shall be responsible for identifying potential community members, mobilising them into Federations and/or JLGs and/or SHGs and/or Individuals, training them as per the requirement of Bank, recognizing them, servicing the Groups, and monitoring of the functions of the Groups/or Individuals. The Service Provider shall be responsible for aggregating the proposals for facilities from the Groups, conveying the Bank's sanction to the Groups or Individuals, ensuring that the documentation for the facility are completed to the satisfaction of the Bank, storage/safety of the facility/security documents as may be agreed by the Bank, **disbursing the facility to Groups/or Individuals, recovery of the amount disbursed on behalf of the Bank and ensuring appropriate use of the loans. The Service Provider shall be responsible for maximizing the recovery of the facility**, and shall make all possible efforts to this effect. The Service Provider shall be responsible for



post-sanction monitoring; monitoring and hand holding of SHGs/JLGs/Credit Groups/others."

**15.** Para 3 of Annexure I under the heading of "Charges and Commissions" also makes it abundantly clear that the Service Provider i.e. the petitioner was entitled to even mobilize the accounts and was to be paid commission/charges for their services on the eligible products.

**16.** Thus, when comprehensively these aspects are taken into consideration, then it cannot be said that petitioner was not engaged in the function of mobilizing credits so to fall out side the purview of the definition of "Financial Establishment" as given in Section 2(c) of the Act of 2000. Thus, when definition is inclusive and the functions to be discharged by the petitioner are included in the definition as contained in Section 2(c) of the Act of 2000, issuance of the impugned order contained in Annexure-P/10 for taking action on account of violation of the statutory provisions, cannot be said to be arbitrary or illegal calling for interference.

**17.** Accordingly, this petition fails and is hereby dismissed.

**(VIVEK AGARWAL)**  
**JUDGE**