

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

+ LPA 42/2008

% **Date of decision: 31.1.2008**

NATWAR DALMIA EX-DIRECTOR APOLLO Appellants
STONES LTD & ANR

Through:Mr. Kirti Uppal and Mr.Ranjeet Singh,
Advocates.

versus

RESERVE BANK OF INDIA & ORS Respondents

Through:Mr. H.S. Parihar and Mr. K.S. Parihar,
Advocates for respondent No.1/RBI.

Mr. Rajiv Kapur, Advocate for respondent
No.2/SBI.

Mr. Subhash Bansal, Senior Central
Government Standing Counsel with Mr. Raghav
Bansal, Advocate for respondent No.3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed
to see the judgment ? No
2. To be referred to the Reporter or not ? No
3. Whether the judgment should be reported in the Digest ?No

DR. MUKUNDAKAM SHARMA, CJ (oral)

1. We have heard the learned counsel appearing for the appellant as also the counsel appearing for the Reserve Bank of India and the counsel appearing for the respondent No.3. The learned Single Judge has passed an order on 22.11.2007 modifying and issuing certain directions in respect of pre-deposit to be made by the appellant and also directing the Appellate Tribunal to consider the appeal of the appellant and decide according to law with a further direction to the Reserve Bank of India to consider the request of the appellant in terms of the existing policies. The aforesaid directions and observations of the learned Single Judge are contained in para 16 of the order which is extracted hereinbelow:-

“16. In view of the above, I am of the opinion that this petition can be disposed of with appropriate direction. It is accordingly directed as follows :-

1. The RBI shall consider the petitioner's request in terms of its existing policies and pass an order as early as possible and in any case within two months from today, from the date of the petitioner making a comprehensive representation to it in terms of Section 18 read with Rule 8 of the FERA.

2. The petitioner shall make his representation to the RBI within four weeks from today. A copy of the same shall be furnished to the SBI as well as the other respondents.

3. The impugned order of the Tribunal requiring the pre-deposit of 40% is hereby modified having regard to the facts. Instead of the direction to pay 40%, the petitioner shall ensure deposit of 20% of the amount. This shall be done within 12 weeks from today.

4. The RBI shall communicate its decision to the petitioner, SBI as well as the Appellate Tribunal, within 12 weeks from today.

5. The Appellate Tribunal shall consider the appeal of the petitioner, and decide according to law, after 14 weeks from today.”

2. On hearing the counsel appearing for the appellant and the counsel for the respondent, we find no reason to take a different view than what is taken by the learned Single Judge for the simple reason that on interpretation of the provisions of Foreign Exchange Regulation Act, 1973, particularly the provisions of Section 18 thereof and also the provisions of Section 49(3) & (4) as also Section 49(6) of the FEMA, it was held that the obligations, rights and liabilities arising under FERA would be continued so far the appellant is concerned. We find that the learned Single Judge has given an opportunity to the appellant to file a representation to the RBI, which when filed was directed to be considered by the RBI in terms of the existing policies of the RBI and also to pass an order as early as possible, preferably within two months from the date of making the comprehensive application to the RBI. In the meantime, a direction was also issued that since the appellant has

also filed an appeal, the said appeal should be considered by the Appellate Tribunal when the appellant deposits 20% of the amount as pre-deposit. On consideration of the records we find that the Appellate Tribunal had issued a direction to the appellant to deposit 40% of the amount as a pre-deposit with a direction that on deposit of the said 40% of the amount the appeal shall be heard. The aforesaid order of the Appellate Tribunal was modified to the extent that only 20% of the amount was directed to be deposited by the appellant which will enable the appellant to get a hearing of the appeal.

3. We find no reason to interfere with the aforesaid order. However, we now permit the appellant to file a comprehensive representation in terms of the order of the learned Single Judge within two weeks from today. On receipt of the said representation from the appellant, the RBI shall consider his request in terms of the existing policies and pass an order within a period of six weeks from the date of appellant making the representation to the RBI in terms of Section 18 read with Rule 8 of the FERA. Copies of the said representation may also be furnished to the counsel for the other respondents including the respondent No.3, who may take appropriate steps at their end to pursue the matter so that the orders passed by this Court are duly complied with. The appellant is permitted to deposit 20% of the amount within two months and on deposit of the aforesaid amount, the

Appellate Tribunal shall proceed to hear the appeal filed by the appellant and decide the issue arising therefrom according to law as expeditiously as possible.

4. In terms of the aforesaid order, the appeal stands disposed of.

CHIEF JUSTICE

REVA KHETRAPAL, J

JANUARY 31, 2008
Rohtash