

HC admits NBFC's plea against RBI

The Bombay high court on Wednesday admitted a petition that has challenged an order of the Reserve Bank of India cancelling the Non Banking Financial Company (NBFC) licence of **Alternative Investment and Credits Limited**. The company is a ten year old NBFC operating on "Islamic Finance principles." However, the HC bench headed by Justice D D Sinha has left the issue of maintainability on its jurisdiction open.

The RBI recently passed the order which AICL has now sought to quash on the ground that the Bank was aware of its business model since August 2001 but it was only in 2010 that it raised objections against the functioning. The RBI action is "completely unreasonable and unfair" said the company's lawyers Venkatesh Dhond and Ameet Naik. The Islamic Finance Principles follow a non-interest bearing participatory finance model. The lawyers pointed out that majority of the nations recognised principles of Islamic Finance as it plays a major role in foreign direct investment transactions. The company also raised a larger issue about the validity of RBI policy which did not permit non-interest bearing financial activities.

The RBI contended that AICL did not indicate to borrowers upfront the exact annualized rate of interest that the borrowers will have to pay on the loans availed which could lead to AICL charging exorbitant and undisclosed rate of interest from the borrower. The AICL plea on the other hand claims it has been transparent with its customers and that interest details have always been indicated upfront not only in the sanction letter but also the loan agreement. Naik said RBI was wrong as the "AICL has complied with the guidelines in its spirit."

Darius Khambata, Advocate General appearing on behalf of the RBI submitted that the petition was not maintainable as AICL has an alternative remedy available to them under the Reserve Bank of India Act.

In the Writ Petition, AICL also has challenged the legality and validity of the circulars of RBI dated September 28, 2006, May 24, 2007 and January 2, 2009 as the circulars are ultra vires the provisions of the Reserve Bank of India Act. Reserve Bank of India under Section 45-L has powers to issue directions but shall have due regard to the condition in which and the objects for which the institution has been established, its statutory responsibilities, if any, and the effect of the business of such financial institution is likely to have on the trends in the money and capital markets.

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