(2010) 12 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

DEPOSIT INSURANCE And CREDIT GUARANTEE CORPORATION — APPELLANT

Vs

Chandrakant V Zingade — RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : 2011 1 CPJ 19 : 2011 1 CPR 115

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Mahendra Anand , H.S.Parihar , Shankar Divate , Sriparna Chatterjee , Soumitra Chatterjee

Judgement

1. MRS. Vineeta Rai, Member-The Deposit Insurance and Credit Guarantee Corporation and others (hereinafter referred as the ''Petitioners'') have filed these revision petitions against the order of the State Consumer Disputes Redressal Commission, Bangalore, Karnataka (hereinafter referred to as the ''State Commission'') which had upheld the order of the District Forum in favour of Chandrakant V. Zingade and five others (hereinafter referred to as the ''Respondents'') by dismissing the appeal of the Petitioners.

2. IN all, 20 revision petitions have been filed by the Petitioners. Since the facts and circumstances are the same, except that the amounts deposited by each Respondent varies, all these revision petitions are being disposed of by this common order.

3. THE brief facts of the case are that the Respondents are six persons belonging to one family and had fixed deposits with the Gulbarg Co-operative Bank Ltd. (Petitioner in R.P. Nos. 458 to 472 of 2007) as per the details given below: S. No. Name of the depositor Deposited Amount Maturity Amount 1. Chandrakant Zingade 1,84,718 2,93,530 2. Jayashree Zingade 86,979 1,38,612 3. Smita Zingade 1,85,794 3,02,321

4. NAMRTA Zingade 1,25,767 1,93,648

5. PUNEET Zingade 49,000 99,882

6. PAVAN Zingade 49,000 99,882 4. All the fixed deposits were made on 1.7.2000 and the maturity date was 5.7.2005. However, on 2.8.2002 i.e. before the maturity date, the Respondents approached the Petitioner bank and sought to withdraw the deposits. Accordingly, the Petitioner/bank calculated the interest on the principal amount to be Rs. 7,08,610 and issued banker''s cheques of Rs. 1 lakh each in the name of all six Respondents individually. The difference was adjusted towards their loan accounts and the original fixed deposit receipts were returned. The Bank however, could not honour these cheques and the payment was, therefore, rescheduled. The bank again calculated the interest and paid the same to the Respondents plust 5% of the value of the banker''s cheques. 5. In the meantime, the financial position of the bank became precarious and the Reserve Bank of India deregistered the licence of the Bank under the relevant statute and appointed the Registrar, Cooperative Societies as Liquidator of the bank. Under these circumstances, the banker''s cheques issued to the Respondents were not honoured. Since the bank had insured the deposits of all depositors with the Deposit Insurance and Credit Guarantee Corporation, Petitioner/bank requested it to release the amounts due to them. The Petitioner/ Insurance Corporation, however, declined to release any money to them as according to it banker''s cheques in respect of the closed deposit account of a depositor cannot be treated as a part of the deposit for extending the deposit insurance cover by DICGC under Section 2(g) of the DICGC Act, 1961. 6. Aggrieved by the refusal to settle the claims, Respondents filed a complaint before the District Forum on the grounds that Section 2(g) was wrongly interpreted to deny them the payments because under this Section the term ''deposit'' includes the aggregate of the unpaid balance due to a depositor in respect of its accounts. There was, therefore, deficiency of service on the part of Petitioners in not relasing the full maturity value of the fixed deposits to be paid to them.

7. THE Petitioners on the other hand have denied the allegations of any deficiency on the grounds that under Section 16(1) of the DICGC Act, 1961, the liabilities of Petitioner/Insurance Corporation arises where an order for winding up or liquidation of an insured public sector/cooperative bank is made, and there too it will be limited to the depositors having deposits with the cooperative bank as on that date. In the instant case, the Petitioner/bank was de-registered and at that time the Respondents were not depositors of the cooperative bank and therefore, there is no deficiency on the part of the Petitioners in not making any payment. The District Forum after hearing both parties accepted the complaint and directed the Petitioner to pay jointly and severally the amount which would have become due on maturity of deposits to each Respondent along with Rs. 2,000 towards mental agony and costs within one month from the date of the order.

8. AGGRIEVED by this order, the Petitioners filed an appeal before the State Commission which upheld the order of the District Forum and dismissed the appeal of the Petitioners. The relevant part of the order of the State Commission

reads as follows: "It is not in dispute that the complainant have invested certain amount with the OP/co-operative Bank. It is also not in dispute that on maturity the OP has issued banker''s cheque in favour of the complainants. But after the issuance of the banker''s cheque the OP did not honour the cheques presented by the complainants on the ground that there is a direction issued by the Reserve Bank of India preventing the OP bank from paying the amount. The Reserve Bank of India has no doubt had written a letter to the OP Bank directing not to carry on banking business in India as defined in Section 5(b)(c) and Section 7 and Section 49A of the Act and also stop conducting banking business including repayment of deposits forthwith. This letter written to the OP bank is not binding on the complainants who deposited the amount in the OP Bank. If at all if there is any restrictions imposed by the Reserve Bank of India directing the OP Bank stop paying the amount deposited by the depositors, it is open for the OP Bank to move the Reserve Bank of India to lift the said restriction and seek permission to pay the amount as per the banker''s cheque issued by the OP to the depositors."

Hence, the revision petition filed by the Petitioners.

9. LEARNED Counsel for the parties made oral submissions. Learned Counsel for Respondents reiterated that the learned Fora below had rightly concluded deficiency of service on the part of the Petitioners and had accordingly compensated them by directing the Petitioners jointly and severally to pay each of them the matured amount due as also compensation of Rs. 2,000 each for mental agony and harassment caused. This order based on sound reasoning and appreciation of evidence and facts needs to be upheld.

10. LEARNED Counsel for Petitioners stated that although at the time when the complaint was first filed before the District Forum, in terms of Section 2 of DICGC Act, the Respondents were not entitled to any benefit as depositors, the Petitioner/Insurance Corporation has reviewed the scope of deposit in 2008 and the present position is that the Respondents do have the status of depositors. Under these circumstances, they would be entitled to receive payments as depositors as provided under the DICGC Act. Petitioners further stated that in terms of Sections 17 and 18 of the DICGC Act, the total amount payable by the Petitioner/Insurance Corporation to any one depositor in respect of his deposit(s) in an insured bank shall not exceed Rs. l lakh, whatever be the amount deposited by him. In case the deposit is of less than Rs. 1 lakh, then the actual amount will be paid. Claims for any additional amount would be decided/settled in due course by the Liquidator after assessing the assets and liabilities of the bank. In the instant case the learned Fora below without taking into account the above statutory provisions of the DICGC Act directed the Petitioners to pay each of the Respondents amounts that would have been due on maturity which were over Rs. 1 lakh in all cases. In fact, as per the DICGC Act, the amounts that could have been paid in respect of the depositors were as follows: (i) Chandrakant Zingade - Rs. 1 lakh. (Respondent No. 1 in RP No. 3992 of 2006) (ii) Smita

Zingade - Rs. 1 lakh (Respondent No. 1 in RP No. 3993 of 2006) (iii) Namrta Zingade - Rs. 1 lakh (Respondent No. 1 in RP No. 3995 of 2006) (iv) Jayashree Zingade - Rs. 86,979 (Respondent No. l in RP No. 3994 of 2006) (v) Puneet Zingade - Rs. 49,000 (Respondent No. 1 in RP No. 3997 of 2006) (vi) Pavan Zingade - Rs. 49,000 (Respondent No. l in RP No. 3996 of 2006)

11. IT was further pointed out by Counsel for Petitioner that the Liquidator after having accessed the details of the Respondents'' deposits with the bank had calculated a total sum of Rs. 5,50,000 due to them after deducting interest of Rs. 1,58,610 which had already been paid to them upto 2.8.2002. Further, Rs. 3 lakh out of this amount of Rs. 5,50,000 had already been disbursed to the Respondents and, therefore, the amount that remained to be paid to them was only Rs. 2,50,000 which the Petitioners are willing to pay. However, so far as Rs. 2,000 as compensation is concerned, it will not be possible for the Petitioner/ Insurance Corporation to pay this amount in cases where it exceeds Rs. l lakh because of the statutory limitation.

12. WE have considered the averments made by the Counsel for the parties and have gone through the evidence on record.

13. IT is a fact that due to irregularities in its operation the Reserve Bank of India deregistered the Gulbarga Urban Cooperative Bank and appointed the Registrar, Cooperative Societies as its Liquidator. It is also a fact that as per the provisions of the DICGC Act, 1961 each depositor who had made deposits of Rs. l lakh and above is entitled to be paid only Rs. l lakh by the Petitioner/Insurance Corporation irrespective of the amount that may have been deposited. In the instant case it is clear from the documentary evidence on file that out of the six Respondents only three of them had deposited amounts which exceeded Rs. l lakh and in terms of Sections 17 and 18 of the Act, the liability of the Petitioner/ Insurance Corporation was to pay them only Rs. l lakh each. So far as the other Respondents are concerned, since they had deposited less than Rs. 1 lakh each, as per the provisions of the DICGC Act, they are only to be paid the amount of the deposit. In view of this clear statutory provisions, learned Fora below erred in directing the Petitioners jointly and severally to pay all Respondents the amounts due on maturity which were deposited by them.

14. LEARNED Counsel for the Petitioners has pointed out that the Liquidator had calculated a total amount of Rs. 5,50,000 due to the Respondents after deducting the interest already paid to them upto 2.8.2002.

15. WE have gone through the chart filed by the Liquidator indicating the various details in respect of the amounts paid and the balance to be paid to the Respondents and note that there is an error in calculating the amount that remains to be paid. Whereas it has been submitted before us that a total amount of Rs. 5,50,000 only is due, in fact, the correct figure as per the chart of the Liquidator is Rs. 5,75,000. It is on record and not denied by the Respondents that Rs. 3 lakh which had been deposited by the Petitioners before the District

Forum has already been disbursed to them by the Petitioners. This being the case the Petitioner are now liable to disburse another Rs. 2,75,000 and not Rs. 2,50,000 to the Respondents as due to each one of them.

16. KEEPING in view these facts, we do not agree with the orders of the State Commission regarding the deposited amount to be paid to the Respondents which is set aside. Since the Petitioners have already paid Rs. 3 lakhs out of Rs. 5,75,000, we direct the Petitioners to pay the remaining Rs. 2,75,000 as due to each of the Respondents within a period of one month from the date of this order. The Counsel for the Petitioners has stated that Rs. 5 lakh has been deposited by them with this Commission vide a Central Bank of India cheque which is also on record. In view of this, the office is directed to pay the sum of Rs. 2,75,000 to the Respondents out of the deposited amount of Rs. 5 lakh along with accrued interest on that amount and the remaining amount with interest accrued thereon be returned to the Petitioners.

17. THE State Commission had granted a compensation of Rs. 2,000 to be paid to each of the Respondents for mental agony and harassment which they had suffered. We do not interfere with this part of the order and direct that this amount should be settled and paid by the Liquidator to the Respondents within a period of one month. With these directions, the revision petition is disposed of with no order as to costs.