
(2016) 05 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Case No : 2807 of 2015

IFCI LTD.

APPELLANT

Vs

ROSY RANI

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Consumer Protection Act, 1986, Section 24(2), Section 24A - Finality of orders - Limitation period

Citation : 2016 2 CPR 721

Hon'ble Judges : V.K. Jain, Presiding Member

Advocate : R.K. Dikshit

Judgement

1. The complainants / respondents purchased Bonds namely Millionaire Bonds from the petitioner IFCI Ltd, the aggregate amount of the bonds purchased by them being Rs.10,000/- each. The tenure of the said bonds was thirty years. A Bond of the face value of Rs.5,000/-, if held for thirty years was redeemable at the face value of Rs.5,00,000/-. Vide public notice dated 30.9.2003, the petitioner, purporting to act as per the terms of the issue mentioned in the Prospectus and in terms of the Resolution passed at the meeting of the Bond Holders held on 25.6.2003, decided to exercise the call option and redeem the said bonds on 06.12.2003. The redemption value of a bond was Rs.30,270/- in the case of bond with the face value of Rs.10,000/- and Rs.15,135/- in the case of bond with the face value of Rs.5,000/-. The bond holders were requested to surrender their original bonds for the purpose of redemption, after the same were duly discharged by signing on the reverse of the bond certificates. The bond holders holding the bonds in Demat form were required to transfer them from their Demat Account to the Demat Account of the petitioner.

2. The case of the complainants is that since no individual notices were sent to them and they were not aware of the above referred public notice, they did not send their respective bonds for the purpose of redemption. According to them, the petitioner could not have exercised the call option before 06.9.2011. The

petitioner sent the redemption amount of the bonds to the complainant, by post after, deducting applicable tax at source. Being aggrieved, the complainants approached the concerned District Forum by way of separate complaints, alleging deficiency on the part of the petitioner company in rendering services to them.

3. The petitioner company remained ex-parte before the District Forum, which directed the petitioner to pay Rs.1,00,000/- each to the complainants after deducting the amount of Rs.26,216/- each which it had already paid to them. Interest @ 9% per annum from the date of the cheque, i.e. 01.2.2010 till 06.9.2011, along with further interest @ 5% per annum from September, 2011 till the actual payment was also awarded to the complainants / respondents.

4. Being aggrieved from the order passed by the District Forum, the petitioner company approached the concerned State Commission by way of two separate appeals. Vide impugned order dated 07.4.2015, the State Commission dismissed the said appeals. Being still dissatisfied, the petitioner company is before this Commission by way of these revision petitions.

5. The first question which arises for consideration in these cases is as to whether the complaints when filed before the District Forum were barred by limitation or not. It is alleged in para-2 of the complaints that the redemption amount after deducting the TDS amount was sent to the complainants / respondents by post on 01.12.2010. It is also alleged in para-5 of the complaint that the cause of action arose to the complainants on 01.12.2010 when they received the cheque of Rs.26,216/-, though, it is further alleged that the cause of action also arose on each day thereafter when the opposite party failed to repay the balance amount, along with interest. The public notice exercising the call option was given by the petitioner company in Newspapers on September 30, 2003. Though, there is no evidence of individual notice having been given to the complainants, such notices were not required as per terms and conditions on which the bonds were issued by the petitioner company. The clause relating to the "Notices as contained in the Prospectus reads as under: "Notices

The bonds being negotiable instruments are transferable by endorsement and delivery as stated herein and register of transfer is not envisaged. Therefore, the company would not be aware of the identity of the bondholder from time to time. Hence, individual notices are not feasible and would not be given.

All notices to the bondholder(s) required to be given by the Company of the Trustee shall be deemed to have been given if published in one English and one Regional language daily newspaper in Delhi, Mumbai, Madras, Calcutta, Bangalore and Ahmedabad and may, at the sole discretion of the Company or the Trustee, but without any obligation, be sent by ordinary post to the original sole / first allottees of the Bonds or if notification and mandate has been received by the Company, pursuant to the provisions contained hereinabove, to the sole / first transferees".

In view of the aforesaid clause, the public notice given in the newspapers

constituted sufficient notice to the complainant. Having received the said public notice, the complainants came to know that the petitioner company was seeking to exercise the call option and redeem the bonds with effect from 06.12.2003. The cause of action to file the complaints therefore arose on the day the said public notice was published in the newspapers. The complaints therefore ought to have been filed within two years from the publication of the said notice. In any case, once the cheque of Rs.26,216/- each towards redemption amount of the bonds was received by the complainants Shri Rajiv Singla and Smt. Rosy Rani, the cause of action in terms of Section 24A of the Consumer Protection Act arose to them on that very day. The complaints therefore, ought to have been filed within two years thereafter i.e. on or before 01.12.2012. The order passed by the District Forum shows that the complaints were in fact instituted on 05.12.2012. Having been filed four days after the expiry of the period of limitation prescribed in Section 24-A of the Consumer Protection Act, the complaints barred by limitation. It would be pertinent to note here that no application, in terms of the proviso to Section 24(2) of the Consumer Protection Act, for the condonation of the said delay was filed. Though, the petitioner having remained ex-parte before the District Forum, the plea of limitation could not be taken by it that would make no difference to the outcome of the complaint since it was mandatory for the District Forum to satisfy itself, before allowing the complaints, that they had been filed within the prescribed period of limitation. It would only be appropriate at this stage to take note of the decision of the Hon'ble Supreme Court in State Bank of India Vs. B.S. Agriculture (2009) 5 SCC 121, where the Hon'ble Supreme Court inter- alia observed and held as under:

"11. Section 24-A of the Act, 1986 prescribes limitation period for admission of a complaint by the Consumer fora thus :

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It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, "shall not admit a complaint" occurring in Section 24-A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.

12. As a matter of law, the consumer forum must deal with in the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24-A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set

aside".

For this reason, the impugned orders are liable to be set aside.

6. Coming to the merits of the case, the Prospectus issued by the petitioner company to the extent it pertained to the Millionaire Bonds, reads as under:

"MILLIONAIRE BOND

The Millionaire Bond, having a maturity period of 30 years, offers the investors two options. The Millionaire Bond (Option I) is being offered at a discounted price of Rs.10,000/- (Ten Thousand). At the end of the maturity period, the investor can redeem the Bond at its face value of Rs.10,00,000 (Ten Lakhs). The Millionaire Bond (Option II) is being offered at a discounted price of Rs.5,000 (Five Thousand). At the end of the maturity period, the investor can redeem the Bond at its face value of Rs.5,00,000 (Five Lakhs).

KEY TERMS:

Issue Price

Option-I : Rs.10000 per Bond. The entire amount is payable on application.

Option-II : Rs.5000 per Bond. The entire amount is payable on application.

Maturity

30 years from the demand date of allotment. The face value under option-I is Rs.10 lakhs and the face value under option-II is Rs.5 lakhs.

Early Redemption Option

Investors also have the option to redeem the Millionaire Bond before the expiry of the maturity period as indicated below and get the amount indicated there against (which is the Deemed Face Value of the Bond at the time of early redemption).

Period from deemed date of allotment Amount payable to Investor (Deemed face value per Bond in Rs.)

Option -I Option -II

3 years 15,500 7,750/-

6 years 25,000 12,500

10 years 46,000 23,000

15 years 1,00,000 50,000

19 years 1,80,000 90,000

23 years 3,40,000 1,70,000

27 years 6,30,000 3,15,000

28 years 7,30,000 3,65,000

Procedure for Early Redemption:

Investors may please refer to the Common Features of all bonds appearing elsewhere in the prospectus.

Call Option

IFCI also reserves the right (Call Option) to redeem the Millionaire Bond on the terms indicated above. In that event, the Deemed Face Value of the Bond indicated in the table above will be paid to the Bondholders.

The full face value of Rs.10,00,000/- or Rs.5,00,000/- as the case may be, shall be payable only if the bond holder does not exercise the early redemption option and IFCI does not exercise the call option to redeem the Bond. On the Bond holder receiving the amount as specified above on exercise of the early redemption / call option at any time, the Bond shall stand fully discharged.

Investors are cautioned that if any liability to deduct / pay tax arises during the currency of Bond or at the time of the redemption/ early redemption under the scheme, the face value will be reduced accordingly.

See also common features, terms and conditions of the Bonds mentioned elsewhere in the Prospectus".

Procedure for Redemption / Early Redemption by Investors The bond holders desirous of exercising the option of redemption / early redemption of the bonds at any of the periods specified elsewhere in this prospectus, should submit their request in writing to the office of the Registrar / Registered Office of IFCI or to such persons at such addresses as may be notified by the company from time to time along with the Bond certificates duly discharged by the sole / all the joint holders (signed on the reverse of the Bond Certificates) by registered post with acknowledgement due or by hand delivery, nor more than three months and not less than two months prior to the redemption / early redemption date.

Procedure for Early Redemption by the Company In case, IFCI exercises the early redemption option at any of the periods specified elsewhere in this prospectus, it will announce its intention to do so, at least three months prior to the relevant period. For mode of announcement, kindly refer to the details mentioned under the head "Notices", appearing elsewhere in this prospectus".

It would thus be seen that though the bonds had a maturity term of thirty years, the investor had option to redeem the said bonds before the expiry of the maturity period. But, the said option, in terms of the above referred provision of the Prospectus, could have been exercised by the investor only on expiry of the 3 years, 6 years, 10 years, 15 years, 19 years, 23 years, 27 years or 28 years, from the deemed date of allotment. The investor could not have sought redemption of the bonds, at any time of his choice. For instance, if acting under the above-referred provision of the Prospectus, the investor did not seek

redemption of the bond on expiry of three years from the deemed date of allotment, he could have sought the same only after expiry of six years from the deemed date of allotment. If he did not exercise the said option on expiry of six years from the deemed date of allotment, he could have exercised it only on expiry of ten years from the said date and not on an earlier date of his choice.

It is explicitly clear from the above referred terms that the call option also could have been exercised by the petitioner company only on the "terms indicated above", which included the period after which the said option could have been exercised. This would mean that the call option could have been exercised by the IFCI only on expiry of 3 years, 6 years, 10 years, 15 years, 19 years, 23 years, 27 years or 28 years from the deemed date of allotment and not at any time of its choice. In other words, if for instance, IFCI did not choose to exercise the call option on expiry of three years from the deemed date of allotment, the said option could have been exercised by it only on expiry of six years from the said date and not on a date after three years but before six years from the deemed date of allotment. The periods when the option of redemption and the call operation could be exercised was clearly specified in the Prospectus and acting under the aforesaid provision, neither the petitioner nor the bond holder could have exercised the said option, except on the intervals noted hereinabove.

In taking this view I find support from the procedure prescribed in the Prospectus for early redemption by the company which is given at page 12 of the Prospectus and provides that in case IFCI exercises the early redemption option, at any of the periods specified elsewhere in this Prospectus, it will announce its intention to do so, at least three months prior to the relevant period. The procedure for early redemption by the company also clearly indicates that the redemption option by it could be exercised only at the period specified in the Prospectus and not at any time of its choice. Therefore, I have no hesitation in holding that the petitioner company could not have exercised the call option with effect from 06.12.2003. The said call option could have been exercised only at regular intervals specified under the Clause "Early Redemption Option".

7. The learned counsel for the petitioner company relying upon the following provision of the Prospectus contended that the call option could be exercised by the petitioner company at any point of time:

"Any Time Liquidity

In addition to (i) the listing of bonds at Delhi Stock Exchange and National Stock Exchange and (ii) giving early redemption options at regular intervals in various schemes, IFCI offers any time liquidity to the individual bondholder, without any limit, after one year from the deemed date of allotment.

IFCI, through all its regional and branch offices throughout the country shall repurchase the bonds at a price which amounts to a yield of 13% p.a. (subject to tax deduction at source) after deducting any interest of annual payment or any benefit that may have been paid from the deemed date of allotment.

Bondholders in the category of individuals only may, if need be, surrender the bond duly discharged at any of the offices of IFCI operating at that time with a request to IFCI to purchase the bond. After verification by IFCI / Registrar, the purchase price shall be paid to the Individual bondholders (first /sole holder) through crossed cheque / pay order".

However in my view, the aforesaid provisions of the Prospectus did not permit the petitioner company to exercise the call option at any time of its choice. The option to seek redemption of the bonds against payment of yield @ 13% per annum was given to the investor and IFCI did not have a right to redeem the bonds at any time of its choice, without a request to that effect from the bondholder. It would also be noticed that the above referred clause in the prospectus entitles the bond holder only to a yield of 13% per annum as against the much higher yield provided to him in case early redemption option, if exercised either by him or by the petitioner company on expiry of three years, six years, ten years etc., from the deemed date of allotment. Therefore, the terms of "Any Time Redemption" under the Clause "Any Time Liquidity" were different from the terms of redemption under the Clause "Early Redemption Option". The call option to the petitioner was available only on the terms given under the clause "Early Redemption" and not on the terms given under the clause "Any Time Liquidity". Therefore, it would not be correct to say that the petitioner under the option "At Any Time" could have repurchased the bonds giving a yield of 13% per annum to the bond holders. In fact, even the call option exercised by the petitioner was not in terms of clause "Any Time Liquidity".

8. For the reasons stated hereinabove, I have no hesitation in holding that the complaints were barred by limitation prescribed in Section 24A of the Consumer Protection Act. Since no applications seeking condonation of the said delay were filed, the District Forum and the State Commission ought to have dismissed the complaints. That having not been done, the impugned orders cannot be sustained and the same are accordingly set aside and the complaints are consequently dismissed with no order as to costs. However, considering that the petitioner is a Public Sector Company and on merits the grievance of the complainants is eminently justified, it may consider granting appropriate relief to the complainants in the form of additional interest, ignoring the fact that the complaints when filed were barred by limitation. It would also be pertinent to note here that though, the law of limitation bars the remedy, it does not extinguish the right of a person. A copy of this order be therefore, sent to the Managing Director of the petitioner company, for information and consideration.