

(2009) 05 DEL CK 0423

In the Delhi High Court

Case No : Writ Petition (C) 7464 of 2000

Indian Bank Mutual Fund and Another

APPELLANT

Vs

SEBI and Another

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Citation : (2009) 2 CompLJ 494 : (2009) 160 DLT 334 : (2010) 8 RCR(Civil) 1683 : (2009) 96 SCL 1

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Mahavir Singh, Gautam Awasthi and Rakesh Dahiya, for the Appellant; S.C. Dhanda, for AITD/R-2, Neeraj Malhotra and Shohit Chaudhary for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—By this Writ Petition, the petitioners-Indian Bank Mutual Fund and Indian Bank have challenged the Order dated 30th November, 1999 passed by Chairman, Securities and Exchange Control Board of India (hereinafter referred to as SEBI, for short) and the Order dated 18th February, 2000 passed by the Central Government. By the impugned Orders, the petitioners have been directed to pay dividend for the Financial Year 1996-97 to respondent No. 2-Asian Institute of Transport Department (hereinafter referred to as AITD, for short).

2. AITD is an NGO which had applied and was issued Units under the Ind-Jyoti Scheme, 1990 (Plan A) (hereinafter referred as the said Scheme, for short) promoted and floated by the petitioners. It is admitted by the petitioners that as per Plan A. the Unit holders were assured of minimum return as per the offer document. The minimum assured return was as under:

1st year Date of allotment to 31/03/1992 12.75%

2nd year 01/04/1992 to 31/03/1993 13.25%

3rd year 01/04/1993 to 31/03/1994 13.75%

4th year 01/04/1994 to 31/03/1995 14.25%

5th year 01/04/1995 to 31/03/1996 14.75%

6th year 01/04/1996 to 31/03/1997 14.75%

7th year 01/04/1997 to 31/03/1998 15.25%

3. Respondent No. 2-AITD was paid minimum assured return dividend upto the Financial Year ending 31st March, 1996. Thereafter, the petitioners did not pay the minimum assured return for the Year Ending 31st March, 1997. This was probably on account of the fact that the petitioners did not have sufficient capital balance and income to pay the assured return as is apparent from the letter dated 9th June, 1999 written by the petitioners to SEBI.

4. Respondent No. 2-AITD surrendered the Units to the petitioners on 25th September, 1997 and the said Units were redeemed on the Net Asset Value. Subsequently, the petitioners declared dividend for the Financial Years 1996-97 and 1997-98 on 31st March, 1998. Respondent No. 2-AITD was however not paid the said dividend. Thereupon the said respondent made a complaint to SEBI and by the impugned Order dated 30th November, 1999 the petitioners were directed to make payment of dividend for the Financial Year 1996-97. Central Government has confirmed the said Order by the impugned Order dated 18th February, 2000.

5. Learned Counsel for the petitioners has raised two contentions. Firstly, reliance is placed upon Clause 16-e of the Rules and Regulations of the said Scheme and it is submitted that only registered Unit holders on the date when dividend was declared are entitled to dividend distribution. Secondly, it is submitted that the respondent No. 2-AITD while applying for repurchase of the Units had relinquished and given up all claims.

6. It is undisputed that under the said Scheme, the petitioners had promised assured returns at the rates specified above. The petitioners do not contest and accept the said position. It is also accepted that for the Financial Year 1996-97, the petitioners did not abide by their promise and pay dividend as assured under the said Scheme. In these circumstances, I do not think the petitioners can rely upon Clause 16(e) of the Rules and Regulations of the said Scheme, which reads as under:

16(e) . Such of the Ind Jyothi unit holders whose names appear in the register of Ind Jyothi unit holders as at the close of the Register, prior to declaration of income distribution by the Turst, shall be entitled to receive and retain the Income so distributed.

7. The aforesaid Clause has to be read harmoniously and along with the clauses under which minimum assured return was provided. The Scheme postulates payment of dividend at regular intervals. Thus in normal course dividend for the

Financial Year 1996-97 should have been declared and paid immediately after the end of the said Financial Year. The dividend for 1996-97 got delayed because the petitioners themselves did not abide and fulfill their promise of assured return.

There was lapse and default on the part of the petitioners in declaring the dividend for the Financial Year 1996-97. The promised dividend was declared late. The petitioner cannot take advantage of their lapse and defaults to deny promised minimum dividend.

8. Similarly, the plea of the petitioners with reference to the purchase form Clause 3 cannot be accepted. The purchase form was a standard form prescribed by the petitioners. Any person while applying for repurchase of the Units had to fill up the standard format form. Clause 3 of the said format stipulates as under:

3. I/We hereby relinquish all claims on the units listed above and authorize you to deal with the units as deemed fit by you.

9. A reading of the said Clause shows that respondent No. 2-AITD had given up and relinquished their claim on the listed Units and had authorized the petitioners to deal with the Units. The Clause does not make specific reference to right to assured returns which was promised by the petitioners and the right to dividend.

10. The petitioners have accepted the said position in their letter dated 9th June, 1999 written to the Chairman, SEBI. Relevant portion of the said letter reads as under:

Ind Jyothi scheme was approved by Reserve Bank of India vide letter dated August 6, 1990 and was launched on December 1, 1990. At the end of the scheme period, the units of both the plans of the scheme (Plan A and Plan B) were redeemed at Net Asset Value as on March 31, 1998 in addition to the payment of assured dividend for the years 1996-97 and 1997-98. The rationale of the redemption made by us, justifying the position that the redemption was carried out fully complying with the terms of the offer document of the scheme was detailed in the various letters dated 25.04.98, 27.04.98, 04.05.98 and 18.11.98 addressed to SEBI.

The salient points are reiterated below:

1. Units have been redeemed at NAV as on 31.03.98 in terms of Clause 16 of the offer document which provides for redemption at net asset value.

2. Since the commencement of the scheme on 01.12.90 till 31.03.96 dividend had been declared at the minimum assured rate or at higher rates under Plan A of the scheme. Under Plan B of the scheme, the dividend at the same rate was declared and reinvested in the scheme itself. This fully complies with Clause 14 of the offer document.

3. Dividend for the years 1996-97 and 1997-98 could not be declared due to

inadequacy of distributable surplus. For these years also, dividend at minimum assured rates were paid at the time of redemption on 31.03.98, out of the funding provided by Indian Bank, the Sponsor.

4. x x x x x

5. x x x x x

6. As mentioned earlier, the scheme could not generate the required surplus to meet the assured dividend payment for the years 1996-97 and 1997- 98. Indian Bank, the sponsor funded the scheme to meet the dividend liability of Rs. 43.59 cores. Our bank is passing through very difficult times incurring net loss since 1995-96. Further, when Ind Jyothi matter was referred to the Bank's legal advisors, they had advised that it would be perfectly in order to meet the assured dividend liability out of the net assets of the scheme itself. In spite of this position, Indian Bank decided not to deplete the NAV and went ahead with the finding of Rs. 43.59 cores to meet the assured dividend liability over and above the net asset value of the scheme at the time of redemption. This decision was taken by Indian Bank solely with the purpose of protecting the interest of the investors, in compliance with the directions of SEBI and to maintain the image of a public sector organization.

Asian Institute of Transport Development (AITD)

AITD, Delhi was holding 10 lakhs units worth Rs. 1 crore of Ind Jyothi scheme (Plan A). They opted for repurchase of their entire holdings in the month of September, 1997. However, after the redemption of the scheme on 31.03.98, AITD preferred a claim for the dividend declared for the year 1996-97 and prorata dividend till September 1997 on the plea that the dividend under the scheme was assured and the same was declared under the scheme only at the time of redemption. The legal opinion obtained by the bank was not in favour of recognizing the claim, as AITD was not a unit holder as on the record dated (31.03.98) when the dividend was declared. However, accepting in spirit the concept of assured dividend, in the larger interest of the investors and in complying with the advice of SEBI over the matter, we have agreed to settle the dividend claim for 1996-97 of not only AITD but of all similar unit holders who stayed with the scheme for entire 1996-97 and had got their units repurchased during the period 01.04.97 and 31.03.98. Necessary approval from RBI has been already sought for to fund the shortfall in this regard.

11. The petitioners in the aforesaid letter have accepted that the said Scheme stipulated and provided for assured minimum dividend. Dividend for the Financial Years 1996-97 and 1997-98 could not be initially declared due to inadequate distributable surplus. For these years, the dividend at minimum assured rate was paid subsequently, out of the funds provided by the Indian Bank. With regard to payment to the respondent No. 2-AITD, the petitioners have categorically agreed that they would pay the dividend as per the assured return for the Financial Year 1996-97 as the Units had been purchased after the end of the said Financial Year

on 25th September, 1997. Accordingly, it is accepted position that no dividend is payable to the respondent No. 2-AITD for the financial year 1997-98 but the same is payable for the financial year 1996-97.

12. Both SEBI and Central Government have accepted the plea and contention of respondent No. 2-AITD after referring to the relevant Clauses of the Scheme and upon interpretation of the same. They have also specifically referred to the letter dated 9th June, 1999. The impugned Orders cannot be said to be perverse or bad for lack of application of mind to the relevant Clauses of the Scheme. The contention of the parties have been considered and the relevant Clauses interpreted. The orders and the interpretation given is plausible and reasonable. It takes into account the promise made, intention and spirit of the Scheme. It appears that the petitioners have changed their stand inspite of their letter dated 9th June, 1999 admitting the position that the respondent No. 2-AITD is entitled to dividend for the Financial Year 1996-97. As a writ court there is no justification and reason to set aside concurrent findings of both SEBI and the Central Government.

No other issue and contention has been argued. In view of the aforesaid position, the Writ Petition is dismissed. The petitioners will pay dividend along with simple interest @ 8% p.a. from 31st March, 1998 till the dividend amount was deposited. Interest will be paid directly to the respondent No. 2-AITD within two months. The interest accruing on the fixed deposit will be also paid to the respondent No. 2- AITD.

No costs.