(2011) 09 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

K Radha Krishnan , V.B. DESAI APPELLANT

Vs

Sri Ajay Kumar , Karnataka Consumer Forum Regd , Madras Motor Finance Guarantee Company Ltd. , Sri T.N. Laxmi Narayanan, I.A.S. , V.B. Desai , Mrs. Usha Nair , Dr. J. Venkata Ramana , Sri B. Ray Prantik , Sri RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 631

Hon'ble Judges : V.R.KINGAONKAR , VINAY KUMAR J.

Advocate : P.B.SURESH , K.P.TOMS , P.K.KOVILAN POONGKUNTRAN

Judgement

1. BY this common judgement, all these appeals are being decided together inasmuch as they arise out of common order rendered by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short the State Commission) in complaint case no. 89 /1997. By the impugned order, the complaint filed by respondent no. 1 Karnataka Consumers Forum (Regd.) was allowed. The appellants were directed to jointly and severally refund the amounts deposited by various depositors as per the list appended with the complaint and also to pay interest @18% p.a. from the date of the complaint till the date of entire payment was made. They were also directed to pay amount of Rs.1 lakh by way of compensation to the depositors.

2. IT is not necessary elaborately set -out the facts of each complainant s case. Suffice it to say that the appellants were past Directors of respondent no. 2 Madras Motor Finance Guarantee Company Limited (for short MMFGC Ltd.). It appears that the MMFGC Ltd. was incorporated under the Companies Act, in or about 1975. It appears that the MMFGC Ltd. issued an advertisement on 11.11.1992 calling for deposits from members of the public under various deposit schemes on basis of attractive rates of interest. The advertisement showed that the company was incorporated on 10.09.1975 having business of hire -purchase finance and leasing. The company was controlled by the Board of Directors. In

response to such advertisement a large number of public members deposited several amounts under the MMFGC Ltd. with a view to earn higher rate of interest on the deposits. On 30.11.1995, a publication was issued by the Reserve Bank of India, prohibiting the MMFGC Ltd. from accepting any further deposits or renewing the deposits which were already accepted. The depositors gathered that such embargo was placed by the RBI because the MMFGC Ltd. had not maintained required liquid assets. The depositors also learnt that misleading advertisement was published by the MMFGC Ltd. with a view to collect huge deposits. Some of the depositors sought refund of the deposits. MMFGC Ltd. did not refund the depositors amount. It appears that some of the creditors of the MMFGC Ltd. filed winding up petition before the Company Court at Chennai. It also appears that an Official Liquidator was appointed during pendency of the said proceedings by the High Court. Taking up cause of all the depositors, enlisted as per the list filed with the complaint, respondent no. 2, i.e., Karnataka Consumers Forum (Regd.) filed complaint case no. 89 / 1997 in the State Commission. The following reliefs were sought: - i) Refund the deposited amount alongwith interest accrued upto July 1997 amounting to Rs.9,40,971. ii) To pay a compensation, totaling to Rs.3,36,800/ - towards mental agony and other injuries suffered by the Depositors due to non -refund of their deposits. iii) To order the opposite parties to pay an interest at 18% per annum on Rs.12,77,771/ - from 1.08.97 upto the date of payment. iv) To award Rs.5000/ - to the Complainant Organisation towards cost of prosecuting this complaint and to grant any other relief deemed fit under the circumstances of the case. Alongwith the complaint, the complainant organization has enclosed the list regarding the various amounts of deposits made by the Depositors.

Though, notice was issued by the State Commission of all the appellants yet only original OP No. 3 Mr. V.B. Desai, appeared before the State Commission. His contention was that the complaint was barred by limitation. He further submitted that he had retired as director of the MMFGC Ltd. on 06.08.93 and had no liability to refund the deposits. He further submitted that in view of section 446 of the Companies Act, 1956, the complaint was barred. It was submitted that without leave of the Company Court no such complaint could have been filed by the respondent no. 1 (complainant).

3. THE complaint was not pressed against original OP No. 14 and 19, who were left out of fray. Hence, the complaint was dismissed against OP Nos. 4 and 12.

4. THE State Commission came to the conclusion that complaint could have been filed by the registered organization, i.e., Karnataka Consumer Forum in its representative capacity. The State Commission rejected the objection regarding the bar by limitation as well as bar under section 446 of the Companies Act, 1956. The State Commission held that the depositors were entitled to get refund of the deposited amounts with interest for period between date of deposit till the date of maturity as well as further interest @18% p.a. from the date of complaint till the entire payment is made. In keeping with such findings, the complaint was

allowed. We have heard learned counsel for the appellants. None appears for the respondents. However, written arguments have been submitted by the respondent no. 1 / Karnataka Consumer Forum (complainant). The written arguments are received by post. We have perused the written arguments.

5. WE may take note of the fact that the appellants were Directors of the erstwhile MMFGC Ltd. We further may take note of the fact that in or about 1994, new management had taken over the charge of MMFGC Ltd. Though the management of M/s. Rajarathinam and Associates got acquired the shares of MMFGC Ltd. yet they continued to run affairs of the said company under the old name and style as Madras Motor Finance Guarantee Company Ltd. . Needless to say that in 1994 the old Directors of the MMFGC Ltd. were discontinued and new management took -over affairs of the company. It is well settled that for fixing civil or criminal liability on a Director, it ought to be established that he was : in charge of and managing affairs of the company . There is hardly any tangible evidence to show that the appellants were in charge of the affairs of the MMFGC Ltd. after the same was taken over by the new management in or about 1994. It is not clear from the record as to whether the new management took over the affairs of the MMFGC Ltd. with all the assets and liabilities.

6. THE fact that the winding up proceedings were pending vide Company Petition Nos. 142 / 1995 and 72 / 1996 prior to filing of Consumer Complaint No. 89 / 1997 is not in dispute. It appears from the record that the complaint was filed when the Insolvency Petitions / Company Petitions were filed before the Madras High Court. Learned Counsel for the appellants makes a statement that as per the interim order of the Madras High Court, the depositors have been paid 50% of the amounts so deposited by them. He further makes a statement that Official Liquidator was appointed in the Company Petitions. According to him, some of the appointments were no more concerned with the affairs of the Board of Directors inasmuch as they were name lenders and were taken on the board being IAS, IPS Officers. In other words, they were not in charge of the affairs of the MMFGC Ltd. It appears from the record that the Official Liquidator was appointed by the Madras High Court on 26.11.2001, i.e., much before the impugned order which came to be rendered on 14.11.2003. We may now proceed to examine legal impact of the consequences of winding up orders. Section 446 of the Companies Act, 1956, reads as follows: - 446. Suits stayed on winding up order. (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the [Tribunal] and subject to such terms as the [Tribunal] may impose.

7. TRUE , the Consumer Forum is not a Civil Court in stritco -sensu though it has trappings of the Civil Court. However, the legal embargo is not only applicable to a civil suit but also is equally applicable to other legal proceedings . Therefore, such other legal proceedings cannot be further proceeded with against the

company unless the Company Court / Tribunals would grant leave only as per the terms imposed by such Tribunal. In S.V. Kondaskar, Official Liquidator Vs. V.M. Deshpande [AIR 1972 SC 878], the expression other legal proceeding as used in sub -section (1) succinctly clarified. The Apex Court held that the expression other legal proceeding as used in sub -section (1) and the expression legal proceeding as used in sub -section (2) convey the same meaning. The various High Courts have taken a similar view. For example in Managing Director, Dugar India Ltd. and Anr. Vs. Sobhana Nair P.N. [I (2002) CPJ 195 (Ker.)], Asia Pacific Investment Trust Ltd. Vs. Amod Juneja [I (2002) CPJ 239 (Del.)] and Branch Manager, Sudarsan Chits (India) Ltd. Vs. P. Viswan Vishnu Prasad [IV (2004) CPJ 281 (Ker.)], it has been held that the proceedings against the Company cannot continue, after passing of the winding up order under section 446 of the Companies Act, 1956. The import of section 3 of the Consumer Protection Act, 1986, is no doubt, to provide an additional remedy which is not in derogation to any other remedy. In the very purport and nature of the proceedings under the Companies Act, is to freeze the assets of the company and ensure appropriate distribution of the assets to the persons like depositors / creditors in accordance with the proportionate amounts available as a result of winding up. It is obvious, therefore, that if only the enlisted depositors are paid full amounts as per the impugned order, though the other creditors may not get their appropriate dues only because they did not file consumer complaint or that they were not the members / beneficiaries of the schemes though have some amounts to be recovered. For example, another creditor of the MMFGC Ltd. may have a claim for Rs.25 lakh but if the depositors enlisted in the list are paid Rs.20 lakh then the proportion of such another creditor is likely to be reduced. Considering such difficulties, the legal embargo appears to have been envisaged under section 446 of the Companies Act. This material aspect seems to have been over -looked by the State Commission.

8. TAKING over all view of the matter, we are inclined to allow the appeals and set aside the impugned order. The impugned order passed by the State Commission is set aside. The depositors are, however, at liberty to claim the remaining amounts due to them from the competent authority or in accordance with the orders passed in the company petitions as may be permissible under the law. The appeals are accordingly allowed with no order as to costs.

