(2006) 06 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

MANIPAL FINANCE CORPORATION LTD. — APPELLANT

Vs

KARAN SINGH POONAIAH — RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Citation : 2006 3 CPJ 438 : 2006 3 CPR 9

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS Revision Petition is filed against the order dated 26.2.2004 passed in Appeal No. 52/2003 by the State Commission, Panaji, Goa whereby the petitioner''s appeal against the order dated 19.6.2003 of District Forum, North Goa in a complaint No. 131/2002 was dismissed.

2. BRIEF facts of the case are : Revision petitioner herein M/s. Manipal Finance Corporation Ltd. is a Finance Company. Respondent, Mr. Karan Singh Pooniah invested his hard earned money with the petitioner in three deposits, details are given as under :

It is stated by the respondent that he was made to understand by the Branch Manager that proper stamped certificates will be issued in due course of time. However, no proper stamped certificates were issued to the respondent till the time of filing the complaint in the District Forum, Goa.

3. THE respondent in his affidavit stated that he was lured by the letter dated 7.5.2002 calling for deposits from the public and in the meetings of the investors at Mapusa and Goa and in that letter it is mentioned as under : "All the public deposits accepted by these companies have been deployed for the purpose of creating loan assets and there is no risk for the customers who have deposited their money, as the said deposits have been deployed remuneratively."

The respondent having come to know that the petitioner was financially unstable based on newspaper report published in a Marathi newspaper Goa "Tarun Bharat" on 5th July, 2002 that there are some irregularities in Manipal Group of

Companies, claimed premature withdrawal of his deposits with interest by letter dated 5th July, 2002. There was a public notice dated 8th July, 2002 by the petitioner that they have decided to repay the deposits and other investments made by the public in a phased manner. Respondent vide his letter dated 8th July, 2002 requested to return the deposits at the earliest. There was no reply to the said letter by the petitioner. It is only when he went to the Branch Manager of the Petitioner''s Company at Mapusa, Goa Branch, "Shreyus Certificates" were given to the respondent. Respondent filed the complaint in District Forum for refund of deposits with interest along with costs. District Forum framed two issues for consideration: "Whether (i) there is any deficiency in service on the part of the opposite parties. (ii) if so, for what relief, the complainant is entitled."

4. DISTRICT Forum allowed the complaint affirming the issue (i) and directed the petitioner jointly and severally to pay Rs. 1,95,000, Rs. 30,000 and Rs. 75,000 w.e.f. its respective dates of deposit with interest @ 9% p.a. (simple interest) upto the dates of payments. Petitioner aggrieved by the order of the District Forum appealed before the State Commission which dismissed their appeal with cost of Rs. 3,000. In this revision petition learned Counsel argued mainly on one ground that if the investment made by the respondent is "Shreyus Certificate" which is Sub-Ordinated Debt and there is no provision of redemption of this debt before maturity as per condition No. 5 of the said certificate. It is argued that as per Annexure ''D'' which indicates clearly that it is Shreyus Redeemable Subordinated Debts- Series II (in the nature of Promissory Notes of Rs. 1,000 each). As per the terms of the condition No. 5: Condition No. 5: "The face value of Debts will be redeemed at par at the expiry of 60 months from the date of allotment unless these are called on at the option of the company."

5. IT is further stated that any action for non-refund, if any, can be agitated before the Civil Court or before the Company Law Board and that there is no deficiency in service on the part of the company as the complainant is not a depositor; instead he is a lender.

6. IT is a case of the petitioner that "Redeemable Sub-ordinated Debts" mature in the year 2007 and the investment under Sub-Ordinate Debt (Shreyus Certificate) is for a period of 5 years and 1 day and that the minimum period is 60 months as per RBI Guidelines 1998 dated 31.10.1998. IT is further argued by the learned Counsel for the petitioner that the complaint filed by the respondent herein that the investment was for fixed deposit is wrongly termed whereas it was Sub-Ordinate Debt (Shreyus Certificate). IT is also brought to our notice that RBI has issued specific instruction to the Company as per DNBS (BG) No. 1529/CMD III/MFCL-2002/03 dated 7.10.2002 that "No part of the Sub-ordinate Debt (Shreyus Certificate) can be redeemed till other creditors (including Public Depositors) are fully paid." It is further submitted by the learned Counsel that the "Hybrid Debt" means capital instrument which possesses certain characterists of equity as well as of debt and Subordinates debt means a fully paid up capital instrument, which is unsecured and is subordinated to the claims

of other creditors and is free from restrictive clauses and is not redeemable at the instance of the holder or without the consent of the supervisory authority of the NBFC.

As against this, learned Counsel for the respondent/complainant argued that firstly the Shreyus Certificates were not issued to him and the condition No. 5 which has been relied upon by the petitioner for the first time at revision petition stage cannot be considered. It is denied by the respondent that the certificates were given to him when he visited the Manager of the petitioner at a later date. Respondent was unaware that the petitioner issued Shreyus Certificate as Sub-ordinated Debts.

7. WE heard both the parties and perused the record carefully. WE have gone through the written submission of the petitioner in the District Forum and also grounds of appeal in the State Commission. Strangely, there is no mention regarding the so-called Hybrid/Sub-ordinated Debt Shreyus Certificate and that the petitioner was restrained by the direction of RBI vide Circular No. DNBS (BG) No. 1529/CMD III/MFCL-2002/03 dated 7.10.2002. The complaint has been filed on 1.8.2002, appeal has been filed on 1.10.2003 along with an affidavit and none of them have brought out the issue that the petitioner was restrained from paying the said amount of the certificates. On our query as to whether the petitioner has communicated the RBI guidelines to the respondent at any time learned Counsel for the petitioner could not produce any such document. In our view, petitioner cannot take this ground that they did not pay the said amount because respondent invested in their finance company not as a fixed deposit but as a debt and that RBI guidelines directed them not to pay the Sub-ordinated debts before the maturity date. They cannot take this plea for the first time and improve their case after two Fora have gone into the entire record and directed them to refund the amount with interest. Taking different grounds at different stages of District Forum, State Commission and National Commission to improve their case is not a good practice. WE do not find any reason for us to interfere with the well reasoned orders of the Fora below. There is no merit in this case. In view of the above discussion, we dismiss the revision petition with further cost of Rs. 5,000. Revision Petition dismissed.

