

(2015) 09 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Case No : 3938 of 2013

M/S. IFCI LTD.

APPELLANT

Vs

ANIRUDH HISARIYA

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

[Companies Act, 1956](#), [Section 205C](#),
[Section 205C\(2\)](#) - Establishment of Investor Education and
Protection Fund. - Establishment of Investor Education and Protection Fund.
[C](#)

Citation : 2016 1 CPJ 203

Hon'ble Judges : K.S. Chaudhari

Advocate : Nitin Dahiya

Judgement

1. Both these revision petitions arise out of single order of learned State Commission passed in two appeals involving similar facts; hence, decided by common order.

2. These revision petitions have been filed by the petitioner against the order dated 5.8.2013 passed by the Rajasthan State Consumer Disputes Redressal Commission, Bench No.3, Jaipur (in short, "the State Commission") in Appeal No. 1106/2011- IFCI Vs. Anirudh Hisariya and Appeal No. 1107/2011- IFCI Vs. Sushila Hisariya by which, while dismissing appeals, orders of District Forum allowing complaints were upheld.

3. Brief facts of the case are that complainants/respondents in both the complaints purchased family bond amounting to Rs.5,000/- from OP/petitioner on 6.9.1996. Payment of bond on redemption was to be made as per the face value. Complainant sent original bonds for payment, but OP on 20.4.2010 sent payment of Rs.14,121/- in complaint No. 255/2010 & Rs.13,108/- in Complaint No. 253 of 2010 whereas complainants were entitled for payment of Rs.50,000/-. Alleging deficiency on the part of O P, complainant filed complaint before District forum. OP resisted complaint and submitted that bonds were in the nature of the

pronote and complainant made investment by purchasing bond, so, he was not consumer. It was further submitted that OP decided on 25.6.2003 to redeem bond and intimation regarding this was published in newspaper on 30.5.2003 and payment was to be made as per value on 16.12.2003 and payment was made accordingly. Complaint was barred by limitation and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to pay interest on aforesaid amount from 6.12.2003 to 20.4.2010 @ 9% p.a. and further awarded cost of Rs.1,000/-. Appeals filed by OP were dismissed with cost of Rs.5,000/- against which, these revision petitions have been filed.

4. Heard learned Counsel for the petitioner and respondent in person finally at admission stage and perused record.

5. Learned Counsel for the petitioner submitted that inspite of payment made as per exercise of option for redemption of bond and complaint barred by limitation, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeals; hence, revision petitions be allowed and impugned order be set aside and complaint be dismissed. On the other hand, respondent submitted that order passed by learned State Commission is in accordance with law as they were not intimated about exercise of option; hence, revision petition be dismissed.

6. It is not disputed that complainants purchased bonds issued by OP and early redemption option was given to the investor as well OP. Terms and conditions attached with bond provided that bonds are negotiable instruments transferable by endorsement, individual notice to bond holders are not feasible and would not be given and notice will be published in English and one regional language newspaper in Delhi, Mumbai, Madras, Calcutta, Bangalore and Ahmedabad. Perusal of record further reveals that OP exercised option to redeem bond and publication was made in Indian Express dated 30.9.2003 for redemption of bond from 6.12.2003.

7. Learned Counsel for petitioner submitted that as per prescribed procedure, notice was published in the paper and complainant was under an obligation to submit bond for redemption on that date, but he submitted bonds later on so he was not entitled for interest. Respondents submitted that he has not seen this paper at a place where he resides and as no notice was served to him personally, he was entitled to interest as awarded by learned District Forum. Learned State Commission observed that it was the duty of OP to inform personally to each bond holder about early discharge of the bond. This observation is prima facie contrary to terms and conditions of the bond because as per terms and conditions, no individual notice was required to be given and only publication was to be made in the paper and no individual notice was required to be given by OP to bond holders.

8. Respondent submitted that scope of revision is limited and he placed reliance

on judgment of Hon''ble Apex Court in 2013 (2) CPR 14 (SC)- Mrs. Rubi (Chandra) Dutta Vs. M/s. United India Insurance Co. Ltd. in which it was observed that revisional power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. I also agree with the aforesaid proposition of law and in the case in hand there is prima facie error in allowing complaint against the terms & conditions of bond; hence, revision is maintainable.

9. When bonds were submitted by complainants, payment was made to them. Learned District Forum committed error in allowing interest and learned State Commission further committed error in dismissing appeal.

10. Learned Counsel for the petitioner submitted that complaints were barred by limitation and placed reliance on judgment of Hon''ble High Court of Delhi in W.P. (C) 7415 of 2010- T.K. Dhar Vs UOI and Anr. in which while interpreting Section 205C of the Companies Act, it was observed as under: "Having heard learned counsels for the parties and considered their respective submissions, as also the judgment of the Division Bench in Nivedita Sharma (supra), I am of the view that there is no merit in the petitioners submission that the period of seven years in W.P.(C) 7415/2010 Page 8 of 17 the petitioners case, as prescribed in section 205C of the Companies Act, would begin to run only from 06.09.2009, and not from 06.09.2000, the date on which the early redemption of the bond was notified by the respondent IFCI.

The submission of learned counsel for the petitioner that the liability of respondent IFCI continued to exist, and did not get extinguished, since the petitioner did not receive the amount either on the exercise of early redemption option, or at maturity, has no force. The bond became payable upon early redemption by the IFCI. The obligation of the IFCI to make payment under the bond did not arise twice, i.e. first upon early redemption on 06.09.2000, and again on the expiry of 13 years period, i.e. on 06.09.2009. The bond itself provides that the amount is receivable by the bondholder "on the exercise of early redemption option as aforesaid or at maturity". Therefore, upon the early redemption option being exercised - either by the bondholder, or by the IFCI, the bond become payable at that stage.

The proviso to Section 205C(2) clearly states that the starting point of limitation period of seven years is "Seven years from the date" the bond "became due for payment". As aforesaid, the said date can only be 06.09.2000, and it cannot be 06.09.2009 in this case. The explanation following the proviso to section 205C(2) of the Companies W.P.(C) 7415/2010 Page 10 of 17 Act leaves no room for debate in this respect. It declares "that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed or unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims". The use of the expression "from the dates that they first became due for payment" leave no room for doubt that the period of seven years is liable to be computed from the

date of early redemption of the bonds, and the starting point of limitation would not get postponed to the date of redemption after the full/maximum term of the bond, as initially envisaged in the bond itself, expires." In the case in hand as bonds were redeemed on 16.12.2003, complaint should have been filed within two years whereas complaints were filed in the year 2010 without any application under Section 24A of the C.P. Act and complaints were barred by limitation; even then, learned District Forum committed error in entertaining and allowing complaint and learned State Commission further committed error in dismissing appeal.

11. Consequently, revision petition filed by the petitioners are allowed and impugned order dated 5.8.2013 passed by the State Commission in Appeal No. 1106/2011- IFCI Vs. Anirudh Hisariya and Appeal No. 1107/2011- IFCI Vs. Sushila Hisariya and order of District Forum dated 6.4.2011 in CC No. 255 of 2010- Shri Anirudh Hisaria Vs. IFCI Office and in CC No. 253 of 2010- Sushila Hisariya Vs. M/s. IFCI Office is set aside and complaint stands dismissed with no order as to costs.