
(2002) 04 AHC CK 0066
In the Allahabad High Court
Case No : Company Petition No. 87 of 1999

Reserve Bank of India

APPELLANT

Vs

Kuber Mutual Benefits Ltd.

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45MC

Citation : (2002) 2 AWC 1666(2)

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : S.N. Varma, Sharad Verma, Yashwant Verma, Ashok Srivastava and A.K. Bhattacharya, for the Appellant; Anurag Khanna, Shikha Singh, D.S. Pandey, V.K. Shukla and Satish Mandhyan, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—This company petition has been filed u/s 45MC of Reserve Bank of India Act. 1934, to wind up respondent company and to appoint Official Liquidator, High Court, Allahabad or some other fit and proper person to be appointed as liquidator and further to appoint provisional liquidator to take charge of company's properties and assets, its books of accounts, papers, vouchers etc. and to issue ad interim injunction restraining the respondent, its servants, agents and assignees from encumbering, transferring, alienating and disposing of any of the assets of the respondent company.

2. The Reserve Bank of India issued Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, to regulate acceptance of deposits by companies carrying on the business of non-banking financial institutions, in exercise of powers conferred by Sections 45J, 45K and 45L of the Reserve Bank of India Act. 1934. Respondent company, namely, Kuber Mutual Benefits Limited having its registered office at Kuber Bhavan, Begum Bridge Road, Meerut (U. P.) was incorporated on September 30, 1991. The company is a Non-Banking Financial Company and was bound by the aforesaid

Directions of 1998. The company has paid up capital of Rs. 44.09 lakhs as on 31.3.1998 and was declared as "Nidhi" Company u/s 620A of the Companies Act, 1956 on March 18, 1993, and was exempted from the provisions of Sections 45-IA, IB and IC of the Reserve Bank of India Act, 1934. It was further denotified from the "Nidhi" status by the Central Government on March 26, 1999. An inspection was carried out by the Reserve Bank of India in which it was found that the company was not complying with the provisions of Chapter II1B of the Reserve Bank of India Act and the directions issued by the Bank for companies declared as "Nidhi" Companies. u/s 45IA of the Act, a company cannot carry on the business of non-banking financial activity unless it has a certificate of registration issued by the Bank. The company did not apply for grant of certificate of registration after being denotified from the status of Nidhi Company on 26.3.1999 but continued to carry on the business in violation of the aforesaid provision. It also failed to repay the amounts due to the depositors and that a number of complaints were received by the Bank from the members of the public against the company. The latest balance sheet available with the bank shows total assets of Rs. 194.02 crores against total liabilities of Rs. 194.02 as on 31.3.1998.

3. The Reserve Bank of India issued a prohibitory order to the company on April 5, 1999, restraining it from accepting deposits and the same is in force for a period of more than three months. Civil Misc. Writ Petition No. 16458 of 1999 was preferred by the company before this Court for quashing the notification dated 26.3.1999 issued by the Ministry of Law, Justice and Company Affairs, Government of India, New Delhi and consequential communication dated 5.4.1999 issued by the Reserve Bank of India. The Reserve Bank of India filed a complaint against the company and Its Directors u/s 58B read with Section 58C of the Act for violation of the provisions of the Act. The complaint dated 18.6.1999 Is pending before the court of Chief Judicial Magistrate, Meerut. This company petition was thereafter filed with the averments that the continuance of the company as a Non-Banking Financial Company will not serve any public purpose but will be detrimental to the public Interest and to the interest of the depositors of the company. Section 45MC of the Reserve Bank of India Act, 1934, provides that the Bank may file winding up application against a Non-Banking Financial Company if following conditions are satisfied :

- (a) It Is unable to pay its debt ; or
- (b) It has by virtue of Section 45IA become disqualified to carry on the business of a non-banking financial Institution ; or
- (c) It has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months : or
- (d) Its continuance is detrimental to the public interest or to the interest of depositors of the company.

4. Notices were issued on the company petition on 27. 10. 1999. These were

returned undelivered with the postal remarks as "Left without address written to sender". The Court as such directed advertisement to be made in news papers Hindustan Times (English) published from New Delhi and "Amar Ujala" (Hindi) published from Meerut within a month. The order was carried out and the publication was made by the Bank. On 27.3.2000, Sri Anurag Khanna Advocate stated that he had instructions to appear on behalf of respondent. He was allowed time to file counter-affidavit which was extended on 6.7.2000 and 8.8.2000 but no counter-affidavit was filed. On 26.11.2001, this Court admitted the petition for advertisement and directed that the steps be taken for advertisement under Rule 24 of the Companies (Court) Rules, 1959, within two weeks. The notices were to be published in the "Hindustan Times" (English) published from New Delhi and "Amar Ujala" (Hindi) published from Meerut. The Official Liquidator, U. P., Allahabad attached to this Court, was appointed as provisional liquidator and was directed to take possession of the assets of the company and to make inventories therefor, and that an injunction was issued restraining respondent company, its directors, agents or any authority dealing with the assets of the company from transferring, alienating, disposing of or encumbering the property in any manner whatsoever except without prior permission of this Court. The advertisement was carried out, as directed by this Court.

5. On 21.1.2002, an application was filed by respondent company through Sri Anurag Khanna, advocate for recalling the order dated 26.11.2001 supported by an affidavit of Shri P. K. Sharma, Chairman and Director of the respondent company. On the said application, the following order was passed by this Court on 21.1.2002 :

"This application has been filed by Kuber Mutual Benefit Limited (respondent company) through Shri Anurag Khanna for recalling the order dated 26.11.2001 supported by an affidavit dated 26.11.2001 of Shri P. K. Sharma, Chairman and Director of the respondent company.

The company petition has been filed u/s 45MC of the Reserve Bank of India Act, 1934. Notices were issued on 27.10.1999, and that, in spite of appearance put by Shri Anurag Khanna in the matter, and time granted on 27.3.2000 to file reply, no reply or counter-affidavit was filed. Taking into account the facts and circumstances, an order was passed on 26.11.2001 in public interest and in the interest of depositors to advertise winding-up petition under Rule 24 of the Companies (Court) Rules, 1959, within two weeks, and that Official Liquidator was appointed as Provisional Liquidator to take possession of the assets of the company and make inventories thereof. In response to the advertisements, four applications and one affidavit has been filed, on behalf of the depositors/ employees, of the respondent company for impleadment and for payment of their deposits.

It is submitted in the application filed on behalf of the respondent company that the Directors of the company are facing criminal prosecution all over the country

and were under custody upto 5th May, 2000, when they were released after an order passed by the Apex Court in Writ Petition (Crl.) Nos. 72-75 of 2000 after imposing conditions with regard to their bail and a direction to surrender their passports as well as cancellation of bail if the investigating agency found that the petitioners are misusing the liberty granted to them. It is submitted that the Chairman and Directors of the company were required to be present in various courts with regard to the matters of their bail, and day-to-day trial conducted by designated court under provisions of Maharashtra Protection of Investors Deposits Act and that the Directors came to know about the pendency of the winding-up petition only a few days ago.

In paragraph 15 of the application, it has been stated that Reserve Bank of India, in affidavits filed in Writ Petition No. 3944 of 1995, B. S. Sehgal and others v. R. B. I and others, pending before the Delhi High Court, has not disputed that the realizable value of the assets of the company exceed the total liability and thus, the company which is keen and prepared to pay the money shall submit a claim of repayment in a detailed counter-affidavit, after consideration with the Chartered Accountants.

The company petition was filed in the year 1999 and that appearance was put on behalf of the Directors in March, 2000. There is absolutely no justification for the respondents to seek further time to file counter-affidavit. The Reserve Bank of India has filed this petition after causing detailed enquiries in the matter and after noticing the fact that the respondents have violated provisions of Reserve Bank of India Act, and is unable to pay its debts. The company has been prohibited from receiving any further deposits and a satisfaction was arrived, that its continuance is detrimental to the public interest or the interest of depositors of the company and thus, the company should be wound-up. Shri Anurag Khanna states that during the aforesaid period, the company has paid some of its creditors and that in the injunction matter pending before the Bombay High Court, a scheme has been submitted for repayment of the depositors money in instalments. In order to find out the true state of affairs, the assets available with the company, bona fides of its intention to pay the creditors and the injunction orders passed by the Bombay High Court and Delhi High Court, it is necessary to bring on record the entire facts, and it is also in public interest as well as depositor's Interest to consider the extent of assets available and the scheme of repayment proposed by the respondent. Although an injunction order has been passed by this Court restraining the respondent, directors, agent or any authority to deal with the assets of the company, and they have been restrained from transferring, alienating, depositing, or encumbering the properties of the company in any manner whatsoever, except to the prior permission of this Court on 27.10.1999, and, thereafter, again on 26.11.2001, Shri P. K. Sharma, aged 49 years, s/o Shri Deep Chand Sharma, 32. Greater Kailash, New Delhi, the Chairman and Director of Kuber Mutual Benefit Limited present in Court, and identified by Shri Anurag Khanna, Advocate, has given an undertaking to the Court that he will abide by the injunction without

demur.

In the aforesaid circumstances, the respondent company is given an opportunity to bring the aforesaid facts and records and proposed scheme before this Court on or before 14th February, 2002, failing which the Court shall proceed to wind-up the company.

List on 14th February, 2002, peremptorily as a first case."

6. The respondent company was thus given an opportunity to bring the details about its assets, list of guarantors of creditors, the company had chosen to pay and to bring on record the orders passed by Bombay and Delhi High Court. On 14.2.2002 when the matter was taken up ; a request was made by Sri Anurag Khanna to adjourn the hearing of the case on the ground that Sri P. K. Sharma has been taken ill and was admitted to hospital and that he will require some time to comply with the order dated 24.1.2002. He has filed an application A-34 along with the affidavit of R. P. Chug as Pairokar of Shri P. K. Sharma, stating that Shri Sharrna was suddenly taken ill as a case of acute coronary syndrome and has undergone coronary anglography followed by angioplasty on 11.2.2002. He was advised rest for next two weeks and not to travel. On an enquiry whether any steps have been taken to submit the details required by this *Court, Sri Anurag Khanna informed the Court that all the employees of the company have left and Sri P. K. Sharma alone is looking-after the case.

7. The company petition was instituted on 27.10.1999. With great difficulty, the respondent company could be served and inspite of three adjournments, the respondent company has not even filed reply to the petition. On 21.1.2002, when this Court secured attendance of Sri P. K. Sharma, it was specifically made clear to him that looking into the interest of race of depositors and in the public interest, he will not be given any further adjournment and that he must bring the entire details and particulars on record in support of his application A-26 dated 21.1.2002. He has failed to avail the opportunity and as such, the Court rejected the prayer for adjournment and reserved the orders.

8. In his affidavits dated 21.1.2002. Sri P. K. Sharma has stated that all the Directors were in judicial custody from June, 1999 to 5th May, 2000 and the registered office being closed, the notice was not received. The notices were published in news papers as per order dated 18.1.2000 of this Court and since the deponent Sri P. K. Sharma and other Directors were in judicial custody, they had absolutely no knowledge of the publication. Sri Vikas Pahwa, who was handling the matters relating to the bail application of the applicant in various Courts at Delhi, took notice of the publication and contacted Sri Anurag Khanna, Advocate on phone requesting him to seek an adjournment on 27.3.2000. Sri P. K. Sharma, the then Director was released by the order dated 5.5.2000 passed by the Apex Court. This order has been annexed with the affidavit. This order was passed by the Apex Court relying upon the terms and conditions in the decision dated 28.3.2000. The terms and conditions are quoted as below :

"(1) If the petitioner is arrested in connection with any criminal case in his capacity as Managing Director/Director of J.V.G. Group of Companies, the arresting officer shall release him on bail on his execution a bond to the satisfaction of the arresting officer.

(2) Such relief shall be made after getting an assurance from him that he will be present in the Court concerned on the days when his case is posted. However, we make it clear that it is open to the petitioner to apply to the Court concerned for exempting him from personal appearance on condition that a counsel on his behalf would be present on such posting dates and he would not dispute his identity as the particular accused in that case, and further that he would make himself available on any date when his presence is imperatively needed in that Court.

(3) We permit the petitioner to move the appropriate High Courts for bringing all the case pending In different Courts within the territorial jurisdiction of that High Court to one single Court or more than one Court (depending upon the number of cases of the width of the area of the State is concerned).

(4) This order will come into effect only if the petitioner would surrender his passport in this Court. Shri Shanti Bhushan, learned senior counsel expressed a doubt that petitioner would have already surrendered his passport before another Court pursuant to the order passed. In that case he can satisfy the Registrar General of this Court by an affidavit of the situation and the Registrar General can Intimate the Jail authorities concerned of that position.

(5) We make It clear that it Is open to the investigating agency In any case to move for cancellation of bail if any such investigating agency finds that petitioner is misusing the liberty granted by this order."

9. During the pendency of the company petition, several applications have been filed by depositors and employees of the company. The details of these applications are given below :

(1) A-9 on behalf of Sri N. P. Agrawal and 5 others, who were Branch Managers of the respondent company, for their impleadment. Applicant No. 6 Sukh Pal Gupta claims to customer/depositors and all the applicants state that they have deposited with respondent company a sum of Rs. 21 lacs. The affidavit points out discrepancies in the order of Company Law Board as well as in the petition of Reserve Bank of India.

(2) A-11 by M/s. Kuber Kalyan Samiti and another giving details of deposits in para 4 to the extent of Rs. 17,64,285.00. The society appears to have been founded to protect interest of depositors and prays to allow the winding up petition by appointing an Official Liquidator to take over the assets of the company and prepare its inventory and thereafter after en-cashing the F.D.Rs, which have been seized by the Income Tax people and which is to the tune of Rs. 43 crores for payment to investors.

(3) A-12 by Vishal and 6 other depositors of respondent company with a prayer to pay the amount deposited in the two schemes of two respondent company, details of which have been given in the affidavit.

(4) A-23 affidavit of Mr. Praveen Maheshwari, an investor of Rs. 5 lacs requesting the Courts for payment.

(5) A-24 by Smt. Mohlta and 6 others, who are investors/ creditors/ depositors under the Fixed Deposit Scheme of the company and invested an amount of Rs. 1 lac with prayer to pay the amount in question.

(6) A-25 by Mahipal Singh Vishnoi and another, depositors of Rs. 182,300 in the year 1997-98 on the rate of interest 15% of one year in the scheme of Kuber Mutual Benefits for the return of deposited money with interest.

(7) A-29 affidavit of N. P. Agarwal, giving details of deposits for its return.

(8) A-30 affidavit of N. P, Agarwal giving details of deposits and for its repayment.

(9) A-31 by Manohar Lal and 6 others giving details of deposits with the respondent company for winding up the company.

(10) A-32 by Shyam Lal and another giving the details of deposit of Rs. 94,449.00 with the respondent company for its repayment with Interest.

(11) A-33 affidavit by Sukhpal Gupta for repayment of his deposits detailed In paras 5 and 6 of the affidavit.

(12) A-35 by Om Narain Saxena and 6 others for repayment of amount with interest.

(13) A-36 by Prafulla Kumar Mohapatra and others giving details of deposit of Rs. 1,85,700 and for its repayment with interest.

(14) A-37 by Sankarsan Pal and 47 other residents of Orissa giving details of deposit and for its repayment with interest.

(15) A-16 Letter from Rameshwar Dass Goyal giving details of deposit of Rs. 64,627 with the prayer for its repayment.

(16) A-17 by Madhu Bansal giving details of deposit with the prayer of its repayment and to take action for criminal breach of trust.

(17) A-18 by Nishant and Mrs. Madhu Bansal giving details of deposits with prayer for its repayment.

10. Apart from aforesaid applications, several letters have been received by this Court from the depositors which need not be referred to and that may be adverted to by the Official Liquidator under the Companies (Court) Rules, 1959.

11. An application was filed before the Company Law Board, Northern Bench. New Delhi being Application No. 15/199/98-CLB u/s 45Q of the Reserve Bank of

India Act. The Company Law Board while passing order on 21.12.1999, took into notice the interim order dated 13.8.1998 issued by High Court of Delhi restraining the company from alienating its assets, except in the normal course of business. After hearing the depositors and considering the averments by the respondent company, which took defence under the Interim order issued by Delhi High Court, the Company Law Board framed a scheme, in exercise of suo motu powers vested in Company Law Board, by which respondent company was directed to make payment under the different scheme of deposits, which had already matured and the deposit which would be maturing in future in phased manner, which is categorised as under :

Categories of Deposits

Schedule of repayment of the deposits

Upto Rs. 5.000

Within 3 months from the date of thematurity or the date of order whichever is later.

Rs. 5,001 to Rs. 10,000

In two (2) equal six monthly instalments commencing from the date of maturity or the date of order whichever Is later.

Rs. 10.001 to Rs. 15.000

in three (3) equal six monthly instalments commencing from the date of maturity or the date of order whichever is later.

Rs. 15,001 and above.

In four (4) equal six monthly instalments commencing from the date of maturity or the dale of order whichever is later.

12. It appears that the aforesaid scheme of payment was not adhered to and the respondent company made payment only to chosen few depositors for the reasons best known to the respondent company. In order to find out the proceedings pending before Delhi High Court, some depositors filed a copy of writ petition in between Mr. B. S. Sehgal and others v. Reserve Bank of India and others in which an interim order was passed. A perusal of the writ petition shows that it was filed by six depositors, including Public Action Forum against the Governor, Reserve Bank of India, the Secretary. Department of Company Affairs and other authorised officer, Including Union of India and a number of companies including M/s. Kuber Mutual Benefits Ltd., as respondent No. 43, with a number of prayers and directions listed from (a) to (n) for causing Investigation ; to bring guilty officers and other respondents before the Court of law and to be tried, etc.

13. A detail application has been filed by K,uber Kalyan Samiti as employees and depositors and for repayment which was directed to be put up with the record.

14. From the aforesaid facts and circumstances. I find that the respondent company has deliberately and intentionally failed to file a reply inspite of several adjournments. I also find that the respondent company has no intention to file reply and to submit the details of its assets to the proposed scheme of repayment.

15. In the facts and circumstances, this company petition filed by Reserve Bank of India is allowed. Kuber Mutual Benefits Ltd. with registered office at Kuber Bhawan. Begam Bridge Road, Mcerut [respondent company) is directed to be wound up. The Official Liquidator. U. P. High Court. Allahabad, is appointed as Liquidator of the company. He is directed to take charge of company's properties and assets, its books of accounts, papers, vouchers and other documents of the company in accordance with Companies (Court) Rules, 1959, require the Directors to file statement of affairs and to submit a report to this Court.