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(2012) 05 DEL CK 0146

In the Delhi High Court

Case No : Writ Petition (C) 7415 of 2010

T.K. Dhar APPELLANT

Vs

UOI and Another RESPONDENT

Date of Decision : 24-05-2012

Acts Referred:

Companies Act, 1956 — Section 205C, 205C(2), 205C(2)(c)
Constitution of India, 1950 — Article 14, 226

Citation : (2012) 05 DEL CK 0146

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Gayatri Verma, for the Appellant; Neeraj Chaudhari, CGSC with Mr. Karam Deswal for respondent No. 1 and Mr. Dinkar Singh and C.S. Chauhan for Respondent No. 2/IFCI Ltd, for the Respondent

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek a direction to the respondents to release the maturity proceeds of the education bonds subscribed to by the petitioner. The case of the petitioner is that on 6th September 1996, he subscribed to the Education Bond issued by respondent no. 2 Industrial Finance Corporation of India Ltd. (IFCI), in the name of his grand-daughter, who at that time was only two years of age, in order to ensure availability of finance at a later stage for continuing her education. The term of the bond was 13 years. However, the bonds were redeemable at the option of the subscriber, or at the option of IFCI earlier. The relevant clause in this respect, contained in the bond, reads as follows:

The holder(s) of this Bond and IFCI shall have the option to redeem the Bond on any of the following dates at the deemed face value mentioned, provided annual redemptions under the scheme have not started:

Early Redemption Date

Deemed Face Value (per bond)

Applicable to

on Sept. 6, 2000

at Rs. 11,000/-

wait period 13/11/9 years

on Sept. 6, 2004

at Rs. 20,000/-

wait period 13/11 years

on Sept. 6, 2008

at Rs. 37,000/-

wait period 13 years

On receiving the amount by the Bondholder(s) as specified above, on the exercise of early redemption option as aforesaid or at maturity, the liability of IFCI hereunder shall stand fully extinguished.

2. The case of the petitioner is that upon the expiry of date of maturity of the Bond after 13 years, the petitioner approached the respondent IFCI on 05.04.2010 seeking the release of the maturity amount. However, the said amount was not released even after sending a legal notice. In response to the legal notice, the respondent took the stand that the said bond had been redeemed by IFCI in the year 2000 itself, i.e. on 06.09.2000. Since the petitioner did not collect the amount due under the bond, the said amount had been dealt with in terms of section 205C of the Companies Act.

3. In this background, the present petition has been preferred.

4. Section 205C of the Companies Act reads as follows:

205C. Establishment of Investor Education and Protection Fund.-

(1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the following amounts, namely:-

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

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(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.- For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and 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.

(3) The Fund shall be utilised for promotion of investors? awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established". (Emphasis supplied)

5. Learned counsel for the petitioner submits that section 205C of the Companies Act would have no application in the facts of the present case for the reason that the seven year period would start to run from the date of full maturity of the bond, which in this case was 6th September, 2009. It is argued that the bond became due for payment only on 06.09.2009 and not before that. According to her, since the petitioner had sought redemption of the bond within the period of seven years of 06.09.2009, the petitioner was entitled to receive payment, and the liability of the IFCI subsisted. It is submitted that the petitioner was not served with any notice by the respondent IFCI, when it decided to redeem the bonds on 06.09.2000. Else, there was no question of the petitioner not redeeming the bond.

6. The respondents have filed their counter-affidavits. The case of the respondent IFCI is that early redemption is provided under the terms of the bond as set out hereinabove. Learned counsel submits that the bond became due for payment whenever it was sought to be redeemed on its terms, i.e., on

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06.09.2000. The requirement of issuing notices to the bond holders, in case the IFCI decides to redeem the bonds earlier than its full term is contained in the prospectus, which reads as follows:

Notices

The Bonds being negotiable instruments are transferable by endorsement and delivery as stated herein and register of transfer is not envisaged. Therefore, the Company would not be aware of the identity of the bondholder from time to time. Hence, individual notices are not feasible and would not be given. All notices to the Bondholder(s) required to be given by the Company or the Trustee shall be deemed to have been given if published in one English and one regional language daily newspaper in Delhi, Mumbai, Madras, Calcutta, Bangalore and Ahmedabad and may, at the sole discretion of the Company or the Trustee, but without any obligation, be sent by ordinary post to the original sole/first allottees of the Bonds or if notification and mandate has been received by the Company, pursuant to the provisions contained hereinabove, to the sole/first transferees.

All notices to be given by the Bondholder(s), including notices referred to under "Payment of Interest" shall be sent by Registered Post or by hand delivery to the Transfer Agents of the Company or to such persons at such address as may be notified by the Company from time to time.

(emphasis supplied)

7. The case of the respondent is that requisite notices were issued in the press. Copies of the advertisements published in various news dailies have been placed on record alongwith the counter-affidavit of respondent no. 2 IFCI.

8. Learned counsel for the respondent IFCI submits that, even though there was no legal obligation so to do, in addition, the individual bond holders were also issued notices by IFCI through its Registrar MCS Ltd. He submits that the petitioner has himself placed on record a copy of the certificate issued by the Indian Post and Telegraph Department, which was provided to the petitioner in response to the petitioners notice. In the said certificate, the name of the petitioner is found at ref. no. 614 with the address D-3/3328, Vasant Kunj, New Delhi, which was the registered address of the petitioner on the bond.

9. Learned counsel for the respondent submits that it could be that the petitioner had shifted his residence by the time the notice was issued, and that is why he did not receive the said notice. He submits that no change of address was notified to the respondent.

10. Learned counsel for the respondent IFCI submits that the procedure for redemption/early redemption prescribed in the prospectus issued by IFCI, is as follows:

Payment on redemption or early redemption of the Bonds will be made only on the surrender of Bond Certificate(s), duly discharged by the Sole/all the joint

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holders (signed on the reverse of the Bond certificate). IFCI''s liability to Bondholders towards all their rights including payment or otherwise shall cease and stand extinguished from the due date of redemption/early redemption in all events. Further, IFCI will not be liable to pay any interest, income or compensation/benefit of any kind from the date of such redemption/early redemption of the Bonds.

On the Bondholder receiving the amount as specified above in respect of the Bonds, the liability of the Company shall stand extinguished.

In case, the due date for redemption/early redemption happens to be a holiday, the next working day would be the due date.

No interest or other benefit shall accrue from the due date of the redemption of the respective bonds or in case where an early redemption option is exercised, no interest or other benefit shall accrue from the date of early redemption.

11. He submits that this procedure requires the bondholder to surrender the bond certificates duly discharged by the sole/all the joint holders, signed on the reverse of the bond certificate. Since the bond was not submitted by the petitioner duly discharged, the payment was not sent to the petitioner on early redemption on 06.09.2000. As the amount due under the bond remained unclaimed and unpaid for a period of seven years from 06.09.2000, the same was liable to be transferred to the Investor Education and Protection Fund.

12. Learned counsel for the respondent submits that the present case is squarely covered by the decision of a Division Bench of this Court in Nivedita Sharma v. The Industrial Credit & Investment Corporation of India & Ors., W.P.(C.) No. 10517/2009 decided on 07.07.2011.

13. 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 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.

14. As noticed above, the bond gave an option to both - the bondholder and to the IFCI, to redeem the bond on the specified dates. The exercise of its option to redeem the bond by respondent no. 2 IFCI, therefore, appears to be in order. The manner of early redemption of the bond has also been prescribed in the prospectus, which has been taken note of herein above. The respondent IFCI appears to have complied with the procedure prescribed for issuance of notice to the bondholders of their decision to redeem the bonds.

15. Even though the respondent IFCI specifically excluded any obligation to give individual notices to the bondholders, it appears that such notices were, in fact, issued to the bondholders including under recorded delivery. The postal receipt

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placed on record by the petitioner, as provided by the respondent IFCI, clearly shows that the postal department issued notice to Akanksha Dhar under the guardianship of T.K. Dhar - the petitioner, at the address provided by the petitioner. The address of the petitioner as contained in the Memo of Parties is 31-B, Manasarovar Apartments, Sector 61, Noida 201301. It appears that the petitioner shifted from his accommodation at Vasant Kunj to Noida, and probably, on this account, did not receive the individual notice issued by the respondent IFCI regarding the early redemption of the bond in question.

16. 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.

17. 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 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.

18. Even otherwise, the submission made by the learned counsel for the petitioner has been considered and pronounced by the Division Bench in Nivedita Sharma (supra). I may extract paras 7 and 8 from the said decision, which read as follows:

7. During the course of hearing, a contention was raised that a premature or early encashment/redemption should not be covered by Section 205C of the Act. It is not possible to accept the said contention as the language of the said provision is lucid and clear. Section 205 C (2)(c) refers to matured deposits with a company. The term "matured deposits" will mean all deposits, which have become due for payment. Deposits which were payable, but had remained

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unclaimed for seven years and, therefore, unpaid amounts had to be transferred to the fund. The maturity date cannot be counted from the date when the bond was to mature without taking into account the early redemption date. The investors or public when they deposit the amount must stake their claim within seven years, when the amount became payable. In case they fail to make any claim within seven years they lose their right. Once a right is lost, it is lost forever in view of the proviso to Section 205 C (2) of the Act. The proviso to Section 205 C (2) itself specifically has not been challenged and no specific ground has been raised. Even otherwise, we do not see any reason to strike down the proviso. Once the money is transferred, it has to be utilized for the purpose of the fund. It ceases to be the money of the company or the depositor/ creditor. The depositor/creditor loses his right because of the period of limitation during which he is required to make the claim.

8. Section 205 C is a salutary and virtuous provision. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. The word "unclaimed" used in the proviso to Section 205 C (2) clarifies that in case a claim is made within a period of seven years from the date amount became due and payable; the money shall not be transferred to the said fund. Thus, if a person makes a claim within a period of seven years, Section 205 C will not apply. Period of seven years is substantially long. A depositor or a person dealing with a company, therefore, should make a claim within a period of seven years. In case he makes a claim, provisions of Section 205C of the Act are not applicable and money cannot be transferred to the fund. We do not see any reason to hold that the said provisions are unconstitutional or they violate Article 14 or any other provisions of the Constitution. It cannot be said that the aforesaid provisions are faulty and violate the fundamental rights guaranteed in the Constitution.

19. For the aforesaid reasons, the present petition is dismissed.

20. Before parting with this judgment, I would like to voice my concern with regard to the scheme contained in section 205C of the Companies Act, particularly vis-a-vis cases of early redemption of Bonds - as in the present case. I feel, that the present statutory scheme causes unintended hardship to the bond subscribers who may have, inadvertently missed the notification of early redemption, and thus got trapped by this provision of law. No doubt, the said provision has been found to be good and not offensive to the fundamental rights guaranteed under the constitution by the Division Bench in Nivedita Sharma (supra). However, I would like the concerned departments of the Ministry of Finance, as well as the Ministry of Law and Justice, to look into the suggestion being made hereinafter, for the reasons stated by me.

21. Bonds such as the education bond in question are subscribed to largely by the lay-citizens on account of the fact that they offer long term security, i.e. for the period of the bond. When bonds are issued by public financial institutions,

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they enjoy the confidence of the public. The subscribers, who are largely lay persons, experience a sense of comfort and assurance that their money is safe, and that they would get the return, as promised under the bond, upon maturity. The facility of early redemption, though prescribed in the bond itself, is something the bond holder either does not take notice of, or forgets over a period of time. The focus of the subscriber, generally speaking, is not on the dates/ tenure of early redemption, but on the full term of the bond.

22. Even the Bond itself declares its full term as the wait period. In the present case as well, the clause regarding early redemption is provided in a relatively smaller font, when compared to the print of the period of the bond. The bond clearly states that the "wait period" is "13 years". The location of the "wait period" on the bond is more prominent and has greater visibility, when compared to the early redemption clause. One can take notice of the fact that the genuine investors, who are not traders and adept to trading in such instruments, are likely to put away such instruments in safe custody, and may not even read their terms and conditions for years together, reeling under the belief that they would get the money only at the end of the bond "wait period".

23. Large number of people who invest in such like bonds may not even read the newspapers, wherein the redemption notice issued by the issuer of the bond may be published. In a maze of such like public notices, the reader often skips, and does not focus on such notices/advertisements. Unless a person is alive to, and conscious of the terms on which such like instruments are issued, and keeps himself abreast of such financial developments, such public notices may easily escape his attention.

24. If the bondholder misses the public notice issued by the bond issuer, communicating its option to redeem the bonds earlier than their full term, he would be doomed, because he would continue to wait for the expiry of the full tenure of the bond, by which time section 205C would kick in, and swallow the investment made by the bondholder, leaving him high and dry. The intention of the legislature, while framing Section 205C of the Companies Act, 1956 was not, and could not have been, to deprive the innocent and lay investors of their hard earned savings, invested by them with such implicit faith and assurance, merely because they may have failed to notice the public notice or may not have otherwise come to learn of the early redemption of the bonds. In fact, it appears that the intention of the legislature, while framing Section 205C of the Companies Act, 1956 was to grant even greater protection of the law to the investors, than they would otherwise have enjoyed under the civil law which is why, the period of limitation to enforce a claim for refund of the bond amount, which, under the civil law is three years from the date the cause of action accrues, has been extended to seven years by Section 205C.

25. It is obvious that if the investor becomes aware of the early redemption, he would take steps to recover the amount due under the bond. The investor/ subscriber cannot be ascribed the intention to forego the invested amount, and

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to give it away in charity to the Investor Education and Protection Fund.

26. The case of a bondholder, who does not come to claim the amount even after expiry of the full term of the bond for years together, stands on a different footing. However, a bondholder who may have missed the public notice issued by the bond issuer for early redemption for one or the other reason, should at least be able to get back the bond redemption amount on the date on which the bond was redeemed, even if he were not to be paid the interest for the period thereafter.

27. The concerned ministries may, therefore, consider bringing about a suitable amendment to section 205C of the Companies Act, so that persons, such as the petitioner, do not suffer such severe consequences on account of their innocence and ignorance. A provision could be added to enable a bondholder to apply to the Fund, to seek return of the amount of the bond as on the date of redemption thereof, upto seven years from the date of expiry of the full term of the bond. If this suggestion is acceptable, I suggest that the amendment be made with retrospective effect to benefit persons such as Nivedita Sharma and the petitioner herein. A copy of this judgment may be sent by the Registry to the Secretary, Ministry of Finance, as well as the Secretary, Ministry of Law and Justice for their consideration and action, if considered appropriate.

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