

PROCEEDINGS OF COMPETENT AUTHORITY & SECRETARY
TO GOVERNMENT, UNDER BANNING OF
UNREGULATED DEPOSIT SCHEMES ACT (BUDS), 2019.
PRESENT : SRI. SANJAY M KAUL IAS

HOME (SC) DEPARTMENT

SC3/147/2023/Home Dated,Thiruvananthapuram (12-02-2024)

Sub: Home - BUDS Act - Settlement Proposal put forward by M/s Popular Finance - Judgement dated 07.09.2023 in WP(C) No.15846/2023 - Directions complied with - Orders issued.

Ref: 1. Judgement dated 07.09.2023 in WP(C) No. 15846/2023.

2. Representation dated 06.04.2023 submitted by the Popular Group of Investors Association.

ORDER

The Hon'ble High Court of Kerala as per judgement read as first paper above directed the first respondent Competent Authority to immediately hear respondents 2 and 3 in WP(C) No.15846/2023, representing the Popular Finance Companies, as also the petitioners and any other investors who may be interested, thus initiating an appropriate enquiry and scrutiny, as is required under the BUDS Act, 2019, finally leading to appropriate and concrete action as is necessary thereunder, which shall be completed as expeditiously as is possible, but not later than four months from the date of receipt of a copy of the judgment. The Hon'ble High Court also clarified that, during the afore said exercise, the first respondent Competent Authority shall, through the jurisdictional Authorities under its command, ensure that the activities of the companies in question are properly watched and monitored, so that no further prejudice will be caused to the petitioners or to other investors; and in case any such becomes warranted, it shall be done without having to obtain any further orders from the Court.

The Popular Group Investors Association as per representation read as second paper above has informed Competent Authority that the Deposit taker has forwarded a settlement proposal for repayment of deposits accepted by M/s Popular Finance. The Deposit taker, Sri Thomas Daniel, Chairman of Popular Group of Companies (PFG) has informed the Investors Association that there is a proposal for revival and takeover of the business of popular group of companies by Sri Daniel Varghese, Patron and Chairman of M/s D Capitals Portfolio Investments LLC, M-01, Abu Dhabi, UAE, who came forward to takeover and revive the business of Popular Group of Companies/Firms/LLPs by investing necessary funds for repayment of the depositors from the income generated after reviving the business. He has also stated that his Chartered Accountants, his Banking experts and the Lawyers have prepared a takeover cum revival scheme of the business. The said scheme is stated to have been approved by Shri. Daniel Varghese subject to the conditions therein and also with the approval of the jurisdictional court as and when obtained.

The detailed proposal for revival of the business of Popular Finance, put forward by the Respondent 2 and 3, is enumerated in the counter affidavit filed before the Hon'ble Court in WP(C) No. 15846/2023. The settlement cum revival proposal envisions a net profit of Rs.260.39 crores to be generated within a span of five years by opening 70 profitable branches through gold loan and money transfer businesses by investing Rs.100 crores for the same. And the profit generated from the business will be utilized for the repayment of the deposits. The Popular Finance Group has a total liability of Rs.1009 crores towards the depositors as stated in the settlement plan. The process of repayment scheme envisions only the principal amount to be released to the depositors subject to the terms of the repayment scheme in a gradual manner from out of the income derived from the business that is conducted by the new management. The depositors are entitled to be repaid only the principal amounts deposited by them as fixed deposits with the Popular Finance and allied firms. In the scheme for repayment to the depositors, priority shall be given to aged, sick and ailing persons and small depositors. The investment made by the Settlor Circuit Trust as against the assets of the Popular Finance worth Rs.150 crores will be solely utilized for doing business and generating income and such income will be utilized for paying off the debts due to the depositors. The capital amount invested by the Settlor Circuit Trust will not be utilized for paying off the debts due to the depositors. Settlor Circuit Trust has to share 90% of the net income

generated from taking over and carrying on the business of the PFG utilizing its licence, for the purpose of sharing the said profit for repayment to the depositors of the PFG. Settlor Circuit Trust is only entitled to 10% of the net income for a period of 10 years or until the depositors are repaid their deposits.

Therefore, the Company is seeking necessary orders from the Hon'ble High Court/ Government including lifting of the attachment orders/ prohibitory orders and coercive proceedings of courts and competent authorities before implementing the take - over scheme.

As of now the Popular Group of Companies are facing attachment orders, prohibitory orders, freezing of account orders and closure orders issued by the competent authorities under the Kerala Protection of Interests of Depositors in Financial Establishments Act, 2013, the Banning of Unregulated Deposits Schemes Act, 2019 and Prevention of Money Laundering Act, 2002 and Kerala Money Lenders Act etc and the same need to be lifted or modified by moving the competent court /competent authorities for enabling taking over cum revival and restructuring of the business. The crime cases are now under investigation by various agencies like Central Bureau of Investigation, Enforcement Directorate and Serious Fraud Investigation Office.

The powers vested in the Competent Authority as provided under BUDS Act relates to conduct enquiry and confiscate the properties of the deposit taker operating unregulated deposit schemes and to file the report before the Designated Court to decide upon the matter. As per section 7(4) of BUDS Act, the Competent Authority shall, for the purposes of sub-section (3), have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while conducting investigation or inquiry in respect of the following matters, namely:—

(a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath; (c) compelling the production of records; (d) receiving evidence on affidavits; (e) issuing commissions for examination of witnesses and documents; and (f) any other matter which may be prescribed.

As per Kerala BUDS Rules, 6 . *Powers of Civil Court conferred on the*

Competent Authority. - (1) Apart from the powers conferred on the Competent Authority under sub-section (4) of section 7 of the Act, the Competent Authority shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while conducting investigation or inquiry in respect of the following matters, namely:-

- (a) issue commission for local inspection;
- (b) to pass, during the pendency of any complaint, any interim order, as may appear to the Competent Authority to be just and fair to meet the ends of justice;
- (c) to dismiss a complaint for default or being frivolous.

As per section 15 (4) of BUDS Act, it is provided that "The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that—(a) the deposit taker or the person referred to in sub-section (1) has interest in such property; and (b) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker. (5) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

From the above provisions, it is to be inferred that the attachment effected against the properties of the Deposit taker can be released only if there remains an amount or property sufficient for repayment to the depositors of such deposit taker.

As per section 18 (1) (g) of BUDS Act, the Designated Court have the " power to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker and for repayment of the same to the depositors of such deposit taker or on any other matter or issue incidental thereto ". The Act gives priority to the repayment of deposits over any other claim put forward by the Deposit taker. Through the settlement plan, PFG intends repayment of deposits in a phased manner ie over a period of 5 - 10 years from the income generated out of the revived business.

Within the purview of BUDS Act, there is an option to lift the attachment over the properties by the Designated Court only if the deposit taker deposits the fair value of the property in lieu of attachment, that is sufficient to repay the depositors of the amount they invested with the firm. (section 17 (1) of the Act).

In compliance of the directions of the Hon'ble High Court, Competent Authority has conducted a hearing with all parties concerned on 27.11.2023 to discuss the settlement proposal. In the wake of the arguments/suggestions of the various stakeholders, the following points are forthcoming for consideration.

1. There are a total of around 30,000 depositors and the total loss of the depositors is in the region of Rs.3000 crores. The Popular Finance Depositors Association has only 6000 members. Hence the Petitioners in WP(C) No. 15846/2023 cannot be said to be representing the interest of all the depositors whose money is at stake. The Petitioners herein are only a microcosm eager to settle the matter with the PFG. There are depositors in other States like Karnataka, Delhi, Maharashtra etc and they may or may not accede to the demands of the PFG.
2. The properties provisionally attached under the provisions of PMLA Act, BUDS Act, etc cannot be lifted without orders from the Competent Court.
3. The settlement proposal only suggests the infusion of an amount of Rs.100 crores to revive the business. The valuation of the provisionally attached properties has not been completed. There are allegations that the siphoned money is remitted to foreign accounts in Australia and UAE in the name of relatives of the directors, partners or owners of entities. In order to unearth the diversion of misappropriated money, concerted investigation on the part of the Central Bureau of Investigation and SFIO is needed and as the investigation is progressing, there may be chance that the Investigating Agencies are able to locate/find out sources and channels of the embezzled money and it may be higher than the amount proposed in the Settlement Plan. As such in the present scenario, the settlement cum revival of business plan is not feasible as it proposes no definite schemes for the repayment of deposits or infusion of sufficient amount to pay off the debts.

In such circumstances, I, Sanjay M Kaul IAS, Competent Authority for BUDS Act hereby direct the Deposit taker to come up with a concrete financial proposal along-with clarity of cash flows anticipated, sources of such cash flows and how the claims of all the investors is expected to be met as the current proposal projects only an intent to settle the deposits and does not have any clarity on how this will be achieved. The detailed proposal to be submitted shall

duly be certified by a Chartered Accountant and it shall be examined for its viability through a committee consisting of following members :

1. Representative of a Scheduled Public Sector Bank, nominated by State Level Bankers Committee.
2. The Company Secretary/Financial Controller of KSIDC/KFC.
3. The officer in-charge of Credit Department from Kerala Bank/KFC/KSIDC.
4. Deputy Secretary, Home (SC) Department, Government of Kerala (Chairperson).

This committee shall examine the detailed financial proposal and put up its conclusions about viability thereof, before the Competent Authority within a period of two months from the date of receipt of such a proposal, post which the Competent Authority can consider passing an appropriate order in consonance with the BUDS Act 2019. The directions of the Hon'ble High Court in judgement dated 7th September, 2023 in WP(C) No. 15846/2023 is complied with accordingly.

(Sd.)

SANJAY M KAUL

Forwarded/By order

Section Officer.

To:

1. Smt Bindu T N, Secretary, Popular Group Investors Association (PGIA), Newtons Law Kochi, 2nd Floor, Vattoly Estate, St Vincent Road, Kacheripady, Kochi- PIN 682018.
2. Sri Prabhakaran P B, General Secretary, Popular Finance Depositors Association, First Floor, Raj Air Travel Building, Chandappally,

Pathanamthitta - PIN 689648.

3. Sri Oommen Mathai, Valiyathannickal, Mallappally, Ezhumalloor, Kumbanad, Thiruvalla PIN 689547.

4. Smt Jolly P Mathew, Palakarakattil, Mallappally, Ezhumalloor, Narakathanni, Pathanamthitta PIN 689544.

5. Smt Madhu T, No. 503 11 B Cross, Bellayout III Block, PO , Vidyaranyapura, Bangalore PIN 560097.

6. Smt Vimala, No. 503 11 B Cross, Bellayout III Block, PO , Vidyaranyapura, Bangalore PIN 560097.

7. Sri Jibi Korah, Kandanaslam, Valyanchirangara, Vengola PIN 683556.

8. Smt Krishnaja T, Ambiliyil, Pavumba PO, Kollam PIN 690 574.

9. Sri Jamshad J, Kalloorkizhakkathil, Thamarakulam P O, Alappuzha PIN 690 530.

10. Smt Bhuvnalakshmi, Abhikabhavanam, Thamarakulam P O, Alappuzha PIN 690 530.

11. Sri M C Varghese, Thattathil, Kompalapoika, Vallayani, Pathanamthitta.

12. Sri Muraleedharan Pillai, Neelambari House, Sooranad North, Anayadi, Kollam PIN 690 561.

13. Sri Daniel Varghese, CRA 60, Premkunju, Edaparambil. Sreekaryam, Thiruvananthapuram.

14. Sri Thomas Daniel, Indikkattil, Vakayar, Pathanamthitta.

15. The Head of Branch, CBI - ACB, Kochi.

16. The Registrar of Companies, Company Law Bhavan, Kochi.

17. The Advocate General, Kerala (with C/L)

18. I & PR (Web & New Media) Department.

19. Stock File/Office Copy.