



Gujarat State Law Commission

JUSTICE M. B. SHAH

Former : Judge, Supreme Court of India,
Chief Justice, High Court of Bombay
President, N.C.D.R.C., New Delhi.

Chairman, Gujarat State Law Commission

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No.GSLC/2020/PS (I/c.) LPAD/022

17th March, 2020

Dear Shri *Aggarwalji,*

Government of Gujarat, Legislative and Parliamentary Affairs Department; vide its Resolution No.LAC/2006/44/110/Law Cell, dated 31st December, 2013; had appointed the undersigned as Chairman of the State Law Commission.

Till date, the Commission under the chairmanship of the undersigned has submitted in all **sixteen reports** on various points for consideration and for taking further needful actions.

Today, the Commission submits its **Seventeenth Report**, namely, "Step to protect small depositors of the bank".

Two sets of the aforesaid report and one C.D. containing soft copy thereof are sent herewith for consideration and for taking needful action.

With warm regards,

Yours sincerely,


Justice ~~M. B. Shah~~ (Retd.)
Chairman

Encl. : As above

To,
Shri Manoj Aggarwal (IAS)
Principal Secretary (I/c.)
Legislative and Parliamentary Affairs Department,
Block No.4, Fourth Floor, Sardar Bhavan,
Nava Sachivalaya, Gandhinagar.

Step to protect small depositors of the bank

1. It appears that bank frauds are regularly taking place in the present day. Main sufferers are depositors, particularly, who have invested their hard-earned money for future. All of a sudden, they cannot recover their deposited amount because there is a ban imposed by the RBI on the ground that insolvency proceedings may be started against the bank. For giving some immediate relief to such depositors, there is the Deposit Insurance and Credit Guarantee Corporation Act, 1961.
2. Particularly, Section 16 had been enacted with a very laudable purpose, for giving relief to those depositors who have deposited their hard-earned money for particular events, such as, marriage of their daughter/son or for spending for some particular event in the family.

The purpose of the said section is to give limited social security (relief) to the depositors for their funds invested in the bank. That purpose would be frustrated, if there is long delay in making the said payment. On the contrary, Section 16 read with Section 18 of the Act *inter-alia* provides that, "before the expiry of two months from the receipt of such list, the Corporation shall pay the amount payable under Section 16 either directly to the depositor or to the transferee bank or the insured bank for being credited in his account."

Section 16 read with Section 18 of the Act provides scheme for repayment of the amount payable to the depositor.

The aforesaid Section 16 reads:--

"16. Liability of Corporation in respect of insured deposits

(1) *Where an order for the winding up or liquidation of an insured bank is made, the Corporation shall, subject to the other provisions of this Act, be liable to pay to every depositor of that bank in accordance with the provisions of Section 17 an amount equal to the amount due to him in respect of his deposit in that bank at the time when such order is made:*

Provided that the liability of the Corporation in respect of an insured bank referred to in clause (a) or clause (b) of sub-section (1) of Section 13 or clause (a) or clause (b) of Section 13C shall be limited to the deposits as on the date of the cancellation of the registration:

*Provided further that **the total amount payable by the Corporation to any one depositor in respect of his deposit in that bank in the same capacity and in the same right shall not exceed one thousand and five hundred rupees:***

Provided further that the Corporation may, from time to time, having regard to its financial position and to the interests of the banking system of the country as a whole, raise, with the previous approval of the Central Government, the aforesaid limit of one thousand and five hundred rupees.

- (2) *Where in respect of an insured bank a scheme of compromise or arrangement or of reconstruction or amalgamation has been sanctioned by any competent authority and the said scheme provides for each depositor being paid or credited with, on the date on which the scheme comes into force, an amount which is less than the original amount and also the specified amount, the Corporation shall be liable to pay every such depositor in accordance with the provisions of Section 18 an amount equivalent to the difference between the amount so paid or credited and the original amount, or the difference between the amount so paid or credited and the specified amount, whichever is less:*

Provided that where any such scheme also provides that any payment made to a depositor before the coming into force of the scheme shall be reckoned towards the payment due to him under that scheme, then the scheme shall be deemed to have provided for that payment being made on the date of its coming into force.

- (3) *For the purposes of this Section, the amount of a deposit shall be determined after deducting therefrom any ascertained sum of money which the insured banks may be legally entitled to claim by way of set off against the depositor in the same capacity and in the same right.*

- (4) *In this section*

(a) *“original amount” in relation to a depositor means the total amount due by the insured bank immediately before the date of coming into force of the scheme of compromise or arrangement or, as the case may be, of reconstruction or amalgamation to the depositor in respect of his deposit in the bank in the same capacity and in the same right:*

Provided that where under the proviso to sub-section (2), the scheme is deemed to have provided for any payment being made on the date of its coming into force the amount of such payment shall be included in calculating the original amount;

(b) "specified amount" means one thousand and five hundred rupees, or, as the case may be, the amount fixed by the Corporation under the third proviso to sub-section (1)."

3. Vide Press Release dated 04th February, 2020, the Chief General Manager, RBI, Mumbai notified that, *"With a view to providing a greater measure of protection to depositors in banks, the Deposit Insurance and Credit Guarantee Corporation, a wholly owned subsidiary of the Reserve Bank of India, **has raised the limit of insurance cover for depositors in insured banks from the present level of Rs.1 lakh to Rs.5 lakh per depositor with effect from February 4, 2020 with the approval of Government of India.**"*

It appears that, the said step of enhancing the limit has been taken, after various cases of bankruptcy of banks or large scale frauds with the banks came to light.

4. Question would be, whether that purpose is served by paying fixed amount of Rs.5 lacs after five years or ten years i.e. finalization of liquidation proceedings.

Apparently, that object and purpose is frustrated, if the amount is not released at the earliest.

Depositor is compelled to wait for years for getting back some part or full amount of deposit. This delay causes lot of frustration for the depositor of small amount of Rs.5 lacs.

5. In the Judgment dated 01st July, 2015 rendered by the Honourable Supreme Court of India in the case of **Deposit Insurance & Credit Guarantee Corporation v. Ragupathi Ragavan & Ors. [Civil Appeal No.1035/2008]**, it was *inter-alia* observed in Para: 3 that, *"The function of the Corporation is to insure deposits made by depositors with the banking companies and the said Corporation has been constituted under the provisions of Section 3(1) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (hereinafter referred to as the Act). The Act had been enacted with a very laudable purpose. Normally, a person deposits his savings or invests his money by way of a saving bank account or a fixed deposit with banking companies, including cooperative banks, without taking much care of ascertaining financial condition of the bank, possibly because of the trust reposed by him in the Reserve Bank of India, which regulates the banking business in the country."*

The Court then observed in Para: 4 that, *"In the event of any financial difficulty faced by the banking company, the depositors would generally lose substantial amount of their deposits, in whichever form made, because normally at the end of the winding-up proceedings, the unsecured creditors get very little amount. So as to safeguard the interest of such small depositors or investors, who have parked their funds with*

banking companies, the Act had been enacted to insure the amount deposited by the depositors and to guarantee repayment of certain amount to such investors, when the banking company is in financial difficulty and is ultimately wound-up."

The Court, in Para: 20 of the judgment, observed and held that, *"The object with which the Act has been enacted has been stated hereinabove in a nutshell. The object was to insure the depositors so that they may not have to stand in a queue before the Official Liquidator for every paisa deposited by them with the concerned bank. As on today, as per the provisions of Section 16(1) of the Act, a sum of Rs.1 lakh is being insured or guaranteed in respect of each depositor. So a depositor is safe and he has not to wash his hands off his deposit if the amount deposited by him is less than Rs.1 lakh. The Official Liquidator, as per the provisions of the Act, has to give details about the depositors and the amount deposited by them in a prescribed form within three months from the date on which the liquidation order is passed or from the day on which he takes charge, whichever is later and within two months from the date on which the details are submitted to the Corporation, the Corporation has to make payment to the above extent either to the depositors directly or to them through the Official Liquidator."*

- 6. In my view, once the amount is admittedly deposited, there is no reason for delaying its payment, till finalization of the liquidation proceedings.**

7. Further, Section 21 of the Act reads:--

"21. Repayment of the amount to Corporation

- (1) Where any amount has been paid under Section 17 or Section 18 or any provision therefor has been made under Section 20, the Corporation shall furnish to the liquidator or to the insured bank or to the transferee bank, as the case may be, information as regards the amount so paid or provided for.*
- (2) On receipt of the information under subsection (1), notwithstanding anything to the contrary contained in any other law for the time being in force,—*
 - (a) the liquidator shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, payable by him in respect of any deposit such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit;*
 - (b) the insured bank or, as the case may be, the transferee bank shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in Section 18, such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit."*

8. In the Judgment rendered in the aforesaid case, it was *inter-alia* held in Para: 22 that, if any amount is available at the disposal of the Official Liquidator, which he might have recovered from the borrowers or from other sources, he has to pay the said amount to the extent to which the amount had been paid by the Corporation as per the provisions of Section 21 of the Act. The Court then *inter-alia* observed that, Section 21(2) of the Act, in unequivocal terms, directs the Official Liquidator to make the payment to the Corporation, as it has been stated in the said sub-section, **notwithstanding anything to the contrary contained in any other law for the time being in force**. The Court, thus, held that the Official Liquidator, as per clause 2(a) of Section 21 of the Act, has to repay the amount to the Corporation. The aforesaid Section 21 not only makes it obligatory on the part of the Official Liquidator to repay the said amount to the Corporation, but it also clarifies that there shall not be any other preferential creditor who would be getting any amount from the Official Liquidator till the amount payable under Section 21 of the Act is paid to the Corporation.

Finally, the Court observed and held that, Regulation 22 of the Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961 provides that the Official Liquidator, after making necessary provision for the expenses in relation to the liquidation proceedings and for declaration of dividend, as prescribed in the Regulations, has to make payment to the Corporation.

The Court, then, in Para: 30 *inter-alia* observed that, if the amount deposited is less than Rs.1 lakh, each depositor gets the amount in full, but if the deposit is exceeding Rs.1 lakh, then only the amount which is in excess of Rs.1 lakh may not be given to the depositor, unless the bank in liquidation is having sufficient funds which can be given to all on pro-rata basis after providing for expenditure in the liquidation proceedings and after repaying the amount to the Corporation as per the provisions of the Act and that, the Act in a way guarantees repayment of Rs.1 lakh to each depositor. The High Court or any other authority has no power to direct payment in excess of Rs.1 lakh by ignoring statutory provisions of the Act and the Regulations made thereunder.

9. The limit of payment of Rs.1 lac is recently modified to Rs.5 lacs.

The aforesaid suggestion made in this report is in conformity with the law as provided in Section 18(2) of the Act, as quoted above.

The Corporation is required to pay the amount payable under Section 16 either directly to the depositor or to the transferee bank or the insured bank for being credited in his account.

10. For the State of Gujarat, it would be open to modify the aforesaid scheme by providing that the insured amount should be paid as early as possible.

Entry 23 of the Concurrent List provides that, the State Government would have power to amend the aforesaid scheme. The said Entry empowers the State Government to amend any provision with regard to "social security and social insurance, employment and unemployment". The aforesaid scheme for payment to the depositor is by way of social security so that common man may not loose confidence in banking system of the country.

Date : 17th March, 2020
Place : Ahmedabad



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Former Judge,
Supreme Court of India
AND
Chairman,
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