

KABC010154112023



**IN THE COURT OF THE XCI ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU (CCH.92)**

Present: **SHRIDHAR GOPALAKRISHNA BHAT**
XCI Addl. City Civil & Sessions Judge
& Spl. Judge for KPIDFE Cases, Bengaluru.

Dated this the 05th day of October 2023

Misc. No:770/2023

Petitioner:- The Special Officer &
Competent Authority for IMA
and other KPID cases,
Office at: 3rd floor, Mini V.V Tower,
Podium Block, Dr. Ambedkar Veedhi,
Bengaluru – 560 001.

Represented by its
Competent Authority
Amlan Aditya Biswas,
Competent Authority and
Special Officer,
for IMA and other cases,
Aged about 54 years.

(By the Special Public Prosecutor Sri. Venkatesh P. Dalwai)

V/S

Respondents:- - NIL-

Date of Institution of the Petition	17/06/2023		
Nature of the Petition	for an order of approval for equitable distribution of the realised amount		
Date on which the order is pronounced.	05/10/2023		
	Year/s	Month/s	Day/s
Total duration	00	03	18

ORDER

The petitioner being the Competent Authority for I Monetary Advisory (IMA in short) filed the petition under Section 8 read with Section 11(1) & 11(2) (e) (f) of the Karnataka Protection of Interest of Depositors in Financial Establishments Act-2004 (KPIDFE Act in Short) seeking approval of the calculation of eligible claim amount after adjusting the payout amount already paid to the depositors of the IMA Group,

permission to settle the claim from the available amount as mentioned in Annexures 'A' & 'B' and to continue the same as and when additional amount are made available and permission to settle the claims only through bank transfer of the eligible amount to the eligible claimants only after completion of the authentication in the claim application either Aadhar based, biometric authentication or based on UTR number for transfer of atleast Rs.1 from IMA bank account.

2. Factual background of the petition:-

2(a). It is contended in the petition that, the petitioner is appointed as the Competent Authority for IMA and its group entities under Section 5(1) of the KPIDFE Act as per notification No.RD.20.GRC.2017 (P-2), Bengaluru dated 24/07/2019 and 13/01/2020 read with Government notification No.e-DPAR-190-SAS 2022, dated 18/04/2022. As per Section 7(2) of the KPIDFE Act, the Competent Authority had invited the claims of the depositors and secured creditors of the IMA and its group entities and accordingly the petitioner had received 66,258 claim applications form all over which correspond to 69,099 accounts with a total claim of Rs.2,695.13 crores for the principal amount deposited.

2(b). It is further case of the petitioner that, the state Government had issued orders of an ad-interim attachment of the properties of the Financial Establishment of the value approximately of Rs.475 crores till date under various notifications. Based on the said notification, has filed various petitions before this court seeking further order of attachment absolute. Further he had filed similar application before this court seeking permission to disburse the amount realised and the said application was allowed by order dated 17/02/2021. As per the permission accorded under the said order, he had disbursed an amount of Rs.19.12 crores to 6800 depositors upto payable due of Rs.50,000/- (Rupees Fifty Thousand) each restricting to their maximum payable due.

2(c). It is further case of the petitioner that, as per the provisions of KPIDFE Act, the Competent Authority is required to secure and transfer the assets of the Financial Establishment with prior approval of the Special Court, so as to make payments as per the orders of the Special Court in proportionate and equitable manner keeping in mind the objectives of the said Act and the Rules for protecting and safeguarding the depositors interest, when the money realised from the Financial Establishment is not sufficient to meet the entire deposit liability.

Accordingly the petitioner has prepared equitable graded and proportionate distribution scheme as described in Annexures 'A' & 'B' instead of distributing the amount in equal and prorate as the available amount for distribution is only Rs.69 crores. If the distribution is permitted as per the method / scheme shown in Annexures 'A' & 'B', that will be much helpful to the depositors. The smaller and marginalized depositors deserve to be prioritized and it would be appropriate to make proportionate and graded payment as described in Annexures 'A' & 'B' as the amount available is not sufficient to meet the entire deposit liability of the Financial Establishment. The petitioner has segregated the depositors as most affected claimants and least affected claimants based on their deposit amount and payable due so as to reach the payment of the claim amount equitably to individual depositors. Accordingly prayed for allowing this petition.

3. Along with the petition, the petitioner has produced Annexures 'A' & 'B' for showing mode and method evolved for equitable distribution of the amount realised and also produced copy of the notification bearing No.e-DPAR-190-SAS-2022, Bengaluru dated 18/04/2022 and copy of the order dated 17/02/2021 passed in Misc.No.96/2021 permitting the petitioner Competent Authority for settlement of the claims.

4. Heard the learned Special Public Prosecutor appearing for the petitioner. He has also relied upon the decision of the Hon'ble Bombay High Court in Crl. Appeal No.451/2020 reported in 2021 SCC Online Bom 316 (Rabibai Mohammed Ismail V/s State of Maharashtra through the Competent Authority and another).

5. On hearing the learned Special Public Prosecutor and verifying the entire material placed before this court, the points that would arise for consideration are:

Point No.1) Whether the petitioner has made out the grounds for granting the relief as sought-for ?

Point No.2) What order?

6. The above points are answered as under:-

Point No.1: partly in the affirmative,

Point No.2: as per the final order for the following:

-.REASONS:-

7. Point No.1 :- The petitioner being the Competent Authority for IMA and its group entities filed the present petition interalia seeking permission of this court to settle the claims of

the eligible depositors of the Financial Establishment in equitable, proportionate and graded manner to satisfy the claims of such eligible depositors out of the available amount of Rs.69 crores. The petitioner has furnished the details of mode, manner and method of the distribution scheme in Annexures 'A' & 'B' annexed to the petition. The said details are stated in Annexures 'A' & 'B' annexed to this order as given by the petitioner.

8. Sri. Venkatesh P. Dalwai, the learned Special Public Prosecutor vehemently submitted as to the contents of the petition and the manner in which the Competent Authority is seeking to distribute the amount. It is submitted by him that, there is vast gap between the liability and assets of the Financial Establishment. Till now, the property of the Financial Establishment and its associated persons attached is approximately of the value of Rs.450 crores, whereas the total amount of claim received from the depositors is Rs.2695.13 crores. It is further submitted that, as per the order passed in Misc.No.96/2021 by this court, the petitioner had disbursed Rs.19 crores and 5638 accounts were fully paid and 1220 accounts were partly paid and the remaining accounts are yet to be paid. Since the claim is more than the available assets, the petitioner has adopted equitable, proportionate and graded

method scheme to satisfy the claims of all the depositors partially as shown in Annexures 'A' & 'B'.

9. It is further submission of the learned Special Public Prosecutor that, the provisions of KPIDFE Act, do not mean the equal distribution of the available amount, but provide for equitable distribution of the realised amount when the amount is not sufficient to satisfy the entire claims of the depositors. In this regard he has relied upon the order of the Hon'ble High Court of Bombay, wherein the provisions of MPID Act relating to the method of distribution of the amount among the depositors is discussed. The provisions of MPID Act and KPIDFE Act are found to be para-materia. Relying on the said decision, it is submitted by the learned Special Public Prosecutor that, the term "equitable distribution" has to be interpreted in terms of the object, reasons and purpose of the Act depending on the facts and circumstances of the case. The term "equitable distribution" is not same as "equal distribution" and the discretion is given to the Special Court to give direction for equitable distribution of the money realised. In this case, the petitioner has considered the least affected depositors and most affected depositors, so as to distribute the realised amount in a graded manner, so as to satisfy the claim of the eligible depositors partially. The least

affected depositors are those who have received more than 90 % benefits from the Financial Establishment and most affected depositors are those who have not received any benefits from the Financial Establishment. Depending on the data available with the Competent Authority, the graded manner distribution from 0-10 to 90-100 scheme is proposed. The said scheme is more equitable and amount could be distributed among all the depositors equally and will achieve the very purpose and object of the Act.

10. It is further submitted by the learned Special Public Prosecutor that, as per the information received from the petitioner total validated accounts are 71,631 out of which 5638 accounts are fully paid and 1220 accounts are partly paid by distributing Rs.50,000/- (Rupees Fifty Thousand) as per the order passed by this court. Further 9647 accounts are nil payable accounts as they have received more than the amount invested with the Financial Establishment and hence the said accounts are not considered. After deducting the said accounts, now the available amount has to be distributed among the remaining eligible 55126 accounts. The remaining amount to the said claims and already partly paid 1220 accounts has to be paid as and when additional amount is realised. At present the available total assets of the Financial Establishment is

approximately 450 crores ie., 31.6% of the claim amount. Hence the claim could be satisfied only to that extent out of the total assets available at present after realization. It is also his submission that the legislatures have not fixed any formula with reference to how the funds are to be distributed except indicating equitable distribution which need not be with mathematical precision. Every Financial Establishment has to be dealt differently depending upon the data available with reference to investment made and profit received by the depositors till notified under the Act.

11. In the light of the argument addressed and materials placed before this court, now the reliefs sought-for by the petitioner are analysed, the petitioner has sought-for the following reliefs:-

- a). Approve the calculation of eligible claim amount after adjusting the payout amount already paid to the depositors by the IMA Group.
- b). Permit settlement of claims in the manner and method more fully mentioned in Annexures – A & B.

c). Permit the settlement of claims to be started from the available amount and to be continued as and when additional amounts are made available.

d). Permit the settlement of claims only through Bank transfer of the eligible amounts to the eligible claimants and only after completion of specified authentication in the claim application ie., either Aadhar based bio-metric authentication or based on the UTR number for transfer of at-least Re.1 from the IMA Bank Account.

12. It is pertinent to note that, out of the above reliefs ie., relief (a) and (d) is already granted by this court in Misc.No.96/2021 by order dated 17/02/2021. Therefore the granting of the said reliefs again do not arise. The petitioner has not filed by fresh eligible claims, so as to approve the same again. Similarly the settlement of the claims only through bank transfer of the eligible amount to the eligible claimants is already permitted and the petitioner has to follow the same while disbursing the amount to the claimants. Now only remain reliefs (b) and (c) sought-for by the petitioner.

13. So far as the method of disbursement of the amount to the claimants are concerned, this court by order dated 17/02/2021, permitted the petitioner to settle the claim initially up to Rs.50,000/- (Rupees Fifty Thousand) for each claimant limiting the total amount to each of them to their eligible claim amount. Further the petitioner is also permitted to settle the claim to be started from available amount and to be continued as and when additional amounts are available and to settle the claim in order of priority which is in ascending order of the eligible claim amount. Now the petitioner is intended to deviate from this method of settlement of claims by introducing the graded method of settlement as shown in the Annexures 'A' and 'B' based on the most and least affected claimants.

14. It is noticed that, as per the information furnished by the petitioner now only Rs.69,45,32,010/- (Rupees Sixty Nine Crore Forty Five Lakhs Thirty Two Thousand Ten) is available for disbursement to the eligible claimants. If the earlier order of payment of Rs.50,000/- (Rupees Fifty Thousand) is followed, only 13,890 eligible claimants could be paid out of 55126 eligible claims that too after excluding the claims already paid and nil payable accounts. Hence it is clear that chunk of the depositors / claimants will remain un-paid and they have to wait

for their payment till availability of the further amount. In this view of the matter, the petitioner has come up with fresh method of graded settlement of the claims by segregating the claimants as least affected and most affected as amount available is comparatively very less when compare the total claim amount.

15. The fresh settlement scheme provided by the petitioner is analyzed, it appears to be just, reasonable and equitable distribution of the available amount among all claimants. As submitted by the learned Special Public Prosecutor, it appears that if the settlement scheme proposed by the petitioner is accepted, the realized amount will reach to each claimant. The claimants who have already received benefits from the Financial Establishment will get the amount in proportion to the amount / benefit already received by them from the Financial Establishment. The person who got less benefit from the Financial Establishment proportionately gets more amount than the person who got more benefit from the Financial Establishment on the invested amount. Further if this method of settlement is continued, as and when additional amount is received each claimant who is eagerly waiting for some payment could be paid with some amount. The partly paid claims also could be included in the settlement scheme if additional amount

could be paid to them as the per scheme after taking in to account the amount already paid to them. Therefore on going through the settlement scheme proposed by the petitioner meticulously this court found that the proposed settlement scheme as more equitable, reasonable, justifiable and acceptable in the light of the purpose and object of the KPIDFE Act. On continuing the settlement of the claims as ordered earlier, that will not meet the majority of the claimants.

16. At this stage, this court is also being guided by the ruling of the Hon'ble High Court of Bombay relied by the learned Special Public Prosecutor, where in provisions of the MPID Act are considered with regard to the term “equitable distribution”. The provisions of the KPIDFE Act are also synonymous with the provisions of the MPID Act. In the said case also the Hon'ble High Court has approved the graded distribution of money to the depositors as against equal or prorate basis, based on the facts and circumstances of the case keeping in view of the object and purpose of the Act. On going through the said decision, along with the facts of the present case, this court is of the considered view that the proposed scheme put forwarded by the petitioner in this case could be accepted and the same is found to be equitable, justifiable and reasonable method of distribution of

money among all the depositors / investors of the Financial Establishment. If the proposed scheme is applied, that will meet all the depositors / investors in equitable manner and all the depositors will get proportionate payments. As and when additional amount is secured, the same could be distributed under the same method, so as to satisfy the claim of all the depositors / investors to the extent possible as the assets available are much lesser than the depositors liability of the Financial Establishment.

17. Considering all these aspects, this court is of the considered view that the proposed method / scheme of settlement as shown in Annexures 'A' and 'B' could be accepted. Accordingly the petitioner could be permitted to settle the claims of the depositors / investors as per Annexures 'A' and 'B' to be started from the available amount and to be continued as and when additional amount are made available. So far as other reliefs are concerned, they are already granted by this court and hence granting the same again does not arise. The petitioner has to follow the order dated 17/02/2021 passed by this court, so far as the payment of amount through bank transfer is concerned. Hence point No.1 is required to be answered partly in the affirmative and answered accordingly.

18. Point No.2:- For the reasons discussed in connection with point No.1 and finding given thereon, this court proceed to pass the following:-

ORDER

The petition filed by the petitioner under section 8, read with section 11(1) & 11(2) (e) & (f) of the KPIDFE Act is hereby allowed in part.

The proposed scheme / method for settle of the claim as per Annexures 'A' and 'B' is approved.

The petitioner is permitted to settle the claims in the manner and method described in Annexures 'A' and 'B' to be started from the available amount and to continue the same as and when additional amount are secured through Bank transfer as per order dated 17/02/2021.

It is also ordered that, the petitioner shall make settlement of the available amount as permitted with in 20 days and shall report the same to this court.

During the course of hearing of this matter, it has come to the notice of this court that the direction issued

by this court in number of cases is not complied by the Competent Authority. Hence office to verify in that regard and put-up the matter in which the direction issued by this court is not complied for further necessary action.

(Directly dictated to the Stenographer on computer, then corrected and pronounced by me in open court, on this the 05th day of October 2023)

SHRIDHAR Digitally signed by
G BHAT SHRIDHAR G BHAT
 Date: 2023.10.05
 15:28:56 +0530
(Shridhar Gopalakrishna Bhat)
 XCI Addl. City Civil & Sessions Judge
 and Spl. Judge for KPIDFE Cases, Bengaluru.

WITNESSES EXAMINED FOR THE PETITIONER:-

- NIL -

DOCUMENTS MARKED FOR THE PETITIONER:-

- NIL -

WITNESSES EXAMINED FOR THE RESPONDENTS:-

- NIL -

DOCUMENTS MARKED FOR THE RESPONDENTS:-

- NIL -

SHRIDHAR Digitally signed
G BHAT by SHRIDHAR G
 BHAT
 Date: 2023.10.05
 15:29:02 +0530
(Shridhar Gopalakrishna Bhat)
 XCI Addl. City Civil & Sessions Judge
 and Spl. Judge for KPIDFE Cases, Bengaluru.

ANNEXURE - B
MODE AND METHOD INVOLVED IN EQUITABLE
DISTRIBUTION

Regarding distributing the available amount of Rs.69 Crores held in the Absolute account of competent Authority of IMA & other entities. It is proposed to distribute the claim amount based on equitable distribution concept. Hence the following formula is designed for ensuring equitable distribution of claim amount.

1. Firstly, we have segregated the claimants or depositors as the most affected claimants & the least affected claimants based on their deposit amount payable due. In the table Annexure to this report, the column "A" represents percentage of deposit amount payable due, column 'B' represents number of claimants' falling under this range and column 'D' represents total payable due.

Eg. A) In the Annexured i.e., Sl.No.1. 90-100 Range represent those claimants who fall under this range have received their deposit amount 10% of their deposit. Hence these depositors are considered as "The most affected Category".

Hence the more weightage should be given to this range while disbursing the claim amount.

B) In the same table i.e., Sl.No.10, 0-10 range represent, the claimants who have received 90 to 100% of their claim amount as against the deposit amount and they are considered as least affected depositors. Hence they are given least weightage while disbursing the claim amount.

C) Consideration of Base value:

The total liability of the depositors is around 1400 Crores, but the total realizable value from the assets identified is around Rs.450-500 crores. So this amount is not sufficient to repay the entire claims of depositors. Hence, Rs.450 crores is taken as base value and out of which, the amount has to be distributed to each range is manually assigned percentage wise based on weightage to be given to each range i.e., from range 90 – 100% to 0-10%.

The weightage is given manually to each range based on degree of affected is given in column 'J' of the table.

1) Proposal to pay the claim amount based on the current realised amount.

I. Currently available amount is around Rs.69 crores. This amount is assigned to each range has described in para 1 as per the weightage given in para 1(C).

II. Regarding Equitable Distribution to Individual claimant.

Regarding equitable distribution of claim amount to individual depositor within the range considering total amount payable due is done using the following formula:

The Amount payable to individual depositors within the range	Amount payable due to the claimant X The available claim amount c assigned to that specific range.
	Total amount payable due to that range in which the said claimant falls.

As per the above formula, the following examples have been considered.

Consideration of 90-100 Range.

Eg.1.

A person whose CMS No.159529 has invested Rs.2,00,000 & he has received Rs.2060 and total claim amount payable due is Rs.1,97,940. If we apply the formula as mentioned in para 2:

15,090	= 197940/2157209031*164472000
--------	-------------------------------

Eg.2.

A person whose CMS No.264417 has invested Rs.6,00,000 & he has received Rs.8240/- and total claim amount payable due is Rs.5,91,760/-.

If we apply the formula as mentioned in para 2:

45,117	= 591760/2157209031*164472000
--------	-------------------------------

In the above examples the person whose payable due is Rs.5,91,760 is getting Rs.45,117 which is 3 times more than the person whose payable due is Rs.1,97,940 is getting Rs.15,090.

So the individual within a range who has more claim amount payable due will get more claim amount equitably and the principle of equitability is also applied to individual within the range based on quantum of claim amount payable due.

(Furnished by the petitioner)

**SHRIDHAR
G BHAT**

Digitally signed by
SHRIDHAR G
BHAT

Date: 2023.10.05
15:29:13 +0530

(Shridhar Gopalakrishna Bhat)

XCI Addl. City Civil & Sessions Judge
and Spl. Judge for KPIDFE Cases, Bengaluru.

ANNEXURE -A																	
Sl. No	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
	% of Amount to be paid	Total number of Claimants	% distribution of claimants	Total amount to be paid	% distribution of amount	Average	Distribution of Amount Recoverable	Distribution of Amount Recovered	Average	%	Amount to be paid as per %	Amount to be paid now	Average Payout	Rounded Payout per Claimant	Rounded amount	% Share	Constant % Calculated on payable Amt.
1	90-100	7832	14.20%	2157209031	15.10%	275435.3	678128950.8	104714636.8	13370.1	46.00%	992316154	154360291	19708.92	21000	164472000	23.80%	7.624295913
2	80-90	6011	10.90%	2095017100	14.60%	348530.5	658578620.4	101695733.5	16918.3	35.00%	733255985	114062042	18975.55	19000	114209000	16.50%	5.451459084
3	70-80	7763	14.10%	2585608071	18.10%	333068.2	812798232.8	125509863.1	16167.7	32.00%	827394583	128705824	16579.39	15000	116445000	16.80%	4.503582787
4	60-70	9371	17.00%	2648492054	18.50%	282626.4	832566112.8	128562359.8	13719.2	29.00%	768062696	119476419	12749.59	12000	112452000	16.20%	4.245887763
5	50-60	8429	15.30%	2019483807	14.10%	239587.6	634834369.4	98029217.5	11630	26.00%	525065790	81676901	9689.99	10000	84290000	12.20%	4.173838866
6	40-50	5240	9.50%	1160695698	8.10%	221506.8	364870230.4	56342165.6	10752.3	24.00%	278566968	43332639	8269.59	8000	41920000	6.10%	3.611627067
7	30-40	3888	7.10%	822728542	5.70%	211607.1	258628642.3	39936658.5	10271.8	22.00%	181000279	28155599	7241.67	7000	27216000	3.90%	3.308016996
8	20-30	2988	5.40%	505494977	3.50%	169175	158904757.8	24537595.7	8212	20.00%	101098995	15726510	5263.22	6000	17928000	2.60%	3.54662776
9	10-20	2112	3.80%	264641847	1.80%	125303.9	83191427.3	12846170.5	6082.5	19.00%	50281951	7821637	3703.43	5000	10560000	1.50%	3.990298626
10	0-10	1492	2.70%	55665310	0.40%	37309.2	17498655.9	2702089.9	1811.1	18.00%	10019756	1558629	1044.66	1800	2685600	0.40%	4.779278124
	Total	55126		14315036437			4500000000	694876491		271.00%	4467063156	694876491	4500000000	31.44%	692177600		45.234908

(Furnished by the petitioner along with the petition)

**SHRIDHAR
G BHAT**

Digitally signed by
SHRIDHAR G BHAT
Date: 2023.10.05
15:20:38 +0530

(Shridhar Gopalakrishna Bhat)

XCI Addl. City Civil & Sessions Judge
and Spl. Judge for KPIDFE cases, Bengaluru

