

IN THE STATE COMMISSION: DELHI

(Constituted under section 9 of the Consumer Protection Act, 1986)

Date of Hearing:30.07.2019

Date of decision:07.08.2019

First Appeal No.496/2012

IN THE MATTER OF

✓ **M/s Jaiprakash Associates Ltd.,**
Sector-128,
Noida-201304 (U.P)

Earlier at:-

JA House,
63, Basant Lok, Vasant Vihar,
New Delhi-110057

....Appellant

VERSUS

Sh. Pritpal Singh Chhabra,
C-50, Friends Colony (East),
New Delhi-110065

S.K. Financial Services,
51-52, Delhi Stock Exchange Building,
Asaf Ali Road,
New Delhi-110002

....Respondent

HON'BLE SH. ANIL SRIVASTAVA, MEMBER

1. Whether reporters of local newspaper be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes

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6797/SC
24/9/19

Present: Sh. Chetan Tripathi, Counsel for the appellant
None for the respondents. Infact none has appeared on their
behalf since 30.03.2015

ANIL SRIVASTAVA, MEMBER

JUDGEMENT

1. Aggrieved by the orders dated 28.03.2012 passed by the Consumer Dispute Redressal Forum-VII in complaint number 721/2008 in the matter of Pritpal Singh Chhabra versus M/s Jai Prakash Associates Ltd. and Sh. S.K. Financial Services, both in New Delhi directing the OPs to pay jointly or severally, cost of the shares as per market value as on date alongwith Rs. 10,000/- compensation for the harassment caused and Rs. 5,000/- as cost of litigation, the Jai Prakash Associates Ltd., OP before the Forum, has preferred an appeal, for short appellant under Section 15 of the Consumer Protection Act 1986, the Act, against the Sh. Pritpal Chhabra and Sh. S.K. Financial Services, hereinafter referred to as respondent, alleging that the order has been passed without application of mind and without appreciating the facts.
2. Facts of the case necessary for the disposal of the appeal are these.
3. Sh. Raj Malhotra and Keki Phiroz Pagdiwala, NRIs residing at U.K. and Saudi Arabia respectively, in the year 1986 vide application nos. 953950 and 588198 respectively, had applied in the public issue of M/s Jai Prakash Industries Ltd. (JIL) presently known as M/s Jaiprakash Associates Ltd. (JAL) and were allotted 5,000 shares and 500 shares of Rs. 10/- each respectively, vide folio nos. 901002 and 900984 reply. The erstwhile JIL had allotted Bonus Shares to its NRI shareholders in the year 1993 in the ratio of 1:4 by passing Board resolution dated 01.04.1993 and at that relevant point time M/s Allied Computer Technics Pvt. Ltd. New Delhi were the registrar of the company.
4. The Registrar vide its letter dated 14.01.1994 reported to appellant company that certain Bonus Issue Share Certificates (286 nos.) of 100 shares each allotted to NRIs were not traceable at their end and appeared to have been misplaced while handling. The aforesaid misplaced/lost 286 Share Certificates were cancelled by the appellant company and marked as Stop Transfer in the records of the Appellant Company in addition to informing the stock exchange(s) on 21.01.1994 about such loss. The

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Appellant Company issued duplicate share certificate to its NRI shareholders in lieu of the shares misplaced/lost by the Registrar.

5. The Share Certificates reportedly misplaced/lost by the Registrar also included 300 shares in dispute (Share Certificate nos. 1302391, 1302400 & 1302365) which were allegedly purchased by the respondent no. -1 from respondent no. -2 and lodged for transfer with appellant company in June, 1994.
6. The appellant company however did not transfer the shares in favour of respondent no. 1 owing to the following reasons, namely,
 - a. *The shares certificates submitted by respondent no. 1 for transfer were among the 286 share certificate which were lost and subsequently cancelled by the appellant company and marked at 'Stop Transfer' ; and, secondly,*
 - b. *The transfer deeds had the forge signatures and the same did not tally with the signature in the record of the appellant company.*
7. The appellant having not transferred the shares advised the respondent number-1 to approach the broker for the redressal of the grievances. The respondent however filed the complaint before the District Forum which complaint having been allowed, the OPs before the District Forum have preferred this appeal before this Commission praying for setting aside the order impugned here, raising the questions that the complainant/respondent being not registered shareholder of their company, was not a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act 1986 and thus not entitled to raise a consumer dispute. Secondly the transfer deed submitted by respondent no. 1 contained forged signatures which means the deed was defective.
8. The respondents were noticed and in response thereto they have filed reply resisting the appeal on merit and stressing the point that there exists no infirmity in the order impugned here.
9. This matter was listed before this Commission for final hearing on 30.07.2019 when the counsel for the appellant appeared and advanced his arguments praying for setting aside the order as the same is not sustainable in the eyes of law. None appeared on behalf of the respondent. Infact none has appeared on their behalf after 20.03.2015 although the matter was listed on several dates. The matter being of the year 2012, it is not possible to adjourn the matter for the appearance of the respondents. I proceed to dispose of the appeal.

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10. Short question for adjudication in this appeal is whether there exists any infirmity in the orders impugned directing the appellant/OPs to pay cost of the shares as per market value as on dates. Secondly, whether the complainant/respondents in the facts and circumstances of the case is a consumer within the meaning of Section 2(1)(d). The appellant company have strongly argued that the complainant/respondent dealing with the shares have transacted for commercial purpose and thus not covered under Section 2(1)(d) of the Act. No defence of the respondents to this effect is on record.
11. In the first instance I may advert to the provisions of Section 2(1)(d) of the Act, which

"Consumer means any person who.-

- I. *Buy any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*
- II. *[hires or avails of] any services of a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include person who avails of such services for any commercial purpose];*

{Explanation- For the purpose of this clause, " commercial purpose" does not include use by person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self employment.

12. On a bare perusal of the Act it is evident that transaction for commercial purpose, as is the case here dealing with the share, is not covered within the ambit and scope of the aforesaid provision of the Act, save the condition when the said transaction is for livelihood by self

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employment. Exception is carved out for specific purpose. No averment to this effect regarding self employment or livelihood is made either in the complaint or in the reply to the appeal, which means and to put it differently, transaction in the subject matter is not covered under the exception clause. The complainant is consequently not a consumer.

13. For this purpose reliance is placed on the decision of the Hon'ble NCDRC in the matter of Nagaraj Narayan Katti and Anr. Versus 17C Ltd. and ors as reported in I [2014] CPJ 485 (NC), the relevant para of which are extracted as under:-

The Hon'ble Supreme Court in Morgan Stanley Mutual Fund vs. Kartick Das. II (1994) CPJ 7 (SC) = 1994 (4) SCC 225. has held:-

"The consumer as the term implies is one who consumes. As per the definition, consumer is tile one who purchases goods for private use or consumption. The 'meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.

In the light of this we will have to examine whether the shares for which an application is made for allotment would be goods. Till the allotment of shares takes place. "the shares do not exist". Therefore, they can never be called goods. Under the Sale of Goods Act, all actionable claims and money are excluded from the definition of goods since Section 2 (7) of the Sale of Goods Act, 1930 is as under:-

"(7) 'goods' means every kind of movable property other an actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale". It will be useful to refer to Clause (6) of Section 2 of the Sale of Goods Act, 1930. That reads:



"(6) 'future goods' means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale."

Certainly, Clauses (iii) and (iv) of Section 2(1)(c) of the Act do not arise in this case. Therefore, what requires to be examined is, whether any unfair trade practice has been adopted. The expression 'unfair trade practice' as per rules shall have the same meaning as defined under Section 36A of Monopolies and Restrictive Trade Practices Act, 1969. That again cannot apply because the company is not trading in shares. The share means a share in the capital.

The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on the trade. It is not a practice relating to the carrying of any trade. Creation of share capital without allotment of shares does not bring shares into existence.

Therefore, our answer is that a prospective investor like the respondent or the association is not a consumer under the Act.

From the above discussion, it is clear that the question of the appellant company trading in shares does not arise.

In view of our answers to Questions 1 and 2, it follows that the Consumer Disputes Redressal Forum has no jurisdiction whatsoever.

This must be borne in mind that this decision was made prior to the amendment. The amendment of 'consumer', in Section 2(1)(d)(ii) and explanation brought out further changes in the definition of consumer. It was squarely laid down with the amendment w.e.f. 15.3.2003, that this does not include a person who avails of such services for any commercial purpose. The Explanation appended to this Clause further lays down, "For the purposes of this clause, 'commercial purpose' does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment". There is no evidence that the Complainants Nagaraj Narayan Katti and Smt. Sushma Nagaraj Katti were availing services for the



purpose of earning their livelihood, by means of self-employment. No such averment was made.

This view is further supported by the case of Dr. V.K. Agarwal v. M/s. Infosys Technologies Ltd. & Ors., I (2013) CPJ 373 (NC). In O.P. No. 287 of 2001 decided on 24.7.2012.

In the case of Chairman Cum Managing Director (ONGC) & Anr. v. Gurbir Singh Anand & Anr., Revision Petition Nos. 4243 to 4254 of 2011, decided by the Bench headed by Hon'ble Justice Ashok Bhan on 30.8.2012, also gave the same view. The SLP filed by the petitioner against the above said order was dismissed by the Hon'ble Apex Court. Similar view was taken in another case. First Appeal No. 362 of 2011, Ganapati Parmeshwar Kashi & Anr. v. Bank of India & Anr., decided by the Bench headed by Hon'ble Justice Ashok Bhan, on 21.8.2012. Aggrieved by the order passed in First Appeal No. 362 of 2011, a Special Leave to Appeal (Civil) No. 5401 of 2013 was filed before the Hon'ble Apex Court by the Appellant. The Hon'ble Apex Court was pleased to dismiss the said Civil Appeal.

Lastly, this Bench, consisting of Justice J. M. Malik and Mr. Vinay Kumar in case of A. Asaithambi v. The Company Secretary and Others, in Revision Petition No. 1179 of 2012 decided on 1st August, 2012, took the similar view. The Apex Court in Civil Appeal No. 3684/2012 filed against the above said order, dismissed the SLP, vide order dated 14.12.2012.

Further, same view was taken in Vijay Kumar Idusind Bank, II (2012) CPJ 181 (NC), Som Nath Jain v. R.C. Goenka & Anr., reported in I (1994) CPJ 27 (NC).

This is, thus clear that Consumer Fora is not armed with the power to decide the question of shares. It entails huge evidence which cannot be decided in a summary procedure.

14. Having regard to the discussion done and the legal position explained I am of the considered view that the appeal deserves to be allowed keeping in view the fact that the complainant is not a consumer, transaction being for commercial purpose and having done so the complaint stands dismissed leaving the parties to bear the cost. Since the complaint is ordered to be dismissed on the premise that the

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complainant is not a consumer no other point raised in the appeal is taken up for adjudication. Ordered accordingly. The FDRs, if filed, be returned to the appellant.

15. A copy of this order be forwarded to the parties to the case free of cost as statutorily required. A copy of this order be forwarded to the concerned District Forum for information and records.
16. File be consigned to records.

(Anil Srivastava)
Member

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