(2002) 02 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

MAHAKOSH HOLDING PVT. LTD. APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Citation : 2002 3 CPJ 272 : 2003 1 CLT 414 : 2003 1 CPR 19 : 2003 2 CPC 294

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Complaint dismissed

Judgement

1. COMPLAINANT who is engaged in the business of share broking, has filed this complaint seeking direction to the opposite party-insurer to settle and pay the claim of the complainant for Rs. 25 lakhs on account of loss incurred by him on the fake/counterfeit shares and a further sum of Rs. 10.00 lakhs towards cost, compensation and mental agony caused to him.

2. COMPLAINANT had computer terminals connected to the National Stock Exchange of which it is a member. National Stock Exchange had taken a policy of insurance from the opposite party called the ''Stock Holders Indemnity Insurance Policy'' to cover the loss arising out of the deliveries of counterfeit securities, forged signatures, fraudulently altered, lost or stolen. COMPLAINANT says that earlier it had been dealing with Harish M. Shah who was one of its valued clients and this Harish M. Shah had introduced one Bharat Jain, proprietor of Megh Associates to complainant. Megh Associates had done a total trading of the value of Rs. 133 crores in the financial year 1996-1997. It is alleged that a lot of fake shares were introduced on the National Stock Exchange by Megh Associates while they were trading, a fact which was brought to the notice of the complainant by the National Stock Exchange. inquiries by the complainant revealed that Megh Associates introduced the fake shares on the National Stock Exchange when these were in turn delivered to them by their clients. COMPLAINANT says that as it was responsible for the National Stock Exchange for losses, it requested Megh Associates to pay the amount of losses incurred by delivery of fake shares routed by them through the complainants to the National

Stock Exchange. Nothing appears to have happened and the complainant lodged many complaints with the Police which registered cases under Sections 120(B), 420, 465, 467, 468, 471, 380 of the Indian Penal Code. We need not detail further facts as mentioned in the complaint except to note that when complainant submitted its claim with the opposite party it was repudiated on the ground that loss incurred by the complainant had arisen due to active connivance/collusion/gross negligence of the Director-cum-Chief Executive Officer of the complainant and further that no complaint was filed with the opposite party-insurer within a period of 30 days of first discovery of loss. COMPLAINANT denied the grounds of repudiation. Its case was that insurer policy was executed between National Stock Exchange and the opposite party and as such master policy was in the custody of National Stock Exchange. It was only later that complainant was able to procure copy of the master policy from the National Stock Exchange. We issued notice to the opposite party which had filed its detailed version. Various objections have been taken. It is also alleged that Megh Associates and National Stock Exchange are necessary parties to these proceedings. If we read both the complaint and the written version it is at once seen that complaint raises complex issues both of law and fact. A great deal of evidence both oral and documentary will have to be led in the present case by both the parties. It will be a prolonged affair. National Commission in summary jurisdiction cannot decide such cases of extreme complexity in nature. Even today the record runs into over 200 pages. Both the parties are based at Bombay. It would be more appropriate for the complainant to go to Civil Court. We, therefore, dismiss this complaint. This will, however, not debar the complainant from seeking its remedy before Civil Court or any other Forum as it may choose to get the relief in the present case. Complaint dismissed.

