(2000) 01 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

MANAGING DIRECTOR, A And S TEXTILES LTD — APPELLANT

Vs

CH.JANARDHAN Reddy — RESPONDENT

Date of Decision : 20-01-2000

Acts Referred:

Citation : 2000 2 CPJ 527 : 2001 1 CLT 372 : 2001 1 CPC 304 : 2001 1 CPR 153

Hon'ble Judges : S.Parvatha Rao , Mamata Lakshmanna J.

Final Decision : Appeals allowed

Judgement

1. THESE appeals are covered in favour of the appellant by our order in P.J. Credit Capital Limited v. Gudla Govind Rao, 1998 ALD (CONSUMER) 119.

2. THE appeals have been preferred by the opposite party i.e. THE Managing Director, A and S Textiles Limited in O.P. Nos. 470 of 1996 and 61 of 1997. THE complainants in those two OPs, are sole respondents in these two appeals. THE two OPs, were disposed of by a common order by the Nellore District Forum dated 8.3.1999. It is the case of the complainants that they applied for shares of the appellant on private placement basis and that they were allotted those shares but that they were not being paid any dividends and that the Company had not gone for public issue. THE appellant objected that the Nellore District Forum had no territorial jurisdiction to entertain the complaints inasmuch as its registered office was in Tamil Nadu at Coimbatore and that no part of the cause of action took place within the territorial jurisdiction of the Nellore District Forum. THE District Forum rejected that contention holding as follows : "It was held that after allotment of shares, in the matter of grant of right shares as well as in sending dividends on such shares, they are to be made available to the share holders at the addresses available with the Company and in such cases, where the right shares or dividends are not received by the share holder where they are expected to receive, part of cause of action would arise there."

We considered all the questions considered by the District Forum in P.J. Credit Capital Limited (supra). Following this we also held in THE Managing Director, Sigachi Laboratories Limited v. R. Rama Subba Reddy, Order dated 11.12.1998 in

FA No. 617 of 1998, and batch of A.P. State Commission, that the order of the Cuddapah District Forum holding that the complainants were entitled to recover the amounts covered by the shares allotted to them was bad. We followed these decisions in THE Managing Director, M/s. Stanpro Pharmaceutical Limited v. Dr. Peter Shieh, Order dated 14.12.1999 in FA IA No. 614 of 1999, FA SR No. 1615 of 1999 and RP No. 172 of 1999 of A.P. State Commission. We hold in this case as follows : "We find that the material placed before the District Forum do not establish that the Company gave any assurance that its shares would be listed in any of the recognised Stock Exchanges. No material has been placed to establish the same. Mere statement to that effect in the letters addressed by the complainant do not establish the same. THE learned Counsel for the complainant appearing before us submits that as no replies were given to those letters it must be presumed that the alleged assurance was established. In the absence of any convincing and satisfactory material whatsoever filed before the District Forum we are unable to see how such a presumption can be made. THE order of the District Forum is thus illegal because it is not supported by any material whatsoever to establish the case of the complainant that any binding and enforceable assurance was given to him that the shares of the Company would be listed. Moreover we do not find that any consumer dispute is made out because there is no hiring of service for consideration. When a person subscribes for allotment of shares and the shares are allotted to him he becomes a member of the Company. Whether a Company''s shares would be listed in a recognised Stock Exchange is a matter to be decided in accordance with the Articles of Association of the Company and the provisions of the Companies Act, 1956. No hiring of service by a member of the Company is involved in respect of the decision to be taken by the Company in that regard."

In The Managing Director, represented by M. Keshav Rao, M/s. Geomans Limited v. Sakala Krishna Murthy, Order dated 15.7.1998 in F.A. No. 232 of 1998 and batch of A.P. State Commission, we held that when shares of a Company were subscribed and allotted on private placement basis, no hiring of service for consideration was involved.

In the result, the common order of the Nellore District Forum in O.P. Nos. 470 of 1996 and 61 of 1997 is set aside and the complaints are dismissed and the appeals are accordingly allowed. No costs. Appeals allowed.

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