
(1993) 05 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

NANDAKUMAR R. DAVE

APPELLANT

Vs

DHANALAKSHMI CONSOLIDATED INDUSTRIES LTD.

RESPONDENT

Date of Decision : 12-05-1993

Acts Referred:

Citation : 1993 2 CPR 553 : 1993 3 CPJ 1593

Hon'ble Judges : S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS is a complaint under Section 17 of the Consumer Protection Act. The first opposite party is a Financial Institution of which the opposite parties 2 & 3 are Directors. The first opposite party caused wide advertisements for CORPORATE BONDS for the Face value of Rs. 5,000/- issuable at Rs. 3,300/-per Bond. The complainant 1 & 2 purchased 4 Bonds of the total face value of Rs. 20,000/- repayable on 26.8.1990. The complainants 1 & 3 have purchased 6 bonds, of the Face Value of Rs. 30,000/-repayable in 3 years. All the complainants are entitled to get a sum of Rs. 50,000/-. Even after maturity, the amount has not been paid in spite of repeated demands. Hence this complaint for payment of a sum of Rs. 50,000/- with interest @ 24% per annum and compensation of a sum of Rs. 50,000/-.

2. THE opposite parties 1 & 2 remain absent and set ex-parte. THE third opposite party is represented by an Advocate and the Counter filed by the 3rd opposite party is that the Company Petitions have been filed in C.P. No. 117 of 1992 and C.P. No. 73 of 1991 for winding up of the 1st opposite party, corporated body. THE third opposite party has also stated that he resigned the Directorship of the Company on 1.5.89. Exhibits A1 to A12 and B1 to B8 are marked and group affidavits are filed.

Exhibits A1 to A4 and A6 to A11 are Bonds issued by the 1st opposite party in favour of the complainant the total value of Rs. 50,000/-. Even after maturity, the amount have not been paid. The claim of the complainants is for refund the value of Rs. 50,000/- and they are also entitled to interest from the date of

maturity at 24% per annum till date of repayment.

3. THE contention of the 3rd opposite party is that the company petitions have been filed against the 1st opposite party for winding up the company and hence this complaint is not maintainable. Under Section 446 of the Indian Companies Act no suit or other legal proceedings can be commenced or shall be proceeded with him if already pending when the winding up order has been made or the Financial Liquidator has been appointed. THERE is no evidence on the side of the opposite parties to this effect. THEREfore this complaint is maintainable. The contention of the 3rd opposite party that he has resigned his Directorship of the company on 1.5.89 is not supported by acceptable evidence. There is nothing to show that any resolution has been passed by the Board of the company relieving him of his position as Director. The learned Counsel for the complainant is however agreeable to absolve the third opposite party of his liability if he subsequently proves that he is not a Director of the Company since 1.5.1989.

4. THE complaints have also claimed compensation of Rs. 50,000/-. We are inclined to award compensation of Rs. 15,000/- only. In the result there will be an order as follows: (i) The opposite parties shall pay to the complainant a sum of Rs. 50,000/- with interest thereon at 24% from the date of maturity of each bond till the date of payment. (ii) The opposite parties shall also pay a compensation of a sum of Rs. 15,000/- to the complainant. (iii) The opposite party shall pay cost of Rs. 1,000/- to the complainant. (iv) The 3rd opposite party is given the option to substantiate his claim that he ceased to be a Director of the 1st opposite party in 1989 in which case he shall not be liable for the claim.

Complaint allowed with costs.