(1996) 12 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

UDMI UPBHOGTA VIKAS PARISHAD — APPELLANT

Vs

MANAGING DIRECTOR, FOREST INDIA LTD. — RESPONDENT

Date of Decision : 23-12-1996

Acts Referred:

Citation : 1997 1 CPJ 19

Hon'ble Judges : Sardar Ali Khan , U.P.Singh J.

Final Decision : Complaint dismissed

Judgement

1. THIS order will dispose of an application of complaint under Section 10(a)(i)/36B (read with Section 2(o)(ii), 2(r), 2(t), 36A (i)(ix)(ii) and 38(h) of the Monopolies and Restrictive Trade Practices Act, 1969 and under Rules 10A, 3(B) of Non-Banking Financial Deposit (Reserve Bank) Direction Rule, 1977 and Injunction Application under Section 12A of the Act.

2. THE complainant is a business association and has filed this complaint through its Secretary, Mr. Vinod Kumar Sharma. It has been alleged that the respondents 1 and 2 have issued their brochure putting therein the rosy picture of their attractive returns on the investments with them. According to the complainant the respondents have assured high returns to its investors namely 15% to 24% on monthly basis which according to the allegations of the complainant are false and misleading which attracts the provisions of the MRTP Act. It has been further alleged that the respondents are indulging in the Unfair/ Restrictive Trade Practices. In the complaint, it has been prayed that the inquiry may be initiated and cease and desist order may be passed against the respondents No. 1 and 2. On 21.8.96, after hearing the complainant the notice of both the applications were issued to respondents and applications were fixed for hearing on 30th October, 1996.

In response, the respondents appeared on 30th October, 1996. At the request of respondent Nos. 1 and 2 three weeks time was allowed to file the reply, but the representative of respondent No. 3 filed reply in the from of letter dated 25.10.1996 signed by Shri B.D. Sapra, General Manager, Reserve Bank of India.

The reply of respondent No. 3 was served to other side. Since the reply filed by respondent No. 3 was not found in order, they were directed to file an appropriate reply.

3. ALL the respondents filed the reply on 18.12.96. The Reserve Bank of India in its reply has submitted as under: "a. The Golden Forests (India) Ltd. (hereinafter called respondent Nos. 1 and 2) are Non-Banking and Non-Financial Companies. b. being a Non-Banking and Non-Financial Companies they are not subjected to RBI directions regarding ceiling on acceptance of deposits, rate of interests and payment of commission/brokerages to the agents, etc.

After hearing the respondent No. 3 and the complainant it was observed that since the activities of the respondent Nos. 1 and 2 are not within the purview of RBI, there is no need to proceed against the RBI. Therefore, the name of RBI was deleted from the array of parties.

4. ARGUMENTS were also heard on the admissibility of complaint against respondent Nos. 1 and 2. In reply to the complaint, the respondent Nos. 1 and 2 submitted as under: The present complaint is absolutely misconceived. This is apparent from the fact that the complaint has been filed on the wrong assumption that the respondent Nos. 1 and 2 are Non-Banking Financial Companies whereas in reality it is a Non-Banking Non-Financial Company and has been awarded Code 05 by the Department of Company Affairs; that the respondent Nos. 1 and 2 are Non-Banking Non-Financial Companies and the RBI directions regarding ceiling on acceptance of deposits, rate of interests and payment of commission/brokerages to the agents, etc. are not applicable to them. Therefore, the question of violations of such directions does not arise; that the respondent Nos. 1 and 2 to invite the investments from the public for agriculture operation only and the services by the respondents are rendered in terms of Rule 2b(VI) of Companies (Acceptance of Deposits) Rules, 1975 read with Section 45 of Chapter 3B of Reserve Bank of India Act, 1934; that the social forestry farms/plantations are developed by the respondents making liens of the units of different types under different schemes for different periods offering returns in the form of agriculture returns out of the land unit mortgaged/ leased in the name of investor; that the investor applies to the Company for the allotment of the land unit under various schemes of the Company through proposal form which is mutated in MUSH TRI KA KHATA in the revenue records. After making investment with the Company a service agreement is executed between the investor and the respondent Company for development of Social forestry farm/plantations, etc. The Company receives rent/lease/development receipts from the investors against the lease/mortgage of specific land to the unit holder which is a bonafide agriculture considerations in the hand of the Company and in no way the payments made under various agreements and contracts can be called as loan/deposits taken by the Company. The payment made by the Company to the land unit holder at the expiry of the terms is in the nature of agriculture returns as produce value which is a bonafide agricultural

consideration and cannot be called interest on investments. The main contention of the complainant was to demonstrate that the investments accepted by the respondent Nos. 1 and 2 are in the form of deposits and the returns paid on such deposits are in the form of interests. This has been seriously objected to by all the respondents. In contradictions to the allegations of the complainant, the respondents have urged that the investment accepted by the respondents are neither deposits for any interests nor the returns claims or assured or refunded in the form of interests in support of this contention the respondents have relied on the judgment of this Commission in which it has already been decided that the activities of the respondents are agricultural activities duly approved by the RBI. The certificate of RBI clearly classifies the respondent Company as a Non Financial-Company and has allotted Code 05. The rejoinder to the reply filed by the respondent Nos. 1,2 and 3 was filed by the complainant and in the rejoinder, the complainant has reiterated the same allegation and has again submitted that the activities of the respondents come under the purview of the RBI. In the rejoinder the complainant has also reiterated the same allegation against the respondent No. 3. After the completion of the pleadings the arguments were heard and the orders were reserved.

5. WE have gone through the documents submitted by both the parties and their contentions, in support of his allegations the complainant has relied on two cases namely D.G.J. & R. v. IOFIC Leasing Ltd., (1991) 70 Comp Case 62 MRTPC, D.G.I. & R. v. Oriental Finance and Exchange Company, (1990) 67 Comp Case 480 MRTPC as well as Reserve Bank of India v. Peerless General Finance and Investment Company Ltd., (1987) SCC 424. In our opinion all these cases refer to financial companies and are nor relevant in the present case. The contention of the respondents get the support from the reply filed by RBI stating therein that respondent Company is a Non-Banking Non-Financial Company, and is not under its purview. In view of the above discussion, we are of the considered view that respondent Nos. 1 and 2 is a Non-Banking Non-Financial Company and the investments accepted by these respondents can never be considered as deposits accepted for a return in the form of interest. The allegations made in the complaint against the respondents that they are indulging in any objectionable trade practices are false and baseless. The complaint is dismissed. No order as to costs. Complaint dismissed.