(2017) 01 NCDRC CK 0115

In the National Consumer Disputes Redressal Commission

Case No : 1159 of 2016

VISHWANIDHI DALMIA APPELLANT

Vs

INDIA INFOLINE COMMODITIES LIMITED &6 RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Citation : 2017 1 CPR 153

Hon'ble Judges : K.S. Chaudhari

Advocate : Mr.Ashim Shridhar

Judgement

1. This complaint has been filed by the complainant against OPs.

2. Brief facts of the case are that OP No. 1 through its office bearers OP No. 2, 3 & 6 projected themselves to be leading premium institutional broker for the commodity market and allured complainant with benefits of trading on the platform of OP No. 1 through operations of OP No. 7. Complainant entered into agreement with OP No. 1 on 19.2.2011 and further executed power of attorney in favour of OP No. 1 to carry out transactions on behalf of complainant on the platform of OP No. 7. From March, 2011 to July, 2013, complainant parted with substantial sums of money and in the month of July, 2013, the complainant?s financial exposure was approx. 7.5 crore. It was further pleaded that Department of Consumer Affairs issued directions to OP No. 7 to settle all contracts on due dates. OP No. 1 in collusion with OP No. 7 were carrying out trade in commodities without any tangible stock in the warehouse and complainant parted with Rs. 4.5 crores in July, 2013, though, by end of July, 2013, all future trading was suspended. Complainant asked OPs to refund amount along with brokerage charged. It was further submitted that on 30.8.2013, FIR was registered against OP No. 5 regarding misappropriation of Rs.5600 crores. It was further pleaded that Hon?ble High Court of Bombay in Suit No. 173/2014 constituted a Committee to carry recovery of sums misappropriated by OP. Inspite of notice, amount has not been refunded by OPs. Alleging deficiency on the part of OP, complainant filed complaint with a prayer to direct OP No. 1 to 6

to refund Rs. 7.60 crores with interest along with damages of Rs. 2 crore.

3. Heard learned Counsel for the complainant for admission purposes.

4. Learned Counsel for complainant submitted that on account of deficiencies on the part of OPs, complainant had suffered huge loss; hence, complaint be admitted.

5. Perusal of record reveals that complainant entered into an agreement with OP No. 1 for transaction of commodities and also executed power of attorney in favour of OP No. 1 to carry out transactions on behalf of complainant on the platform of OP No. 7. As per pleadings and statements filed by the complainant, it becomes clear that complainant made payment of Rs. 4.5 crores within 3 days from 29.7.2013 to 31.7.2013 for trading in commodities. It has nowhere been pleaded that complainant was carrying on aforesaid activities for earning his livelihood by means of self-employment and when complainant had executed power of attorney in favour of OP No. 1 to trade in commodities on his behalf, it cannot be said that complainant was carrying on aforesaid activities for earning his livelihood by means of self-employment and in such circumstances, Consumer Fora has no jurisdiction to entertain the complaint as complainant does not fall with purview of consumer under C.P. Act.

6. In the light of aforesaid discussion, as complainant does not fall within purview of consumer, complaint is not maintainable before this Commission.

7. Consequently, complaint filed by complainant is dismissed and complainant is given liberty to approach appropriate Forum for redressal of his grievances.

