

(1993) 09 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

USHA RACTIFIER CORPORATION
(I) LTD.

APPELLANT

Vs

SURINDER KUMAR

RESPONDENT

Date of Decision: Sept. 28, 1993

Citation: 1993 0 CPC 854 : 1994 1 CPJ 438 : 1994 1 CPR 386

Hon'ble Judges: S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision: Appeals allowed

Judgement

1. THE opposite party before the District Forum, appeals under Section 15 of the Consumer Protection Act against the five virtually identical orders of the District Forum, Bathinda dated June 3,1993 passed in Complaint cases No.128/1991, 230/1991, 186/1991, 249/1991 and 250/1991. Admittedly, the issues of fact and law are common and the learned Counsel for the parties are agreed that this order will govern all of them.

2. THE representative matrix of facts may be noticed in First Appeal No. 56/193, M/s. Usha Rectifier Corporation (I) Ltd. v. Surinder Kumar. THE complainant-Respondent in his complaint had alleged that the appellant-Corporation got permission of the Controller Capital Issues, Department of Companies, New Delhi for raising capital for their new project at Faridabad which was of the cost of Rs. 711 crores. THE amount was to be collected by way of public issue of 14% fully convertible debentures as well as rights issue, Debentures of the value of Rs. 162 crores were offered to the general public by the opposite party while the remaining were offered to the existing share-holders. THE opposite-party issued prospectus dated

18.10.1990 in this respect and also advertised in the various newspapers. According to the Respondent, he felt induced by the advertisement in the newspapers and applied for 50 fully convertible debentures each of the value of Rs. 100/- and a total sum of Rs. 2,000/- was sent to the opposite party by making deposit in certain bank accounts. It was alleged that against the target of Rs. 711 crores, only an amount of Rs. 270 crores was collected by the opposite party and their own contribution was upto Rs. 4.10 crores. According to the complainant, the opposite party was required by the Controller of the Capital Issues, New Delhi to refund all the amounts along with interest to the applicants as per notice published in the Tribune on May 15, 1990 and as the opposite party failed to make payment, he made a complaint for getting refund of the amount along with interest @ 18% p.a.

On notice being issued, the opposite party raised a preliminary objection regarding the maintainability of the complaint. On merits, it was admitted that the amount received was less than the target but inspite of it, the Corporation was executing its project as promised. With these allegations, the opposite-party prayed that the complaint deserved to be dismissed.

The District Forum, Bathinda brushed aside the preliminary objection and while examining the observations made by the State Commission of Gujarat in M/s. Usha Rectifier Corporation v. Shah Dhansukh Lal Sakar Lal (Appeal No.68 of 1992 decided on 28.8.1992) had observed in the order under appeal that the learned State Commission had felt that the failure of public issue could not be considered to be unfair trade practice and the subscribers who had applied for shares/debentures could not have a legal right to demand their moneys back unless the Company failed to get the minimum subscription as envisaged in Section 69 of the Companies Act, 1956, which lays down a mandate for a Company that it must receive minimum of 90% subscription against the entire issue before making the allotment of shares or debentures to the public and if the minimum amount of 90% is not received, the entire amount collected with applications must be refunded to the applicants at the end of 90 days from the closure of issue. The District Forum while relying on these observations of the learned Gujarat State Commission, allowed the complaint, holding that in the present case, the collection was far less than 90% of the figure of Rs. 711 Crores and as such it was the bounden duty of the Corporation not to have issued any shares or debentures and instead it should have returned the money to the various applicants at the end of the period of 90 days alongwith interest as was prescribed and accordingly directed the Corporation to make refund of the amount received i.e. Rs. 2,000 /- from the complainant alongwith interest @ 18% p.a. from the date of deposit till payment and to pay Rs. 200/- as costs. Being aggrieved by this order, the opposite party-appellant has filed this appeal as aforesaid.

3. DESPITE service, neither the complainant-respondent in person nor his representative is present when the case is called for hearing. Mr. Pritam Saini, the learned Counsel for the appellant-Corporation has vehemently argued before us that the District Forum has wrongly interpreted the provisions of Section 69 of the Companies Act, 1956 and while referring us to the Clauses No. 9 and 10 of the "guidelines for issue of fresh share capital" (Annexure "B"), issued by the Government of India, Ministry of Finance, Department of Economic Affairs on January 22, 1990 has submitted that the minimum subscription of 90% clause was introduced on 6.4.1990, which came into effect from 8.4.1990 through a Notification issued by the Ministry of Finance and that since 90% of the minimum subscription was not there at the time of the appellant's issue was released, Section 69 of the Companies Act was not applicable to the appellant's case and that the District Forum was in error in holding that the complainant-Respondent was entitled to the refund of application money under Section 69 of the Companies Act. It is contended that Section 69 was amended after the appellant's issue was over and it was specifically mentioned therein that the amendment will come into force from 8.4.1990. We are firmly inclined to take the view that there is modicum of merit in the submissions of the learned Counsel for the appellant. Before coming to the grips with the question at issue, it is apt to clear the cobwebs which seem to have some what clouded the issue before the District Forum. It may be highlighted here that the District Forum while relying on the provisions of Section 69 of the Companies Act had passed the impugned order against the opposite party. In order to appreciate the contention of the appellant, we will now refer to Section 69 of the Companies Act, 1956 which reads as follows:-

"69.(1) No allotment shall be made of any share capital of a company offer to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of Directors, must be raised by the issue of share capital in order to provide for the matters specified in Clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid and received by the company, whether in cash or by a cheque or other instrument which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and in this Act referred to as "the minimum subscription."

(3) The amount payable on application on each share shall not be less than five per cent of the-nominal amount of the share.

(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank - (a) until the certificate to commence business is obtained under Section 149, or (b) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company.

(5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent, per annum from the expiry of one hundred and thirtieth day; and where such amount has not been received by the Company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under Subsection (5), all moneys received from applicants for shares shall be returned in accordance with the provision of that Subsection."

Clauses 9 and 10 of the guidelines for issue of fresh share capital (Annex "B") issued by the Government of India, Ministry of Finance, which are particularly attracted in the case and consequently deserve notice for facility of reference:

"9. Companies will make adequate disclosure in the prospectus, letters of offer, advertisements, publicity literature, investors/brokers conferences, etc. in this context and also undertake to refund the amounts at the end of 90 days from the closure of the issue, if not subscribed up to 90 per cent and to pay interest at 15% per annum if refunds are delayed by more than ten days after this period;

10. These guidelines/conditions will apply to all public/rights issues made hereafter, except those for which prospectuses/ letters of offer have been filed /issued upto 8th April, 1990 (issued by the Ministry of Finance, Department of Economic Affairs, vide No. F. 22/14/CCI/90 dated 6.4.1990 (1990) Chartered Secretary 389. 390)."

The plain reading of the provisions of Section 69 of the Companies Act clearly shows that it is nowhere mentioned therein that if the collection is far less than 90% of the entire issue then the entire amount collected with applications must be refunded to the applicants at the end of 90 days from the closure of issue. However, in the guidelines for issue of fresh share capital, issued by the Government of India, Ministry of Finance in the press note of January 22, 1990 specifically mentioned in Clauses 9 and 10 of the guidelines that if the collection was far less than 90% of the entire issue then the entire amounts collected with applications must be refunded to the applicants at the end of 90 days from the closure of issue alongwith interest @ 15% p.a. and these guidelines would apply to all public/ rights issues made hereafter except those for which letters of offer have been issued upto 8th April, 1990. In the present case, convertible debentures were issued by the opposite party to the complainant on 15.1.1990 and at that time, the amended Section 69 of the Companies Act was not applicable to the complainant's case.

4. ONCE it is held as above, we find that there is no proper application of mind by the District Forum while interpreting Section 69 of the Companies Act. In order to avoid this mistake being committed by the District Forum, we are constrained despite long lapse of time to set aside its order and to remit the case back for decision afresh of the complaint in accordance with law keeping in view the observations made herein above after giving an opportunity to the parties of being heard. If any of the parties makes request to the District Forum for adducing evidence, it will be open to the District Forum to record it. The result is that the appeals are allowed and the order dated 3.6.1993 passed by the District Forum, Bathinda in Complaint Cases Nos. 128/1991, 230/1991, 86/1991, 249/1991 and 250/1991 are set aside and the cases are sent back for a fresh decision in accordance with law. Keeping in view the observations made herein above, the parties shall bear their respective costs. Appeals allowed.