

(2001) 08 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

AMARJIT SINGH

APPELLANT

Vs

JVG LEASING LIMITED

RESPONDENT

Date of Decision: Aug. 23, 2001

Citation: 2002 1 CLT 361 : 2002 1 CPJ 334

Hon'ble Judges: K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision: Appeal allowed

Judgement

1. THE present appeal has been filed under Section 15 of the Consumer Protection Act, 1986 [for short hereinafter to be referred as the C.P. Act] against order dated 16.3.2001 in Complaint Case No. 689 of 1999 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [for short hereinafter to be referred as the District Forum-II].

2. THE contextual facts, narrated briefly, are as under.

The appellant/complainant, Mr. Amarjit Singh, resident of H. No. 3229, Sector 46-C, Chandigarh in pursuance to an advertisement floated by respondent/opposite party invested Rs. 3,01,000/- in 30,100 shares of Rs. 10/- each in the Non Cumulative Redeemable Preference Shares vide Application No. 18092 dated 30.6.1997, copy of the receipt has been brought on record as Annexure P-1. As per averments made, inter alia, the respondent/opposite party - Company neither allotted the above mentioned shares nor returned his money. The appellant/complainant vide his communication letter dated 20.1.1998 requested the respondent/opposite party to return his money with interest but the respondent/opposite party failed to do so.

The appellant has alleged that respondent/opposite party has indulged in unfair trade practices by giving misleading advertisements in the papers. The appellant/complainant has further alleged that this act of respondent/opposite party has caused wrongful gains to them but the same has caused severe financial losses and other hardships to the appellant/complainant. The appellant/complainant has prayed to direct the respondent/opposite party to refund Rs. 3,01,000/- and another sum of Rs. 40,000/- has been claimed towards the loss of interests on the above amount and towards physical harassment, mental agony and litigation expenses.

The respondent/opposite party - Company in the reply filed on 25.8.2001 took the plea that the complaint against it cannot proceed in view of the orders of Hon"ble High Court of Delhi in the case of Reserve Bank of India v. J.V.G. Finance Ltd., in Company Petition No. 265 of 1998/C.A. 885/1998 and RBI v. JVG Leasing Ltd., in 266/1998 and C.A. No. 886/1998. The respondent has further averred that Hon"ble High Court of Delhi in the above listed cases has appointed Official Provisional Liquidator consequent to which no proceedings can be allowed to take place in view of the provisions of Section 446 of Indian Companies Act, 1956. The respondent/opposite party argued that Forum cannot proceed with under Section 27 of the C.P. Act in view of the ruling of Hon"ble Delhi State Commission in Raj Kumar Sareen v. M/s. Skipper Towers Pvt. Ltd. & Ors., and M/s. Bharat Overseas Construction Ltd. & Ors. v. Mr. Deepak Bansal & Ors., Case No. A-119/1997 dated 24.7.1998. The respondent/opposite party has further stated in the reply that it has every intention to comply with the orders of the Forum but the fact that the Managing Director of the respondent Company was in Tihar Jail and the cases against the Company were proceeded against ex-parte. The respondent/opposite party has also taken the plea that the Company has not rendered any services to the complainant as accepting of amounts for a fixed period cannot be treated as rendering of service as defined under Section 2(1)(o) of the C.P. Act. Another plea that respondent/opposite party Company is a Company registered under Reserve Bank of India Act, 1934 and the deposits accepted by them from the public are covered under Reserve Bank of India Act and in the event of default in repayment the depositors are entitled to approach the Company Law Board which is proper and Competent Authority to look into the complaints of depositors and pass the necessary orders and directions, hence plea that the appellant/complainant is not a consumer as per the provision of the C.P. Act and the Forum has no jurisdiction to entertain the complaint. The respondent/opposite party has cited ruling given by the Hon"ble Supreme Court in the matter of Chairman, Thiruvalluvar Transport Corporation v. Consumer Protection Council, reported in 1995 (2) Bombay Case Report (CONSUMER) pg. 34. In support of above, further the respondent has averred that the relationship in the present case is of a debtor-creditor and the depositors being the creditors cannot be termed as consumers.

3. THE District Forum-II vide its order dated 16.3.2001 clubbed 34 complaints of different complainants filed against the different companies, namely, JGV Leasing Ltd., JVG Finance Ltd. and JVG Securities Ltd. all of JVG Group of Companies and held that all these complaints cannot be proceeded with in the Forum, the company being under liquidation as per the orders dated 15.5.1998 of the Hon"ble Delhi High Court in pursuance of petitions of Reserve Bank of India v. JVG Finance Ltd., in C.P. No. 265/1998 in C.A. No. 885/1998; Reserve Bank of India v. JVG Leasing Ltd., in C.P. No. 266/1998; and C.A. No. 886/1998, Reserve Bank of India v. JVG Securities Ltd., in C.P. No. 267/1998 and C.A. No. 887/1998. THE District Forum-II further held that the provisions of Section 446(2) of the Companies Act, 1956 are attracted to the present cases, hence the Forum cannot take cognizance of instant complaints. THE District Forum-II also perused the facts of the following cases :

(a) Bansidhar Sankarlal v. Md. Ibrahim & Anr., AIR 1971 SC 1992 (V 58 C 260). (b) Punjab National Bank & Anr. v. Punjab Finance Pvt. Ltd. & Ors., Vol. 43 (1973) Companies Cases 350. (c) International Housing Development Corporation Ltd. v. Suniti Pal, I (1998) CPJ 580. and held that none of the above cases cited by the learned Counsel for the complainant lend any support to the case in hand as the facts of all three cases are clearly distinguishable from the facts of complaints under challenge.

The District Forum-II in the last paragraph of its order held "that the proceedings in the instant case have to be stayed. These are, therefore, disposed of accordingly and the complainants, if so, advised, in terms of Section 446 of Companies Act, 1956 can either ask for the leave of the Company Court viz. High Court at Delhi for proceedings with these complaints in the present Forum or for transfer of these cases to the said Court".

4. AGGRIEVED against the above order of the District Forum-II, Mr. Amarjit Singh filed an appeal before this Commission pleading, inter alia, that the District Forum-II has committed gross error in fact as well as in law by clubbing 34 different complaints and deciding them through single common order. The appellant has averred that since the facts and averments in each case were different, the order of District Forum-II in clubbing these cases cannot be justified. Further, the appellant has averred that these 34 complaints were instituted against three different companies, namely, JVG Leasing Ltd., JVG Finance Ltd. and JVG Securities Ltd.,

though all these Companies were run by the same group still the District Forum-II was in error in law to club these and treat them against the same opposite party though every company was a separate corporate identity. The appellant has further contended that the District Forum-II wrongly held that the provisions of Section 446 of the Companies Act, 1956 are attracted in the present case. Since Company is such liquidation before the Delhi High Court, the Consumer Disputes Redressal Agencies cannot look into the complaints of deficiency in service and of the unfair trade practices indulged in by the companies. The appellant has averred that Section 3 of the C.P. Act in clear terms gives the remedy in addition and not in derogation of any law for the time being in force and the District Forum-II, Chandigarh having a separate jurisdiction to look into the deficiency in service committed by the party was empowered to decide and proceed with the case on merit. The appellant has also pleaded that the District Forum-II was unjustified in deciding 34 complaints of three different companies by the same and common order though the facts of each case were different and the opposite parties were three different corporate identities. The appellant has also drawn the attention of the Commission that he had specifically made averments of unfair trade practices by the respondent/opposite party but the District Forum-II has not given any finding on this question of law. The appellant has alleged that principle of natural justice and equity has not been taken into account and the impugned order, if allowed, will result in miscarriage of justice. The appellant has also stated that the C.P. Act became effective from 1986 while the Companies Act is in operation since 1956 and hence the remedies given under C.P. Act was aimed at providing relief to the harassed consumers which cannot be closed abruptly in view of the provisions of Companies Act, 1956. Moreover, the Companies Act, 1956 does not lay any bar against the institution or awarding of compensation resultant from any deficiency in service or unfair trade practices carried on by any company though under liquidation. At best, the order of Consumer Forum cannot be put into execution in view of the liquidation proceedings pending. The appellant has, thus, prayed to set aside the impugned order and allow the appeal with costs in the interest of justice or the case of the complainant be remanded back to the District-Forum-II, for decision on merit.

We have perused the facts and averments of the complaint and the reply filed by the opposite party. We have also gone through the evidence brought on record as well as impugned order and the grounds of appeal. After going through the all above mentioned documents and grounds of appeal this Commission is of the considered view that the contention of the appellant does have merit to the extent that there was no bar on the District Forum-II in deciding the complaint on merit in view of the clear provisions of Section 3 of the C.P. Act under which the present complainant has sought the refund of his deposited amount and compensation for deficiency in service and unfair trade practices. Further the District Forum-II was legally not justified in clubbing the complaints pertaining to JVG Leasing Ltd., JVG Finance Ltd. and JVG Securities Ltd. Since all these companies though owned by a common

management, namely, JVG Group, still are having different names and identities. As is well established law that each and every company is a separate corporate identity and it can sue and be sued separately in each case as a separate juristic person. The contention of the appellant is that the District Forum-II was wrong in disposing of 34 complaint cases of different complainants against 3 different companies by a common judgment.

After hearing the learned Counsel for the appellant and perusing the entire record of the complaint case, we deem it appropriate to remand the case of the appellant/complainant to District Forum-II for decision on merit. The interest of justice also requires that each complaint case should be decided on its own merit. Resultantly, the appeal is accepted and complaint case is remanded back to the District Forum-II, U.T., Chandigarh with a direction to decide the same in accordance with the law on merit. The parties are directed to appear before the District Forum-II on 15.9.2001. Copy of the order be sent to the parties free of charges. Appeal allowed.