



Date of Complaint Filed : 31.08.2018

Date of Reservation : 05.12.2022

Date of Order : 15.12.2022

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
CHENNAI (SOUTH), CHENNAI-3.

PRESENT: TMT. B. JIJAA, M.L., : PRESIDENT
THIRU. T.R. SIVAKUMHAR, B.A., B.L., : MEMBER I
THIRU. S. NANDAGOPALAN., B.Sc., MBA., : MEMBER II

CONSUMER COMPLAINT No.312 /2016
THURSDAY, THE 15th DAY OF DECEMBER 2022

JagannathanYoganandan,
 Senior Citizen, aged about 67 Years,
 No. 1A, Chakrapani Road, 1st Floor,
 Guindy, Chennai-600032.

... Complainant

..Vs..

- 1.SMC Global securities Ltd.,
 Represented by the Branch Manager,
 Chennai Office, Salzburg Square,
 Flat No.1, 3rd Floor, Door No.707,
 Harrington Road, Chetpet, Chennai-60003.
- 2.SMC Global Securities Ltd.,
 Represented by The Chairman & Managing Director,
 11/68, Shanti Chamber, Puna Road,
 New Delhi-110005.
- 3.Securities Exchange Board of India,
 Represented by The Chairman,
 SEBI Bhavan, Plot No.C-4A, 'G' Block,
 Bandra Kurla Complex, Bandra (East),
- 4.Central Depository Services (I) Ltd.,
 Represented by The Chairman,
 16th Floor, Phiroze Jeejebhoy Towers,
 Dalal Street, Mumbai - 400001.
- 5.National Stock Exchange (1) Ltd,
 Represented by The Chairman,
 Plot No.C-1, 'G' Block, Bandra-Kurla Complex,
 BKC Road, Bandra East,
 Mumbai-400051.

... Opposite Parties

Counsel for the Complainant ; Party in Person
 Counsel for the 1st & 2nd Opposite Parties : M/s. T.D. SelvanBabu
 Counsel for the 3rd Opposite Party ; Party in Person
 (Securities Exchange Board of India)
 Counsel for the 4th Opposite Party ; Party in Person
 (Central Depository Services (I) Ltd)
 Counsel for the 5th Opposite Party : Exparte

On perusal of records and after having heard the oral arguments of the Counsel for the Complainant and the Counsel for the 3rd Opposite Party, we delivered the following:

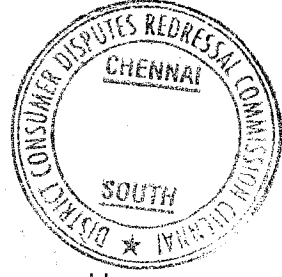
ORDER

Pronounced by the President Tmt. B. Jijaa, M.L.,

1. The Complainant has filed this complaint as against the Opposite Parties under section 12 (A) of the Consumer Protection Act, 1986 and prays to direct the Opposite Parties to refund the wrongful DPC charges of Rs.1436.39 with interest @18% from 08.01.2015 to up-to-date and to pay a sum of Rs.1,00,000/- for deficiency in service and to pay a sum of Rs.85,000/- towards mental agony, stress, tension depression and pain sustained by the Complainant and to pay a sum of Rs.10,000/- towards Lawyer's fees, legal Aid Fees, cost of incidental and other legal expenses.

2. The averments of Complaint in brief are as follows:-

The Complainant submitted that he retired from service and wanted to invest part of his retirement benefits in shares as an investment and savings for his future protection, livelihood and not for his speculative or commercial purposes. The Senior relationship Manager Mr.Jothi Krishnan of SMC Global Securities Limited called on the Complainant at his residence on 20.07.2014

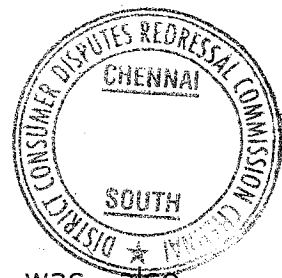


and requested for opening Trading and Demat Accounts with them. He offered special privileges a) if Rs.599 is paid in advance there will be no charges till demat account is maintained with them including annual maintenance charges, etc., b) settlement Period: T+5 with no interest till T+5. Based on the promise the Complainant opened the Demat and trading account and started buying shares as an investor. Usually he used to settle the amount on the purchase of share on or before settlement i.e., T+2 from the date of purchase of shares. As per the circular issued by the securities exchange board of India(SEBI) in No.MIRSD/SD/CIR - 19 /2009 dated 31.12.2009 all the copies of document executed by the client shall be given to him free of charge within 7 days from the date of execution of the document. The stock broker shall take clients acknowledgement for receipt of the same. The company violated the above condition and never sent copy of account opening form with all documents duly executed by him. The Complainant further submitted that suddenly the company charged DPC on payment made after T+2 settlement dates and debited his ledger account with Rs.12977.32. On raising objection the said amount was credited in to his ledger account. Without any due intimation to the Complainant, the company once again debited his account on 08.01.2015 with Rs.211.69/-, on 16.01.2016 with Rs.1083.25 and on 20.01.2015 with Rs.131.55 totally to Rs.1436.39. The Complainant wrote a letter on 14.03.2015 to the 2nd Opposite Party. The Complainant was not satisfied of the service of the

company and had asked the relationship manager Mr.Jothi Krishnanan to come to his residence with account closure form to close the trading and demat account. In the mean while he was enquiring about the non credit of 2000 shares of ITC Limited purchased on 02.03.2015 and not credited after settlement date i.e., even after 04.03.2015. The said ITC Limited shares were not credited till 14.03.2015. The SEBI mandated all the brokers who are trading in equity shares to settle the funds within 24 hours of the payout. However the company has failed to credit the funds on their due dates which amount to deficiency in service. The Complainant suffered financial losses as he could not sell the shares when he wanted to sell them as this shares were not credited in his demat account till 16.03.2015. The company has failed to adhere the rules, regulations, guidelines issued by SEBI. Due to the violations committed by the Opposite Parties the Complainant was put to financial loss and being senior citizen suffered a lot of tension depression, stress etc., hence the complaint.

3. Written Version filed by the 1st and 2nd Opposite Parties in brief is as follows:-

The 1st and 2nd Opposite Parties submitted that the Complainant has already filed C.C.Sr.No.622/2015 in this Hon'ble Fourm against the Opposite Parties raising similar dispute which was dismissed by this Hon'ble Fourm without admitting the same by order dated 28.07.2015 against the dismissal order, the Complainant approached the Hon'ble State Consumer Disputes



Redressal Commission, Chennai in F.A.No.247/2015 which was also dismissed by order dated 04.11.2015. Earlier the same complainant had filed arbitration proceedings vide Arbitration Matters (AM) No.CM/C-0013/2015 raising the same complaint and the Hon'ble Arbitrator of National Stock Exchange of India Limited has dismissed the Complainant's arbitration proceedings on merits by order dated 23.09.2015. The Complainant had also approached Investor Grievance Redressal Panel (IGRP) of National Stock Exchange Limited with a complaint No.1503220771401020 and by its decision dated 08.05.2015 the IGRP Panel found no merit in the Complainant's claim and dismissed the claim of the Complainant. The Complainant has suppressed all the earlier proceedings and filed the instant complaint to mislead the Forum. Further submitted that the Hon'ble National Commission has held in various Judgements that the selling and purchasing of shares does not come under the Consumer Protection Act. Hence the complaint is to be dismissed.

4. Written Version filed by the 3rd Opposite Party in brief is as follows:-

The 3rd Opposite Party submitted that SEBI is established under Securities and Exchange Board of India Act 1992 for performing statutory function assigned to it under the said Act and as such cannot be said to be rendering any services for consideration as contemplated under section 2(o) of the Consumer Protection Act 1986. Further in the instant case, there is no

prayer or relief sought against SEBI. It is submitted that SEBI normally takes up complaints received from Investors with the concerned entity or the Intermediary to the concerned Stock Exchange for redressal of the grievance when it involves grievance regarding the transaction in the capital market. SEBI had received complaints from the Complainant on various dates against the 1st and 2nd Opposite Parties and the same had been closed based on the action taken report submitted by the 4th and 5th Opposite Parties. The 5th Opposite Party had submitted to SEBI in SCORES that "the case was placed before the Investor Grievance Resolution Panel (IGRP) on 08.05.2015. IGRP had advised the Complainant to take further course of action as per NSE Byelaws as the Complainant did not accept the Rs.25,000/- offered by the broker being the loss amount mentioned in the complaint. IGRP had also informed the Complainant that the compensation for opportunity loss and mental agony do not fall under the ambit of the Forum. In view of the above, the Complainant is advised to place the matter before the appropriate legal for a including the arbitration mechanism at NSE". The 4th Opposite Party had submitted in SCORES that it had sent the Arbitration Forms and procedures to the Complainant. Since no further action has to be taken by SEBI based on the replies of the 4th and 5th Opposite Parties, the complaints were closed. It is submitted that SEBI is neither a necessary party nor privy to the transaction between the



Complainant and the other Opposite Parties. Hence prayed to dismiss the complaint.

5. Written Version filed by the 4th Opposite Party in brief is as follows:-

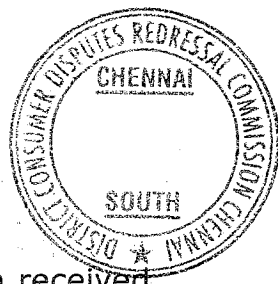
The 4th Opposite Party is registered as a depository under the Depositories Act, 1996 (the Act), read with the Securities and Exchange Board of India Act, 1992 (SEBI Act). The main function or service of the depository, as contemplated under the Act is to record allotment of securities and transfer of ownership of securities in its records in dematerialized and fungible form.

The functions of the 4th Opposite Party as a depository are governed by the Depositories Act, 1996, SEBI (Depository and Participants) Regulations, 1996 and the Bye Laws of CDSL which are approved by SEBI. Under the Act, the depository is required to render its aforesaid services of registration of transfer of ownership of securities through depository participants (who have to be registered as depository participants under section 12(1A) of the SEBI Act) and not directly. The rights and obligations of the Depository Participant and Beneficial Owners inter se are specified in the Act, in the Regulations and the Rights and Obligations of the Beneficial Owner and Depository Participant document specified by SEBI. Beneficial Owner has interface with a Depository Participant and not with a Depository. It is therefore a primary responsibility of a Depository Participant

to provide depository services and any other services relating to depository activities to the beneficial owners.

The Complainants are a Beneficial Owners holding securities in dematerialized form in their account opened with 1st Opposite Party.

The 4th Opposite Party had received complaint from the complainant against the DP - SMC Global Securities Ltd. i.e. 1 Opposite Party through SEBI Complaints Redress System (SCORES) SEBIIP/TN15/0000145/1 dated 29th April, 2015 regarding Non closure/ delay in closure of account. Upon receipt of the complaint through SCORES, the 4th Opposite Party vide e-mail dated 8th May, 2015 had sought clarification from 1st Opposite Party with necessary documents and proofs. Further advised 1 Opposite Party to redress the grievance of the Beneficial Owner (BO) within 7 days of receipt of this email, under intimation to the 4th Opposite Party. 1st Opposite Party vide their e-mail dated 12th May, 2015 replied to the 4th Opposite Party, wherein 1st Opposite Party had stated that, Complainants demat account is closed on 19th March, 2015 as per Complainants instructions and the same was informed to the Complainant vide letter dated 18th May, 2015, along with the reply e-mail dated 12th May, 2015 received from the 1st Opposite Party. The 4th Opposite Party states that, we had further received a complaint from the complainant through SCORES against the 1st Opposite Party, complaining that there was delay in closure cum transfer of securities to the Complainants demat account. The 4th Opposite Party had sought clarification



from the 1st Opposite Party regarding the same. In the Clarification received from the 1st Opposite Party vide their e-mail dated 28th May, 2015, wherein the 1st Opposite Party had stated that, there was no delay in closure of demat account and no charges were recovered from the Complainant for shifting of account. The 4th Opposite Party further states that, complaint regarding non-credited of shares in the demat account of the Complainant is broking related activity and does not come under the purview of depository (CDSL). It is pertinent to note that the grievance of the Complainants is mainly against 1st Opposite Party and 2nd Opposite Party and the 4th Opposite Party being a depository has been unnecessarily roped into present Complaint. In view of what has been stated the 4th Opposite Party should be discharged from the present complaint. Hence prayed to dismiss the complaint.

6. The Complainant submitted his Proof Affidavit and Written Arguments. On the side of the Complainant documents were marked as Ex.A-1 to Ex.A-16. The 1st, 2nd and 3rd Opposite Parties submitted their Proof Affidavit and Written Arguments. On the side of the 1st and 2nd Opposite Parties documents were marked as Ex.B-1 to Ex.B-6. Proof Affidavit of 4th Opposite Party was closed. The 5th Opposite Party did not appear before this Commission even after sufficient notice served and remained absent and set exparte.

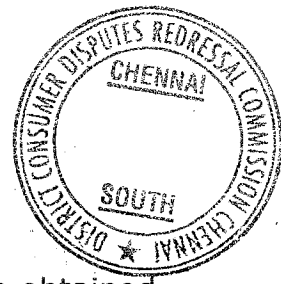
Points for Consideration

1. Whether the complaint is barred by the principles of resjudicata?
2. Whether there is deficiency in service on the part of the Opposite Party?
3. Whether the Complainant is entitled for reliefs claimed?
4. To what other reliefs the Complainant is entitled to?

Point No.1:

The contention of the Complainant is that he being a retired employee has invested part of his retirement benefits for his livelihood by opening a Trading and Demat Account with 1st and 2nd Opposite Parties on assurance that if Rs.599/- is paid in advance there will be no charges for maintenance of Demat Account without interest. Suddenly the company charged DPC on payments made after T+2 settlement date and debited his Ledger Account with Rs.1297.32. On raising objection the said amount was reversed. Once again the company debited his account on 08.01.2015 with Rs.21.69, on 16.01.2015 with Rs.1083.23 and on 20.01.2015 with Rs.131.55 totalling Rs.1436.39/-. In the meanwhile 2000 shares of ITC purchased on 02.03.2015 was not credited after settlement date i.e even after 04.03.2015 i.e till 14.03.2015, when SEBI had mandated all the Brokers, who are trading in Equity shares to settle the funds within 24 hours of the pay out.

As the Complainant was not satisfied with the services of the company, he asked for closure of Trading and Demat Account. On



16.03.2015, one of the company's representation Mr.Jothi Krishnan obtained signature in Account closure forms and the Demat account was closed on 17.03.2015. The Complainant submitted that he was not provided with Statement of Account. His Account was not closed on 16.03.2015 and 17.03.2015, and alleged deficiency in service on the part of the Opposite Parties.

The 1st and 2nd Opposite Parties had averred that the Complainant had already filed C.C.Sr. No.622/2015 before this Commission on the same cause of action which was dismissed, and confirmed by the Hon'ble State Commission in F.A.No.247 of 2015. A perusal of Ex.B-2, the order dated 04.11.2015 passed by the Hon'ble State Commission in F.A.No,247/2015, shows that the Complainant has filed the complaint against the same Opposite Parties on similar set of facts, and the Hon'ble State Commission has held that buying and selling shares in the share market do not come under the purview of the Consumer Protection Act and hence the complainant is not a consumer as defined U/s 2 (1) (d) of the Consumer Protection Act and dismissed the Appeal confirming the order of this Commission rejecting the complaint.

Further from Ex.B-3, the award passed by the Sole Arbitrator on 23.09.2015, the Complainant had also filed an Arbitration case against the Opposite Parties for the same cause of action which claim of the Complainant was disallowed by the Arbitral Tribunal.

Suppressing the above facts that already similar Consumer Complaint was filed before this Commission as well as an Arbitration case was filed and finally decided against the Complainant, he has again come out with the present Consumer Complaint for the same cause of action.

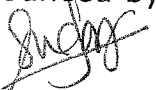
The reliefs sought for in this complaint has been finally decided by the Hon'ble State Commission by its order dated 04.11.2015 passed in F.A. No.247 of 2015 and by the Arbitral Tribunal vide Award dated 23.09.2015, which are binding upon the Complainant. Hence this complaint is barred by the principles of res judicata.

Point No.2, 3 and 4:

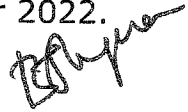
As discussed and decided Point No.1 against the Complainant, that the Complaint is not maintainable and barred by the principles of res judicata, the question of deficiency in service on the part of the Opposite Parties need not be considered. Hence the Complainant is not entitled for the reliefs claimed in the complaint and for any other relief/s. Accordingly Point Nos.2,3 and 4 are answered.

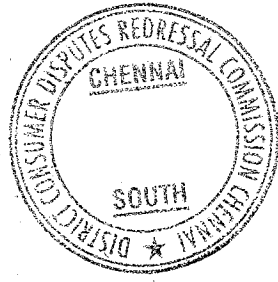
In the result the complaint is dismissed. No costs.

Dictated to Steno-Typist, transcribed and typed by her, corrected and pronounced by us in the Open Commission, on 15th of December 2022.


S. NANDAGOPALAN
MEMBER II


T.R. SIVAKUMHAR
MEMBER I


B. JIJAA
PRESIDENT



List of documents filed on the side of the Complainant:-

Ex.A1	04.10.2014	Letter by Complainant to 1 st Opposite Party
Ex.A2	02.02.2015	Ledger statement
Ex.A3	14.03.2015	Letter by Complainant to 2 nd Opposite Party
Ex.A4	13.03.2015	Holding statement
Ex.A5	18.03.2015	Holding statement
Ex.A6	23.03.2015	Account Statement
Ex.A7	05.05.2015	Demat Transaction Statement
Ex.A8	31.03.2015	Bank Account summary statement
Ex.A9	16.03.2015	Letter by Complainant to 2 nd Opposite Party
Ex.A10	16.03.2015	Account closure Form@17.03.2015
Ex.A11	18.03.2015	Account closure Form@18.03.2015
Ex.A12	18.03.2015	CSR Report of Chetpet Police Station
Ex.A13	18.03.2015	Complainant's complaint to Police
Ex.A14	18.03.2015	Letter by Complainant to 2 nd Opposite Party
Ex.A15	02.03.2015	Contract Note No,A14Q01209221
Ex.A16	08.05.2015	IGRP Proceedings

List of documents filed on the side of the 1st and 2nd Opposite Parties:-

Ex.B1	-	Authority letter of Representative of Opposite Parties 1 & 2
Ex.B2	-	Order of the Hon'ble State Consumer Disputes Redressal Commission, Tamil Nadu in F.A No.247 of 2015 dated 04.11.2015 filed by Complainant against the Opposite Parties 1 & 2
Ex.B3	-	Order of dismissal dated 23.09.2015 of Hon'ble Arbitrator of National Stock Exchange of India Limited in Arbitration Proceedings vide Arbitration Proceedings vide Arbitration Matter (A.M) No, CM/C-0013/2015 of the Complainant against the Opposite Parties 1 & 2 same cause of action

Ex.B4	-	Order of Investor Grievance Redressal Panel (IGRP) of National Stock Exchange Limited dated 08.05.2015 in complaint filed by Complainant against Opposite Parties bearing , complaint No.1503220771401020.
Ex.B5	-	Bye-laws of NSE pertaining to reference to arbitration
Ex.B6	-	Circular of SEBI dated 13.07.2015 stating that investing in shares by the customer does not come under the ambit of the Consumer Protection Act, 1986.

List of documents filed on the side of the 3rd & 4th and 5th Opposite Parties:-

NIL


S. NANDAGOPALAN
MEMBER II


T.R. SIVAKUMHAR
MEMBER I


B. JIJAA
PRESIDENT

**DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION CHENNAI (SOUTH)**
Free certified copy

Serial No. of the Application.....

Date of receipt of Application.....

Name of the applicant.....

Date of disposal.....15/12/2023

Date of Preparation of copy.....16/3/23

Date of dispatch of free certified copy of order

By Hand.....17/3/23

By Post.....


HEAD CLERK 16/3/23


16/3/23