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DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
MADURAI

PRESENT: THIRU. N.PARI,M.A.,M.L., - PRESIDENT,
TMT.K.A.VIMALA, B.PT., - MEMBER I,
THIRU. K.VELUMANI,M.A.,B.L., - MEMBERII,

C.C.No.15/2012
WEDNESDAY THIS THE 19th DAY OF OCTOBER 2022,

P.Govindarajan,
S/o. L.Perumal,
Plot No.2, Bharathiyar Nagar, 3rd Street,
Alagappan Nagar,
Madurai – 625003.

.....Complainant

/Vs/

1. Sub Broker (CHEN GPK),
Angel Broking Private Limited,
South Masi Street,
Madurai – 625001.

2. M/s. Angel Broking Private Limited,
Ground Floor, 45 TTK Road,
Alwarpet,
Chennai – 600018.

3.M/s. Angel Broking Private Limited,
G-1, Akruti Trade Center,
Road No -7, MIDC, Andheri
East Mumbai – 400093.

4. M/s. Securities And Exchange Board of India,
Through its Regional Manager,
O/o. Regional Office, South zone,
3rd Floor, 32 D' Monte Colony, TTK Road,

Alwarpet,
Chennai – 600018.

5. M/s. National Stock Exchange of India Limited,
Branch Office,
Through its manager,
D.No.123-124, 2nd Floor, Ispahani Centre,
Nungambakkam,
Chennai.

.....Opposite parties

This complaint came up before us for final hearing on 16.09.2022 and on perusal of the material records and on hearing the arguments of complainants counsel Thiru.M. Piraviperumal and 1st and 5th opposite parties Exparte and 2nd and 3rd opposite parties Counsel Thiru.R. Parthiban and 4th opposite party Counsel Thiru.M.Sivakumar, till this day this Commission passed the following:

ORDER

THIRU.K.VELUMANI, M.A.,B.L., MEMBER II

The complaint has been filed under section 12 of the Consumer Protection Act, 1986 seeking the relief to direct the opposite parties 1to 3 to delete the debit entry of Rs.3,00,000/- made in the complainant's demat account on 28.01.2011 and subsequent entries charging interest for said amount and to pay a sum of Rs.1,00,000/- as compensation for the mental agony, pain and anguish suffered by the complainant and pay Rs.10,000/- as cost of this complaint

2.Case of the complainant:-

The complainant has a demat account with the 1st opposite party. Mrs.Leelavathi, one of his close relatives, having acquainted with the involvement of risk and reward prevailing in the stock market, wanted to invest Rs.3,00,000/- in the complainant's trading account. The cheques drawn in favour of Angel Broking given by Mrs.Leelavathi were deposited in the complainant's trading account. Later, due to unfavourable market conditions, the complainant's account incurred loss and the same was informed to her by him. The opposite parties 1 and 2 debited Rs.3,00,000/- from the complainant's

account without any rhyme or reason. The complainant made query with 1st opposite party the reason for the debit. They informed that Mrs.Leelavathi preferred complainant against the opposite parties 1 to 3 to the opposite parties 4 and 5 regarding the loss suffered by her in trading. The complainant learnt that the opposite parties 4 and 5 have pulled up the opposite parties 2 and 3 from accepting third party cheques, which is prohibited and would take penal action, impose penalty on them for accepting third party cheques and directed them to redress the grievance of Mrs. Leelavathi. The opposite parties 2 and 3 accepted the third party cheques till the end of June 2009. The transaction pertaining to this dispute is on July 2008. The opposite parties 2 and 3 knew that they were the third party's cheques and they settled the amount to Mrs.Leelavathi to escape from their liability by debiting the amount from the complainant's account. The opposite parties 2 and 3 cannot make the complainant a scapegoat as there is no fault on him. The settlement of amount lost by Ms.Leelavathi in share market by the opposite parties 1 to 3 is not a sane direction. The direction of the 4th and 5th opposite parties to the opposite parties 1 to 3 to settle the amount lost in trading by Mrs.Leelavathi is not legally sustainable and lacks credibility. If the 2nd and 3rd opposite parties have committed any violation of SEBI Act or Rules and Regulations, then it warrants interference of the 4th and 5th opposite parties, but here they have no authority to direct the opposite parties 1 to 3 to settle the amount lost by Mrs.Leelavathi (a third party) and debit said amount from the complainant's account. The said act of the 4th and 5th opposite parties are unlawful, arbitrary and is against the provisions governing their functioning. The complainant is not seeking any relief against the 4th and 5th opposite parties, but they are added as parties to the complaint only for effective adjudication. The dispute regarding the acceptance of 3rd party's cheques by the opposite parties 1 to 3 in violation of the instructions of the 4th and 5th opposite parties has to be dealt with appropriate provisions of law and not in the manner narrated above. The 4th and

5th opposite parties have powers to take penal action against the opposite parties 1 to 3, but the 4th and 5th opposite parties have no business or legal right to direct them to debit the amount in the complainant's demat account. The opposite parties have acted in an unlawful manner for obvious reasons. This act of opposite parties 1 to 3 has caused acute mental agony, pain and anguish to the complainant and his family members. All this has arisen as a result of the negligence and deficiency in service of the opposite parties 1 to 3. The complainant is entitled to claim compensation for mental agony and the pain suffered by him due to the deficiency in service of the opposite parties. The act of the opposite parties 1 to 3 amounts to negligence and gross deficiency in service coupled with unfair trade practise. It is therefore prayed to direct the opposite parties 1 to 3 to delete the debit entry of Rs.3,00,000/- made in the complainant's demat account on 28.01.2011 and subsequent entries charging interest for said amount and to pay a sum of Rs.1,00,000/- as compensation for the mental agony, pain and anguish suffered by the complainant and pay Rs.10,000/- as cost of this complaint.

3. Written version of opposite parties 2 and 3 in brief:

The prayer sought for in the complaint is a consequential relief and hence the same is not maintainable in law. The complainant, without seeking recovery of the amount which has been debited, cannot seek for a prayer to delete the debit entry of Rs.3,00,000/- made in his demat account. The complainant has executed a "Risk Disclosure document for Capital Market/Cash segment" along with a "Member Client agreement" dated 05.09.2007 and is bound by the terms and conditions enumerated in said document. It is wrong to state that the 2nd and 3rd opposite parties have debited a sum of Rs.3,00,000/- in the demat account of the complainant without any rhyme or reason. The complainant had invested Rs.3,00,000/- belonging to one Leelavathi in his trading account much against the regulations of the SEBI. The complainant knowing pretty well that

he is not entitled to deal with the third party cheques had done the same in violation of SEBI rules and regulations. Mrs. Leelavathi had given a complaint and on the basis of the same the 3rd respondent had refunded the sum of Rs.3,0,000/- by means of an account payee cheque, No.203301 dated 21.01.2011, and the same has also been encashed by Mrs. Leelavathi. As per the conditions incorporated in the Member Client agreement, dated 5.09. 2007 the client shall be wholly responsible for all his investment decisions and trades. Furthermore, as per the Member Client agreement, the opposite party is also entitled to adjust the proceeds in the account of the client towards his liabilities and the same shall be charged without prior notice to the client. Hence, the 3rd opposite party is well within their right to debit said sum of Rs.3,0,000/- from the account of the complainant for flagrant violation of the SEBI rules and in dealing with the third party cheques.

4. It is wrong to state that the 2nd and 3rd opposite parties were accepting third party cheques till the end of June 2009. It is also wrong to state that the opposite parties have accepted the cheque knowing pretty well that it is a third party cheque. Hence, the 3rd opposite party's act is well within their power to debit the amount. The compensation claimed by the complainant is really exaggerated and it is not sustainable by law. There is no deficiency in service and unfair trade practise as alleged by the complainant.

5. Written version of opposite party 4 in brief:

SEBI is established under Securities and Exchange Board of India Act, 1992 for performing statutory functions assigned to it under said Act and as such cannot be set to render any services for consideration as contemplated under section 2(O) of the Consumer Protection Act, 1986. The performance of statutory functions cannot be construed as rendering any services for consideration in terms of the Consumer Protection Act as no fees is charged by SEBI from any investors for the functions performed.

6. SEBI normally takes up complaints received from investors with the concerned entity or intermediary for redressal of the grievance. In this case, SEBI received a complaint against the stockbroker from Leelavathi on 18.11.2010. Said complaint was taken up with the registration number 2484, and as per the standard procedures was forwarded to the NSE to take up the matter with the concerned stockbroker and redress the grievances. In the monthly report for January 2011, the NSE sent the following comments: "The complaint had stated that she had issued 2 cheques, one for Rs.2,00,000/- and other for Rs. 1,00,000/- to Mr Praveen Kumar who represented him as a partner of Angel capital & DebtMarket Limited in 2008. However, she has not received any return on the investment from him. Further, she stated that she hasn't signed any documents either. Trading member had stated that the client had withdrawn her complaint against us. Further, they had enclosed the withdrawal letter received from the complainant. The same was forwarded to her, treating the matter as resolved in our records."

7. Based on the above action report submitted by NSE, the complaint was closed. Subsequently, SEBI received another complaint from Shri. P. Govindarajan on March 14, 2011. Said complaint was taken up with the complainant registration number 2720 and as per standard procedures was forwarded to NSE for taking up the matter with the concerned stockbroker to redress the grievances. In the monthly report for March 2011, the NSE sent the following comments for said complaint: "The complainant had stated that Mrs. Leelavathi is his close relative and had given Rs. 3,00,000/- cheque to him to invest through his account. She had traded through his account and accrued profits were paid to her then and there and due to unfavourable market conditions she incurred losses and the same was informed to her. He had stated that, due to some family disputes, they are not having cordial relationship and she had lodged a complaint and the Trading member had debited his account by

Rs.3,00,000/-.Trading member had stated that the client Mr.P.Govindarajan was introduced by their sub-broker Mr. Praveen Kumar and mapped under their Chennai branch. They had stated that there were erroneous credit entries of Rs. 2,00,000/- and Rs.1,00,000/- passed in the client's account on 23.06.2008 and 01.07.2008 against cheque number 295223 and 425366 dated 17.06.2008 and 30.06.2008 respectively. They had stated that Mrs.Leelavathi wide her letter dated October 23, 2010 had raised a dispute that the funds belong to her and on proper investigation, they found the claim to be true. The Trading member had stated that in view of the above,a debit rectification entry was passed in Mr.Govindarajan's account with due intimation of the said facts. The Trading member's reply clarifying the matter was forwarded to the complainant and the same was treated as resolved in our records.

8. Based on the above report submitted by the NSE, the complaint was treated as closed. It is further submitted that, the complainant had stated at para no. 7 of the complaint that, the complainant is not seeking any relief from SEBI and had added it as a party only for effective adjudication of the complaint. In view of the aforesaid reasons, it is most respectfully prayed that this Hon'ble Forum may be pleased to delete the name of Securities and Exchange Board of India from the proceedings or in the alternative "SEBI" may be permitted to remain ex-parte in the proceedings.

9. The complainant has filed his proof affidavit and Exhibits A1 to A7 were marked. The 2nd and 3rd opposite parties has filed his proof affidavit and Exhibits B1 to B14 marked and 4th opposite party his proof affidavit filed and no document.

10. Points for consideration:-

1. Whether the complaint is maintainable as to the complainant is a consumer as defined in the Consumer Protection Act, 1986?

2. Whether the opposite parties 2 and 3 committed unfair trade practice?
3. Whether the opposite parties 1 to 3 are liable to delete the debit entry of Rs.3,00,000/- made in the complainant's demat account on 28.01.2011 and subsequent entries charging interest for said amount ?
4. Whether the complainant is entitled for a sum of Rs. 1,00,000/- as compensation for the mental agony, pain and anguish suffered by the complainant ?
5. Whether the complainant is entitled for a sum of Rs.10,000/-as cost of this complaint ?

11. Point Nos.1 to 5:-

We heard the learned counsel for the parties and gone through the records. The opposite party 2 and 3 contended in the argument that admittedly the complainant is a trader in the stock market. The complainant is trading regularly in the share business which is a commercial activity hence, the complainant would not fall under the definition of Consumer as per the Consumer Protection Act, 1986. Moreover, regular trading in the sale and purchase of shares is a purely commercial activity and the only motive is to earn profits. Therefore, this activity, being purely commercial one, it is not covered under the provisions of the Act. Hence whether the complainant is the consumer is the first and foremost issue here to be decided. For appreciating the submissions of the 2nd and 3rd opposite parties it will be necessary to section 2 (1) (d) (ii) of the Consumer Protection Act, which is as follows:

2. Definition (1) in this Act unless the context otherwise requires.

(d) "consumer" means any person who,--

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any

system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose

Explanation.-- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

12. It could be seen that whenever a person avails the services for commercial purposes, he would not be a consumer; it further clarified that the 'commercial purpose' does not include use of goods by a person bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self employment. In this case, the complainant pleaded that he has a demat account with the 1st opposite party, having demat account is only for purchasing and selling of shares with the motive of earning profits.

13. The complainant has not pleaded in the complaint or in the proof affidavit that he is a consumer as per the definition of the Act and also not pleaded that he is doing share trading business for his self-employment nor has it been pleaded that the services are being availed exclusively for the purpose of earning his livelihood by means of self-employment.

14. The Honorable National Consumer Dispute Redressal Commission in Vijay Kumar Vs. Indus ind Bank, II (2012) CPJ 181(NC) has held since, the petitioner has been trading regularly in the shares which is a commercial transaction and for which he has also availed the overdraft facility from the respondent, as such

he would not be a consumer as per section 2(1)(d) of the Act. Moreover, regular trading in the sale and purchase of shares is a commercial transaction and the only motive is to earn profit. Thus this activity is purely commercial one and is not covered under the Act. As per this authority and the facts of the case pleaded by the complainant, this commission has come to the conclusion that the complainant is not a consumer. Hence, this complaint is not maintainable and liable to be dismissed. Issue No. 1 is answered accordingly. Since issue No.1 is answered against the complainant and the complaint is liable to be dismissed the discussion and decision on issue Nos.2 to 5 are not necessary.

In the result, the complaint is dismissed

Dictated by the Member II to the Steno-typist taken and down, transcribed and computerized by him, corrected and pronounced by us on this the 19th day of October 2022.

Sd/-
K.A.VIMALA
MEMBER I

Sd/-
K.VELUMANI
MEMBER II

Sd/-
N.PARI
PRESIDENT

Complainant witness PW1:P. Govindarajan

Documents filed by the complainant:-

Ex.A1	23.10.2010	Letter to Leelavathi to SEBI	Copy
Ex.A2	13.12.2010	Letter to complainant to SEBI	Copy
Ex.A3	02.02.2011	Letter by complainant to Op2 & Op3	Copy
Ex.A4	21.01.2011	Extract of ledger for debiting Rs.3,00,000/- in complainant's a/c	Copy
Ex.A5	14.03.2011	Reply to NSE by OP2 & 3 to NSE for complainant's complaint	Copy
Ex.A6	16.03.2011	Communication from NSE	Copy
Ex.A7	31.03.2011	Rejoinder to NSE by Complainant	Copy

2nd and 3rd opposite parties witness RW1:E. Aravindan

Documents filed by the 2nd and 3rd opposite parties:-

Ex.B1	07.08.2015	Certified true copy of the resolution of	Copy
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		the board of directors	
Ex.B2		Client Registration Form	Copy
Ex.B3		Member Client Agreement	Copy
Ex.B4	25.01.2011	The letter sent to Angel broking company by the said leelavathi.	Copy

Sd/-
K.A.VIMALA
MEMBER I

Sd/-
K.VELUMANI
MEMBER II

Sd/-
N.PARI
PRESIDENT