

NON-DELIVERY OF SHARE CERTIFICATE IS SERVICE DEFICIENCY

Non-receipt of share certificates in time is one of the major grievances of small investors. Despite paying the call money and complying with all legal formalities of the company, investors have not been able to get their share certificates, thereby putting them under a loss.

Majority of the investors buy shares with the objective of trading on them when there is a favorable market and reap some benefits. However non-receipt of the share certificate defeats this purpose.

Some investors have been approaching the Investor Grievance Cell of Respective Stock Exchanges and Securities Exchange Board of India (SEBI) but with little help. The common complaint is that these grievance redressal machineries do not even acknowledge or reply to the share holders.

Is there an alternative remedy for the small investors for such deficiencies? Can they approach the Consumer Forum or commission set up under the Consumer Protection Act, and seek relief? Does the Consumer Fora have jurisdiction over matter relating to shares?

Ever since the Supreme Court in the case of Morgan Stanley Mutual Fund vs Kartick Das, decided that disputers relating to shares of companies cannot be challenged in the Consumer Fora or commission, almost all the fora and commissions have been rejecting any complaint in connection with shares as not maintainable under the CPA.

But the fact remains that the Supreme Court's judgement in this case, does not apply to all and every share transaction and each case is to be viewed depending on the facts of the complaint. Just because the subject involved is 'shares' all transactions connected with it cannot be rejected. And the present decision supports this view.

Thanks to the recent judgement (1998/CTJ/553/CP/SCDRC) of the Delhi State Commission which has decided that not issuing share certificates despite payment of all money constitutes deficiency in service and the consumers are entitled for compensation.

In this case, the commission has held M/s Videocon International Limited for deficiency in service and has directed them to pay compensation to the complainants Mrs Prakash Kaur and Mrs Habir Kaur.

The complainants had applied for 100 shares each of M/s Videocon International Limited along with cheque of Rs 6000 each towards the allotment money. On receipt of allotment letter, they remitted the balance amount of Rs 6000 each. However the complainants later found that the latter cheques had been returned due to insufficient funds.

Both the share applicants once again remitted the money along with interest for late payment which was encashed by the company. When the share certificates were not forthcoming both of them filed a complaint in the District Forum claiming a compensation of Rs 50198.

Though the District Forum refused to grant the compensation claimed, it found deficiency in the services of M/s Videocon International Limited, and directed it to pay Rs 5000 each on account of damages for the harassment caused to the complainants

M/a Videocon International Limited appealed against this order in the State Commission. The company argued that in view of the judgement in the case of Morgan Stanley Mutual Fund, share holders are not consumers and their complaints need to be dismissed as not maintainable.

But the commission has taken a view that the fact of the present case is quite different from that of the Morgan Stanley case and as such the contention of the company is misconceived. Here, the company has allotted the shares on the basis of the applications received and has also received the call money. But it has failed to dispatch the share certificates till the present complaint has been filed.

The State Commission felt that since holders did not receive the share certificates in time, they could not off load the shares thereby leading to loss, harassment and mental agony. As a result they are eligible for compensation. The company has been directed to pay Mrs Prakash Kaur and Mrs Harbir Kaur Rs 2500 each as compensation.
