

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND,
DEHRADUN

Date of Admission : 28.08.2020

Date of Final Hearing : 27.04.2026

Date of Pronouncement : 13.05.2026

SC/5/A/104/2020

1. Director
Consortium Securities Private Limited
Registered Office: 36 Sant Nagar, East of Kailash
New Delhi 110 065
Through Sh. Sanjay Vats, Managing Director
2. Director
Consortium Securities Private Limited
Registered Office: 36 Sant Nagar, East of Kailash
New Delhi 110 065
Through Ms. Sarika Sood, Director
3. Sh. Mohan Singh Rana
Branch Manager,
Consortium Securities Private Limited
108, Swaraja Complex, First Floor,
72 Rajpur Road, Opposite Madhuban Hotel, Dehradun
(Through: Sh. Sanjeev Kumar Jha & Sh. Uttam Kumar, Advocates)
.....Appellants

VERSUS

Sh. Sunil Kumar Gupta S/o Late Sh. K.C. Gupta
R/o 38, Inder Road, Dehradun

.....Respondent in Person

Coram:**Ms. Kumkum Rani,****President****Mr. C.M. Singh,****Member****ORDER**

(Per: Mr. C.M. Singh, Member):

This appeal has been directed against judgment and order dated 07.03.2020 passed by the District Consumer Disputes Redressal Forum, Dehradun (hereinafter to be referred as the District Commission) in consumer complaint No. 192 of 2015 styled as Sh. Sunil Kumar Gupta vs. Director, Consortium Securities (Pvt.) Limited and Ors., wherein and whereby the complaint was allowed directing the opposite parties, jointly or severally, to pay Rs. 5,00,000/- alongwith Rs. 20,000/- for mental agony and Rs. 5,000/- towards litigation expenses to the complainant within a period of 30 days, failing which the complainant is entitled to get simple interest @ 9% per annum from the opposite parties.

2. Brief facts of the case are as such that the complainant had initially opened a Demat Account with ICICI Bank, Dehradun, wherein he held mutual funds and certain shares as investment. In early 2010, one Sh. Harish Chandra Singh visited the complainant and introduced himself as an associate of opposite party No. 3. He represented that he will render financial advisory and investment related services to the complainant and his family members and induced the complainant to open a demat account with opposite party Nos. 1 & 2. Acting upon such representation, the complainant alongwith his wife opened a demat account with opposite party Nos. 1 & 2 after completing the requisite formalities. The complainant further states that the opposite parties obtained the original share certificate from the complainant and deposited the same in his demat account. The value of which was approximately Rs. 10 Lacs. Owing to financial requirements for construction of his house, the complainant sold certain shares during the period from 31.05.2010 to 03.12.2010 for an amount of Rs. 6 Lacs and received a sum of Rs. 5,14,896.05, while the remaining value continued to be remained with the opposite parties. The

complainant was under *bonafide* belief that the remaining shares were safe and appreciating in value and, therefore, do not take any further steps. The opposite party No. 3, however, continue to approach him for further investment, which the complainant declined due to financial constraints. Thereafter, in the month of January, 2015, the complainant attempted to contact the opposite party No. 3 telephonically in connection with certain family requirement. However, the opposite party No. 3 did not respond. Upon persistent enquiry by the complainant regarding the status of his demat account, the opposite party No. 3 informed him that all the share had been sold on account of loss suffered by the company. The complainant made repeated efforts to meet opposite parties, but such attempts were unsuccessful and he was allegedly threatened. Consequently, the complainant lodged a police complaint. Upon intervention of police, the opposite parties admitted that share mentioned by the complainant alongwith additional shares worth Rs. 1 Lac purchased on behalf of the complainant had been sold and had resulted in loss, despite there being no authorization of such transactions from the complainant. The complainant contend that the aforesaid acts of the opposite parties are illegal, as they neither obtained consent nor informed him prior to undertaking the purchase or sale of shares. Such conduct amounts to be unfair trade practice and deficiency in service, for which the opposite parties are liable. As a result, the complainant has suffered a financial loss of Rs. 5 Lacs alongwith mental agony for which he claimed compensation of Rs. 3 Lacs. It is further stated that on dated 30.06.2015, a meeting has been conducted at Police Station, Dalanwala, where the opposite parties were directed either to return the shares or pay the entire amount. Although, the opposite parties assured compliance, but no action was taken. The opposite parties neither sought complainant's consent, nor informed regarding the sale of shares after 03.12.2010 and no amount whatsoever was paid to the complainant to date.

3. The opposite party Nos. 1 to 3 in their preliminary objections have submitted that the complainant vide application dated 17.03.2010 expressed his intention to register with them, furnished requisite personal details and deposited a cheque of Rs. 750/-. It is further stated that the complainant executed necessary agreements and related documents. Thereafter, the complainant alongwith his wife opened a demat account with the Company and was also allotted a trading account number CXD381. It is further contended by the opposite parties that the complainant opted SMS alert service and duly registered his mobile number and email address, pursuant to which regular updates regarding daily transactions were sent to him via SMS and email. The opposite parties further stated that all the details of transactions in the demat account were regularly communicated to him. The opposite parties further averred that the complainant executed a power of attorney in favour of the opposite parties for operation of his demat account. On this basis, it is submitted that the complainant himself initiated transaction in his account commencing on dated 27.05.2010 and continued till 02.12.2010 and that final settlement was effected on dated 03.12.2010, through cheque of Rs. 52,164.42. It is further stated by the opposite parties that the complainant did not undertake any transaction until January 2012 and thereafter resume trading from 03.12.2012 by buying and selling shares of various companies. As a result of such transaction, the account allegedly came in debit balance and became irregular. Despite repeated requests by the opposite parties to regularize the account, the complainant failed to respond. Consequently, the opposite parties claimed that they were compelled to liquidate the shares lying in complainant's demat account on dated 02.04.2013 and that due intimation was provided to the complainant. It is also submitted by the opposite parties, that both the National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange Limited (BSE) continuously sent SMS and email alerts regarding daily transactions. Therefore, according to the opposite

parties, the complainant cannot claimed ignorance of transaction carried out in the account. On this ground, the opposite parties have denied allegations contained in the complaint and prayed for dismissal of the complaint.

4. The District Commission after hearing both the parties and after taking into consideration the facts and evidence on record, has passed the impugned judgment and order dated 07.03.2020 wherein and whereby the complaint was allowed in the above manner.

5. On having been aggrieved by the aforesaid judgment and order of the District Commission, an appeal has been submitted by the opposite parties as appellants on the ground that the District Commission lacked the initial jurisdiction to entertain a complaint regarding alleged dispute with regard to sale / purchase of shares and failed to appreciate that the respondent – complainant opened a trading account for trading in shares for commercial purpose; that the Commission below has failed to appreciate that the respondent did not qualify to be termed as a ‘consumer’ under the Consumer Protection Act, 1986 and also failed to appreciate that the dispute between the parties was that of business to business and not that of business to consumer; the dispute raised by the respondent is not a consumer dispute; the respondent had agreed for dispute resolution by way of arbitration as stipulated by SEBI; that a Special Law enacted by SEBI would always have precedence over the general law, i.e. Consumer Protection Act; that a Power of Attorney executed by the respondent authorised the appellants to sell the shares and regularize the debit balance of his account; that the District Commission failed to appreciate that additionally SMS alerts for the transaction carried out in the respondent’s account in NSE and BSE were also sent by the Stock Exchange; that the District Commission failed to appreciate that the respondent lacked specifics and was silent as to shares which were allegedly traded unauthorizedly in his account; that the

complainant was also silent on the prices the shares were allegedly purchased and sold as to ascertain the losses that respondent allegedly suffered; that no cogent reason was given in the order condoning the delay in filing the complaint. The impugned judgment and order is perverse and without jurisdiction, hence liable to be set aside and the appeal deserves to be allowed.

6. Learned counsel Sh. Sanjeev Kumar Jha & Sh. Uttam Kumar for the appellants have appeared whereas respondent – Sh. Sunil Kumar Gupta has appeared in person.

7. We have heard arguments of the learned counsel of appellants and the respondent and also perused the material available on record.

8. Learned counsel for the appellants argued that the respondent does not fall within the definition of ‘consumer’ under the provision of Consumer Protection Act, 1986, as the respondent being an Advocate has opened the trading and demat account for commercial purpose. Learned counsel contended that the complaint is barred by limitation as the respondent had filed the complaint beyond prescribed statutory period without seeking condonation of delay. It was also argued by the learned counsel for the appellants that the transactions in question are governed by the mechanism established by SEBI including arbitration and such special law would prevail over consumer law.

9. Respondent argued that the transaction relating to sale and purchase of shares carried out by the appellants were effected without consent or authorization. It was contended that such act of the appellants in dealing with shares without authority is illegal, arbitrary and contrary to the terms

and conditions. Hence, the appellants are liable to compensate for financial losses alongwith compensation for mental agony.

10. It is admitted that the respondent had opened a demat account with the opposite parties and executed a Power of Attorney in favour of the appellants. It is not disputed that the respondent deposited the shares in the said demat account and undertook the transactions of purchase and sale of shares. It is not disputed that the respondent was in requirement of fund for which he sold certain shares from 31.05.2010 to 02.12.2010 and also received an amount of Rs. 52,164.42 arising out of such trading account activities. It is also not disputed that a SMS and email alert regarding transactions was generated and that the shares lying with the respondent's account were liquidated by the appellants on dated 02.04.2013. It is also undisputed that during the period of active trading, the respondent did not raise any immediate objection with regard to the transaction carried out in his account.

11. The first and foremost issue for consideration in the present case is whether the respondent falls within the definition of 'consumer' as provided by Consumer Protection Act, 1986 and consequently whether the complaint filed by the respondent is maintainable or not before the District Commission. Section 2(1)(d) of the Consumer Protection Act, 1986 defines 'consumer' as under:-

2(1)(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 purposes;***

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. From the aforesaid definition of ‘consumer’, it is abundantly clear that the person who avails services for any commercial purpose or is involved in commercial activity does not fall within the ambit of ‘consumer’ under Consumer Protection Act, 1986.

13. In the present case, the respondent has himself stated in the complaint that he is an Advocate by profession and earns livelihood through the

practice of law. Therefore, the share trading activity undertaken by him cannot be said to be for earning livelihood by means of self-employment. Rather it indicates that the respondent was engaged in share trading activity with object of generating additional income. Such contention clearly establishes that the respondent was involved in commercial activity.

14. In addition to above, the record reveals that the respondent opened a trading account with the appellants as evidenced by paper No. 65 of the appeal file and executed requisite documents including Member-Client Agreement and risk disclosure document for trading and investment in shares of NSE and BSE and MCX. Upon due verification of his credential, the appellants allotted a trading account number CXD381 to the respondent. The respondent also opened a demat account with the appellants and executed a Power of Attorney in favour of the appellants authorizing them to operate the said account.

15. It is further evident from the record particularly paper Nos. 115 & 116 that the respondent operated trading account number CXD381 from 11.05.2010 to 03.12.2010 and have earned an income of Rs. 52,164.42. The material on record further reflects frequent and continuous transactions, which indicates that the respondent was actively engaged in the sale and purchase of shares. Such activity squarely falls with the ambit of commercial purpose.

16. Learned counsel for the appellants has cited following case laws, which are as under:-

**1. Som Nath Jain vs. R.C. Goenka and Ors.,
MANU/CF/0294/1993, Original Petition No. 18
to 27 of 1993, decided on dated 21.10.1993
(NCDRC, New Delhi)**

2. Vijay Kumar vs. Indusind Bank, MANU/CF/0175/2012, Revision Petition No. 3986 of 2011, decided on dated 15.02.2012 (NCDRC, New Delhi)

3. M/s Sterlite Industries (India) Ltd. vs. Ganapati Finsec Pvt. Ltd., MANU/CF/0464/2013, Revision Petition No. 3345 of 2012, decided on dated 12.07.2013 (NCDRC, New Delhi)

4. Sh. Rakesh Chandra Kaushik vs. Sh. Sukesh Jain and Ors., Consumer Complaint No. 15 of 2013, decided on dated 09.10.2014 (SCDRC, Uttarakhand, Dehradun)

17. In the case of **Som Nath Jain (supra)**, the Hon'ble National Commission has held that "Para No. 4 - Elaborate evidence will have to be taken to establish what were the precise instructions given by the complainant to the respondent broker etc. Further allegations of fraud and manipulation of accounts cannot be decided on the basis of affidavits. Therefore, it is not a fit case to be dealt with by the Consumer Forums.

18. In the case of **Vijay Kumar (supra)**, the Hon'ble Apex Court has held that –

Para 13. "Petitioner has nowhere pleaded in its entire complaint that he is doing share trading business as 'self-employment for livelihood'. Nor it has been alleged that the services provided by the respondent, were being availed of exclusively for the purpose of

earning of his livelihood by means of self-employment by the petitioner. Dispute between the parties relating to commercial purposes are excluded under the Act.

Para 14. Since, petitioner has been trading regularly in the shares which is a commercial transaction and for which he has also availed the “over draft facility” from the respondent as such he would not be a consumer as per Section 2(1)(d)(ii) of the Act. Moreover, regular trading in the purchase and sale of the 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. There are concurrent findings of facts also with regard to the services of the notice upon the petitioner.”

19. In the case of **Sh. Rakesh Chandra Kaushik (supra)**, the State Commission, Uttarakhand has held that, i.e. Para 16 – this apart, the dispute raised by the complainant in the present case pertains to purchase and sales of shares and in the consumer complaint, the complainant has nowhere pleaded that he is dealing with share business as self-employment for earning livelihood. It is a settled law that the transactions regarding sale and purchase of shares are commercial transactions and the person engaged in the said transaction cannot be termed as consumer as per the definition of the word provided under Section 2(1)(d) of the Consumer Protection Act, 1986.”

20. The aforesaid case laws relied upon by the appellants are fully applicable to the present case, except the case of **M/s Sterlite Industries (India) Ltd.**, as the facts and circumstances involved therein are distinguishable from those of the instant case.

21. Learned counsel for respondent has cited the following case laws, which are as under:

1. Vaman Nagesh Upaskar & Anr., vs. India Infoline Ltd. & 2 Ors., Revision Petition No. 2873 of 2014, dated 28.10.2020, NCDRC, New Delhi .

2. M/s Emaar MGF Land Limited vs. Aftab Singh, Review Petition (C) Nos. 2629-2630 of 2018, , decided on dated 10.12.2018 (Supreme Court of India)

3. M/s Kalindi Enterprises vs. Suresh G Kumar, Revision Petition No. 1083 of 2023, decided on dated 01.05.2024, (NCDRC New Delhi)

22. In the case of **Vaman Nagesh Upaskar & Anr. (supra)**, the complainant had merely opened a demat account, whereas in the instant case, the respondent had not only opened a demat account, but also a trading account which was actively and regularly operated by him. Hence, with due regard to the Hon'ble National Commission, the facts of the case relied upon by the respondent are distinguishable from the facts of the present case and, therefore, the citation is not applicable to the instance case.

23. The cited case laws **M/s Emaar MGF Land Limited (supra)** and **M/s Kalindi Enterprises (supra)** pertain to maintainability of the complaint before Consumer Fora in view of existence of special statutory remedies and criminal proceedings. However, in the present case, the primary issue relates to whether the complainant falls within the definition of ‘consumer’ under the provision of Consumer Protection Act, 1986, the law laid down in the aforesaid judgments is not required to be taken into consideration for adjudication of the present case.

24. In the case of **First Appeal No. 1089 of 2014 and First Appeal No. 1090 of 2014, Tajinder Kumar Taneja vs. M/s Unique Investments and Ors., decided on 09.06.2025 (NCDRC New Delhi)**, the Hon’ble National Commission has held that “ Para 12. -If there exists any accounting discrepancies or disputes between the parties regarding settlement of trading account transactions, which are inherently commercial in nature, such matters fall within the exclusive jurisdiction of civil courts rather than consumer protection fora. The relationship between a share broker and an investor engaging in securities trading does not constitute a consumer and service provider relationship but rather represents a commercial arrangement governed by securities regulations and commercial law principles. Thus, the complaint under consumer protection law is not maintainable.”

25. In view of the following discussions and the case law cited above, it is evident that the respondent was engaged in a trading activity in share market for commercial purpose and, hence does not fall within the definition of ‘consumer’ under Section 2(1)(d) of the Consumer Protection Act, 1986. Consequently, the complaint was not maintainable before the District Commission. The impugned judgment and order having been perused without proper appreciation of the nature of transactions and the

applicable legal position cannot be sustained. Therefore, we hold that the impugned judgment and order is liable to be set aside and the appeal deserves to be allowed.

26. The respondent – complainant is however, granted liberty to approach appropriate forum to address his grievances. Towards the same, for the time spent in progressing the complaint and appeal, he may invoke the provisions of Section 14 of the Limitation Act, 1963.

27. Accordingly, the appeal is hereby allowed. Impugned judgment and order dated 07.03.2020 passed by the District Commission, Dehradun is hereby set aside. Consumer complaint shall stand dismissed. No order as to costs of the appeal.

28. Statutory amount, if any, deposited by the appellants be returned to the appellants.

29. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this order alongwith original record of the District Commission, Dehradun be sent to the concerned District Commission for record and necessary information.

30. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. C.M. Singh)
Member