

DIRECTOR-GENERAL OF INVESTIGATION AND REGISTRATION

V.

ORIENTAL FINANCE AND EXCHANGE CO.

[I.A. No. 17 of 1987 in U.T.P. Enquiry No. 54 of 1987]

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Facts of the Case

The responder is a partnership firm that works in the finance industry. Deposits from the general public are accepted. The respondent's administrative office is located at. It is headquartered in Madras and operates out of a number of offices across the country, the majority of which are in Southern India. The Director-General has stated in his application that the respondent has been issuing advertisements in the newspapers and has also brought out a brochure to attract deposits. Printed copies of two such advertisements, one issued in The Indian Express dated January 23, 1987, and the other issued in the same paper dated February 1, 1987, and a copy of the brochure has been annexed to the Director-General's application under Section 36B(c).

Issue Raised

- Whether under Section 12A of the Monopolies and Restrictive Trade Practices Act, 1969, praying for an ex parte ad interim injunction restraining the respondent from carrying on unfair trade practices of making false or misleading statements in the advertisements and publicity material brought out to attract deposits from the public?
- Whether under Section 36B(c) of the Monopolies and Restrictive Trade Practices Act, 1969, against the same respondent covering the same ground?

Rule of the case

To begin with, there is the guarantee of perfect security. The respondent has not stated what type of security it provides to its depositors or how complete that security is. It has withheld its audited balance sheets, leaving the Director-General in the dark regarding the company's assets and liabilities, as well as its creditworthiness. Similarly, there is no evidence to support the respondent's second claim. As far as the offer of high rates of interest is concerned, the Director-General has found that the respondent does not have the backing of assets or means for paying to its depositors such high rates of interest. According to the Director-General, the respondent "is acting as a medium or a conduit pipe for the so called "Saj Group" of companies located in Kerala. The two main activities of the "Saj Group" consist of running a hotel in Trivandrum and a film business in Kottayam. Such activities do not inspire confidence in regard to the credibility of the respondent and its ability to pay such high rates of interest. From what has been stated in the preceding paragraphs, it appears to us that the claims made in the advertisements and brochure (as annexed with the Director-General's application under Section 36B(C)) are false and misleading, being highly exaggerated and unsubstantiated by facts and

figures. These claims have obviously been made to lure the lay investor. We do not have to stretch our imagination to see how such alluring but false promises, assurances and claims cause loss or injury to its depositors. In taking the stand that unfair trade practices indulged in by the respondent in the form of misleading claims in respect of its deposit-taking operations are prejudicial to public interest, the Director-General has sought to derive support from the following observations of the Supreme Court in the case of Reserve Bank of India v. Peerless General Finance and Insurance Co. Ltd.¹

“We would also like to query what action the Reserve Bank of India and the Union of India are taking or proposing to take against the mushroom growth of 'finance and investment companies' offering staggeringly high rates of interest to depositors leading us to suspect whether these companies are not speculative ventures floated to attract unwary and credulous investors and capture their savings.”

Judges also accept the Director-argument General's that an ex parte injunction under Rule 3 of Order XXXIX of the Code of Civil Procedure is required because delay would defeat the very purpose of such an injunction in the sense that lay investors would continue to fall into the respondent's trap, mesmerised by the offer of incredibly high interest rates and lulled into complacency view of high sounding tall promises of complete security, etc.

Analysis

To begin with, there is the assurance of complete safety. The respondent has not specified the sort of security it provides to its depositors or the extent to which such protection is complete. It has kept its audited balance sheets hidden from the Director-General, keeping him in the dark about the company's assets and liabilities, as well as its creditworthiness. Likewise, there is no proof to back up the respondent's claims. As a result, the aforementioned claims appear to be unfair trade practices under Section 36A of the Monopolies and Restrictive Trade Practices Act.

Conclusion

In these circumstances, the issue an ex parte preliminary injunction prohibiting the respondent from engaging in unfair trade practices, including making false or misleading statements in advertisements and brochures, as set forth in the Director-Order. General's This order's subject-matter is an application. In accordance with Rule 3 of Order XXXIX of the Civil Procedure

¹ [1987] 61 Comp Cas 663, 695

Code, the Director-General (Investigation and Registration) shall send a copy of this injunction order and a copy of the application for issue of injunction by registered mail to the parties by tomorrow. responder, and an affidavit to that effect must be filed.