

4.2.2010

COMPETITION COMMISSION OF INDIA

File No.C-140/2009/DGIR(Transferred from MRTPC)

Shri Ratanshi A.Ashar  
through Vimla A.Ashar, Advocate .. Complainant

Vs.

Kotak Mahindra AMC and ING AMC .. Opposite Party

ORDER

1. Consequent upon the repeal of the MRTP Act, this complaint has been transferred to the Competition Commission under the provisions of section 66 (6) of the Competition Act, 2002.

2. Ms. Vimla A.Ashar, Advocate filed the instant complaint on behalf of herself and Shri Ratanshi A.Ashar alleging monopolistic and restrictive trade practices against the opposite parties namely Kotak AMC and Ing AMc. In the complaint after narrating the procedure which is to be adopted in the case of investment made by NRIs, it is pointed out that without FIRC (Foreign Inward Remittance Certificate) any investment by an NRI of NRE status cannot be legally accepted and recorded by an AMC or any other financial institution in India under FEMA Rules of RBI; but in case of NRI Cheques drawn on any Indian bank, the FIRC is not necessary because the word 'NRE a/c' is printed by the bank on the cheque itself which shows the source of fund as NRE, repatriable.

3. About their own case, the complainants have alleged that an inordinate delay of 14 days has occurred due to unjustifiable demand of FIRC by Kotak AMC. It is also alleged that ING AME also caused delay of 4 days due to illegal demand of FIRC at the time of maturity after 2 years of investment with them.

4. In substance the allegation made in the complaint against the above referred AMCs is that due to their unwarranted insistence for FIRC, delay has occurred in the payments by which the opposite parties have gained at the cost of the complainant which shows the monopolistic and restrictive trade practices on their part.

5. Upon receiving the complaint, the DGIR MRTP Commission decided to conduct a preliminary investigation under section 11(2) of the MRTP Act and after forwarding a copy of complaint, the reply of the opposite parties was asked for.

6. Kotak Mahindra in its reply has stated that the scheme under which the complainant had invested money, matured on 20<sup>th</sup> April, 2009 and redemption amount

was credited in the complainant's account on 24<sup>th</sup> April, 2009 and 3 days delay was caused by refusal of Axis Bank who was authorized for this purpose by the complainant himself to directly credit the money in his account and for want of confirmation of his non resident status. It has been denied that there was delay of 14 days in the payment. The opposite party has also taken the plea that as per section 53 of SEBI (Mutual Fund) Regulation 1996, the Mutual Fund and Investment Management Company is required to dispatch the redemption or repurchase proceeds within 10 working days from the date of maturity and complainant was actually paid the amount within 4 days of maturity which is well within the prescribed time limit.

7. The second opposite party i.e. ING AMC has also stated that the redemption payable to the complainant was due on the 3<sup>rd</sup> business day from the date of receipt of the redemption request which is well within the statutory time limit of 10 business days as specified in the SEBI Regulation.

8. Both the opposite parties have, therefore, denied the allegations made in the complaint.

9. This complaint has been transferred to the Competition Commission stating that the allegation made against the opposite party is a restrictive trade practice. Section 66(6) of the Competition Act reads as under :

“6. All investigations or proceedings other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.”

10. On perusal of the above provision, it is clear that the Commission, after examining the matter, is having discretion to conduct investigation or order for other proceedings in the case received by it 'in the manner as it deems fit'.

11. So far as the instant complaint is concerned, the only allegation is that undue delay occurred in the payment on the maturity of the scheme on account of demand of FIRC. On going through the replies filed by the opposite parties, it is found that the redemption amount was paid to the complainant within the period stipulated under the SEBI (Mutual Fund) Regulation 1996 and there was no undue delay on the part of opposite party in this respect. Even the provisions of section 33 of the MRTP Act which relate to restrictive trade practices do not appear to be attracted in the instant case.

12. Under the Competition Act also, no issue regarding anti-competitive practice or abuse of dominance position is found to be involved and, therefore, from this angle also, no action is required to be taken in this complaint by the Commission.

13. In view of the above, the instant complaint requires to be closed at this stage and the same is disposed of accordingly.

14. The Secretary is directed to inform all concerned accordingly.

Sd/ -  
Member (G)

Sd/ -  
Member (R)

Sd/ -  
Member (P)

Sd/ -  
Member (GG)

Sd/ -  
Member (AG)

Sd/ -  
Member (T)

Sd/ -  
Chairperson