PETITIONER:
MORGAN STANLEY MUTUAL FUND

Vs.

RESPONDENT:
KARTICK DAS

DATE OF JUDGMENT20/05/1994

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
VENKATACHALLIAH, M.N.(CJ)
ANAND, A.S. (J)

CITATION:
1994 SCC (4) 225 JT 1994 (3) 654
1994 SCALE (2)1121

ACT:

HEADNOTE:

JUDGMENT:
The Judgment of the Court was delivered by
MOHAN, J.- Leave granted.

2. The appellant is a domestic mutual fund registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') under Registration No. MF/005/93/1 dated 5-11-1993. The appellant is managed by a Board of Trustees. Pursuant to the SEBI (Mutual Fund) Regulations, the investment management company of the appellant, Morgan Stanley Asset Management India Private Limited was registered with SEBI on 5-11-1993. Under such registration Morgan Stanley Asset Management India Private Limited is constituted as the asset management company of the appellant. Morgan Stanley Asset Management India Private Limited is it subsidiary of Morgan Stanley Group Inc. which holds 75% of equity, the balance being held by Indian shareholders such as Housing Development Finance Corporation (HDFC), Stock Holding Corporation of India etc. Morgan Stanley Asset Mana-enient India Private Limited was ranted certificate of incorporation on 18-10-1993 by the Registrar of Companies, Bombay. Its Memorandum and Article of Association have also been approved by the SEBI as per the provisions of the said Regulations.

3. The draft scheme of the appellant was approved by the Board of Trustees by Circular Resolution dated 8-1 1-1993. This was forwarded to SEBI for its approval on 10- 11- 1993. The scheme was duly scrutinised and examined by the SEBI and SEBI gave its approval and certain amendments were suggested. Upon receipt of such approval for the scheme, the appellant and the Investment Manager took necessary steps to begin marketing the scheme by issue of advertisements. All advertisements and publicity material were approved by SEBI in writing before publication as required by the Regulations. Pursuant to such approval tile appellant commenced advertising the public issue.

4. On 13-12-1993 the advertisements and hoardings were released. One Piyush Aggarwal filed a suit before the learned Sub-Judge, Tees Hazari Courts, Delhi for injunction restraining the public issue from being floated by the appellant. On 24-12-1993 an interim order was passed. Aggrieved by the same, the appellant moved the High Court in CM(M) No. 543 of 1993. On 3-1-1994 the said order passed by the learned Sub-Judge was stayed. That was subsequently confirmed on 4-1-1994. One Dr Arvind Gupta filed Writ Petition No. 14 of 1994 against SEBI. In effect, he sought to stay the public issue from being floated. That writ petition was rejected.

5. On the same rounds, as were urged in the writ petition, the respondent moved the Calcutta District Consumer Disputes Redressal Forum seeking to restrain the public issue from being floated. The principal grounds taken were that the appellant's Offering Circular was not approved by the SEBI. There are several irregularities in the same. The basis of allotment is arbitrary, unfair and Unfair. The appellant was seeking to collect money by misleading the public.

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6. The following order was passed on 4-1-1994 by the Calcutta District Consumer Disputes Redressal Forum :

> "Petitioner files the complaint today. Register. Issue notice of show cause against OPs.
>
> Considering the utmost urgency of the case as cited by the learned lawyer for the petitioner we are inclined to pass an interim order otherwise the application would be frustrated. Accordingly we direct OP 1 and OP 2 and its men, agents, collecting banks not to proceed any further with the issue of 30 crores Morgan Stanley Growth Fund Units due to be opened on 6-1-1994 till proper clarification is made in its prospectus and with the leave of this learned Forum. OP 3 i.e. SEBI is also directed not to issue clearances until Regulation 28 of Schedule V of SEBI Regulations is complied with by the OP 1 and OP 2.
>
> OP 4 and OP 5 i.e. the bankers to the offer are specifically restrained from accepting any application form of Morgan Stanley Growth Fund from anybody until further orders from this learned Forum.
>
> OPs are at liberty to apply for vacation/variation of this order. Next date fixed on 19-1-1994."

7. Aggrieved by this order, civil appeal arising out of SLP (C) No. 272 of 1994 has come to be preferred.

8. Against the dismissal of Writ Petition No. 14 of 1994 by the High Court of Delhi, civil appeal arising out of SLP (C) No. 321 of 1994 has come to be preferred.

9. Mr Ashok Desal learned counsel for the appellant (Morgan Stanley\ Mutual Fund) urges the following :

> (a) A prospective investor is not a consumer to prefer a complaint under the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'). If that be so, a voluntary consumer association cannot complain about the issue of shares. The shares are not 'goods' as defined under Section 2(1)(1) of the Act. Even otherwise, there can be no consumer

association of prospective applicants for future properties, The issue of shares was to open on 27-4-1993. The so-called consumer has yet to apply for allotment of final shares and make payments in respect thereof. Therefore, it is submitted that no member of this association could be held to be a consumer of future shares within the meaning of the definition (supra).

(b) In law, a prospective investor does not become a consumer as defined under the Act. Even assuming that shares could be goods before allotment, the so-called consumer has neither purchased the goods for a consideration nor hired the services of the company for consideration. Hence, he is not entitled to make any complaint.

(c) There being no transaction of buying goods for consideration the requirement of Section 2(1)(d)(i) of the Act defining 'consumer' is not satisfied.

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(d) No member of the public has a right or entitlement to a share of the company making an issue of capital for the first time. A prospective investor has no say in the valuation of shares issued. That is determined by the general body of shareholders. Should a prospective investor have any legal right and if the issue of capital is not to his desire, he may not opt to subscribe. He cannot intentionally, with the objection of which he is personally aware, subscribe to the issue and challenge its very terms.

(e) Under the scheme of the Consumer Protection Act, a consumer forum is competent to deal with the complaint if it relates to goods bought or services rendered. Thus the District Consumer Forum has no jurisdiction whatsoever to deal with this case.

(f) Section 2(1)(c) of the Act defines a 'complaint' and lists four cases where investigation, inquiry and relief could be granted. The complaint in relation to public issue of shares namely future goods does not fall within any one of four categories of which a complaint can be filed under the provisions of the Act.

(g) Section 14 of the Act deals with the nature of relief that can be granted. This section does not envisage grant of any interim relief or an ad interim relief. The section contemplates only a final relief. In the instant case, the grant of injunction against the public issue of the appellant company is a relief not provided for under the statute.

(h) The principles relating to grant of injunction including the balance of convenience have not been borne in mind. Even assuming that the Forum is conferred with the power to grant injunction it has not examined whether there were overwhelming reasons for urgency and why the grievance could not have been made earlier. In this

case, the party had gone to the Forum on the last date when the issue was about to open after the issue had been advertised. The public advertisement was issued on 13-12-1993; the petition was filed on 4-1-1994, the orders were passed on the following day. The Calcutta District Consumer Disputes Redressal Forum was approached on the last day, obviously with unclean motives. There is also suppression of material facts on the part of the respondent. In matters of this kind there must be an undertaking as to the damages on the part of the party seeking the injunction.

For these reasons, it is prayed that the impugned order may be set aside. In this case, since the appellant has suffered very much in that not even the copy of the injunction was served on the appellant which copy came to be obtained only through the bankers, it is a fit case in which the appellant should be compensated with exemplary costs.

10. Mr K.G. Vishwanathan, learned counsel for the respondent urges that there are well-known principles for the grant of ex parte injunction. Should the court be satisfied that there is a prima facie case, on balance of convenience, it can always grant. Where the issue of public share is nothing but an attempt to gain an undue advantage, the court is not powerless. This is

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a case to which the Regulations would apply. Therefore, if those Regulations are not conformed to, a prospective applicant would be entitled to seek an injunction. There has been a violation of Regulation 27 and that the appellant did not have any approval as is clear from their own document. Only a letter from SEBI seeking the clarification from the appellant is produced. This does not, it is urged, amount to an approval in law.

11. It is further urged by Mr Vishwanathan that the bankers to the issue at Calcutta were really non-existent. The brochure indicates that the application forms could be received in Calcutta at the Bank of Baroda, Old Court House Street and Corporation Bank, Cappling Street. Both these branches, it is urged, are non-existent while there is no branch of Bank of Baroda at Old Court House Street. There is no street called Cappling Street in Calcutta.

12. The basis of allotment what is styled "first come, first served" was, it is urged, intended to confuse and designed to deceive the innocent investors. The applications were received in 45 centres simultaneously. No priority number was given. Hence, the appellant would be in a position to deny to each one of the investors on the ground that he had not come or approached the appellant first. As a result, the appellant will be able to amass enormous sums of money by way of interest and thereafter return the amount to the respective investors.

13. The failure to stipulate the period before which the refund would be effective is, it is further urged, a serious irregularity violating Regulation 23.

14. The Calcutta District Forum has, it is claimed, power to issue the restraint order under the Act. Such injunctions are not unknown to law as seen from the Financial Services Act, 1986 of the United Kingdom. Therefore, no interference is called for.

15. In SLP (C) No. 321 of 1994, the appellant would urge that the High Court has dismissed the writ petition without a speaking order. There were important points raised in the writ petition. The announcement of the impugned scheme of

public issue of units by the appellant is, it is contended, without the approval of SEBI and is illegal and that by proposing the allotment of units based on first come first served basis, fair treatment is not meted out to small investors. There is contravention of Sections 55, 63 and 68 of the Companies Act, 1956. To hold out, as the appellant has done, that the allotment of units will be based on firm allotment basis and with a changed sponsor in the advertisement, it is contended, is illegal in law, apart from it being violative of the norms and practices in the capital market. In such a case, the impending disaster could be avoided only by a quia timet interference of the court. It is also urged that by piercing the corporate veil, it could be easily seen that the real sponsor is no other than the Morgan Stanley Group, New York. Therefore, SEBI should have acted in accordance with Section 11(2)(e) of the SEBI Act, 1992 for prohibiting fraudulent and unfair trade practices relating to securities market. It is also urged that the writ petition came to be filed and dismissed without consideration of these aspects. So, it requires interference of this Court.

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16. We have already extracted the impugned order. The correctness the same can be determined with reference to the following questions:

(1) Whether the prospective investor could be a 'consumer' within the meaning of Consumer Protection Act, 1986 ?

(2) Whether the appellant company 'trades' in shares ?

(3) Does the Consumer Disputes Redressal Forum have jurisdiction in matters of this kind ?

(4) What are the guiding principles in relation to the grant of an a interim injunction in such areas of the functioning of the capital market and public issues of the corporate sectors and whether certain 'venu restriction clauses' would require to be evolved judicially as has bee done in cases such as State of' W.B- v. Swapan Kumar Guha an Sanchaita Investments' ?

(5) What is the scope of Section 14 of the Act ?

The answers to these questions will decide not only the fate of this civil appeal but also the appeal arising Out of SLP (C) No. 321 of 1994.

17. In order to decide these questions, it will be necessary to set out the factual matrix. On 11-4-1988, Government of India by an administrative circular constituted the Securities and Exchange Board of India (SEBI) for investors' protection. On 30-1-1992, an ordinance known as SEBI Ordinance was promulgated. On 21-2-1992, a bill was introduced namely the SEBI Bill of 1992 which became the Act on 4-4-1992. It came into force on 30-1-1992 as stated in Section 1(3) of the SEBI Act. On 29-5-1992, the Capital Issues Control Act, 1947 was repealed.

18. Mutual funds in India are regulated by SEBI pursuant to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1993 Under the said Regulations, all mutual funds in India as also the asset management companies and the custodians of the mutual funds assets are required to be registered with the SEBI. No mutual fund in India can approach the market with a scheme unless scheme has been fully approved by SEBI which is the sole authority for

granting approval to such funds. The SEBI examines the scheme and suggests modifications, if any, and allows the scheme to be advertised and published.

19. The appellant is a domestic Mutual fund registered with SEBI. Its registration number is MF/005/93/1 dated 5-11-1993. The certificate of registration is as under:

"SECURITIES AND EXCHANGE BOARD OF INDIA
(MUTUAL FUND) REGULATIONS, 1993
(Regulation 9)
CERTIFICATE OF REGISTRATION

1. In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with

1 (1982) 1 SCC 561: 1982 SCC (Cri) 283

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Securities and Exchange Board of India (Mutual Fund) Regulations, 1993 made thereunder the Board hereby grants a certificate of registration to MORGAN STANLEY MUTUAL FUND as a Mutual Fund.

2. Registration code for the Mutual Fund is MF/005/93/1.

By order"

The appellant company is managed by a Board of Trustees. In accordance with the said Regulations, the investment management company of the appellant Morgan Stanley Asset Management India Pvt. Ltd. is also registered with SEBI. The certificate to this effect is as under:

"SECURITIES AND EXCHANGE BOARD OF INDIA
Little & Co.,
Central Bank Building,
Bombay 400023 11
MARP/22996/93
November 5,
1993.
Dear Sir,
Re: Morgan Stanley Mutual Fund
This has reference to the application made by Morgan & Stanley Group Inc., to sponsor a Mutual Fund.
In terms of Regulation 20 of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1993, we hereby grant our approval to 'Morgan Stanley Asset Management India Pvt. Ltd.', to act as the Asset Management Company for Morgan Stanley Mutual Fund.
We also grant registration to 'Morgan Stanley Mutual Fund' ill terms of Regulation 9 of the Regulations subject to the execution of the Custodian Agreement between the Board of Trustees and Stock Holding Corporation of India Ltd. The certificate of registration in Form B is enclosed. Please quote the registration number in your future correspondence with us.
Yours faithfully,
Sd/--
J.B. Ram"

20. Morgan Stainley Asset Management India Pvt. Ltd. is a subsidiary of Morgan Stanley Group incorporated which holds 75% of the equity, the balance being held by Indian shareholders such as HDFC, Stock holding Corporation of India etc. Morgan Stanley Asset Management India Pvt. Ltd. was granted the certificate of incorporation on 12-10-1993 by the Registran of Companies, Bombay and its Memorandum and

Articles of Association has also been approved by the SEBI as per the provisions of the said Regulations.

21. Regulation 27 of the said Regulations provides that no mutual fund shall announce the scheme unless such scheme has been approved by the Trustees of the Mutual Fund and by SEBI. On 8-11-1993, the Board of Trustees by a circular Resolution approved the draft scheme, the same was

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forwarded to SEBI on 10-11-1993. The scheme was duly scrutinised and examined by the SEBI. By its letter dated 23-11-1993, addressed to Enam Financial Consultants Pvt. Ltd., one of the joint Lead Managers, SEBI gave its approval. It is stated that the scheme has been examined by them in terms of the provisions of the Regulations. It suggested certain amendments as detailed in enclosures thereto. SEBI also advised the said Enam Financial Consultants Pvt. Ltd. to submit three copies of the printed Offering Circular and the abridged Offering Circular of the scheme and the new schemes return in the prescribed format. This requirement of SEBI was complies with. It is after this the appellant took the necessary steps and began marketing the scheme by issuing advertisements in the press, holding presentations with brokers etc. All advertisements and publicity material have been approved by SEBI as under:

"SECURITIES AND EXCHANGE
BOARD OF INDIA
Enam Financial Consultants Pvt. Ltd.
24 BD Rajabahadur Compound,
Ambalal Doshi Marg,
Bombay - 400001

11 MARP/24655/9
November 25, 1993

Dear Sir,

Re : Advertisement campaign of Morgan Stanley Group Inc.

With reference to your letter dated 22-11-1993, we advise that the enclosed revised set of advertisement of the proposed advertising campaign of Morgan Stanley Inc., are in order.

Yours faithfully
K. Ravikanth'

"December 20th, 1993
Mr Ronan Basu,
Fortune Communication Ltd.,
Bombay.
Dear Sir,
Sub: MORGAN STANLEY GROWTH FUND

I enclose a copy of letter received from SEBI, in regard to the changes suggested in the 'Scheme Campaign'. Please carry out the changes as required by SEBI and get the approval of Morgan Stanley Asset Management before its release.

Thanking you,
Yours faithfully
for Enam Financial Consultant Pvt. Ltd N.G.N. Puranik"

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22. It has to be carefully noted that the disclaimer clause required to be incorporated at the beginning of offering circular by SEBI while approving the scheme is a standard requirement and nothing peculiar to the present case. The object of this is to bring to the notice of the investors that they should take the firm decision on the basis of the disclosures made in the documents. It is meant for the

investors' protection. In fact by such a course the SEBI informs the investors that they have approved the scheme but they did not recommend to the investors whether such investment is good or not and leave it to their discretion. In view of this, it will be clear that the allegations of respondents that the SEBI has not approved the other documents is totally baseless.

23. There is also a challenge to the method of allotment. The relevant clause pertaining to the method of allotment is as under:

> "The offer: The targeted amount to be issued is Rs 300 crores. Units are to be issued at a price of Rs 10 per unit, payable in full upon application. The offer will be open for subscription commencing 6-1-1994 and will remain open until one day after notice of the date of closure is given through advertisement in major national daily newspapers, with the latest date of closure being twelve working days after the opening date. If subscriptions for at least 18 crores units have not been received by the closure date, the offering will be terminated and all subscriptions will be returned within 78 days from the closure date. In the event that the issue is oversubscribed, allotments will be made on a 'first come first served' basis. However, MSMF reserves the right to accept or reject any subscriptions, including subscriptions in excess of the targeted amount. See 'Terms of the issue.'
>
> Date of closure: The issue will be kept open for a minimum of three working days and a maximum of twelve working days. The Board will proceed to close the issue by giving one day's notice of the date of closure through advertisements in the major national daily newspapers when approximately 75% of the targeted amount is collected. Only those subscriptions which are received before the expiry of the notice period will be retained. If subscriptions for at least 18 crore units have not been received by the closure date of the issue, the offering will terminate and the board will return the entire amount received within 78 days from such closure date.
>
> 'Basis of Allotment & Despatch of Unit Certificate': The arrangements for closure of the issue and allotment have been designed with the objective of making allotments on a 'first come first served' basis. It is hoped, however, that all applicants will receive their full allotment. Accordingly, MSMF reserves the right to accept or reject any subscription, including accepting subscription in excess of the targeted amount. Allotment of MSGF units and despatch of certificate will be made within ten weeks after the closure of the date of the issue.
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> The above clauses indicate the following-
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> (i) the petitioners clearly have a desire to retain oversubscription and the Offering Circular (and the SEBI guidelines) empowers them to do so.

(ii) that there is a minimum period for which the issue will be kept open namely 3 days;
(iii) that those who apply for the units before the closure of the issue would have the same priority and would be allotted units to the extent applied for;
(iv) that there is a provision for a closure notice, which provision has been discussed with and examined by SEBI. This particular method of closure of the scheme and allotment was chosen to break away from the system followed by other mutual funds.
(v) By encouraging prospective investors to apply early the scheme can be closed quickly, allotments can be finalised earlier (thereby blocking the money of the first applicants for a shorter period of time) and most important of all the proceeds can be invested quickly to benefit from the market opportunities. This reduces the cost of collection that the investor has to bear. In this manner by adopting the 'First come first served basis' the scheme becomes more investor friendly.

24. The respondent entertained a misconception whether honestly or confused the concept of the "first come first served" scheme. As stated, it is an invitation to the subscribers to apply early and the scheme be closed quickly. The appellants have made it very clear that those who applied during the opening period of scheme would be given full allotment. This was clarified by the appellant at a press conference held at Calcutta on 16-12-1993. Regular clarifications were issued in this regard by the appellant. The scheme came to be advertised by the appellant on 13-12-1993. The respondents chose to make an application to the Consumer Forum on the eve of opening of the scheme. It was on that application, the impugned order came to be passed. In this factual background, we will take up the questions set out for determination.

Q. 1: Whether a prospective investor could be a consumer within the meaning of Consumer Protection Act, 1986?

25. The definition of consumer is contained under Section 2(1)(of the Act which reads as under:

"(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
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not include a person who obtains such goods for resale or for any commercial purpose; or
(ii) hires 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 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;".

The meaning of goods is same as defined under Sale of Goods Act, 1930. It is so stated in Section 2(1)(i) of the said Act.

26. The consumer as the term implies is one who consumes. As per the definition, consumer is tile one who purchases goods for private use or Consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.

27. In the light of this, we will have to examine whether the 'shares' for which an application is made for allotment would be 'goods'. Till the allotment of shares takes place, "the shares do not exist". Therefore, they can never be called goods. Under the Sale of Goods Act, all actionable claims and money are excluded from the definition of goods since Section 2(7) of the Sale of Goods Act, 1930 is as under:

> "(7) 'goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

It will be useful to refer to clause (6) of Section 2 of the Sale of Goods Act,

1930. That reads:

"(6) 'future goods' means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale."

28. As to the scope of this clause, reference may be made to Maneckji Pestonji Bharuclia v. Wadilal Sarabhai & Co.2 It was observed thus:

"The Company is entitled to deal with the shareholder who is on the register, and only a person who is on the register is in the full sense of the word owner of the share. But the title to get on the register consists in the possession of a certificate together with a transfer signed by the registered holder. This-is what Bharucha had. He had the certificates and

2 AIR 1926 PC 38, 40: 53 IA 92: 28 Bom LR 777

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blank transfers, signed by the registered holders. It would be an upset of all Stock Exchange transactions if it were suggested that a broker who sold shares by general description did not implement his bargain by supplying the buyer with the certificate and blank transfers, signed by the registered holders of the shares described. Bharucha sold what he had got. He could sell no more. He sold what in England would have been choses in action, and he delivered choses in action. But in India, by the terms of the Contract Act, these choses in action are goods. By the definition of goods as every kind of moveable property it is clear that not only registered shares, but also this class of choses in action, are goods. Hence equitable considerations not applicable to goods do not apply to shares in India."

29. Again in Madholal Sindhu of Bombay v. Official Assignee of Bombay3 it was held thus:

"A sale according to the Sale of Goods Act (and in India goods include shares of joint stock companies) takes place when the property passes from the seller to the buyer."

Therefore, at the stage of application it will not be goods. After allotment different considerations may prevail.

30. A fortiori, an application for allotment of shares cannot constitute goods. In other words, before allotment of shares whether the applicant for such shares could be called a consumer? In CIT v. Standard Vacuum Oil Co.4 while defining shares, this Court observed:

"A share is not a sum of money; it represents an interest measured by a sum of money and made up of diverse rights contained in the contract evidenced by the articles of association of the Company."

31. Therefore, it is after allotment, rights may arise as per the contract (Article of Association of Company). But certainly not before allotment. At that stage, he is only a prospective investor (sic in) future goods. The issue was yet to open on 27-4-1993. There is no purchase of goods for a consideration nor again could he be called the hirer of the services of the company for a consideration. In order to satisfy the requirement of above definition of consumer, it is clear that there must be a transaction of buying goods for consideration under Section 2(1)(d)(i) of the said Act. The definition contemplates the pre-existence of a completed transaction of a sale and purchase. If regard is had to the definition of complaint under the Act, it will be clear that no prospective investor could fall under the Act.

32. What is that he could complain of under the Act? This takes us to the definition of complaint under Section 2(1)(c) which reads as follows:

> "2. (1)(c) 'complaint' means any allegation in writing made by a complainant that-
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> 3 AIR 1950 FC 21,26: 1949 FCR 441:51 Bom LR 906,912
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> 4 AIR 1966 SC 1393, 1397: (1966) 2 SCR 367: (1966) 59 ITR 685
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> (i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage;
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> (ii) the goods mentioned in the complaint suffer from one or more defects;
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> (iii) the services mentioned in the complaint suffer from deficiency in any respect;
>
> (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods, with a view to obtaining any relief provided by or under this Act."

33. Certainly, clauses (iii) and (iv) of Section 2(1)(c) of the Act do not arise in this case. Therefore, what requires to be examined is, whether any unfair trade practice has been adopted. The expression 'unfair trade practice' as per rules shall have the same meaning as defined under Section 36-A of Monopolies and Restrictive Trade Practices Act, 1969.+ That again cannot apply because the company is not trading in shares. The share means a share in the capital. The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on the trade. It is not a practice relating to the carrying of

any trade. Creation of share capital without allotment of shares does not bring shares into existence. Therefore, our answer is that a prospective investor like the respondent or the association is not a consumer under the Act.

Q. 2: Whether the appellant company trades in shares?

34. From the above discussion, it is clear that the question of the appellant company trading in shares does not arise.

Q. 3: Does the Consumer Disputes Redressal Forum have jurisdiction in matters of this kind ?

35. In view of our answers to Questions 1 and 2, it follows that the Consumer Disputes Redressal Forum has no jurisdiction whatsoever.

Q. 4: What are the guiding principles in relation to the grant of an ad interim injunction in such areas of the functioning of the capital market and public issues of the corporate sector and whether certain 'venue restriction clauses' would require to be evolved.judicially as has been done in cases such as Sanchaita case I etc. ?

36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

+ Ed.: After amendment by Act 50 of 1993 (w.e.f. 18-6-1993), S. 2(1)(r) of the Consumer Protection Act, 1986 provides its own definition of 'unfair trade practice'.

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(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court.

37. In United Commercial Bank v. Batik of India5, this Court observed: (SCC pp. 787-88, paras 52-53)

"No injunction could be granted under Order 39, Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily arise is whether in the facts and circumstances of the case, there is a prima facie case and, if so, as between whom? In view of the legal principles applicable, it is difficult for us to say on tile material on record that the plaintiffs have a prima facie case. It cannot be

disputed that if the suit were to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.

Even if there was a serious question to be tiled, the High Court had to consider the balance of convenience. We have no doubt that there is no reason to prevent the appellant from recalling the amount of Rs 85,84,456. The fact remains that the payment of Rs 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment 'under reserve' is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted."

38. This Court had occasion to emphasise the need to give reasons before passing ex parte orders of injunction. In Shiv Kumar Chadha v. 5 (1981) 2 SCC 766

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Municipal Corpn. of Delhi6, it is stated as under: (SCC pp. 176-77, paras 34-35)

"... the court shall 'record the reasons' why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule '1, the procedure prescribed under the proviso has been followed. The party which invokes the Jurisdiction of the court for grant of an order of restrain against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in

respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of Taylor v. Taylor', and Nazir Ahmed v. Emperor8. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramchandra Keshav Adke v. Govind Joti Chavare9.

As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed."

6 (1993) 3 SCC 161, 176
7 (1875) 1 Ch D 426: 45 LJ Ch 373
8 AIR 1936 PC 253(2): 63 IA 372: 37 Cri LJ 897
9 (1975) 1 SCC 915
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39. In this case, the public advertisement was given as seen above, on 13-12-1993; the petition was filed on 4-1-1994 and the impugned order of Consumer Forum came to be passed on the following day. As to why the respondent chose to come at the eleventh hour and where was the need to pass an urgent order of injunction, are matters which are not discernible. Besides tested in the light of the case law set out above, the impugned order which is bereft of reason and laconic cannot stand a moment's scrutiny.

40. Today the corporate sector is expanding. The disgruntled litigants indulge in adventurism. Though, in this case we have come to the conclusion that the District Consumer Forum will have no power to grant injunction yet in general cases it becomes necessary to evolve certain venue restrictions.

41. As to the effect of incorporation it is stated in Halsbury's Laws of' England (4th Edn., Vol. 7, p. 55, para 83) as under:

"When incorporated, the company is a legal entity or persona
distinct from its members, and its property is not the property of the members. The nationality and domicile of a company is

> determined by its place of registration. A company incorporated in the United Kingdom will normally have both British nationality and English or Scottish domicile, depending upon its place of registration, and it will be unable to change that domicile....
>
> The residence of a company is of great importance in revenue law, and the place of incorporation is not conclusive on this question. In general, residence depends upon the place where the central control and management of the company is located. It follows that if such central control is divided, the company may have more than one residence. The locality of the shares of a company is that of the register of shares. The head office of a company is not, however, necessarily the registered office of the company, but is the place where the substantial business of the company is carried on and its negotiations conducted. Like an individual or a firm, a company can, for the purposes of the Rules of the Supreme Court, carry on business in more places than one."

42. As far as India is concerned, the residence of the company is where the registered office is located. Normally, cases should be filed only where the registered office of the company is situate. Courts outside the place where the registered office is located, if approached, must have regard to the following. Invariably, suits are filed seeking to injured either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The Court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in

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relation to the fact which should weigh with the court in the grant of ex parte injunction and the rulings of this Court must be borne in mind.

5: What is the scope of Section 14 of the Act?

43. The said section reads as under:

> "(1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things, namely :
>
> (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
>
> (b) to replace the goods with new goods of similar description which shall be free from any defect;
>
> (c) to return to the complainant the price, or, as the case may be, the charges paid by

the complainant;
(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
(2) Every order made by the District Forum under sub-section (1) shall be signed by all the members constituting it and, if there is any difference of opinion, the order of the majority of the members constituting it shall be the order of the District Forum.
(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government."

44. A careful reading of the above discloses that there is no power under the Act to grant any interim relief of (sic or) even an ad interim relief. Only a final relief could be granted. If the jurisdiction of the Forum to grant relief is confined to the four clauses+ mentioned under Section 14, it passes our comprehension as to how an interim injunction could ever be granted disregarding even the balance of convenience.

45. We have dealt with in the preceding paragraphs as to the approval of SEBI and the compliance with the Regulation 27 of the Regulations, 1993. We have also explained what exactly is a concept of 'first come first served' basis. On these two aspects, the respondent is suffering under a labyrinth of confusion. Therefore, we hold that the grounds urged by the respondent seeking to support the impugned order, are untenable.

46. The appellant has suffered immensely because it has not even been served with copy of order of injunction. The application of the respondent is clearly actuated by mala fides. The Forum should have examined whether ex parte injunction without notice to the opposite side could ever be granted at

+ Ed.: Increased to nine clauses by Amendment Act 50 of 1993 (w.e.f. 18-6-1993).

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all. The grounds urged in the injunction application were insufficient for the grant of such a relief.

47.There is an increasing tendency on the part of litigants to indulge in speculative and vexatious litigation and adventurism which the for a seem readily to oblige. We think such a tendency should be curbed. Having regard to the frivolous nature of the complaint, we think it is a fit case for award of costs, more so, when the appellant has suffered heavily. Therefore, we award costs of Rs 25,000 in favour of the appellant. It shall be recovered from the first respondent. C.A. No. 4584 of 1994 arising out of SLP (C) No. 272 of 1994 is allowed accordingly.

Civil Appeal No. 4587 of 1994 (arising out of SIP (C) No. 321 of 1994)

48. In view of what we have observed above, the writ petition has rightly come to be rejected though in our view, it would have been better had tile High Court given reasons instead of dismissing it summarily. Hence, C.A. No. 4587 of 1994 arising out of SLP (C) No. 321 of 1994 is dismissed.

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