6

CONSUMER PROTECTION LAW

Ashok R. Patil[*]

I INTRODUCTION

THE GROWTH of modern technology, especially the growth in the information technology (IT) and digital sector has increased the spending habits of consumers, which has become a boon for the players in the consumer sector. Consumer spending habits, using the IT and digital tools have resulted in an increased numbers of transactions, again because of which, the number of grievances of consumers are increasing day by day. Somewhere the growth in technology has put consumers prone to the malpractices of some business entities which are encashing the current trend. Challenges such as misleading advertisements, false/misrepresentation of goods and services, spurious goods, defective goods, deficient services, and other kinds of unfair trade practices are still bothering the consumers. Though there are legal mechanisms to address the issues of the consumer, only the awareness and the consumer's attitude of "fight for right" can save him from being victimized.

There is always a continuous effort from the lawmakers, adjudicating bodies, and executives to ensurea safe market environment for the consumers.

Lawmakers are tirelessly working to ensure better protection for consumers. Identifying the issues and for the effective implementation of existing laws, the lawmakers are timely coming up with new rules and regulations. Like every year, this year also the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, has come up with the rules and regulations, which are as follows:

i. Legal Metrology (General) (Amendment) Rules, 2021

ii. The Legal Metrology (Government Approved Test Centre) Amendment Rules, 2021

iii. The Legal Metrology (Packaged Commodities) Amendment Rules, 2021

iv. Consumer Protection (E-Commerce) (Amendment) Rules, 2021

v. The Consumer Protection (Direct Selling) Rules, 2021

vi. The Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021

* Professor of Law, Chair on Consumer Law and Practice [Ministry of Consumer Affairs, Govt. of India] National Law School of India University, Bangalore.

vii. The Central Consumer Protection Authority (Annual Report) Rules, 2021

viii. The Central Consumer Protection Authority (Form of annual statement of accounts and records) Rules, 2021

ix. The Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.

x. The Consumer Protection (Search and Seizure and Compounding of offences by the Central Authority and Crediting of Penalty) Rules, 2021

xi. The Central Consumer Protection Authority (Procedure for Engagement of Experts and Professionals) Regulations, 2021

xii. The Central Consumer Protection Authority (Submission of Inquiry or Investigation by the Investigation Wing) Regulations, 2021

xiii. The Bureau of Indian Standards (Conformity Assessment) First Amendment Regulations, 2021

xiv. The Bureau of Indian Standards (Conformity Assessment) Second Amendment Regulations, 2021

xv. The Hallmarking of Gold Jewellery and Gold Artefacts (Amendment) Order, 2021

xvi. The Bureau of Indian Standards (Conformity Assessment) Third Amendment Regulations, 2021

xvii. The Hallmarking of Gold Jewellery and Gold Artefacts (Second Amendment) Order, 2021

xviii. Removal of Licensing Requirements, Stock Limits and Movement Restrictions on Specified Foodstuffs (Second Amendment) Order, 2021

In the meanwhile, the Consumer Commissions and Supreme Court have also played a vital role in the protection of the rights of the consumers. Numbers of judgments have been pronounced by the Supreme Court and consumer commissions by setting new principles, properly interpreting the provisions of existing laws and clearly defining the rights of consumers. This year many judgments have been pronounced on different issues such as defective products, deficiency in services, misleading advertisements, unfair terms of the contract and unfair trade practices in different sectors such as the automobile sector, banking, e-commerce, education, real estate, *etc*. Judgments defining the power and jurisdiction of commissions have also been delivered.

II JURISDICTION, POWER AND FUNCTIONS OF CONSUMER COMMISSIONS

Consumer complaints filed before the coming into effect of the Consumer Protection Act, 2019 (CPA 2019) should continue in the fora in which they were filed as per the pecuniary jurisdiction under the previous Consumer Protection Act of 1986 (CPA 1986).

In *NeenaAneja* v. *Jai Prakash Associations Ltd.,*[1] the respondent 'Jaypee Greens', Noida provisionally allotted a residential unit in a real-estate project described as

1 2021 SCC OnLine SC 225; MANU/SC/ 0190/ 2021.

'KRESCENT Homes' which was being developed by them to the consumer/appellant based upon the advance payment of Rs. 3.50 lakhs on November 25, 2011 by the appellants (consumers). The total consideration was fixed at Rs.56.45 lakhs and possession was intended to be conveyed within a period of 42 months from the execution of the agreement of the provisional allotment letter. The appellants stated that till date they have paid an amount of Rs. 53.84 lakhs out of the total consideration of Rs. 56.45 lacs. Since the possession was not handed over by the respondents, on June 13, 2017, on 27 April 2020, the appellant sought a refund of the consideration together with interest at 18 per cent. On June 18, 2020, the Appellants instituted a consumer complaint before the National Consumer Dispute Redressal Commission (NCDRC) for refund of entire amount with interest. The consumer complaint was dismissed by an order dated July 30, 2020 for want of pecuniary jurisdiction. On filing the matter before NCDRC, single bench of NCDRC held that following the enforcement of the Act of 2019 on July 20, 2020, the limits of its pecuniary jurisdiction stands enhanced from rupees one crore to rupees ten crores and the complaint instituted by the Appellants is consequently not maintainable. The appellants instituted a petition seeking a review of the order. The review petition was dismissed on October 5, 2020 leading to the institution of the appeal before Supreme Court.

Supreme Court held that consumer complaints filed before the coming into effect of the Consumer Protection Act, 2019 (CPA, 2019) should continue in the *fora* in which they were filed as per the pecuniary jurisdiction under the previous Consumer Protection Act of 1986 (CPA, 1986). Bench set aside the directions of the National Consumer Disputes Redressal Commission which stated that the previously instituted cases as per the 1986 Act should be transferred to the respective fora as per the new pecuniary limits under the 2019 Act. It mentioned that all proceedings instituted before July 20, 2020 shall continue to be heard by the fora constituted under the 1986 Act and they are not to be transferred to the new fora as per the pecuniary jurisdiction as per the 2019 Act. Bench also referred section 107 of the CPA 2019, which repealed the 1986 Act and held that section 107 (2) has saved "the previous operation" of any repealed enactment or "anything duly done or suffered thereunder to the extent that it is not inconsistent with the provisions of the new legislation". Section 107(3) indicates that the general application of section 6 of the General Clauses Act is not prejudiced. It further referred to section 6 of the General Clauses Act which provides for governing principles with regard to the impact of the repeal of a central statute or regulation. These governing principles are to apply, "unless a different intention appears". Clause (c) of Section 6 inter alia stipulates that repeal would not affect "any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed". Clause (e) of Section 6 ensures that a legal proceeding which has been initiated to protect or enforce "such right" will not be affected and that it can be continued as if the repealing legislation has not been enacted. The Supreme Court observed that there is no express language indicating that all pending cases would stand transferred to the fora created by the Act of 2019 by applying its newly prescribed pecuniary limits.

Demanding disproportionate compensation to inflate the value of the complaint to reach the pecuniary jurisdiction of the NCDRC is an abuse of the process of law

In *M.V. Madhu Sudhana* v. *State Bank of India*[2] the complaint was given a cash credit limit of Rs.25 lakhs by the State Bank of India. It is alleged by the complainant (consumer) that opposite party had committed deficiency of service as an interest of Rs. 18,66,719/- had been demanded from the complaint against the outstanding loan of Rs. 23 lakhs. The complainant lodged a complaint before the National Commission praying the National Commission to pass an award directing the opposite party:

i. to pay a sum of Rs. 19,85,27,562/- (Rupees Nineteen Crores Eighty Five Lakhs Twenty Seven Thousand Five Hundred and Sixty Two only) to the Complainant towards compensation and damages for negligence, deficiency in service and unfair trade practices;

ii. to pay a sum of Rs. 5,00,00,000/- (Rupees Five Crores only) to the Complainant for pain and mental agony;

iii. to pay a sum of Rs. 4,00,00,000/- (Rupees four crores only) to the Complainant for loss of closing of the industry of the Complainant;

iv. to pay a sum of Rs. 4,00,00,000/- (Rupees four crores only) to the Complainant for the loss of reputation

v. to pay the cost of entire litigation.

Thus it was clear that the amount claimed by the complainant in the present complaint exceeded Rs. 10 crores, whereas the value of the service is not so. NCDRC remarked that Consumer Protection Act, 2019 provides for a hierarchy of the consumer *fora* to deal with consumer complaints, depending upon the pecuniary value of the complaint. Bench noted that in the instant case, the complainant had demanded disproportionate compensation to inflate the value of the complaint and reach the pecuniary jurisdiction of this Commission which is nothing but an abuse of the process of law. Hence, the complaint was dismissed in view of the above discussion, since it did not fall within the pecuniary jurisdiction of the National Commission. Further the bench reiterated that the settled position of law, expressed that, section 58 of the Act provides that the National Commission shall have jurisdiction to entertain the complaint where value of the goods or services paid as consideration exceeds rupees ten crores.

For an application for condonation of delay to be considered, the party must show sufficient cause for not approaching the court within limitation

In Ram Kishore Prasad v. *Ashok Gupta*,[3] the revision petition was filed by the petitioner against the order dated July 1, 2017 of Bihar State Consumer Disputes Redressal Commission, Patna in first appeal no. 66/2016, whereby the appeal filed by the petitioner was dismissed. Along with the revision petition, IA/7967/2018, an application for condonation of delay was also filed by the petitioner. According to the

2 2021 SCC OnLine NCDRC 172.

3 2021 SCC OnLine NCDRC 192; MANU/CF/0150/2021.

petitioner, there is a delay of 158 days in filing the revision petition. However, according to the computation done by the registry, there is a delay of 313 days.

Dealing with the issue of condonation of delay, NCDRC held that a party who has not acted diligently or remain inactive is not entitled for condonation of delay. Condonation of delay is not a matter of right and the applicant has to set out the case showing sufficient reasons which prevented them to come to the court/commission within the stipulated period of limitation. The burden is on the applicant to show that there was sufficient cause for the delay. National Commission further held that a commission has no power to extend limitation period on equitable grounds. A court may exercise its discretion to condone delay only if sufficient cause is shown. "Sufficient cause" means an adequate and enough reason which prevented a party from approaching the court within limitation. Thus, the NCDRC dismissed the application for condonation of delay.

Appointment of president, members/staff and inadequate infrastructure of district and state commissions

In, *In RE: Inaction of the Governments in appointing President and Members/ Staff of Districts and State Consumer Disputes Redressal Commission and inadequate infrastructure across India* v. *Union of India*[4] a *suo moto* petition has been taken by the Supreme Court on inaction of governments in appointing president and members/ staff of districts and state consumer disputes redressal commissions across India. The court looked into the matter and appointed Aaditya Narain, learned counsel led by Gopal Shankaranarayan, learned senior counsel as *amicus* to assist the court in this matter.

Supreme Court gave certain directions regarding appointment of Presidents and members of the consumer commissions, which are as follows:

1. States which have not yet framed rules u/s 44 of CPA, 2019, should notify rules for salaries and allowances within 2 weeks.
2. Model rule framed by the Central Government will prevail for those States which do not notify the rule within prescribed time.
3. All existing vacancies in State and District Commission must be advertised within 2 weeks.
4. States to constitute Selection Committee as per Rule 6(1) of Qualification and Appointment of President and Members of the consumer commission.
5. All vacancies including post for President or Members should be filled up within 8 weeks in all 30 States and UT's.
6. There should be no delay if the Central Government feels that more members are required.
7. Information on infrastructure and man power must be furnished within 2 weeks.

4 2021 SCC OnLine SC 602.

8. Impact study must be done, post the legislation on other than pecuniary jurisdiction within 4 weeks.

Court divided States into States that have partially filled the vacancies and States that have not filled any vacancies. Further it held that nomination has to be made on an urgent basis. And court ordered that staffing process should be completed within next two months.

NCDRC must pass reasoned judgment along with operative order

In *Sudipta Chakrobarty* v. *Ranaghat S.D. Hospital*[5] the operative order was pronounced on 26.04.2019, and the reasoned judgment was made available after eight months. The court directed the Registrar of the National Commission to submit a report stating the number of cases in which reasoned judgments had not been passed, even though the operative order had been pronounced in court.

The Supreme Court, criticizing the practice of 'reasons to follow' orders, directed the NCDRC to pass reasoned Judgment along with the operative order. The bench observed that, in all matters before NCDRC where reasons are yet to be delivered; it must be ensured that the same are made available to the litigating parties positively within a period of two months. It also held that undisputedly, the rights of the aggrieved parties are being prejudiced if the reasons are not available to them to avail of the legal remedy of approaching the court where the reasons can be scrutinized. It indeed amounts to defeating the rights of the party aggrieved to challenge the impugned judgment on merits and even the succeeding party is unable to obtain the fruits of success of the litigation. The bench observed the recent order passed in *Oriental Insurance Co. Ltd*. v. *ZaixhuX ie*., [SLP (C) Diary No. (S) 1991/2020], which held that delay in delivery of judgments is a violation of article 21 of the Constitution of India and the problems gets aggravated when the operative portion is made available early, and the reasons follow much later, or are not made available for an indefinite period.

Applications to condone delay in filing version in consumer cases pending on March 4, 2020 not Impacted by Constitutional Bench judgment

In *Diamond Exports* v. *United India Insurance Company,*[6] an appeal from the order of NCDRC was brought before Supreme Court, wherein the NCDRC had condoned the delay of 100 days in filing a written statement. This judgment was delivered a few days before the Constitution Bench judgment of *New India Assurance Company Ltd.* v. *Hilli Multipurpose Cold Storage Pvt. Ltd.* [(2015) 16 SCC 20] (delivered on March 4, 2020) wherein it was held that the limitation period under section 13(2) of the Consumer Protection Act, 1986 could not be extended beyond the statutorily prescribed period of forty-five days.

The complainant in the instant case had bought insurance for the protection of his factory. All of a sudden fire occurred in the factory and the complainant suffered huge loss, therefore the complainant lodged the claim before insurance company, and

5 2020 SCC OnLine SC 1180; MANU/SC/0098/2021.

6 2021 SCC OnLine SC 1241.

the same was repudiated. Aggrieved by the action of the insurance company, the complainant approached the NCDRC. The NCDRC issued summons to the opposite party and the complaint copy along with all the documents on May 20, 2019. The opposite party filed the written statement on September 23, 2019 along with application to condone delay of 100 days. The NCDRC condoned the delay of 100 days along with cost considering the judgment in *Reliance General Insurance Company Ltd.* v. *Mampee Timbers and Hardwares Pvt. Ltd.* [(2021) 3 SCC 673]. (which is a division bench judgment) wherein it was held that consumer *foras* can accept the written statements beyond the period of 45 days.

Dealing with the issue whether the benefit of judgment in New India Assurance can be claimed for the instant case, the Supreme Court referred several decisions. It referred to the judgment of New India Assurance case wherein it was held that delay cannot be condoned beyond 45 days. Considering the prospective nature of this case the Supreme Court held that no interference can be made in the order of NCDRC which had allowed the application for condonation of delay on merits. The court also noted that the judgments like Reliance General Insurance Company Ltd. and Bhasin Infotech [(2018) 17 SCC 255)] have recognised an element of discretion of the consumer *foras* in deciding the delay condonation issue. Therefore, the Supreme Court did not interfere with the order of NCDRC and gave liberty to the appellants to file their replication within a period of 4 weeks. The Supreme Court also referred to *Daddy's Builder Pvt. Ltd.* v. *Manish Bhargava* [(2021) 3 SCC 669] where in it was held that ultimately it was left to the concerned *foras* to accept the written statements beyond that stipulated period of 45 days. The Supreme Court held that the decision in Daddy's Builder Pvt. Ltd. case would not affect applications that were pending or decided before March 4, 2020.

Finally, in the instant case it was laid down by the Supreme Court that, the applications to condone delay in filing version in consumer cases pending on March 4, 2020 not Impacted by Constitutional Bench judgment.

Consumer *fora* has no power to accept written statement beyond period of 45 days

In *Daddy's Builders Pvt. Ltd.* v. *Manisha Bhargava,*[7] the state commission had rejected the application filed by the petitioners herein seeking condonation of delay in filing the written statement/written version to the consumer complaint. Then the original respondent nos. 1 and 2- before the state commission preferred an appeal before the National Commission which again stood dismissed confirming the order passed by the Karnataka State Consumer Disputes Redressal Commission. Hence, against the order of the National Commission, special leave petition was filed before Supreme Court.

Supreme Court dealt with the issue "whether the State Commission has the power to condone the delay beyond 45 days for filing the written statement under section 13 of the Act?" Dismissing the appeal, the bench observed that in any case, in

7 (2021) 3 SCC 669 ; MANU/SC/0072/2021.

view of the earlier decision of this court in the case of J.J. Merchant [(2002) 6 SCC 635] and the subsequent authoritative decision of the Constitution Bench of this court in the case of *New India Assurance Company Limited* v. *Hilli Multipurpose Cold Storage Pvt. Ltd.*[(2020) 5 SCC 757], consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days and the order of the National Commission was upheld.

Consumers with same interest need not file a complaint in representative capacity but they can file joint consumer complaint before the commission.

In *Brigade Enterprises Limited* v. *Anil Kumar Virmani*[8] about 91 people purchased 51 residential apartments, in a residential complex promoted by the appellant (Brigade Enterprises Limited). There was delay on the part of the builder in handing over possession, which was the primary ground for consumer complaint in which compensation was sought by the respondents before the National Commission. Purchasers joined together and filed a consumer complaint before NCDRC. Challenging an order of the NCDRC passed under section 35(1) (c) of the Consumer Protection Act, 2019 which allowed 91 purchasers of the said 51 apartments to file a consumer complaint in a representative capacity, on behalf of and for the benefit of more than about 1000 purchasers the appeal before the Supreme Court has been brought up. Supreme Court while referring to section 35(1)(c) of the Act, observed that it enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the district commission, to file a complaint, on behalf of or for the benefit of all consumers so interested. It was further observed that the sine qua non for invoking section 35(1) (c) was that all consumers on whose behalf or for whose benefit the provision wereinvoked should have the same interest.

Relying on section 38(11) of the Act which makes the provisions of Order I Rule 8 of the First Schedule to CPC, 1908 applicable to cases where the complainant is a consumer, the bench said, "Order I Rule 8, CPC, unlike section 35(1)(c) operates both ways and contains provisions for a two- way traffic. It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity." Emphasising on the explanation under Order I Rule 8, the bench said that the same distinguished persons having the same interest in one suit from persons having the same cause of action. In this regard it further noted that to establish sameness of interest, it was not necessary to establish sameness of the cause of action. Referring to the definition of complainant under section 2(5), the bench said, "The proper way of interpreting Section 35(1) read with section 2(5), would be to say that a complaint may be filed: (i) by a single consumer; (ii) by a recognised consumer Association; (iii) by one or more consumers jointly, seeking the redressal of their own grievances without representing other consumers who may or may not have the same interest; (iv) by one or more consumers on behalf of or for the benefit of numerous consumers; and (v) the Central Government, Central Authority or state authority. While allowing the appeal, the bench modified NCDRC's order to the effect that the complaint filed by the respondents could be treated as a

8 2021 SCC OnLine SC 1283.

joint complaint filed on the behalf of only the respondents and not as one filed in a representative capacity on behalf of or for the benefit of all the owners of all the 1134 flats.

NCDRC can direct deposit of entire or more than 50% of amount ordered by SCDRC for stay

In *Manohar Infrastructure and Constructions Private Ltd* v. *Sanjeev Kumar Sharma*[9] the complaint has been filed by the complainants, seeking refund of the amount paid by them to the tune of Rs.46,85,000/- to the opposite parties towards purchase of a plot in the project launched by them under the name and style 'Palm Garden', New Chandigarh, Mohali, Punjab, on the ground that they failed to offer possession thereof, for dearth of construction and development activities. The complaint was partly allowed by the state commission and it ordered to refund the amount paid by the respective home buyers with interest. An appeal was filed by the OPs/appellants against the order of the state commission before the National Commission by depositing 50% of the decreed amount.The National Commission stayed the order passed by the state commission on condition that appellant shall deposit the entire decretal amount with interest. Dissatisfied by the impugned order passed by the National Commission, opposite parties/appellants brought an appeal before the Supreme Court of India.

The question posed before the Supreme Court of India was "Whether the National Commission in an appeal under section 51 of the CPA, 2019, while considering the stay application to stay the order passed by the state commission, can pass an order to deposit the entire amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission?".Supreme Court of India observed that condition of 50% of pre-deposit is mandatory for entertainment of an appeal by the National Commission. It was further observed that the object of the said pre-deposit condition is to avoid frivolous appeals and the said pre-deposit condition has no nexus with the grant of stay by the National Commission. It was held by the Supreme court that while considering the stay application in staying the order passed by the state commission, the National Commission can grant a conditional stay directing the appellant(s) to deposit the entire amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission, however, at the same time, the National Commission has to assign some cogent reasons and/or pass a speaking order when the conditional stay of the order passed by the state commission is passed subject to deposit of the entire amount and/or any amount higher than 50 per cent of the amount either as an *ex parte* order or after hearing both sides and considering the facts and circumstances of the case. Thus, the Supreme Court clarified that the National Commission can grant a conditional stay of the order passed by the State Commission on deposit of the entire amount and/or any amount higher than 50 per cent of the amount as ordered by the State Commission.

9 2021 SCC OnLine SC 1182.

III AGRICULTURAL SECTOR

Business entities shall properly provide the information to the farmer and shall follow up after sale, to ensure that the farmer has understood all the instructions

In *AdamaAgan Ltd.* v. *Ramesh,*[10] the respondent/complaint had sown sugarcane in one acre of land in village Baland, Tehsil and District Rohtak. He had purchased herbicides worth Rs. 7,990/- from the petitioner no. 1/OP1. It is alleged by the complainant that the crop which was otherwise doing well after spraying of herbicides, suffered severe damage. When the issue was brought to the knowledge of OP's there was no response. Further, the SDAO (sub divisional agriculture officer/office) was informed. Inspection of the affected crop was carried out and a report submitted. Consumer complaint seeking compensation of Rs. 1,60,000/- on account of crop damage was filed. The district forum hearing both the parties allowed the complaint to the extent of Rs. 72,850/-, this being the loss on account of 235 quintals of sugarcane in one acre land @ Rs. 310/- per quintal, with interest of 9% from the date of filing of the complaint. In the appeal filed before state commission, reasoning and logic of the district forum was upheld by the state commission. Hence, an appeal was filed before the National Commission.

National Commission opined that no ground for revision of the state commission's order was required. Bench observed that an internal circular of deputy director of agriculture was circulated regarding the composition of the inspection team for the purpose of smooth functioning of the department of agriculture in its subordinate filed offices for fulfilling its role of assisting the farmers, including taking prompt action on any complaint as is in the present matter. Further, the Commission stated that, to not have included a representative of the OPs was, at worst, an irregularity but doesn't appear to have *mala fide* intention. Commission also added to its reasoning that the business entities *viz.,* dealers, manufacturers of agricultural inputs (seeds, herbicides) carry a special responsibility. They are expected to properly inform the farmer and follow up after sale, to ensure that the farmer has understood and is following all the instructions. Further it held that the same goes for the manufacturers of agri-inputs: their dealers should be properly trained to ensure that they see their job as not merely one selling but as providing after-sale service through regular follow up. Referring to the decision of the Supreme Court in *Rubi (Chandra) Dutta* v. *United India Insurance Co. Ltd.,* (2011) 11 SCC 269, NCDRC dismissed the revision petitions and upheld the order of the state commission.

IV ARBITRATION SECTOR

The arbitral award may be appealed under section 34 of the Arbitration and conciliation Act.

In *Mir Alam* v. *Magma Finance Corporation, 2021*[11] Mir Alam (the petitioner) filed consumer complaint no. 74/2017, for restraining the opposite party to repossess the truck (bearing registration no. OD-01, M-0554), to issue no objection certificate

10 2021 SCC OnLine NCDRC 3; MANU/ CF/ 0014/2021.

11 SCC OnLine NCDRC 295; III (2021) CPJ 279 (NC).

for deleting endorsement of hypothecation, from the truck, to pay a sum of Rs. 10,000/- for mental agony, to pay cost of the litigation and any other relief to which the complainant will be entitled. It has been stated that the complainant purchased the truck (bearing registration no. OD-01, M- 0554), for Rs. 24 lakhs, in which the opposite party had financed Rs. 18,14,477/- on December 31, 2014, after executing a loan agreement. Till the date of filing of the complaint, the complainant had paid Rs. 19,51,000/- but the opposite party was charging exorbitant interest against guidelines of Reserve Bank of India and showing dues. On OP's side it has been stated that the complainant had committed serious defaults in payment of the instalment of the loan. When in spite of the demand notices being served, the complainant did not turn up for payment of the instalments of the loan, then invoking arbitration clause under the loan agreement, the matter was referred to the arbitrator. The complainant did not appear before the arbitrator also in spite of the notice as such, the arbitrator gave in his ex-parte award, holding the opposite party to pay a sum of Rs. 21,79, 342/- on April 28, 2016. In execution of arbitrator's award dated April 28, 2016, the opposite party repossessed the truck on September 10, 2017, after serving inventory upon the driver the truck. On October 5, 2017, the muscle men of the opposite party tried to repossess the truck, when the truck was near Bishunpurbindha but due to interference of general public, they could not succeed but they gave threatening to repossess the truck later on. On these allegations, the complaint was filed. Dealing with the issue whether the consumer complaint is maintainable after the arbitrator's award, the District Forum allowed the complaint. On appeal, the state commission over turned the judgement of district forum and held that after arbitrator's award dated April 28, 2016 was in the same dispute as such the consumer complaint was not maintainable.

On further appeal, the National Commission upheld order of State Commission and stated that the consumer complaint is not maintainable as:

> i. The Arbitrator's award is final under Section 35 of the Arbitration and Conciliation Act, 1996. The authorities under Consumer Protection Act, 1986 do not exercise supervisor or appellate powers over the Arbitrator's award.
>
> ii. The remedy of the complainant was to file an application for setting aside ex parte Arbitrator's award under Section 34 of the Arbitration and Conciliation Act, 1996 or to file an appeal against it.

V AUTOMOBILE SECTOR

Selling a second-hand car, in place of a new car, after accepting the full consideration price for a new car, inter alia constitutes 'unfair trade practice' under Section 2(1)(r) of the Consumer Protection Act.

In *Shashank Shah* v. *Gurjeet Singh Maan,*[12] the Complainant (Consumer) had paid the full consideration price for purchasing a new car from the Opposite Party (OP), the OP had agreed that the he will deliver a new car; however, later he delivered a second hand car. After knowing this, the complainant filed a consumer complaint

12 2021 SCC OnLine NCDRC 171.

before district commission alleging unfair trade practices. OPs/respondents refuted the allegations levelled by the complainant in the complaint and averred that at the time of Chhattisgarh Rajyotsav Fair, the vehicle was booked by one Hardeep Singh Hora, on payment of Rs.10,000/-. But, later on, no amount was paid by that person and the vehicle was never delivered to Hardeep Singh Hora and so it remained a brand new vehicle and it was sold to the complainant. As such it was not an old or second-hand vehicle and so no amount was payable to the complainant as compensation. The district commission held that the car sold was second hand car and it awarded compensation to opposite party to pay. Then an appeal was filed before state commission challenging the said order. State commission determined that the district forum was correct in concluding that a second-hand car was delivered to the complainant instead of a new one. Further, it was also determined that the compensation awarded by the district forum was just and equitable. Against this judgment, revision petition was instituted under section 21(b) of the Consumer Protection Act, 1986 before NCDRC.

NCDRC noted from the examination made by two fora below, after obtaining the total consideration price of new car, a second-hand car, was delivered by the OPs to the complainant. Commission remarked that the present case revolved around unfair trade practice and stated that: Factum of selling a second-hand car, in place of a new car, after accepting the full consideration price for a new car, inter alia constitutes 'unfair trade practice' ("unfair method or unfair or deceptive practice") within the meaning of section 2(1)(r) of the Act 1986. Hence, the district forum's order which was upheld by the state commission was sustained.

Sale of defective car due to dealer's fault will not make car manufacturer liable unless knowledge can be proved.

In *Tata Motors Ltd* v. *Anonio Paulo Vaz*[13] The 1st respondent(Consumer) *i.e.,* Anonio Paulo Vaz bought a car after paying the agreed total consideration price in 2011 to the 2nd respondent, Vistar Goa (P) Ltd., (the dealer) manufactured by the appellant by Tata Motors Pvt. Ltd. (the Manufacturer). At the time of purchase, 1st respondent had taken loan. A 2009 model car which had run 622 kilometres was sold to him in place of a new car of 2011 make. Therefore, the 1st respondent/consumer sought for refund of the amount and a legal notice was issued to the dealer. Later, as he did not get any response from the dealer and the Appellant, he moved to the Goa District Commission and filed a complaint. The District Forum allowed the reliefs sought in the complaint, holding the manufacturer and dealer liable jointly and severally and directed to pay Rs. 20,000/-. Tata Motors filed appeal in the state commission arguing that it cannot be held liable for the dealer's fault. The appeal was dismissed. Then appeal was filed before National Commission. The National Commission, in further appeal by Tata Motors, affirmed the findings of state commission and the district forum. Aggrieved, the manufacturer Tata Motors approached the Supreme Court.

13 2021 SCC OnLine SC 125; MANU/SC/0099 / 2021.

The Supreme Court, after examining the terms of the dealership agreement, noted that the relationship was on a "principle-to principle" basis. The court also noted that there were no pleadings by the Complaint that Tata Motors had special knowledge of the deficiencies of the dealer. It is difficult to expect the appellant, a manufacturer, to be aware of the physical condition of the car, two years after its delivery to the dealer. Unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its relationship with the dealer, in the facts of this case, were on principal to- principal basis. At last the court held that manufacturer is not liable for the dealer's deficiency.

VI BANKING SECTOR

RBI Guidelines on recovery by private banks are applicable to loan/hypothecation agreements and before taking possession of hypothecated property, proper notice is essential, otherwise it would be deficiency of service.

In *Shriram Transport Finance Co. Ltd.* v. *Nikil Patra,*[14] the complainant had purchased a tractor *i.e.,* Power Track Tractor, from Soket Motors (opposite party-1), for Rs. 4,86,000/- on 25.10.2010. The complainant paid Rs. 1,86,000/- and the opposite party/petitioner financed Rs. 3,00,000/- for the purchase of the said vehicle. Loan was payable in 55 monthly instalments of Rs. 9,855/-, *i.e.,* up to 20.04.2015. The complainant paid monthly instalments regularly up to May, 2012. However, due to financial problem and the illness of his wife, the complainant committed default in payment of 3 instalments. The financer/Petitioner, through their muscle men, took forcible possession of the tractor on 01.08.2012. The Petitioner did not give any prior notice for taking possession of the tractor. The complainant visited to the branch office of Petitioner at Padua and prayed to release the tractor. Then the petitioner asked the Complainant to deposit Rs. 40,000/-. The complainant managed the aforesaid amount and went to the branch office for deposit of that amount, then demand was enhanced to Rs. 50,000/-, thereafter to Rs. 60,000/- and Rs. 1,20,000/-. The tractor was source of earning for the family of the complainant. Due to the opposite party taking forceful possession of the tractor, the complainant was deprived of his source of livelihood. The complainant gave legal notice dated January 24, 2014 but the financer did not respond. On these allegations, the complaint was filed, against the financer Shriram Transport Finance Company Limited, (the petitioner) and Sri Arun Ghosh (the dealer of the tractor) for (i) return of the tractor, (ii) to pay Rs. 5,00,000/- as the financial loss and for mental harassment and (iii) any other relief for which he was entitled. The district forum allowed the complaint and held OPs liable for deficient services since the tractor had been repossessed without notice due to which the complainant was deprived from the source of his earning. The state commission upheld district forum order. Subsequently, an appeal was filed before the National Commission.

The National Commission upheld both State Consumer Dispute Redressal Commission and district forum order and held that in the present case, the dominant purpose of the agreement dated October 15, 2010 was to obtain loan of Rs. 3 lakhs to

14 2021 SCC OnLine NCDRC 297; MANU/CF/0184/2021.

purchase the tractor, as such the guidelines issued by Reserve Bank of India dated July 1, 2006 was binding upon the financer and 60 days prior notice was mandatory. Admittedly no notice was given by the financer to the complainant before taking possession of the tractor on August 1, 2012. The tractor was the source of earning and due to illegal repossession of the tractor; the complainant had suffered financial loss in both way that it was from source of earning and he was liable to pay interest/penal interest to the financer. Further it was held that the impugned orders do not suffer from any illegality therefore the matter was dismissed.

Banks cannot impose unilateral and unfair terms on the consumers while operating bank lockers.

In *Amitabha Dasgupta* v. *United Bank of India,*[15] the appellant's mother (since deceased) had taken one bank locker with Respondent No.1's Bank in 1950's. The Appellant/ Complainant were included as a joint holder of the locker. However, the Appellant was informed that the Bank had broken to open his locker on 22.09.1994 for non-payment of rent dues for the period of 1993-1994. Further, that the locker had subsequently been reallocated to another customer.

The Appellant sent communications to respondent no.1 contending that breaking the locker without permission or intimation was illegal since he had cleared all the dues. The chief manager of respondent 1(bank), who was respondent no. 3 in the present appeal, had responded to the communication and apologized for the same. When the appellant went to collect the contents of the locker, it is alleged that he found only two (one pair of bangles and one pair of ear push) of the seven ornaments that had been deposited in the locker in a non-sealed envelope. However, respondent no.1 bank contended that only those two ornaments were found in the appellant's locker when it was broken open.

The appellant filed a consumer complaint before the district consumer forum ('district forum') calling upon respondent no. 1 to return the seven ornaments that were in the locker; or alternatively pay Rs. 3,00,000/- towards the cost of jewellery, and compensation for damages suffered by the appellant. The district forum allowed the complaint and held respondent no. 1 liable for deficiency of service. On appeal, state commission upheld the order of district commission; however, with respect to recovery of the cost of the ornaments, it held that the dispute on the contents of the locker can only be decided upon provision of elaborate evidence. Against this order, one revision petition was filed before National Commission and National Commissions also upheld the order of the state commission. Aggrieved by this, appeal was filed before Supreme Court.

The Supreme Court observed that the banks owe a duty of care to exercise due diligence in maintaining and operating their locker or safety deposit systems and that they cannot contract out of the minimum standard of care in this regard. The Supreme Court directed the Reserve Bank of India to lay down rules and regulations mandating the steps to be taken by banks with respect to locker facility/safe deposit facility

15 2021 SCC OnLine SC 124; MANU/SC/0100/2021.

management. The Supreme Court further held that until such regulations are framed and issued by the RBI, the following guidelines have to be followed by the bank:

(a) This includes maintenance of a locker register and locker key register. (b) The locker register shall be consistently updated in case of any change in allotment. (c) The bank shall notify the original locker holder prior to any changes in the allotment of the locker, and give them reasonable opportunity to withdraw the articles deposited by them if they so wish. (d) Banks may consider utilizing appropriate technologies, such as block chain technology which is meant for creating digital ledger for this purpose. (e) The custodian of the bank shall additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and the date and time on which they were opened and closed. (f) The bank employees are also obligated to check whether the lockers are properly closed on a regular basis. If the same is not done, the locker must be immediately closed and the locker holder shall be promptly intimated so that they may verify any resulting discrepancy in the contents of the locker. (g) The concerned staff shall also check that the keys to the locker are in proper condition. (h) In case the lockers are being operated through an electronic system, the bank shall take reasonable steps to ensure that the system is protected against hacking or any breach of security. (i) The customers' personal data, including their biometric data, cannot be shared with third parties without their consent. The relevant rules under the Information Technology Act, 2000 will be applicable in this regard. (j) The bank has the power to break open the locker only in accordance with the relevant laws and RBI regulations, if any. Breaking open of the locker in a manner other than that prescribed under law is an illegal act which amounts to gross deficiency of service on the part of the bank as a service provider. (k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open of the locker. Moreover, the locker shall be broken open only in the presence of authorized officials and an independent witness after giving due notice to the locker holder. The bank must prepare a detailed inventory of any articles found inside the locker, after the locker is opened, and make a separate entry in the locker register, before returning them to the locker holder. The locker holder's signature should be obtained upon the receipt of such inventory so as to avoid any dispute in the future. (l) The bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker. In case the locker remains inoperative for a long period of time, and the locker holder cannot be located, the banks shall transfer the contents of the locker to their nominees/legal heirs or dispose of the articles in a transparent manner, in accordance with the directions issued by the RBI in this regard. (m) The banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times. (n) A copy of the locker hiring agreement, containing the relevant terms and conditions, shall be given to the customer at the time of allotment of the locker so that they are intimated of their rights and responsibilities. (o) The bank cannot contract out of the minimum standard of care with respect to maintaining the safety of the lockers as outlined supra.

Bank is Liable for Fraudulent Online Transaction If Account Holder's Fault Not Proved

In *HDFC Bank* v. *Jesna Jose*,[16] the complainant (consumer) had stated that the credit card was in her possession when the disputed transactions had taken place and the transactions had taken place remotely, several miles away from her actual location and therefore, the reason for the fraudulent transactions must be forgery/hacking of the card or some other technical and/or security lapse in the electronic banking system through which the transactions had taken place. The opposite party-bank on the other side stated that the credit card must have been stolen and that it is due to the card holder's negligence that she lost safe custody of her card. Aggrieved by this, the complainant had filed consumer complaint before district commission wherein the bank was held liable. Against this decision, the bank had filed an appeal before state commission which was also dismissed. Later another appeal was filed before the National Commission to quash the order of the state commission.

Dealing with the issue, National Commission noted that the bank had failed to produce any evidence to substantiate its averment that the credit card was stolen or that the complainant had resorted to any fraud/forgery. The National Commission held that the Bank is liable for fraudulent transaction happened in online transaction if the fault of account holder is not proved.

If a fund transfer is affected through net banking and due procedure is followed by the Bank for the transfer, Bank cannot be sued for deficiency of service.

In *Nikhil Phutane* v. *HDFC Bank Ltd.,*[17] petitioner/complainant (consumer) was an account holder of HDFC Bank and was working as an officer with Qatar National Bank. He had deposited an amount of Rs. 4,60,000/-. However, after some time, to his surprise that the entire balance was transferred from his account to another account as per the bank statement. Later he filed a complaint in view of the above, the culprit was found by the police but only an amount of Rs. 70,500/- could be recovered. Alleging deficiency in service and seeking recovery of the balance amount, the complainant/petitioner filed the consumer complaint. OPs denied the fact of their bank being involved in any fraudulent act. They contended that funds were transferred as per the instructions received from the complainant through net banking and since the complainant did not respond to the verification e-mails and messages about the transfer request received by the bank, the transfer was processed. Further, the OPs contended that the complainant was informed after the transaction was completed. District forum allowed the complaint, whereas the state commission held that the complainant failed to establish negligence against the bank. State commission also added that the Bank after following the due procedure transferred the funds. Being aggrieved with the State Commission's Order, the present revision petition was filed by the consumer before the National Commission.

16 2020 SCC OnLine NCDRC 507; MANU/CF/0531/2020.

17 2021 SCC OnLine NCDRC 51; MANU/CF/0107/2021.

During the proceedings before the National Commission it was observed that the Bank after following the due procedure transferred the fund and there was neither negligence nor deficiency in service committed by the Bank. On request for transfer of funds, the Bank had sent verification mail and sms. The Bank waited for 24 hours and not receiving any adverse feed-back, proceededwith the transfer. Once the transfer of funds was made, again the Petitioner/Complainant was informed of the same by the Respondent/ Bank. Only after 47 days of transaction did the Petitioner choose to complain. Thus, the National Commission upheld the State Commission's Order that there is no deficiency in service on the part of bank.

VII E-COMMERCE

Cancellation of the confirmed order by the e-commerce company amounts to Unfair trade practice.

In *Supriyo Ranjan Mahapatra* v. *Amazon Development Centre India Pvt. Ltd.,*[18] complainant (consumer) a law student, came across an offer on Amazon India website for a laptop of a certain company for rs. 190/- as against the product's original price of Rs. 23,499/-. He placed the order for the same and also received an e-mail confirmation. However, he received a phone call from Amazon's customer care department saying his order stands cancelled due to 'pricing issues'. He tried to contact the customer care services of the Respondent Company, however, no result came out. Then he issued a legal notice for which the Respondent Company did not respond. Then he moved to District Commission Odisha and filed a complaint. His complaint was allowed and he was awarded compensation of Rs. 10,000/-. However, he filed an appeal before state commission praying for enhancement of compensation.

The commission held that when there is advertisement made for offer placed the opposite party who is a reputed online shopping website and made offer as per the materials available on record and the complainant placed the order and same has been confirmed, the agreement is complete between the parties. It observed that had there been cancellation before receipt of confirmation, the matter would have been considered otherwise. It also held that when the concerned seller was allowed at the e-commerce website's platform, the latter's responsibility cannot be lost sight of. The commission rejected Amazon's contention that the agreement was with a third party and that it was not privy to the contract between the student and the laptop retailer. Finally it was held by the commission that act of Amazon India for retracting an offer for sale of laptop at Rs. 190/-, after accepting the order is 'unfair trade practice' and compensation should be Rs.30,000/ for unfair trade practice.

VIII FALSE ENDORSEMENT/MISLEADING ADVERTISEMENT

Brand ambassador or endorser can be held liable for false claims through advertisements

In *Francis Vadakkan* v. *The Proprietor.*,[19] the complainant (consumer) bought the cream *viz.,* Dhathri Hair Cream for the first time in January 2012 for Rs. 376/-

18 First Appeal No. 492 of 2018, order dated Jan.11, 2021.

19 Consumer Complaint No. 345 / 2012, order dated Dec. 29, 2020.

after seeing the advertisement in which one Anoop Menon promised that the use of the product for six weeks will assure lush hair growth. Though the complainant used the cream, no improvement happened. Consumer approached the Thrissur District Consumer forum for Rs. 5 lakh compensation alleging 'deficiency in service' by the opposite parties. However, Mr. Anoop Menon admitted that he has never used the product and that he has only used the hair oil prepared by his mother.

It was observed by the forum that the manufacturer could not deliver the result of the product as claimed by him. The Forum also noted that that the brand ambassador had appeared in the advertisement without even using the product. Dealing with the issue of false endorsement of product by the product brand Ambassador the Forum held that the endorser/brand ambassador is liable for making false claims endorsing a hair cream product without ascertaining its effectiveness.

Advertisement / sale of articles claiming they have miraculous or supernatural properties is illegal

In *Rajendra Ambhore* v. *Union of India,*[20] the Petitioner (Consumer), during March 2015, came across advertisements on TV channels and the advertisements were propagating that there were special, miraculous and supernatural properties / qualities in Hanuman Chalisa Yantra, which the advertiser was selling. The purpose of the advertisement was to promote the sale of said Yantra. It was contended that it was a false propaganda and the propaganda was made to exploit people. There was a propaganda that by using aforesaid Yantra, the businessmen who were making losses had started making huge profits, the people who were not having employment had got employment, the people who had lost hope to make career had made career in service, the students had improved their performance, sick people had recovered from illness and the Yantra had brought happiness to the people, who were grieved. It was contended that false propaganda was made that entire Hanuman Chalisa was written on Yantra in Germany and each letter written would last lifelong. In the advertisement made on TV channels the price of Yantra was given as Rs. 4,900/- and it was advertised that this was concessional rate. Along with this, some celebrities shared their views on the yantra which was telecasted in the said advertisement. Believing this, the Petitioner placed an order for the said yantra. However, nothing has happened as mentioned in the advertisement. Aggrieved by this, the petitioner had made representations to Prime Minister and Police to prevent such advertisements. However, he filed a criminal writ petition before the High Court of Bombay and challenged such advertisements.

High Court of Bombay observed the arguments and held that the propagation for sale by advertisement of any article by giving it name as Yantra or otherwise, by attaching the name of any God to such article including the name of Lord Hanuman or any Baba with representation that these articles have special, miraculous and supernatural properties/qualities and making representation that these articles will help human being to become happy, to make progress in business, to make progress

20 Crl. W.P. No. 469 of 2015, High Court of Bombay.

in profession, to make advancement in career, to make improvement in performance in education, to get recovery from any disease etc., is illegal. The Court examined the case through the lens of provisions of the Maharashtra Prevention and Eradication of Human Sacrifices and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. On perusal of the Black Magic Act, the Court held that the definition of propagation, quoted already, shows that advertisement of present nature is covered by the definition. Section 3 of the Black Magic Act prohibits not only commission of act of black magic, evil practices etc., but also propagation, promotion of such practices and magic. Section 3(2) of this Act shows that abetment of such propaganda is also an offence. Thus, TV channels, which telecast such advertisement, also become liable under section 3 of the Black Magic Act.

IX INSURANCE SECTOR

Insurance claim cannot be repudiated arbitrarily

In *G.N. Hallmarking and Refinery Private Limited* v. *National Insurance Company Ltd.*,[21] the appellant/complainant(consumer) was a company engaged in the business of gold jewellery hallmarking and testing of jewellery, refinery and testing of gold. The appellant took jeweller's block policy for a sum of Rs. 4,52,00,000/- from the respondents/insurance company. The policy was valid from May 4, 2009 to May 3, 2010. It was claimed by the Complainant that that two unknown persons snatched and fled away with the bag containing jewellery, at Hariram Goenka Street. Thereafter, a complaint was lodged on the same day at posta police station by the director of the appellant company. Appellant filed an application under section 156(3) Cr. P.C. before the Additional Chief Metropolitan Magistrate, Kolkata who, vide order dated December 11, 2009, allowed the application with a direction to the Office-in-Charge of Posta Police Station to register a case and investigate into the matter. The Police submitted the final report on 18 January; 2012. During the course of investigation, the appellant filed an insurance claim with the respondents/ insurance company. Loss incurred to the appellant was intimated to the respondents/ insurance company, *vide* letter dated December 2, 2009. The respondents appointed Sri Subroto Banerjee as Surveyor, who interrogated JogeshTodkar and recorded his statement. The respondents, however, did not settle the claim, despite several reminders. When the director of the appellant personally visited the office of the respondent to enquire about the status of the insurance claim, he was informed that the claim of the complainant had already been repudiated. The appellant, vide letter dated November 30, 2012, requested the opposite party to officially communicate the repudiation letter. Appellant was informed that its claim had been repudiated on August 9, 2012. Aggrieved by the repudiation of the claim, the appellant filed a consumer complaint before the state commission. The state commission allowed the complaint in part. Subsequently an appeal was brought before the National Commission.

The National Commission rejected the appellants contention that the value of gold increases day by day and therefore, the state commission erred in law by disregarding the prayer of the appellant for a sum of Rs. 42,86,293/- because:

21 2021 SCC OnLine NCDRC 299

i. The award of compensation must be restricted to the amount that had been claimed by the Appellant under the Insurance Policy. A perusal of the Insurance Claim form shows that the Appellant had only claimed Rs. 25,78,680/- from the Insurance Company.

ii. If valuation of the lost gold is determined as on date when reimbursement is made, it would open a Pandora's box where the beneficiaries of such Policies may seek undue benefit by deliberately delaying reimbursements.

Appeal was partly allowed holding the insurance company liable for arbitrarily repudiating the claim.

Where insured had taken the add on covers of new vehicle replacement; he is entitled for payment of amount to be determined under the clauses of new vehicle replacement contained in the insurance policy.

In *Ravish Singh* v. *IFFCO Tokio G.I.C. Ltd.,*[22] the complainant purchased a second hand BMW X5 3.0 7 Seater SUV, 2010 make car bearing registration no. HR26AU-0010 from Zara Infrastructure Pvt. Ltd. and got transferred the insurance policy no. 30343167 issued by the opposite party insurance company, which was valid from 30.03.2017 to 29.03.2018. The insured declared value of the said vehicle was Rs. 29,31,140/-). The opposite party insurance company charged premium of rs. 1,19,915.85/- The policy also included "Add on Covers" falling under Value Auto Coverage, i.e., 'Depreciation Waiver Cover' and 'New Vehicle Replacement Cover' for which additional premium of Rs. 35,906.46/- towards "Depreciation Waiver Cover" and Rs. 20,954/- towards "New Vehicle Replacement Cover" were paid to the Opposite Party Insurance Company. During the currency of the Policy, i.e., on 06.11.2017, unfortunately the insured vehicle met with an accident and was severely damaged. The Opposite Party Insurance Company was informed immediately and the claim was submitted. A surveyor was appointed by the Opposite Party Insurance Company who reported that the vehicle was non-repairable and it was a case of total loss. It is submitted that despite receiving additional premium of Rs. 35,906.46/- and Rs. 20,954/- towards Add on Covers, i.e., 'Depreciation Waiver Cover' and 'New Vehicle Replacement Cover' respectively, the Opposite Party Insurance Company did not replace the damaged Vehicle of Complainant with a New Vehicle. The complainant filed case alleging deficiency in service and unfair trade practice on the part of opposite party insurance company. The state commission partly allowed the complaint. on appeal before the national commission, the national commission upheld order of state commission and held that as the vehicle, in question, had been declared by the surveyor as non-repairable and a case of total loss and the complainant had taken the policy with add on covers of new vehicle replacement and depreciation waiver cover, the complainant is entitled for payment of amount to be determined under the clauses of new vehicle replacement and depreciation waiver contained in the insurance policy.

22 2021 SCC OnLine NCDRC 293; MANU/CF/0178/2021

X MEDICAL NEGLIGENCE

Mere repeal of the 1986 Act by the 2019 Act, without anything more, would not result in exclusion of 'health care' services rendered by doctors

In *Medicos Legal Action Group* v. *Union of India (Through Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution)*[23] a public Interest Litigation (PIL) petition was moved by Medicos Legal Action Group, a registered trust in Chandigarh seeking a declaration from the Court that services performed by healthcare service providers would not be governed by the Consumer Protection Act, 2019 and further seeking the Court's leave to direct all consumer fora to not register complaints filed under the 2019 Act against healthcare service providers. The petitioner submitted that the Consumer Protection Bill, 2018 before the 2019 Act had led to exclusion of '*healthcare*' from the definition of the term "service" as defined in the Bill. It was further pointed out to the Court that the Minister for Consumer Affairs, Food and Public Distribution, had stated on the floor of the Parliament that 'healthcare' had been deliberately kept out of the 2019 Act which indicates the parliamentary intent of not including 'health care' within the definition of "service" in the 2019 Act. It was further argued that term 'health care' has not been included in the definition of "service", as defined by section 2(42) of the 2019 Act. The Bench proceeded to compare the term 'service' as defined under section 2(1)(o) of the 1986 Act and in section 2(42) of the 2019 Act and accordingly observed, "Reading the two definitions, we do not see any material difference between the two. Except inclusion of 'telecom' in section 2(42) of the 2019 Act, the terms of the definition are identical." It was further observed that although Section 2(1)(o) of the 1986 Act did not specifically include services rendered by doctors within the term "service", however such an inclusion was considered by the Supreme Court in its decision in *Indian Medical Association* v. *V. P. Shantha*. Further it was held by the Supreme Court that mere repeal of the 1986 Act by the 2019 Act, without anything more, would not result in exclusion of 'health care' services rendered by doctors to patients from the definition of the term "service". Accordingly, it was observed that petition was *'a thoroughly misconceived Public Interest Litigation*' and petition was dismissed with costs of Rs 50,000.

Negligence in carrying the patient on wheel chair amounts to deficiency in service.

In *Director Administration, P.D. Hinduja National Hospital and Medical Research Centre* v. *Harsha Ashok Lala*,[24] the complainant Harsha Ashok Lala (Consumer) came to the P.D. Hinduja National Hospital (the petitioner/opposite party) for follow-up check-up after her spinal surgery. The petitioner alleged that she was very rashly and negligently wheeled from hospital corridor, on the ramp by an unidentified security guard without putting the seat belt, as a result of which she suffered 'head on fall' from the wheelchair and sustained fracture of left (ankle) lower end fibular tip. She further alleged that immediate first aid was not given, and she was made to stand in que for payment of X-Ray charges which caused further pain

23 2021 SCC OnLine Bom 3696.

24 2021 SCC OnLine NCDRC 194; MANU/CF/0166/2021.

and agony. It was further alleged that the incidence was reported immediately to the Hospital authorities but no avail. The Hospital wilfully avoided informing the police about such serious accident in their premises. The complainant further alleged that there was gross negligence and deficiency in service from the supportive staff at the hospital. Being aggrieved by the negligent care and conduct of the opposite party, she filed the consumer complaint before the district forum and claimed compensation of Rs. 16,00,000/-. She also filed one criminal complainant-FIR in the concerned police station. The district forum partly allowed the complaint and directed the petitioner hospital to pay Rs. 1,00,000/- as compensation and Rs.10,000/- towards cost of legal proceedings to the complainant. The state commission dismissed the petitioner's appeal with costs of Rs. 25000 and directed it to pay Rs. 3,51,000/- to the complainant within one month, failing which 9% interest would be applicable.

On appeal before the NCDRC, the NCDRC upheld the award of the state commission as just and equitable having regarded to the fact that patient underwent mental agony and physical trauma. No palpable crucial error in appreciating the evidence by the two fora below, no jurisdictional error, or legal principle ignored, or miscarriage of justice, is visible. Thus, the revision petition was dismissed.

In medical negligence cases, it is important to examine whether the error of judgment/failure was such that it was negligence.

In *Shiv Kumar Sharma* v. *St. Stephens' Hospital,*[25]on August 18, 2003 the complainant Shiv Kumar sustained bodily injuries due to road accident. After First-Aid at Ambala Government Hospital, he was referred to St. Stephens Hospital, Delhi (opposite party no. 1). Mathew Varghese examined him and diagnosed it as fracture of femur (thigh bone) on right side. Later he was operated and a rod was implanted from the loin to the thigh and he was discharged. The doctor informed about successful operation. During follow-up after one month, X-ray of operated site was taken and seen by Bedi of opposite party no. 1 hospital. He assured that it would take some more time for getting everything cured. It was alleged that even after 6 months the patient was unable to walk due to pain. In the month of May, 2004 because of unbearable pain in operated leg, the patient contacted Neeraj Garg who examined the patient and took X-rays. He opined that there was a fracture of the loin bone, and advised the patient to approach the same hospital where he was first operated. However, the patient met his family doctor, Arvind Saxena, who saw all the X-ray films and opined that the fracture had occurred during the 1st operation in the operation theatre (ot) of the opposite party no. 1 hospital. Then, the complainant met Bedi and showed opinions of two doctors. Bedi, in order to protect the doctors at the opposite party no. 1 hospital, told that the fracture might have occurred due to fall somewhere else. On December 6, 2003, the patient was advised for bone grafting as there was unsatisfactory union of bones. However, the patient was not willing to undergo bone grafting. On June 4, 2004, the patient came back to the hospital with the complaint of pain in right hip and thigh. The X-ray revealed displaced intra-capsular fracture of neck femur and he was advised to undergo osteosynthesisa valgus osteotomy and fixation with angled

25 2021 SCC OnLine NCDRC 199; MANU/CF/0400/2021.

blade plate. The cost of operation was told about Rs. 45,000/-. Because of financial hardship the complainant did not opt for further surgery and approached the nearby Hedgewar Arogya Sansthan", (government hospital) Karkardooma, Delhi wherein on July 21, 2004 he was operated by Ashish and Niraj Garg. Being aggrieved by the alleged negligent treatment at the opposite party no. 1 hospital, the complainant filed the complaint no. 481/2004 before the District Forum, Tis Hazari, Delhi and claimed a total amount of Rs. 16,97,800/-. The district forum partly allowed the complaint and awarded complainant the compensation of Rs.5 Lakhs and 5,000/- as litigation costs. On appeal, the State Commission reduced the compensation from 5 Lakhs to 2.5 Lakhs.

On further appeal, the National Commission gave certain principles to determine medical negligence as follows:

i. An error of judgment/failure to make diagnosis of a complicated condition by itself does not amount to negligence, but it can be said that missing fracture neck femur which normally is missed in 50% cases, is an act of negligence.

ii. "But for" test for causation [The Supreme Court of Canada in *Clements v. Clements*, 2012 SCC 32 (Can LII)]: The plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred.

iii. Duty of care of doctor: duty of care which is required of a doctor is one involving a reasonable degree of skill and knowledge and the standard of care must be according to "general and approved practice" [*Kusum Sharma v. Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480*; Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1] Here, it has been established that the delay/failure in diagnosis of fracture neck femur contributed to the unfavourable outcome and thus, the doctor failed to fulfil his duty of care.

Thus, the NCDRC disagreed with the view taken by the state commission to reduce the quantum of compensation, that there was limited deficiency and negligence from the opposite party no. 1.

Negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability and with due care and caution.

In *J.N. Shori Multi Speciality Hospital* v. *Krishan Lal,*[26] Kiran, the wife of the complainant was under regular observation in Civil Hospital, Kalka during her pregnancy. On 15.07.2006, for labour pains she was admitted in Kalka Nursing Home and remained under observation of Nitasha. Then the patient was referred to the OP-1 - J.N. Shori Multi Specialty Hospital. The OP-2 Sangeeta Shori performed caesarean section and a female baby was delivered at 5.30 pm. According to the complainant after the operation, the patient developed pain and she became critical and unconscious; therefore the OP-2 referred the patient to PGI Chandigarh without providing any medical attendant. The patient died on the way and she was brought back to the OP-1 hospital. The death certificate issued by the OP-2 stated the cause of death as

26 2021 SCC OnLine NCDRC 291; MANU/CF/0164/2021.

septicaemia with labour pains. Alleging medical negligence on the part of the OP-1 and OP-2 causing death of complainant's wife, a consumer complaint was filed by the Complainant before the District Forum, Kalka. The district forum, allowed the complaint and ordered the OPs to pay jointly and severally a lump sum compensation of Rs. 5,00,000/- and the state commission dismissed appeal.

On appeal before the NCDRC, the NCDRC overturned the decision of the district and state commission and allowed this revision petition on the basis that the patient was in advanced stage of labour and it was an emergency. The decision of OP-2 was correct to perform emergency caesarean operation to save the life of patient and the foetus. Therefore, not referring the patient to PGIMS was neither act of omission nor negligence of OP-2. The orders of both the lower fora are set aside. The revision petition was allowed. Consequently, the complaint was dismissed.

XI REAL ESTATE

Not completing construction on time/delay in grant of possession and deducting money while refunding the money is deficiency in service.

In *Tanu Constructions Colonizers and Developers* v. *Arvind Kumar Mandal*[27] respondent (consumer) had filed a consumer complaint, before District Consumer Disputes Redressal Forum, against Tanu Constructions, Colonizers & Developers (OP/petitioner), for refund of Rs. 12,01,000/- along with interest at the rate of 18% per annum from the date of booking of the flat till realisation and, Rs. 5,00,000/- for mental agony and the costs of litigation since there was delay in construction and handing over the possession. The complainant alleged that the petitioner advertised for construction of multi-story building in the name of Vasundhara Apartments and sale of 2 BHK and 3 BHK flats in Durg. The complainant booked 2 BHK flat for total cost Rs. 12,01,000/-. On February 24, 2012, the complainant deposited Rs. 31,000/- through cheque no. 433880, drawn on State Bank of India, Durg Branch and an agreement was executed between them. Balance sale consideration was required to be deposited within 41 monthly instalments, which were deposited on the schedule dates of instalments fixed in the agreement *i.e.,* up to June 19, 2015. According to the agreement, the construction had to be completed and possession over the flat had to be delivered on the date of deposit of last instalment but neither construction was completed nor was possession handed over. In spite of several reminders, the petitioner had failed to hand over possession of the flat to the complainant although on April 3, 2017, he had assured to give possession till last week of May, 2017. The complainant then demanded for return his money along interest as mentioned in the agreement. The petitioner started refunding and total Rs. 1,16,000/- was refunded up to January 31, 2018. Thereafter, the petitioner stopped refunding money and giving any reply of his messages which were sent to him on March 24, 2018, April 1, 2018 and June 22, 2018. On these allegations, the complaint was filed for deficiency in services on July 17, 2018 along with delay condonation application. The district forum allowed the complaint and directed the petitioner to pay an amount of Rs. 10,85,000/- along with

27 2021 SCC OnLine NCDRC 198; MANU/CF/0208/2021.

interest @ 9% per annum from 19.06.2015 till its payment, Rs. 1,00,000/- towards mental agony of the complainant and Rs. 1000/- as cost. The state commission also upheld district forum's order and dismissed the appeal.

The NCDRC condoned the 12 day delay in filing of the petition in view of pandemic COVID-19, in the country and imposition of lock-down. There was deficiency in service on part of the petitioner and it was not entitled to deduct 20% because it was proved that the complainant had not committed default in payment of the instalment rather the petitioner had failed to raise construction within agreed period and hand over possession to the complainant.

Decisions cannot automatically apply in rem and ordinarily, impleadment is necessary for an order to be applicable on any party.

In *Ambience Island Apartment Owners* v. *Raj Singh Gehlot,*[28] original petition no. 93/2004 (Complaint) had been filed by 66 Apartment Owners of Ambience Island against Raj Singh Gehlot and three others before this commission under section 12(1)(c) of the Consumer Protection Act, 1986. The grievance of the flat owners was that *Firstly*, the OPs 1, 2 and 3 did not install the numbers of elevators, as promised and piled on the agony of the Flat Owners, by not maintaining the already installed lifts throughout the Apartment Complex and more particularly, in Block Nos. C, E, F and H, by Scan Elevators, OP4.The present review petition has been filed against the NCDRC order directing payment of Rs.5000/- to the 66 apartment owners stating that the same order would be applicable to all the 340 Apartment Owners as it was a joint complaint on behalf of Ambience Island Apartment Owners and not 66 Apartment Owners only. Review petition before NCDRC was filed.

Dealing with the issue whether the order is applicable to all 340 apartment owners, NCDRC dismissed the review petition and stated that the order was applicable only to the 66 owners who filed the complaint. It was observed that decisions relied upon by the decree holders are not applicable to the facts of the case in the complaint case as no orders have been passed under the provisions of Order I Rule 8 of the CPC, 1908 and the two Orders dated March 19, 2014 and November 3, 2015 cannot be interpreted to be applicable in rem. In fact, they are applicable only to the 66 Apartment Owners who have approached the commission by filing the complaint. The Review Application was dismissed and the order was confined only to the 66 apartment owners who filed the appeal.

XII CONCLUSION

The year 2021 has witnessed huge changes in policies and the approach of the adjudicating bodies in consumer protection. The reason behind is to adjust and adapt to the modern market conditions and to tackle the current issues and hurdles faced by consumers. As a result of enforcement of new Consumer Protection Act, 2019, many procedural issues where arosed during adjudication of disputes, wherein the National Commission and Supreme Court played a vital role in providing clarification of such issues. The pending cases under Consumer Protection Act,1986 will continue to be

28 2021 SCC OnLine NCDRC 292

heard by the same commission before which it is pending as per the procedure under CPA Consumer Protection Act ,1986 was one among such issue.The filling and adjudication of New Complaint enforcement of Consumer Protection Act, 2019 *i.e.,* filing after July 20, 2020 shall be according to the procedure as laid down under the 2019 Act.

Now the need of time demands, is the effective implementation of these rules which would foster the needs of the consumer and their interest. Even though 2019 Act came into force on July 21, 2020, state governments were not showing interest in implementation of this consumer welfare legislation. Hence Supreme Court in a PIL keeping case pending, directed all the state governments for implementation of Consumer Protection Act, 2019 especially for filling of vacancies of president and members; provided adequate infrastructure for mediation cell, *etc*., as a result majority of states have implemented effectively.

The object of the Act can be achieved in true spirit only when both the law-making and the adjudicating authorities work in sync with each other. On the whole, judicial decisions rendered during the year brought much needed clarity on many questions of procedural law and substantive part which foster and strengthens consumer protection.