8

CONSUMER PROTECTION LAW

*Ashok R. Patil**

I INTRODUCTION

"The interest of the consumer has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration."[1]

- Y.V. Chandrachud, J.

THE PROTECTION of the consumer is of utmost importance. The information regarding the products and services being offered to the consumers should be received by them accurately and without any bias. When the consumer is acquainted with all the information pertaining to the product correctly, he is able to exercise his right to choose in its full potential and the chance of them being misled or mistreated thereby reduces.

For the welfare of the consumers, various consumer protection policies, laws and regulations are made to ensurethe accountability of the businesses. There is always a continuous effort from the lawmakers, adjudicating bodies, and executives to ensure a safe market environment for the 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 (Packaged Commodities) Amendment Rules, 2022.

(ii) Food Safety and Standard Authority of India (FSSAI) Notification dated 30 May 2022 by the FSSAI under section 16(5) of the Food Safety and Standards Act.

(iii) The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

* Vice Chancellor National University of Study and Research in Law (NUSRL), Ranchi, Jharkhand. Accredited Mediator- Chief Editor, International Journal on Consumer Law and Practice (SCOPUS) 'Asian Law Institute Fellow''Legal Education Innovation Awardee' from MILAT- SILF

1 *Prag Ice and Oil Mills* v. *Union of India* (1978) 3 SCC 459.

(iv) Guidelines to prevent unfair trade practices and protection of consumer interest with regard to levy of service charge in hotels and restaurants.

(v) Consumer Protection (Qualification for appointment, method of retirement, procedure of appointment, term of office, resignation and removal of President and member of the State Commission and District Commission) (Amendment) Rules, 2022.

(vi) Legal Metrology (General) Amendment Rules, 2022

(vii) Bureau of Indian Standards (Hallmarking) Amendment Regulations, 2022

(viii) Food Safety and Standard (Labelling and Display) Second Amendment Regulations, 2022

(ix) CCPA Guidelines to prevent unfair trade practices and protection of consumer interest with regard to levy of service charges in hotel and Restaurant.

(x) Indian Standard (IS) 19000:2022 Online Consumer Reviews— Principles and Requirements for their Collection, Moderation and Publication.

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.

II JURISDICTION / POWER / FUNCTIONS OF CONSUMER COMMISSIONS

The consumer complaints filed under the Consumer Protection Act cannot be transferred to the high court.

In the case of *Yes Bank* v. *63 Moons Technologies Ltd.,*[2] the Supreme Court dismissed the transfer petitions filed by the petitioner' Yes Bank' and held that the consumer complaints filed under the Consumer Protection Act cannot be transferred to the high court exercising the jurisdiction under Article 226 of the Constitution of India.

Order passed by the NCDRC exercising appellate jurisdiction, can be challenged before the High Court

In the case of *Ibrat Faizan* v. *Omaxe Buildhome Private Limited*[3]*,*The Supreme Court held that an order passed by the National Consumer Dispute Redressal Commission (NCDRC) in appeal under Section 58(1) (a) (iii) of the Consumer Protection Act 2019 can be challenged in a writ petition filed before a high court under Article 227 of the Constitution. Further it was held that NCRDC is

2 MANU/SCOR/25106/2021.

3 MANU/SC/0642/2022.

a "tribunal" falling under Article 227 of the Constitution of India. Further it was observed that the appeal remedy to the Supreme Court is only with respect to the original orders passed by the NCDRC [Section 58(1)(a)(i)(ii)]. No further appeal remedy is given with respect to the appellate orders passed by the NCDRC. In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a) (iv) would be to approach the concerned high court having jurisdiction under Article 227 of the Constitution of India.

The revisional Jurisdiction of NCDRC is extremely limited

In the case of *Sunil Kumar Maity* v. *State Bank of India*[4], the National Commission's revisional jurisdiction is extremely limited. It should only be used in situations that fall within the parameters outlined in Section 21(b) of Consumer Protection Act, 1986, namely when it appears to the National Commission that the State Commission has used jurisdiction that was not granted to it by law, has failed to use jurisdiction that was granted to it, or has acted illegally or with material irregularity while exercising that jurisdiction.

Also, the court laid down that no forum established by the Act, like the Consumer Protection Act, may be closed due to the need to present detailed evidence. The test for whether a complaint will be entertained by a forum under the Act is whether the questions, no matter how complicated they may be, can be answered in a summary enquiry.

For complaints filed before commencement of CPA, 2019 appellate provisions of CPA, 1986 will apply.

In the case of *ECGC Limited* v. *Mokul Shriram EPC JV*[5], the Supreme Court referring to the various judgments held that onerous conditions of payment of 50% of the amount awarded will not be applicable for appeal to the complaints filed prior to the commencement of the 2019 Act, and for such complaints provisions of Consumer Protection Act, 1986 will apply.

In the case of *Indian Oil Corporation Ltd*. v. *Shree Ganesh Petroleum Rajgurunagar*[6], the Supreme Court overruled the case of *General Manager, Telecom* v. *M Krishnan,*[7] and held that the Act of 1986 is not a general law but a special law that has been enacted by Parliament specifically to protect the interest of consumers. Also, it was laid down that the existence of an arbitral remedy under the Indian Telegraph Act, 1885, will not oust the jurisdiction of the consumer forum. It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019.

4 AIR 2022 SC 577.
5 MANU/SC/0186/2022.
6 (2022) 4 SCC 463.
7 (2009) 8 SCC 481.

Governments shall set-up mediation cells and e-filing systems in district and state Commissions.

In the case of *In Re: Inaction of the Government in Appointing President And Members/ Staff of Districts And State Consumer Disputes Redressal Commission And Inadequate Infrastructure Across India* v. *Union of India,*[8] the Supreme Court observed that Mediation is an important, if not at times a better method of resolution of disputes and directed the States to set up the mediation cells and inform the *amicus curiae* at least a week before the next date of hearing. Also it was noted that the e-filing system has not been implemented in some of the forums. Similar direction was made for the setting up of e-filing system and to be made operational within the aforesaid time period.

The President and Member of the State Commission and District Commission if retired or demitted their office prior to the date when the Model Rules, 2020 came into force shall not be governed by the Sub Rule 2 of Rule 11 of the Model Rules, 2020 and it will apply prospectively with effect from July 20, 2020 to the President and member of the State Commission/District Commission, who retired on or before July 20, 2020.

The National Commission, in the case of *Manjula Rohtagi v. Monika Pankaj Bhattad* [9], while examining the question of suspension of the GN Shenoy, looked at the relevant provision of Consumer Protection Act, 1986 and Consumer Protection Act, 2019 giving power to the Central Government and State Government to make rules on the salary and allowance and other terms and condition of President and Members of the District Commission. The commission decided that the President and Member of the State Commission and District Commission if retired or demitted their office prior to July 20, 2020, *i.e.* the date when the Model Rules, 2020 came into force shall not be governed by the Sub Rule 2 of Rule 11 of the Model Rules, 2020 and it will apply prospectively with effect from July 20, 2020 to the President and member of the State Commission/District Commission, who retired on or before July 20, 2020. Also the provision of Sub Rule (2) of Rule 11 of the Model Rule, 2020 does not put any restriction on the President and the Members of the State Commission and the District Commission as the case may be, from practicing before all the State Commissions and the District Commissions throughout the country but the restriction to practice by the President and the Members who retire on or after July 20, 2020 shall apply to only such State Commission or the District Commission from where they were appointed or had worked. There is no restriction from practicing/appearing before the National Commission by the President and the Members of the State Commission and the District Commission who have retired on or after July 20, 2020, i.e., on or after the date of coming into force of the Model Rules, 2020 as the Central Government had specifically provided for in Sub Rule 2 of Rule 16 of the Tribunal (Conditions of Service) Rules, 2021, wherein a restriction has been imposed on the President and the Members of the

8 MANU/SCOR/38066/2022.

9 Case No. RP/236/2022 (NCDRC).

National Commission from practicing before the National Commission after their retirement. In view of the above discussion, commission was of the view that the aforesaid Principle applies to the facts of the present case. Therefore, commission set aside the restriction placed on the GN Shenoy by the State Commission.

The delay in filing the written statement be condoned in light of peculiar circumstances caused by the pandemic

In *Relaxo Footwear Ltd* v. *Xs brand Consultancy Private Ltd.*[10], the Court held that the orders passed by this court on March 23, 2020, 6-5-2020, 10-7-2020, 27-4-2021 and 23-9-2021 in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between March 15, 2020 to October 2, 2021) could still be filed within 90 days from 3-10-2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time-limit for filing the written statement by the appellant in the subject suit did not come to an end on May 6, 2021. It is also noteworthy that even before the scope of the orders passed in SMWP No. 3 of 2020 came to be further elaborated and specified in the orders dated March 8, 2021 and September 27, 2021, this Court dealt with an akin scenario in SS Group, decided on December 17, 2020. In that case, in terms of Section 38(2)(a) of the Consumer Protection Act, 2019, 30 days' time provided for filing the written statement expired on August 12, 2020 and the extendable period of 15 days also expired on August 27, 2020. Admittedly, the written statement was filed on August 31, 2020, which was beyond the permissible period of 45 days. The Constitution Bench of this court has held in *New India Assurance Co. Ltd.* v. *Hilli Multipurpose Cold Storage (P) Ltd*.[11] that the Consumer Court has no power to extend the time for filing response to the complaint beyond 45 days.

Builder's failure to obtain occupation certificate is a "Deficiency in Service" under the Consumer Protection Act

In the case of *Samruddhi Co-operative Society* v. *Mumbai Mahalaxmi Construction,*[12] the court held that it would be a deficiency in service in case there is a failure to obtain an occupancy certificate or abide by contractual obligations. Consumers have a right to pray for compensation as a recompense for the consequent liability like payment of higher taxes and water charges by the owners, arising from the lack of an occupancy certificate.

10 CS(COMM) 917/2018; MANU/DE/2777/2022.

11 2020 SCC OnLine SC 287.

12 AIR 2022 SC 428.

NCDRC should not return complaint unadjudicated for misjoinder of parties

In the case of *Brahmaputra Biochem Pvt. Ltd.* v. *New India Assurance Company*[13], the Supreme Court held that the NCDRC ought to have removed the Surveyor if it believed that he was an unnecessary party or that the pleadings were contradictory. Since it was the NCDRC's responsibility to remove an unnecessary party, the complaint would not become disjointed if the surveyor was removed from the list of parties.

III TELECOMMUNICATION SECTOR

Arbitral remedy under the Indian Telegraph Act, 1885, will not prevent the jurisdiction of the consumer forum.

In the case of *Vodafone Idea Cellular Ltd.* v. *Ajay Kumar Agarwal,*[14] the court held that under section 7B, any dispute concerning a telegraph line, appliance or apparatus, between the telegraph authority and the person for whose benefit the line, appliance or apparatus is or has been provided has to be determined by arbitration. Such a dispute has to be referred to an arbitrator appointed by the Central Government either especially for the determination of that dispute or generally for the determination of the disputes under the Section. Referring to this provision and the definitions of 'service' *etc*. under Consumer Protection Act, the bench observed: "In the present case, the existence of an arbitral remedy will not, therefore, oust the jurisdiction of the consumer forum. It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019." It was further observed that Section 2(o) of the Act of 1986 was wide enough to comprehend services of every description including telecom services and held even if there is any inconsistency between two legislations, the later law, even if general in nature, would override an earlier special law and CPA of 1986 is not a general law but a special law.

IV BANKING SECTOR

When a person avails a service for a commercial purpose, to come within themeaning of 'consumer', he will have to establish that the services were availed exclusively for the purposes of earning his livelihood by means of self-employment.

In the case of *Shrikant G. Mantri* v. *Punjab National Bank*[15]*,*The Supreme Court observed that when a person avails a service for a commercial purpose, to come within the meaning of 'consumer', he will have to establish that the services were availed exclusively for the purposes of earning his livelihood by means of self-employment. Further the Supreme Court noted that the relations between the parties in this case is purely "business to business" relationship and held such transactions would clearly come within the ambit of 'commercial purpose'. It cannot

13 2022 LiveLaw (SC) 211.

14 2022 SCC OnLine SC 231, MANU/SC/0242/2022.

15 MANU/SC/0225/2022; (2022) 5 SCC 42.

be said that the services were availed "exclusively for the purposes of earning his livelihood" "by means of self- employment". If the interpretation as sought to be placed by the appellant is to be accepted, then the 'business to business' disputes would also have to be construed as consumer disputes, thereby defeating the very purpose of providing speedy and simple redressal to consumer disputes.", the court said while dismissing the appeal.

V REAL ESTATE

CPA, 2019 and the RERA Act neither exclude nor contradict each other and they must be read harmoniously to sub serve their common purpose.

In the case of *Sushma Ashok Shiroor* v. *Experion Developers Private Ltd.,*[16] the developer contended that the decision of this court in Pioneer has no application to the facts of the present case, as in Pioneer, the court did not have to deal with delay compensation clause like in the present case, terms of the apartment buyer's agreement alone, would govern the relations between the parties. The developer referring to the provisions of the Real Estate (Regulation and Development) Act, 2016 and particularly to the Regulations made by Haryana Real Estate Regulatory Authority, which were relied on in *Pioneer Urban Land and Infrastructure Ltd.* v. *Govind Raghvan*[17] ("Pioneer") submitted that the Consumer has elected to proceed under the Consumer Protection Act, 1986 and therefore the provisions of RERA Act will not apply and the Pioneer cannot be followed as a precedent. The bench upheld the Commission's finding that the clauses of the agreement are one-sided and that the Consumer is not bound to accept the possession of the apartment and can seek refund of the amount deposited by her with interest. With regard to whether the RERA has application when the Consumer, has elected CPA, referring to *Imperia Structures Ltd* v. *Anil Patni*[18] and *IREO Grace Realtech (P) Ltd. v. Abhishek Khanna*[19], the bench observed that Consumer Protection Act and the RERA Act neither exclude nor contradict each other. Further the Supreme Court observed that when statutes provisioning judicial remedies fall for construction, the choice of the interpretative outcomes should also depend on the constitutional duty to create effective judicial remedies in furtherance of access to justice. A meaningful interpretation that effectuates access to justice is a constitutional imperative and it is this duty that must inform the interpretative criterion. When Statutes provide more than one judicial fora for effectuating a right or to enforce a duty-obligation, it is a feature of remedial choices offered by the State for an effective access to justice. Therefore, while interpreting statutes provisioning plurality of remedies, it is necessary for courts to harmonise the provisions in a constructive manner.

In furtherance of the same, an appeal by Developer against NCDRC order directing refund and compensation to consumer for its failure to deliver possession

16 MANU/ CF/ 1100/2019.
17 (2019) 5 SCC 725.
18 (2020) 10 SCC 783.
19 (2021) 3 SCC 241.

of the apartment within the time stipulated as per the Apartment Buyers Agreement[20] this appeal was dismissed. The court held that the Commission was correct in its approach in holding that the clauses of the agreement are one-sided and that the consumer is not bound to accept the possession of the apartment and can seek refund of the amount deposited by her with interest. It was held that the Commission has correctly exercised its power and jurisdiction in passing the directions for refund of the amount with interest. Also, the Consumer Protection Act and the RERA Act neither exclude nor contradict each other. They are concurrent remedies operating independently and without primacy. Further, the court laid down that the power to direct refund of the amount and to compensate a consumer for the deficiency in not delivering the apartment as per the terms of Agreement is within the jurisdiction of the consumer courts. A consumer can pray for refund of the money with interest and compensation. The consumer could also ask for possession of the apartment with compensation. The consumer can also make a prayer for both in the alternative. If a consumer prays for refund of the amount, without an alternative prayer, the Commission will recognize such a right and grant it, of course subject to the merits of the case. If a consumer seeks alternative reliefs, the Commission will consider the matter in the facts and circumstances of the case and will pass appropriate orders as justice demands.

Altering the layout of the project without prior notice to the consumer amounts to 'trade practice'

In *Vikas Jain* v. *Chintels India Ltd.*,[21] the NCDRC held that there is an admitted delay in offer of possession. There is also an admitted alteration in the project in as much as it has been bifurcated into two phases withan increase in the number of total flats by36% or additional 120 flats. It is, therefore, evident that opposite party has indulged in unfair trade practice. Also it was observed that the he alteration in the number of flats per tower without the area of the project being increased does amount to greater occupation density and dilution of the initially promised common facilities under the project as it is obvious more personsutilizing the same, in view of the increase in the number of flats.

The revision petition under section 51 sub section (2) of the Act, 2019 is maintainable before the NCDRC

The National Commission in the case of *Divya Chadri* v. *Madhuvana House Society Ltd.*,[22] ruled that the order passed by the District Commission in execution proceeding has to be challenged before the State Commission only and thereafter no appeal lies before the National Commission as the complaint is not pending. The commission also ruled that- the principle laid down by the Supreme Court in the case of Karnataka Housing Board will also apply to the appeal arising out of the execution proceeding. The commission gave simple reason for the application of rule laid down in Karnataka Housing Board to the 2019 Act that the Section 51

20 *Experion Developers Pvt. Ltd*. v. *Sushma Ashok Shiroor*, AIR 2022 SC 1824.

21 CC/908/2019.

22 2022 SCC OnLine NCDRC 368.

of the 2019 Act provides for the filing of an appeal against an order passed by the State Commission in exercise of its power conferred by section 47 of the 2019 Act. Hence the plea of the appellant that the second appeal is maintainable under section 51(2) of the 2019 Act is not maintainable and rejected.

The delay of five years is a crucial factor and the bargain cannot now be imposed upon the respondents.

The Supreme Court, in the case of *Marvel Omega builders Pvt Ltd* v. *Shrihari Gokhale*[23], laid down thatthe facts on record clearly indicate that as against the total consideration of Rs.8.31 crores, the respondents had paid Rs.8.14 crores by November, 2013. Though the appellants had undertaken to complete the villa by December 31, 2014, they failed to discharge the obligation. As late as on May 28, 2014, the revised construction schedule had shown the date of delivery of possession to be October, 2014. There was, thus, total failure on part of the appellants and they were deficient in rendering service in terms of the obligations that they had undertaken.Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the respondents. The respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count.

VI AUTOMOBILE SECTOR

For selling vehicles with defective air bags OPs will be held liable for damages

The National Commission, in the case of *Hyundai Motor India Ltd. v. Leela Shu.*[24], observed that it is a very serious matter and the Hyundai Motors India Ltd. should stop selling such vehicles with defective air bags unless or until they are cent percent without flaws ofany kind. A person spent huge amount to save his life but this case clearly goes to show that the complainant was taken for aride. Opposite party no. 2 has given a lameexplanation by stating that impact of jerkcould not reach upto the censor as a result, the air bags could not deploy. Sale of extra air bags amounts to cheating and fraud with the innocent customers. Such Air Bags further endanger the lives of the customers. The National Commission dismissed the revision petition and imposed further costsin the sum of Rs. 1 lakh upon the opposite party No. 1, out of which Rs.75,000/- shall be paid to the complainant and Rs.25,000/-shall be deposited in the Consumer Legal Aid.

Also, it is noteworthy that in the case of *Hyundai Motor India Ltd.* v. *Shailendra Bhatnagar,*[25] when Hyundai Motors went for an appeal before the Supreme Court, the bench observed that the content of the owners' manual does not carry any material from which the owner of a vehicle could be alerted that in a collision of this nature, the airbags would not deploy. The court observed:

23 2018 SCC OnLine SC 3444.

24 Revision Petition No. 1014 of 2016 in Appeal No. 233 of 2015.

25 2022 (6) SCALE 587.

"Ordinarily a consumer while purchasing a vehicle with airbags would assume that the same would be deployed whenever there is a collision from the front portion of the vehicle (in respect of front airbags). Both the fora, in their decisions, have highlighted the fact that there was significant damage to the front portion of the vehicle. Deployment of the airbags ought to have prevented injuries being caused to those travelling in the vehicle, particularly in the front seat. A consumer is not meant to be an expert in physics calculating the impact of a collision on the theories based on velocity and force."

Further, they said, *"Purchase decision of the respondent- complainant was largely made on the basis of representation of the safety features of the vehicle. The failure to provide an airbag system which would meet the safety standards as perceived by a car-buyer of reasonable prudence, in our view, should be subject to punitive damages which can have deterrent effect. And in computing such punitive damages, the capacity of the manufacturing enterprise should also be a factor. There was no specific exclusion clause to insulate the manufacturer from claim of damages of this nature. Even if there were such a clause, legality thereof could be open to legal scrutiny."*

Supreme Court condoned 67 days delay in filing revision before NCDRC saying that Question Of Limitation Pertains to Substantial Justice

In the case of *Manager, Indusind Bank* v. *Sanjay Ghosh,*[26] while setting aside an NCDRC order by which a revision petition filed after 67 days' delay was dismissed, the Supreme Court observed that "the question of limitation is not to be examined with a view to decline the condonation, but to do substantial justice".

VII MEDICAL SECTOR

Health care service provided by doctorsare covered under Consumer Protection Act 2019

The High Court in the case of *Medicos Legal Action Group* v. *Union of India*[27], dismissed thepetition of the petitioners observing there was no material difference between the service definition under the CPA 1986 and CPA 2019, except inclusion of 'telecom' insection 2(42) of the 2019 Act. Thus, placing reliance on *Indian Medical Association* v. *V. P. Shantha,*[28] which had concluded Service rendered to a patient by a medical practitioner (except where the doctor renders service free ofcharge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.", high court dismissed the petitionand held 'healthcare'services rendered by doctors to patients come within the purview of the 'service' definition under CPA, 2019. The high court also imposed a cost of Rs. 50,000 on the petitioner. On Appeal before it, the Supreme Court stated that it is not inclined to entertain the special Leave petition under

26 Civil Appeal No. 4104 Of 2022 [Special Leave Petition (C) No. 6489 Of 2022].

27 Manu/MH/3641/2021; 2021 SCCOnlineBom 3696.

28 (1995) 6 SCC 651.

Article 136 of the Constitution. The Special Leave Petition was accordingly dismissed.

Findings of the MCI regarding the professional conduct of a doctor are relevant for deciding Medical Negligence cases

On an appeal before the Supreme Court, in the case of *Harnek Sing* v. *Gurmit Singh,*[29] it was observed by the Hon'ble Supreme Court that the findings of the report of Medical Council of India on professional conduct of doctors are relevant while considering medical negligence compensation claims. Supreme Court further observed that the MCI on the conduct of respondent 1 leave no doubt in the mind that this is certainly a case of medical negligence leading to deficiency in his services. The NCDRC has committed an error in reversing the findings of the SCDRC and not adverting to the evidence on record including the report of the MCI. The decision of the NCDRC was set aside and it was held that there is medical negligence by respondents 1 and 2 and are entitled to seek compensation on the ground of deficiency of service. Respondents 1 and 2 were directed to pay to the complainants a total amount of Rs. 25,00,000 (Rupees Twenty Five Lakhs only) with interest @ 6% per annum from the date of SCDRC order as compensation.

VIII INSURANCE SECTOR

Insurance company should not ask for the documents, which the insured is not in aposition to produce due to circumstances beyond hiscontrol.

Supreme Court in the case of *Gurmel Singh* v. *Branch Manager, National Insurance Co. Ltd. Insurance,*[30] noted that theinsurance claim has not been settled mainly on the ground that the appellant has not produced either the original certificate of registration or even the duplicate certified copy of certificate of registration issued by the RTO. However, the appellant did produce photocopy of certificate of registration and other registration particulars as provided by the RTO. Even, at the time of taking the insurance policy and getting the insurance, the insurance company must have received the copy of the certificate of registration. Therefore, the appellant had tried his best to get the duplicate certified copy of certificate of registration of the Truck. It was also noted by the Supreme Court that because of the report of theft of the Truck, the details of registration on the computer have been locked and the RTO has refused to issue the duplicate certified copy of registration.Considering the facts and circumstances of the case, Supreme Court observed that non-settlement of claim solely on the ground that the original certificate of registration (which has been stolen) is not produced, when the appellant had produced the photocopy of certificate of registration provided by the RTO, can be said to be deficiency in service. It was also observed that the insurance company has become too technical while settling the claim and has acted arbitrarily. The appellant shall not be asked to furnish the documents which were beyond the control of him to procure and furnish.Thus the order

29 MANU/CF/0320/2020.

30 MANU/SC/0702/2022.

passed by the DCDRC dismissing the complaint filed by the appellant and the orders passed by the State Commission and National Consumer Disputes Redressal Commission, confirming the same were set aside. The original complaint filed before the District Consumer Disputes Redressal Commission, Durg, Chhattisgarh, was allowed. The insurance amount of Rs. 12 lakhs along with interest @ 7 per cent from the date of submitting the claim was awarded to the complainant/insured along with Rs. 25,000/- towards cost of litigation.

Insurer repudiating insurance claim by concealing material fact is liable for penalty

In the case of *National Insurance Co. Ltd.* v. *M Nitin Industries*[31], the bench noted that, the complainant had taken an insurance policy from opposite party no.1. On the date of the incident, the Policy was effective. The incident of fire is also not disputed by opposite party No.1. The cause of fire is disputed by the insurance company. The bench further noted that, as per the Survey or, the exact cause of fire could not be ascertained. The proximate cause was discussed separately elsewhere. The insurance company filed a copy of the investigation report by the same survey or where the survey or had specifically observed that the fire was accidental. The bench stated that, the aforesaid report is a vital document on which the entire case rests. It appears that the insurance company deliberately tried to conceal the separate report submitted by the surveyor regarding cause of fire and did not file the same alongwith the Appeal. The same was filed only on July 7, 2017, after direction of this Commission dated June 6, 2017. There is, thus, clear concealment of material fact on the part of the Insurance Company. Repudiation of the insurance claim on the ground that the Complainant filed a fraudulent claim was certainly not justified. The bench further stated that,the State Commission, thus, assessed the total loss at Rs. 19,30,000/-. The Surveyor assessed thecost of salvage at Rs. 2,60,000/-. The State Commission, therefore, deducted the salvage cost of Rs. 2,60,000/ from the net loss and assessed the loss at Rs.16,70,000/-. The bench noted that, the State Commission observed hatthe Complain anthad not carried out any safety measures against the fire such as fire extinguisher piped water arrangement *etc*. For this reason, the State Commission found contributory negligence on the part of the Complainant and made 20% deduction on the amount of Rs.16,70,000/- and finally assessed the loss at Rs. 13,30,000/-. The bench agreed with the findings of the State Commission and observed that there is concealment of material fact on the part of the Appellant. The bench imposed a cost of Rs. 50,000/- on the appellant (Insurance Company) and directed to pay within two months from the date of the order.

Insurance company cannot repudiate claim merely for delay in intimating it about the occurrence of the theft if the FIR was lodged immediately.

In the case of *Jaina Construction Company* v. *Oriental Insurance Company Ltd*.,[32] the vehicle of the complainant which he had gotinsured by an insurance

31 First Appeal No.207of 2012.

32 2022 LiveLaw (SC) 154 : (2022) 4 SCC 527.

company was stolen. The complainant filed an FIR the very next day. Thereafter, the complainant lodged the insurance claim. The complainant then filed the insurance claim. The same was rejected on the grounds that the insurance company was not notified of the theft right away. Though District Forum and State Consumer Commission allowed the complaint - NCDRC dismissed it by allowing insurer's revision petition. Allowing the appeal, the Supreme Court set aside the NCDRC order and upheld the State Commission order.

IX. E- COMMERCE

The seller and the service provider are liable for any defect, deficiency of services and unfair trade practice on the service provided or good/product sold by them.

The National Commission, in the case of *Shaikh Umar Farooq v. Flipkart International Pvt Ltd.*,[33] observed that there is a tripartite contract between the seller, service provider (herein "Flipkart") and the consumer. The seller and the service provider are liable for any defect, deficiency of services and unfair trade practice on the service provided or good/product sold by them. It was observed that unfair contract means a contract between a manufacturer or trader or service provider, having such terms which causes a significant change in the rights of such consumer, thereby imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage. The Commission pointed out that opposite parties are in contract and agreement with the manufacturer who are service providers through the e-commerce entity and are bound by the contract between the manufacturer, product seller and the consumer and therefore must provide the information and details about the product to the sellers offering goods. It was held that Flipkart had tampered with the original MRP of the product (herein 'oil sachet') and charged an amount more than the MRP from the consumer, thereby illegally extorting the consumer and causing economic loss and mental agony. Flipkart's conduct thereby falls within the ambit of deficiency in service and unfair trade practice.

E-Commerce platform should not violate mandatory standards with regard to sale of pressure cooker.

In the case of *Amazon Seller Service Pvt Ltd* v. *Central Consumer Protection Authority,*[34] the high court has observed that prima facie the investigation has shown that the pressure cookers in question were not BIS certified but also that Amazon appeared to have not been given any opportunity to rebut or meet those findings. According to the court, it would also have to "consider the duties and obligations which an ecommerce entity must be held liable to perform in law before on boarding a seller". These and other issues would warrant further consideration, the court noted in its order. The matter is slated for its next hearing in November. Amazon has been told it is liable to notify consumers of the 2,265 pressure cookers sold on its platform as per the order of CCPA, but recall of those items and

33 2022 SCC OnLine NCDRC.

34 W.P.(C) 13269/2022, CM APPL. 40236/2022; MANU/DEOR/132452/2022.

reimbursement shall be placed in abeyance till the next date. The ecommerce firm is directed to submit Rs 1 lakh with the registrar general of the court.

X EDUCATION SECTOR

Instant ex-parte order may be passed by Consumer Commission in case of non-representation of opposite party and non satisfaction with respect to learning app and failure to refund the amount as promised amounts to deficiency in service.

In the case of *Madhusudan* v. *Think and Learn Pvt Ltd*.,[35] upon analysing the facts and evidence, the court observed that the representatives of OP had ensured the complainants that in case the student is not fully satisfied with the working of the learning app or in the event of an issue, the entire amount will be returned without any deduction, but despite multiple requests, the OP had failed to cancel the subscription and refund. Additionally, the OP had provided different tabs than what they had assured to provide. Thus, the above-stated acts amount to deficiency on part of the OP in rendering service to the complainants. The court also observed that despite service of notice, the OP neither appeared before the commission nor filed any reply, so, the claims made by the complainant have gone un-rebutted and un-challenged. Given the absence of legal representation from the opposite party, the Commission passed the instant Order *ex-parte*.

XI SERVICE SECTOR

Acts of allurement and unfair trade practice via misleading emails and advertisements is covered by the Act

Perusing the facts, contentions and reasoning behind the District Commission's Order, the Bench, in the case of *VLCC Health Care Ltd.* v. *Vijay Aggarwal,*[36] pointed out that the contention raised by VLCC *vis-a-vis* the disclaimer is not sustainable in the eyes of the law because VLCC's own advertisement loudly and proudly claimed- "Lose 4 Kgs in 30 days or take your money back!" The commission relied on its precedent in *Shipra Sachdeva* v. *VLCC Health Care Ltd.*[37] which dealt with similar issues as raised in the instant appeal. The commission also relied on *Divya Sood* v. *Gurdeep Kaur Bhuhi*[38] which raised the concerns surrounding "tempting advertisements, giving misleading statements (...) persons lured to pay large amount to such bodies in a hope that they can reduce their weight by undergoing the so-called treatment." It was observed that the acts of allurement and unfair trade practice *via* misleading emails and advertisements wasted the respondent's precious time, energy and money over a weight loss program that was not fruitful eventually. With the afore-stated observations, the State Commission held that VLCC's advertisements claiming, "Lose 4 Kgs in 30 days or take your money back", squarely falls under the definition of 'misleading advertisement' as defined in Section 2(28) of the Consumer Protection Act, 2019. Therefore, the appeal was dismissed.

35 Complaint Case No. CC/423/2021.

36 Appeal No. 14 of 2022; MANU/SF/0082/2022.

37 First Appeal No. 93 of 2008.

38 2006 SCC OnLine NCDRC 76.

Service charge on hotel and restaurant bill is "totally voluntary" and not mandatory

In the case of *Arkadeep Sarkar* v. *Yauatcha,*[39] the Kolkata District Consumer Disputes Redressal Commissionrelied on the guideline of Fair Trade Practice related to charging of the service charge from the customers by hotel/restaurants issued by the Department of Consumer Affairs, Government of India. This guideline stipulated that service charge on hotel and restaurant and bill is "totally voluntary" and not mandatory. Moreover, said guidelines further stipulated that any deviation thereof would amount to unfair trade practice and will be sternly dealt with by the appropriate authority.

Charging anything other than the said amount would amount to unfair trade practice under the Act.

In the case of *National Restaurant Association of India* v. *Union of India,*[40] the court noted that there would be a serious doubt whether the issue of pricing and levy of service charges would fall within the ambit of Section 2(47) of the Consumer Protection Act, 2019. The court also looks at the precedent decision in *Nitin Mittal* v. *Pind Balluchi Restaurant*[41] by NCDRC where the commission ruled that it is well established that the consumer court on the issue of pricing do not interfere in such matter since it is the discretion of the concerned restaurant to charge the price as they wish. Similarly in *SS Ahuja* v. *Pizza Express*[42] the commission ruled that the meaning given to the restrictive trade practice under section 2(o) of the Act needs to be examined. It has not shown that the levy of service charges would restrict, eliminate or distort competition in general.In light of the above discussion, the court affirmed that the matter requires consideration and thus stayed the impugned guidelines dated July 4, 2022 till the next date of listing the directions.

XII CONCLUSION

The year 2022 has witnessed lot of 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. Even the Supreme Court and National Commission through their judgement have clarified the grey areas which have helped the State Commission and District Consumer Fora in speedy disposal of pending cases. But the object to fulfil consumers' aspiration and dreams can only be achieved only when there is active participation of the peoples and government officials.

39 Complaint Case No. CC/391/2019.

40 2022 SCC OnLine Del 2172.

41 2012 SCC OnLine NCDRC 444.

42 1999 SCC OnLine MRTPC 2.