(2016) 05 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Case No : 121 of 2010

DELHI COMPLIANCE & CONSULTANCY INTEGRATED PVT. LTD. APPELLANT

Vs

CELLCAST INTERACTICVE INDIA PVT. LTD. & ORS. RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Code of Civil Procedure, 1908, Order 1Rule 10 -
Consumer Protection Act, 1986, Section 2(1)(b), Section 2(1)(b)(ii) - Definitions - Defini

Citation : 2016 2 CPR 798

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Ravi Kumar, Manisha, Saurabh Kirpal, Swati, Bhagwati Prasad Paddy, Navin Chawla, ?Aditya Narain

Judgement

1. Delhi Compliance and Consultancy Integrated Private Limited has filed the instant consumer complaint alleging that OP No.1 M/s Cellcast Interactive India Pvt. Ltd. designed a puzzle lottery programme named as ''GoldSafe''. The said programme is telecasted by Opposite Parties no. 2 to 4 on television channels throughout the year. In the programme a picture puzzle of a famous hindi film actor/actress is shown on the television channels of Opposite Parties no. 2 to 4. In the said puzzle, face of the personality is shown bit by bit and viewers are asked to identify the actor / actress and call special telephone number 5664464 through telecom services of Opposite Parties No.5 and 7 as also other telephone service providers. The opposite parties, namely 2 to 4 promised to reward any caller having correctly identified the picture puzzle with cash prize upto Rs.90,000/- and the same caller is also promised of an opportunity to win prize money of Rs.15,00,000/- if the caller could correctly guess the four digit unlocking code of Goldsafe. It is alleged that consumer is charged Rs.12/- per minute for each call made at the number and the caller is required to pay the call charges irrespective of the fact whether or not he is kept on wait or connected with anchor of that television channel. It is further alleged that though maximum sum of Rs.90,000/- is promised for identification of the personality shown in the

picture puzzle but prize value keeps on reducing at every stage when more parts of the face of the personality is displayed on the TV screen and ultimately it is reduced to paltry sum of Rs.5000/- to Rs.10,000/-. According to the complainants, during the episode, the opposite parties intentionally refrained from receiving the telephone calls and continue to fool the audience with fake calls made internally and genuine callers were unnecessary billed with the call charges. It is alleged that OP No.5 and 6 have earned huge amount running into crores of rupees in the year 2008-09. According to the complainant, the scheme devised by the opposite parties amounted to unfair trade practice. Hence, the complaint.

2. The Opposite parties on being served with the notice have contested the consumer complaint. In their respective written statements, they have challenged locus standi of the complainant company to file consumer complaint. They have also denied the allegations of unfair trade practice on merit.

3. Since preliminary issue regarding maintainability of complaint has been raised by the opposite parties, the matter was directed to be listed for arguments on issue of maintainability.

4. Shri Ravi Kumar and Shri Manish Kumar moved IA No. 1 of 2010 with the prayer for being impleaded as complainants. The gist of the application is that Ravi Kumar and Manish Kumar have already been duped due to unfair trade practice on the part of the opposite parties.

5. We have heard authorised representative of the complainant as also counsel for contesting parties on the application IA No. 1 / 2010 as also issue of maintainability.

6. So far as IA No. 1 of 2010 is concerned, contention of authorised representative of the complainant, namely, Ravi Kumar who also is one of the applicant in IA No. 1 of 2010 is that he and Manish Kumar were lured by the representation in the aforesaid telecasted programme and suffered loss by making telephone calls to identify the face puzzle. It is contended that since the issue in the complaint is the same, therefore, in order to avoid multiplicity of the proceedings, the complainants may be allowed to join this complaint as additional complainants. In support of his contention, authorised representative for the complainant as also one of the applicants has relied upon the judgment of the Supreme Court in the matter of Savitri Devi Vs. District Judge, Gorakhpur & Ors in CA No. 932 of 1999 decided on 18.02.1999 AIR 1999 SC 976 . In the above noted judgment, Hon''ble Supreme Court while dealing with scope of Order 1 Rule 10 CPC held that order 1 Rule 10 CPC enables the Court to add any person as a party at any stage of proceedings, if the presence of said person is necessary in order to enable to Court to effective and completely adjudicate upon and settle all questions involved in the suit. There can be no dispute with the aforesaid proposition of law. However, in the instant case the facts are slightly distinct. On perusal of the complaint, it would be seen that the complaint has

been filed on behalf of a Private Limited Company of which applicant Ravi Kumar and Manish Kumar are the only two directors. Perusal of the affidavit of applicant Ravi Kumar filed alongwith the complaint would show that in para 6 of the affidavit , Ravi Kumar stated that complaint has been filed purely in the interest of the large number of affected consumers with no personal interest involved. This implied that at the time of filing of complaint, Ravi Kumar and other director Manish Kumar who are the applicants made it clear that they had no personal interest in the subject matter of the complaint. That being the case, it is obvious that subsequent application under Order 1 Rule 10 CPC being IA No. 1 of 2010 obviously has been filed with a malafide intention to meet the objection pertaining to locus standi of the complainant company to file consumer complaint.

7. In the matter of Ramesh Hirachand Kundanmal V. Municipal Corporation of Greater Bombay and Ors. 1992 2 SCR 1 , Hon''ble Supreme Court while dealing with the issue of impleading a party discussed the matter at length and held that though complaint is ''dominus litis'' and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of particular case. In the instant case, the conduct of the applicants disentitle them from being impleaded as complainants in the instant case particularly for the reason that they being the directors of the complainant company were aware of the filing of complaint but they opted not to join as complainants and even in the supporting affidavit filed alongwith the complaint, it was stated that the complaint was filed for public cause with no personal interest. Thus, application in our view, is abuse of process of law and liable to be rejected. IA No. 1 of 2010 is accordingly dismissed.

8. Coming to the issue of maintainability. Learned Shri Aditya Narain, Advocate, Shri Navin Chawla, Advocate, Shri Bhagwati Prasad Paddy and Shri Saurabh Kirpal Advocate and Ms. Manisha, Advocate appearing for respective contesting opposite parties have argued on the same lines. The contention of the opposite parties is that complainant has no locus standi to file the consumer complaint as complainant company does not fall within the term ''complainant'' as defined under section 2 (1) (b) of the Consumer Protection Act, 1986 (in short, the Act). It is also contended that instant complaint does not confirm to the requirement of filing of complaint as envisaged under section 12 of the Act because reading of the entire complaint would show that it does not specify the names of the persons / consumers who have been actually duped by the alleged lottery scheme telecast on the opposite parties television channels. Sh. Ravi Kumar, Authorised Representative of the complainant company, on the contrary, has contended that complainant is fully covered within the definition of "complainant" as envisaged under section 2 (1) (b) (ii) of the Act as it is voluntary consumer association registered under the Companies Act, 1956. It is submitted that Section 12 of the Act does not come in the way of the complaint because it has been filed on behalf of the number of consumers in general.

9. The question which needs to be answered is whether M/s Delhi Compliance & Consultancy Integrated Private Limited falls within the definition of "complainant" as envisaged under section 2 (1) (b) (ii) of the Act?. The said provision reads as under: (b) "complainant" means-

(i) xxxxxxxxxxxxxxx

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1of 1956)or under any other law for the time being in force; or

(iii) xxxxxxxxxxxxxxx

(iv) xxxxxxxxxxxxxxx

(v) xxxxxxxxxxxxxxx"

10. It is undisputed that complainant company is a Private Limited Company duly registered under the Companies Act, 1956. Thus, the question which needs to be answered is whether the complainant company is a voluntary consumer association?

11. In order to find answer to the aforesaid controversy, it would be useful to have a look on the objects of the Company incorporated in its Memorandum of Association. The copy of Memorandum of Association is available on the record. The relevant extract pertaining to the objects of the Company is reproduced as under: "1. To provide legal solicitation services in matters of -

(i) Arbitration, Contracts, Commercial Agreements, Conciliation, Civil & Criminal disputes, Constitutional matters, Administrative matters, Corporate laws, Real Estate laws, IPR, Due Diligence, Family laws, Labour laws, Banking laws, Outsourcing laws, Banking and Taxation laws, Recruitment of Personnel, Employment contracts.

(ii) RTI Acts, Consumer Protection Laws and Restrictive Trade Practice laws,

(iii) Private Equity, VC funds, Infrastructure, Information Technology, Antitrust & Competition, Bio-technology , Real Estate and REITS.

2. To act as a voluntary consumer association and disseminate knowledge and awareness about consumer issues and rights, to volunteer for the cause and rights of Consumer and to file Public Interest Litigation (PIL) with various Courts for consumer and larger causes, to aid in developing a complaint corporate and legally informed society.

3. To provide consultancy to individuals and corporate on Human Resource recruitment, performance management, Leader-ship capability development, Assessment Centres, Product Development, Strategic & Industrial relation issues, financial risk management, commercial debt collection in India, credit reports, marking consultancy, licensing and distribution, agency and franchise, Outsourcing agreements, Outsourcing employment agreements, Outsourcing joint ventures, BPO/ KPO agreements, outsourcing tax planning, project

financing, merges & acquisitions, International joint venture agreements, identification of joint venture partners, agreements with subsidiaries and such other related corporate management consultancy.

4. To provide consultancy on Trademarks & Patents registration, Patents drafting, and Legal process outsourcing.

5. To provide services like collating, authentication, processing and verification of educational and service testimonials and other academic and service documents.

6. To engage in promotion, contests of high technology products and facilitate / cause awareness of such products and services.

7. To indulge in Sale / purchase of books and stationary items and publishing of books and related e-commerce.

8. To do any other business which is in the unanimous opinion of the other member (s) can be conveniently carried in addition to or in extension of the above said business which is incidental or conducive to attainment of the above object.

(b) OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS ARE :

1. To buy all kinds of equipment, machinery, apparatus, tools, utensils, commodities, substances, articles and things necessary or useful for carrying on the main business of the Company.

2. To enter into agreements with any company or persons for obtaining grant of license or on other terms formulae and other rights and benefits, technical information, know-how, equipment and to arrange facilities for training of technical personnel by them.

3. To subsidize, assist and guarantee the payment of money by or the performance of any contract, engagement or obligation by any person or companies and in particular customers of the Company or any person or companies with whom the Company may have or intended to have business relations.

4. To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, assign, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or notes, trust receipts and other securities, obligations, chose in action and evidences of indebtedness or interest issued or created by any corporation, companies, associations, firms, trusts or persons, public or private or by the Government, or by any state, territory, province, municipality, or by any government agency and as owner thereof to possess and exercise all the rights, powers and privilege of ownership, including the right to execute, consent and vote thereon and to do any and all acts and things necessary or advisable for the preservation, protection, improvement or enhancement in value thereof.

5. To acquire by concession, grant, purchase, barter, lease, license or otherwise either absolutely or conditionally and either alone or jointly with others, land, buildings, machinery, works, conveniences and other movable and immovable properties of any description including any patents, trademarks, concessions, privileges, licenses or other information which may seem necessary for any of the purposes of the Company.

.6. To lease, let out on hire, mortgage, pledge, hypothecate sell or otherwise dispose of the whole or any part or parts of the undertaking of the Company or any land, property, rights or assets of any kind of the company or interest therein respectively in such manner and for such consideration as the company may think fit.

7, To employ experts to investigate and examine into the condition, prospects, value, character and circumstances of business, concerns and undertakings and generally of any assets, property or rights.

8. To establish branches and agencies of the company in India and elsewhere and to discontinue the same whenever necessary.

9. To open Banking accounts with any Bank and to pay into and draw money from such accounts.

10. To appoint attorneys and agents whether on commission or otherwise and constitute agencies and sub agencies of the Company in India or elsewhere.

11. To enter into any arrangement, with any Government or Authorities, Municipal, local or otherwise or any persons or company, in India or abroad, that may seem

conducive to the objects of the company and to obtain from any such government, authority, persons or company and rights, privileges, charters, contracts, licenses and concessions in accordance with express provisions of the Companies Act of 1956.

12. To apply for and obtain any order to such other authority for enabling the Company to carry any of its objects into effect or for effecting any modifications of the Company''s constitution or for any other such purpose, which may seem expedient, and to make representations against any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company''s interests.

13. To enter into partnership or into any arrangement for sharing profits, union of interest, co-operation, joint venture, reciprocal concessions or otherwise with any person, firm or company carrying on or engaged in any business or transactions which this Company is authorised to carry or and to amalgamate with any other such company or companies having objects altogether or in part similar to those of this Company in India or abroad.

14. To enter into collaboration agreement to acquire technical know-how and/ or

any financial assistance for the company.

15. To take other otherwise acquire and hold shares or such other interests in or securities of any other such companies or firms having objects altogether or in part similar to those of this company.

16. Subject to Sections 3 (1) (iii) (c), 58A, 292 (c) (d), 295 and 370 of the Companies Act, 1956, the rules made therein and the directions issued by the Reserve Bank of India, to borrow, raise or secure the payment of money or to receive money as loan at interest for any of the purpose of the Company and at such time or times as may be expedient by promissory notes, bills of exchange, hundies, bills of lading, warrants or other negotiable instructions or by taking credit in or opening current accounts or over-draft accounts with any persons, firm, bank or company and whether with or without any security or by such other means may deem expedient and in to mortgage, pledge or charge the whole or any part of the property by special assignment or otherwise or to transfer or convey the same absolutely or in trust and to give the lenders powers of sale and such other powers as may seem expedient and to purchase, redeem or pay off such securities, provided that the Company shall not carry on the business of banking within the meaning of the Banking Regulations Act, 1949.

17. Subject to Section 77 of the Companies Act, 1956, to invest in other than investment in Company'' sown shares and deal with money of this Company not immediately required upon such securities or investments and in such manner as may, from time to time, be determined.

18. To advance money not immediately required by the company or give credit to such persons, firms or companies and on such terms, with or without security, as may seem expedient and in particular to customers of and others having dealings with the Company and to give guarantees or securities for any such persons, firms or companies as may appear proper or reasonable to the directions, provided that the Company shall not carry on the business of banking, within the meaning of Banking Regulations Act, 1949.

19. To undertake and execute any trusts, the undertaking of which may seem desirable, either gratuitously or otherwise for the attainment of the main objects of the Company.

20. To make donations to such persons or institutions and in such form of cash and otherwise that cash or any other assets as may be though directly or indirectly conducive to any of the Company''s objects or otherwise expedient and in particular to pay out of pocket expenses to any persons or corporation doing undelegated works to this Company, and also to subscribe, contribute or otherwise assist or grant money for charitable, consumer, religious or benevolent, national public or other institutional objects or for any public, general or other objects.

21. To not give to any officers, servants or employees of the company any share

or interest in the profits of the Company''s business or for such purpose to enter into any arrangements the company may think fit.

22. Subject to the provisions of Companies Act, 1956 to vest any real or personal property, rights or interests acquired by or belonging to the company in any person or company on behalf of or for the benefit of the company and with or without any declared trust in favour of the company.

23. To carry on any business or branch of a business which this Company is authorised to carry on by means or through the agency of any subsidiary company or companies and to enter into any arrangement with any such subsidiary company for taking the profits and bearing the losses of business or branch so carried on, or financing any such subsidiary or guaranteeing its liabilities or to make any other arrangements, which may seem desirable with reference to any other business or branch so carried on including power at any time either temporarily or permanently to close any such business or branch and/ or to appoint Directors or Managers of any such subsidiary company.

24. To do all or any of the above things either as principals, agents, brokers, trustees, contractors or otherwise and either by or through agents, brokers, sub-contractors, trustees or otherwise and either alone or in conjunctions with others and to do all such things as are incidental or conducive to the attainment of the above objects.

25. To adopt such means or making known the business of the company as may seem expedient and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations or holding exhibitions.

26. To refer all or any dispute for arbitration."

12. From the above, it is clear that complainant company was incorporated with more than 30 multifarious objects, one of the objects being to act as voluntary consumer association. The question is whether the above object in the Memorandum of Association would make the complainant company a voluntary consumer association? In order to find answer to this question, we have to see whether there is a correlation between the objects specified in the Memorandum of Association. On careful perusal of the above noted objects, we find that object no.3, 4,6, 7 & 8 and the incidental objects no. 1 to 7, 13 14, 23 & 24 have no correlation with acting as a voluntary consumer association. Thus, in our view, just by providing the object to act as a voluntary consumer association in the Memorandum of Association, the complainant would not become a voluntary consumer association as envisaged under section 12 (1) (b) (ii) of the Act. Thus, in our view, complainant has no locus standi to maintain the consumer complaint.

13. Even if for the sake of arguments, it is accepted that complainant company is a voluntary consumer association, then also, the instant complaint is not maintainable for the following reason:

14. On careful going through the complaint, we find that complainant company has not suffered any loss because of alleged scheme of the opposite parties. The instant complaint has been filed on the basis of a presumption that the opposite parties have connived with each other to defraud millions of consumers at large. The opposite parties neither rewarded the consumers as promised nor declared the results, but to increase their sale, indulged in "gross and relentless exploitation of poor, na?ve and gullible consumers". However, in the entire body of the complaint, no specific victim of the so called scheme has been mentioned. Therefore, it is clear that instant complaint has been filed on a presumption of foul play on the part of the opposite parties, there being no identifiable victim of the alleged foul play. The instant complaint, in our view cannot even be termed as complaint with a valid cause of action. Thus, in our view, the complainant company cannot even be termed as "complainant" as envisaged under section 2 (1) (b) (ii) of the Act, and as such, complainant has no locus standi to maintain the complaint and is liable to be dismissed.

15. In view of the discussion above, we are of the view that complaint is not maintainable. It is accordingly dismissed.

