(2013) 04 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

Sam Fine O Chem Limited APPELLANT

Vs

UNION BANK OF INDIA RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 258 : 2013 2 CPJ 490

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Final Decision : dismissed

Judgement

1. M /s. Sam Fine O Chem Ltd., the complainant herein has filed this consumer complaint under Section 21 (a) (i) of the Consumer Protection Act, 1986 with following prayers: a) Direct the opposite party to pay a sum of Rs.1,24,00,966/- towards refund of the excessive interest, which has been paid by the complainant till date along with the unauthorized lead bank charges of Rs.15,15,030/-, which have been paid, by the complainant till date. b) Direct the Opposite Party to pay the additional amount of interest of Rs.62,10,832/- suffered by the complainant on account of levying of excess interest every month and levying of lead bank charges periodically by the opposite party. c) Direct the Opposite Party to pay future interest, calculated till the date of realization at the rate of 12% per annum on the amount of Rs.2,01,26,828/-. d) Direct the Opposite Party to bear the entire cost of the instant proceeding and the legal expenses incurred till the date of institution of the present proceeding. e) Provide any other relief deemed fit in the facts and circumstances of the instant case.

2. BRIEFLY stated, relevant facts for the disposal of this complaint are that as per allegations in the complaint, the complainant availed of credit facility from the OP bank for expansion of its manufacturing facility. The credit facility was sanctioned vide sanction letter dated 17.04.2008 detailing various terms and conditions governing the grant of loan to the complainant, which are reproduced as under: i. The Complainant was sanctioned total credit limits of Rs.14 Crores. The interest to be charged on the loan was 0.75% lesser than the Benchmark Prime Lending Rate ("BPLR ") of the Bank. Hence the interest to be paid by the

complainant was "BPLR-0.75% ". ii. The sanction letter stated that interest rate was subject to change in the event that the BPLR changed or the credit rating of the complainant changed. iii. The sanction letter also informed the complainant that the interest rate of "BPLR-0.75% " was subject to the approval by the competent authority. iv. It further stipulated that "usual processing charges and charges on documentation " would have to be borne by the company without disclosing in clear terms the type, rate quantum and periodicity of charges in maintenance of transparency in the dealings with the customers as mandated by the Fair practices Code adopted by the Bank.

Grievance of the complainant is that the OP bank has charged and debited the interest at the rate much higher than the agreed rate of interest and also charged and debited unauthorized amounts in the loan account of the complainant in respect of the processing charges, lead bank charges-consortium charges against the terms and conditions of the agreement. It is alleged that the complainant wrote various protest communications to the OP bank but the OP has ignored the protest of the complainant, this according to the complainant amounts to deficiency in service, therefore he has filed the instant complaint with the above noted prayers.

3. WE have heard learned counsel for the complainant on maintainability of the instant complaint under Section 21 of the Consumer Protection Act, 1986 and perused the record.

4. ON perusal of the complaint we find that this complaint has been filed by M/s. Sam Fine O Chem Ltd. claiming itself to be a ''Consumer ''. The term consumer has been defined under Section 2 (1) (d) of the Consumer Protection Act, 1986 as under: "consumer" means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly prom-ised, or under any system of deferred payment and includes any beneficiary of such services other than the person who ''hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes; [Explanation. - For the purposes of this clause, "commercial purpose " does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;]

On reading of the above definition in conjunction with the explanation, it is evident that any person who has bought goods or availed services for commercial purpose is not a consumer unless the goods bought or the services availed by him were exclusively for the purposes of earning his livelihood by means of self-employment. In the present case, on going through the allegation in the complaint, it is evident that the complainant has availed the credit facility services of the OP bank for commercial purpose i.e. the expansion of its manufacturing facility. The complainant is a limited company and not an individual therefore it cannot be said that the services of OP were availed by the complainant for earning of his livelihood by means of self-employment. Thus, in our view, the complainant does not fall within the definition of ''consumer '' given under Section 2 (1) (d) of the Consumer Protection Act, 1986. In our aforesaid view, we find support from the order dated 22.08.2003 of Four Members Bench of this Commission in O.P. no.174/2003 titled M/s. Leatheroid Plastics Pvt. Ltd. Vs. Canara Bank.

5. LEARNED counsel for the complainant has referred to the judgment of Supreme Court in the matter of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, (2000) 1 SCC 98 and submitted that the Consumer Protection Act is aimed to protect the interest of the consumer and definition of consumer given under Section 2 (1) (d) is wide enough to include a person who bought and hired service for consideration even if the services availed or hired are for commercial purposes. Learned counsel for the complainant has also referred to the judgment of Supreme Court in the Standard Chartered Bank Ltd. vs. Dr. B. N. Raman, (2006) 5 SCC 727 and contended that in the aforesaid case Hon ''ble Supreme Court has held that the banks in furtherance of their business render service/ facility to its customer or even non customer, therefore it is obvious that the OP was a service provider qua whom the complainant is a ''consumer '' and as such, the complaint is maintainable.

6. WE do not find merit in the submissions made by the learned counsel for the complainant. The judgments relied upon the complainant are of no avail to him. So far as the judgment in the case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi (Supra) we may note that the aforesaid judgment is based upon the interpretation of the definition of ''Consumer '' as it then existed. The definition of consumer was amended in the year 2003, which provided that the person who hired or availed services for commercial purposes would be excluded from the definition of ''consumer ''. Even the judgment in the matter of Standard Chartered Bank Ltd. Vs. Dr. B. N. Raman (Supra) is not applicable to the facts of the this case. The aforesaid judgment related to the case pertaining to deficiency in service in respect of foreign currency deposited in the NRI account holder and it was not a case of loan or credit facility availed by the customer for commercial purpose. In view of the aforesaid discussions, we are of the view that since this complaint relates to deficiency in service availed for commercial purpose, the complainant is not covered under the ambit of the definition of ''consumer '' given under Section 2 (1) (d) of the Consumer Protection Act, 1986, as such the complainant is not eligible to maintain the complaint. The complaint is

accordingly dismissed.

