(2016) 07 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

Case No : 1047 OF 2016

Sidhmukh Flexible Packaging Pvt. APPELLANT

Vs

State Bank Of India & 2 Ors. RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Consumer Protection Act, 1986, Section 2(1)(d) - Definitions

Citation : 2016 3 CPR 520

Hon'ble Judges : V.K.Jain

Advocate : P.K.Agrawal

Judgement

1. The complainant is a private limited company engaged in the manufacturing of plastic packaging film. The complainant allegedly entered into an arrangement with the opposite party State Bank of India for obtaining term loan of Rs. 6.28 Crores and a working capital of Rs. 2 Crores. According to the complainant, the bank disbursed Rs. 1.47 Crores against the agreed working capital of Rs. 2 Crores and term loan of Rs. 5.60 Crores to it. A fire broke out in the factory of the complainant in the night intervening 14/15.02.2004, resulting in loss of several assets. The claim for reimbursement of the said loss was settled by the insurer for a full and final payment of Rs. 8.69 Crores and the said amount was paid to the bank, against the discharge voucher executed by it.

2. The complainant is now alleging excess adjustment of Rs. 3.38 Crores by the bank and claiming the said amount from it. The break-up of the alleged excess adjustment is as under:

1. Claim of excess interest charged by SBI Rs. 80,23,000

2. Claim of loss of interest due to delay by Insurer to remit compensation Rs. 80,70,673

3. Claim of interest due to late submission of Proposal by SBI under TUF scheme Rs. 20,33,000

4. Claim due to depreciation loss towards SBI for forcing to settle on depreciation basis from Insurer. Rs. 50,00,000

5. Additional claim for insufficient amount offered as insurance compensation. Rs. 1,07,00,000

TOTAL Rs. 3,38,26,673

3. I have heard the learned counsel for the complainant on the question as to whether the complainant is a consumer as defined in Section 2 (1) (d) of the Consumer Protection Act.

4. Section 2(1)(d) of the Act to the extent it is relevant provides that though consumer means any person who hires or avails of any services for a consideration, it does not include a person who avails of such services for any commercial purpose. The explanation attached below the aforesaid clause, to the extent it is relevant, stipulates that commercial purpose does not include use by a person, of the services availed by him, exclusively for the purpose of earning his livelihood by means of self-employment. It would thus be seen that emphasis is on the purpose for which the goods are purchased or the services are hired or availed.

The term ''commercial purpose'' has not been defined in the Consumer Protection Act and as held in Laxmi Engineering Works v. P.S.G. Industrial Institute [(1995) 3 SCC 583], in the absence of a statutory definition, we have to go by its ordinary meaning. ''Commercial'' denotes ''pertaining to commerce'' (Chamber''s Twentieth Century Dictionary); it means "connected with, or engaged in commerce; mercantile, having profit as the main aim" (Collin''s English Dictionary) and the word ''commerce'' means "financial transactions, especially buying and selling of merchandise on a large scale" (Concise Oxford Dictionary)". As observed by a three members Bench of this Commission vide its order dated 08.07.2016 in CC No. 51 of 2006 Crompton Greaves Limited & Anr. Vs. Daimler Chrysler India Private Limited & Ors., acquisition of the goods or the hiring or availing of services, in order to bring the transaction within the purview of section 2 (1) (d) of the Consumer Protection Act, therefore, should be aimed at generating profits for the company or should otherwise be connected or interwoven with the business activities of the company. The purpose behind such acquisition should be to promote, advance or augment the business activities of the company, by the use of such goods or services.

If the business activities of a company cannot be conveniently undertaken without the goods purchased or the services hired or availed by a company, such purchase or hiring/availing as the case may be, would be for a commercial purpose, because the objective behind such purchase of goods or hiring or availing of the services would be to enable the company to earn profits by undertaking and advancing its business activities.

5. In Subhash Motilal Shah & Ors. Vs. Malegaon Merchants Co.-op Bank Ltd.,

R.P.No.2571 of 2012 decided on 12-02-2013, the petitioner which had a current account with the bank had alleged deficiency in service on the part of the bank. The State Commission dismissed the complaint, holding inter alia as under:

"Admittedly, since Rainbow Corporation is a firm of Ajay Subhash Shah (HUF), i.e., juristic person, there arise no question of self-employment so as to cover the case under explanation to section 2(1)(d)(ii) of the Consumer Protection Act, 1986 (''Act'' for brevity). It is a case relating to an action related with services given while operating the Current Account of Appellant Rainbow Corporation which was admittedly opened and used for business purpose, of the business of ''commission agent'' and business of ''yarn sale''. Therefore, since the account itself is connected and related to the business transactions and such banking activity is required for the functioning of a given business enterprise of the appellant/complainant, services hired for that purpose would fall within the category of hiring services for commercial purpose. A useful reference can be made to free dictionary by FARLEX (on Internet) which defines the ''Business Activity'' as the activity undertaken as a part of commercial enterprise. Further, reference can be made to an article available on the internet Website Wise Geek (copyright protected 2003-12 by Conjecture Corporation) and which is written by Alexis. W, edited by Heater Bailey. Under the circumstances, prima facie appellant/complainant Rainbow Corporation cannot be a consumer within the meaning of Section 2(1)(d)(ii) of the Act".

Being aggrieved from the order of the State Commission, the complainant in the said case approached this Commission by way of a revision petition and it was contended by the complainant that considering the aims and objectives behind enactment of the Act, the expression ''consumer'' and ''service'' as defined under the Act should be construed in a comprehensive manner so as to include the services of commercial and trade oriented nature. In other words, the contention was that any person who hires services for consideration shall be deemed to be a consumer, even if the services were obtained in connection with a commercial activity. However, relying upon the amendment made in the Act with effect from 15-03-2003 the revision petition was dismissed by this Commission thereby upholding the view taken by the State Commission.

6. In M/s. Sam Fine O Chem Limited Vs. Union Bank of India, C.C.No.39 of 2013, decided on 12-04-2013, the complainant had availed credit facility from Union Bank of India. Alleging deficiency in the services provided by the bank he preferred a complaint before this Commission. Rejecting the complaint this Commission inter alia noted that the complainant had availed the credit facility service of the bank for expansion of its manufacturing activity which was a commercial purpose and, therefore, the complainant did not fall within the definition of ''consumer'' given in Section 2(1)(d) of the Act.

In CC No.11 of 2007, Samkit Art & Craft Pvt. Ltd. Vs. State Bank of India & Ors., decided on 14-10-2014, the complainant which was engaged in the business of export had obtained cash credit limit and term loan facility from the State Bank of India. He filed a complaint alleging deficiency on the part of the bank in the services rendered to him. It was held by this Commission that obtaining cash credit facility for the purpose of export of goods was a commercial purpose and, therefore, the complainant company was not a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act.

7. The complainant company took credit facilities from the bank for the purpose of its business activities. The complainant is engaged in manufacturing of plastic packaging film. The purpose behind taking credit facilities from the bank obviously was to advance and augment the business activities of the company using the funds taken from the bank for this purpose. The complainant was seeking to earn profits by undertaking its business activities with the help of the loan taken by it from the bank. Therefore, it can hardly be disputed that the services of the bank were hired or availed by the complainant for a commercial purpose. Therefore, the complainant cannot said to be a consumer as defined in Section 2(1)(d) of the Consumer Protection Act.

8. Since the complainant is not a consumer within the meaning of section 2(1)(d) of the Consumer Protection Act, this Commission therefore, lacks jurisdiction to entertain the complaint. It is, however, made clear that dismissal of the complaint will not come in the way of the complainant approaching forum other than a consumer forum, for the redressal of his grievances.