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Fundamentals of Consumer Protection in India

INTRODUCTION

The Consumer Protection Act (“Act”) is a social welfare legislation which was enacted in 1986 as a result of a widespread and concerted consumer movement. The main object of the legislature in enacting the Act was to provide for better protection of the interests of the consumer. This has been secured, inter-alia, by simplifying procedures, paring down the court fees to a nominal level, permitting a consumer to appear and argue themselves before the different forums i.e. the district forum and the state and national commissions, (“Fora”) apart from authorizing another person to represent them. The general intention was to keep these Fora free of technical rules of procedure and evidence. This newsletter examines some of the salient features of the Act, notes some of the issues and problems in its working, and suggests certain measures to remedy them.

1.0 Who is a “Consumer”?

Consumer¹ means any person who (i) buys or obtains goods² for a consideration or on hire purchase; (ii) hires or avails of any service³ for consideration. Services obtained on deferred payment

¹ “Consumer” is defined in section 2(1)(d) of the Act

² Under section 2(i) of the Act, “goods” are those as defined under section 2(7) of the Sale of Goods Act, 1930. “Goods” means and includes all kinds of movable property, stocks and shares, grass, crops and things attached to the earth which are to be severed before the sale. It, however, excludes money and actionable claims

³ “Service is defined in section 2(o) of the Act. It means service of any description which is made available to potential user and includes, though not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, housing, construction, supply of electrical or other energy, entertainment, amusement, board or lodging or both, housing construction, entertainment, amusement or the purveying of new or other information, but excludes rendering

basis on lease or hire purchase basis are covered under the definition, but services rendered free of charge are excluded. The definition includes anyone who uses such goods or avails services with the approval of the buyer. This was necessary because the goods purchased and the services hired by a consumer are most likely also to be used by his family members, relatives, and friends. Under the general principles of the law of contract, such users of goods are not entitled to sue the supplier or trader on the ground of the absence of “privity of contract”, which provides that only the parties to the contract can sue and not a stranger. This definition mitigates the rigor of the doctrine of privity of contract.

The definition, however, excludes a person who obtains goods for resale or for any large-scale commercial operation. It is obvious that the Parliament intended to restrict the benefits of the Act to ordinary consumers purchasing goods either for their own consumption or for their family or even for use in some small venture which they may have embarked upon in order to make a living, as distinct from large or commercial scale of user. In a settled case the use of a machine to be operated by the complainant and his son, without employing any staff has been held to be a non-commercial use.⁴

While it is not possible to enumerate all cases of Indian jurisprudence the following types of consumers have been identified as such, specifically by the Fora: a child brought to the hospital, a railway passenger, a telephone subscriber, a debenture holder, a beneficiary of a bank guarantee, a nominee of an

of any service free of charge or under a contract of personal service”

⁴ Shind Engineering Industries Vs. J.S. Birdi & Sons, 2002 NCJ 388 (NC)

insurance policy, an allottee of a flat and the recipient of water supply.

1.1 Who can file a complaint?

Complainant⁵ means and includes a consumer as defined above, whether in his individual or representative capacity in a class action and includes a voluntary consumer association registered under the Companies Act or under any other law, the Central or State government and where the consumer has died, his legal heir or representative. A consumer association can seek relief only for the benefit of the consumer on whose behalf it has filed the complaint and not for itself. The Act requires a specific identification of consumers to file complaints.

As an illustration of the judicial trend, the courts have held that if goods are procured from an independent dealer, who is not responsible for the manufacturing defect, such a dealer may be impleaded as he has been held to be accountable under the Act. Even an employer has been held to be liable for the acts of his employees, if they were acting within the normal course of duty.

1.2 Subject matter of the complaint

In addition to the allegations that the goods purchased are defective or that the services availed are deficient, the complaint can include the allegation to the effect that;

- (i) a trader or service provider has adopted an unfair or a restrictive trade practice;
- (ii) a trader or service provider has charged price in excess of those (a) fixed by law, or (b) displayed on the goods, or (c) in the price list exhibited by him, or (d) fixed by agreement between the parties;
- (iii) the goods offered for sale to the public are hazardous to the life and safety of the public or that they are in contravention of any safety norms;
- (iv) the services offered by the service provider are hazardous to the life and safety of the public.

⁵ As defined in section 2(b) of the Act

1.3 Powers to grant relief

The Fora are quasi-judicial bodies, and have to observe the principles of natural justice. The reliefs that can be granted by these Fora are: (1) repair of defective goods; (2) replacement of defective goods; (3) refund of price paid for the defective goods or service; (4) removal of deficiency in service; (5) refund of any extra money charged; (6) withdrawal of goods hazardous to life and safety; (7) compensation for the loss or injury suffered by the consumer due to negligence of the opposite party; (8) adequate cost of filing and pursuing the complaint; and (9) grant of punitive damages. While quantifying damages, the Fora generally grant actual damages, i.e. the actual losses and expenses incurred. They are loathe to grant exorbitant amounts as special damages, and punitive damages, when granted, are reasonable and limited.

2. Procedural Considerations

2.1 Jurisdiction - The forum where a respondent resides or carries on its work or business or where the cause of action or a part thereof arose has the territorial jurisdiction to entertain and decide the complaint. The District Forum has the jurisdiction to entertain complaints where the value of the goods or services and compensation claimed is below US \$ 50,000 approximately. The State Commission has jurisdiction where the value is between US \$ 50,000 approximately and US \$ 210,000 approximately and the National Commission has jurisdiction above US \$ 210,000. The complaint is required to be filed in accordance with the pecuniary jurisdiction of the forum.

2.2 Court fees - Prior to the amendment of the Act in 2002, no court fees was required to be paid, but after the 2002 amendment, a nominal fee is payable for filing a complaint. For example, in the District Forum located in Delhi, the fee structure is linked with the amount of compensation claimed and ranges between US \$ 2 to US \$ 10. The figure of US \$ 10 applies when the amount claimed is between US \$ 20,000 to US \$ 40,000. If one contrasts this with the ad-valorem court fees payable in the civil courts, the court fees payable on US \$ 2,100 would be US \$ 70 approximately. Hence, as is apparent the court fee payable in all the Fora is substantially lower than the court fees payable in the civil courts, and for this

reason the Fora are immensely popular with the consumers.

2.3 Limitation - The complaint is required to be filed within two years from the date on which the cause of action arose or from the day on which the deficiency in service or the defect in the goods was detected. This time limit can be extended only under certain special circumstances, and the consumer is required to explain each day of delay and to satisfy the Fora about the reasonableness of the delay.

3. Judicial Interpretations

With evolving times, the Fora has interpreted the law in the spirit of making available the benefits under the Act to a large number of consumers. The following section briefly explains the interpretative approach of the Fora in dealing with two main areas where complaints are instituted i.e. defects in goods, and deficiency in service.

3.1 Defects in goods - With the manufacturing sector demonstrating some traits of irresponsibility towards the consumers, particularly in the early days of the Act, there was a need to strictly construe the provisions pertaining to defective goods and the cognate statutes. As per the Act, the goods suffer from a defect⁶ when they suffer from any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained under any law, or under any written or implied contract, or as held out by the trader with respect to the goods. Hence, defects were required to be considered from the perspective of the requirements of laws such as the Drugs and Cosmetics Act, 1940, Prevention of Food Adulteration Act, 1954, Standards of Weight and Measures Act, 1976 and Essential Commodities Act, 1955 which lay down the standards in terms of quality, potency and purity. If the prescribed statutory standards were not met, the goods were held to be defective and the Fora liberally granted the remedy of replacement and damages where the manufacturer declined to replace the goods. The Fora also considered the requirements of the contract, which were strictly construed. Further, the following decided cases provide an indication as to what types of goods have been construed as defective: a

⁶ As stated in section 2 (f) of the Act

photocopier which could neither be repaired nor replaced, use of inferior components to assemble a new product, where an electricity distribution company affixed faulty electrical meters in a residence, and spurious and inferior quality white cement used in the construction of a building.

3.2 Deficiency in service - The definition of service is by no means static. Medical services were subsumed under the Act by virtue of a ruling of the Supreme Court.⁷ A service⁸ would suffer from a deficiency whenever there is any fault, or an imperfection, a shortcoming or inadequacy in the quality, nature and manner of performance of the service. The standards of service that are required to be maintained are as defined under any law or as set out in a contract. Illustrations of judicial precedents where the services have been held to be deficient are where the airlines had changed their schedule, but the travel agent had failed to inform the passenger of the change, where the railways did not provide a berth despite a confirmed reservation, where the bank did not honor a cheque despite sufficient balance in the account, delay by a courier company in delivery of documents and where a real estate developer did not deliver a residential flat in time and then failed to refund the amount in time.

4. Appeals and enforcement of orders

An appeal can be filed against the order of the District Forum before the State Commission within thirty days from the date of the order. If the order directs the payment of a sum of money, the person preferring the appeal is required to deposit 50% of that amount or US \$ 525, whichever is less.⁹ Similar provisions provide for the appeals from the order of the State Commission before the National Commission¹⁰ and for appeals from the order of the National Commission before the Supreme Court.¹¹

An order of the Fora shall, if no appeal has been preferred against such an order be final.¹² Where any person or the complainant does not comply with any order of the Fora, they are punishable with

⁷ Indian Medical Association Vs. V.P Shantha, AIR 1996 SC 550

⁸ Deficiency is defined in section 2 (g) of the Act

⁹ Section 15 of the Act

¹⁰ Section 19 of the Act

¹¹ Section 23 of the Act

¹² Section 24 of the Act

imprisonment for a term between one month to three years together with fine between US \$ 40 to US \$ 200, or with both.¹³ The forum and commissions have the right to reduce the minimum sentence and fine.

Section 24 provides that the failure to file an appeal renders the order final. However, judgment debtors have abused this provision, and it has become their customary practice to buy time and prevent enforcement. In certain instances, in practice, even if the appeal has not been admitted by the appellate commission, and the stay preventing execution is yet to be issued, the judgment-debtor has sought to prevent execution of the original order. Thus, justice still eludes the hapless consumer.

The Act is silent regarding the necessity of obtaining a “stay order”. In our opinion, it is necessary that a specific application be made seeking a stay at the time of appeal. Hence, there is a dire need to amend section 24 of the Act to the effect that an order shall be final unless the appellate commission or court, expressly admits the appeal and grants the stay of execution of the impugned order.

CONCLUSION

With the three tier redressal machinery having spread throughout the country, the Act has provided much needed relief and succor to the consumers. However, the consumer disputes which were originally meant to be disposed off in ninety (90) days, due to the large volume of litigation and the mounting pendency, now take over two years to be decided as the Fora are overburdened and overstretched. In our experience, this may partly be due to the fact that lawyers dominate the Fora, contrary to the expectation that consumers would themselves conduct their matters. Despite the fact that over twenty three years have passed since the coming into force of the Act, and an adequate critical mass of data for a social audit of the Act has been generated, inexplicably, certain problems continue to fester. It is time now for the powers that be to make the necessary amendments to prevent the Fora going the same way as the civil courts. (***Naresh Sahai Mathur***)

¹³ Section 25 of the Act

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