

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 790 OF 2023

(Against the Order dated 10/01/2023 in Complaint No. CC/4/2018 of the State Commission
Uttar Pradesh)

1. SHREE SHAKTI FOAMS

THROUGH ITS PROPRIETOR C/O 71 B, COOPERATIVE
BANK COMPOUND IN FRONT OF SUBHASH PARK
M.G.ROAD, AGRA (U.P.)

.....Appellant(s)

Versus

1. CANARA BANK

THROUGH ITS MANAGER JAIPUR HOUSE, AGRA

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MR. NIKHIL JAIN, ADVOCATE WITH
MR. ABHI GARG, ADVOCATE

FOR THE RESPONDENT : MR. DHARUV DWIVEDI, ADVOCATE WITH
MR. BONNY MEHRA, ADVOCATE

Dated : 02 September 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. These cross appeals have been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 10.01.2023 of the State Commission in complaint no. 04 of 2018, whereby the complaint was accepted.
2. We have heard the learned counsel for M/s Shree Shakti Foam (hereinafter referred to as the 'complainant company') and learned counsel for the Canara Bank (hereinafter referred to as the 'bank') and perused the record.
3. There is a delay of 29 days in filing the appeal no. 391 of 2023. Also, there is delay of 161 days in filing the appeal no. 790 of 2023.

In the interest of justice and considering the reasons mentioned in the applications for condonation of delay, the delays in filing both the appeals are condoned.

4. The facts, in brief, are that the proprietor of the complainant company, which is running a business of quilt (gadda) and Foams, got financial assistance from the bank. The total stock of the complainant company and godown was insured by the bank previously and the premium amount was deducted from the account of the complainant company by the bank. It is alleged that the insurance policy and other related documents are kept with the bank. The insurance of stock and godown of the complainant company was got done by the

bank from National Insurance Company and the premium amount also deducted from the account of the complainant company by the bank and the same was paid to the insurance company. It is alleged that there was insurance of the complainant company for sum insured of Rs. 25,00,000/-. It is alleged that the inspection of the godown was done by the bank employees and only after they give consent for approval. It is alleged that on this basis of this very stock summary, the bank gave loan and every year before getting the insurance done, the employees of the bank used to inspect the godown and the goods lying inside the godown. It is alleged that the complainant company was not informed by the bank that the insurance of the godown and stock is done with which company. On 23.11.2017 the bank informed the complainant company that the insurance of the godown and stock which is lying in the godown without doing verification of the stock, was got done and premium of Rs. 13,771/- was deducted from the account of the complainant company. It is alleged that previously, the insurance of godown of the complainant company and the stock was got done by the National Insurance Company which was valid from 12.07.2016 midnight to 11.07.2017. It is alleged that on 20.10.2017, in the night in between 9.00 to 9.30 p.m., fire took place in the godown of the complainant company and all goods which were lying in the godown were burnt. In the very night, the complainant company informed the police and to the bank. It is alleged that it is the duty of the bank to get the stock lying in the godown and the godown of the complainant company got renewed immediately but the bank did not do so. It is alleged that the bank has not informed the complainant company about the names of the insurance company with which the insurance of the godown and the stock lying inside the godown was got done. It is further alleged that the bank in order to conceal his mistake without inspection, the insurance of burnt godown and the stock got done from TATA AIG Insurance Company on 23.11.2017 i.e. after one month and 03 days without giving any intimation to the complainant company and also without getting any inspection done of the godown and the stock of the complainant company. Alleging deficiency in service on the part of the bank, the complainant company has filed a complaint before the State Commission seeking following relief:

“A. That according to the stock summary from 1st April 2017 to 26th October, 2017 in the Godown of the Complainant there was stock of Rs. 39,19,527.52 (Rupees Thirty Nine Lacs Nineteen Thousand Five Hundred Twenty Seven and Fifty Two Paise only). Hence as the compensation Rs. 39,19,527.52 (Rupees Thirty Nine Lacs Nineteen Thousand Five Hundred Twenty Seven and Fifty Two Paise only) may be got given to the Complainant from the Opposite Party Bank.

B. Due to the grave carelessness and deficiency in service given by the Opposite Party Bank and for the mental and physical pain which has been done with the Complainant and for the financial loss which has been caused to the Complainant for which as relief Rs. 5,00,000/- (Rupees Five Lacs) may be got given to the Complainant from the Opposite Party.

B. That litigation expenses and Advocate fee of Rs. 3,00,000/- (Rupees Three Lacs) may be got given to the Complainant from the Opposite Party.

C. That the loss amount of Rs. 39,19,527.52 (rupees Thirty Nine Lacs Nineteen Thousand Five Hundred Twenty Seven and Fifty Two Paise only) which has

been done to the Complainant from the date of the incident the interest on the said amount which this Hon'ble Commission may deem fit and proper may be got given to the Complainant from the Opposite Party.

D. Any other or further order which this Hon'ble State Commission may deem fit and proper in the facts and circumstances of the case may be got given to the Complainant.”

5. The bank contested the complaint by filing written statement and admitted that the policy documents are in the custody of the bank. It is also stated that on the instructions of the complainant company, the bank used to get insured the stock of the godown. It is also stated that it is the duty of the complainant company to inform the bank for renewal of the policy and after renewal of the policy, the complainant company had to give the receipt of policy to the bank. It is further stated that the complainant company is not entitled for any relief and the complaint is liable to be dismissed.
6. The State Commission, vide its order dated 10.01.2023, accepted the complaint and directed the bank to pay the insured amount of Rs. 25 lakh to the complainant company and 8% simple annual interest on this amount along with Rs.20,000/- compensation towards mental, physical and economic damages and Rs. 5,000/- towards litigation from the date of presentation of the complaint till the date of final payment within two months.
7. Being aggrieved by the order dated 10.01.2023 of the State Commission, the complainant company has filed appeal no. 790 of 2023 for enhancement of the complainant company while the bank has filed appeal no. 391 of 2023 for setting aside of the impugned order.
8. Before this Commission, learned counsel for the bank has argued that apart from the letters written to the police and the bank, there was no other evidence to show that there was a fire in the godown. He further argued that there is no independent survey to assess the loss, if any, due to said fire. He further argued that in terms of clause 12 of the Cash Credit Agreement, it is the sole responsibility of the complainant company to get the stocks insured and only in cases of default of complainant company, the bank, on its own volition, may act as mere facilitator and take the insurance on behalf of the complainant company at complainant company's risk. He further argued that the relationship between the bank and the complainant company is of banker and the borrower and it is not the case where the bank sold insurance policy to the complainant company as a service insurance provider. He further argued that there is no deficiency in service on the part of the bank and the complaint is liable to be dismissed.
9. Learned counsel for the complainant company has argued that the bank had neither disclosed the name of the insurance company nor furnished copy of the insurance company and the complainant company did not know anything about the insurance. He further argued that the bank did not get it renewed timely, therefore, the complainant company has suffered a huge loss. Hence, there is a clear deficiency in service on the part of the bank in not renewing the policy well in advance.

10. The primary question that arises for consideration is as to whether the bank is liable for deficiency in service on account of not insuring the hypothecated goods.

11. As regards, the complainant company's contention that it did not know anything about the insurance as the bank was getting it done, it was pointed out that the insurance was taken in the name of the insured at their address. All correspondence of the insurance company was made to the complainant company. Further, the complainant company's agent Mr. Nitish Kumar procured the insurance policy every year from the bank. Further it was emphasized that the relationship between the bank and the complainant company is one of the banker and the borrower. It is not the case of the complainant company that the bank sold an insurance policy to the complainant company and was an insurance service provider. Providing insurance on the stocks was not a service defined under Section 2(42) of the Act 2019. Reliance was placed on the Cash Credit Agreement (CCA) between the parties, especially clauses 8 and 12. Clause 8 defines the goods being hypothecated. Clause 12 reads as under:

“That the said goods and the said debts and assets shall be kept at the borrower's risk and expenses and the borrower shall at their own expenses during the continuance of this security keep the said goods in good and marketable condition and in proper working order and shall likewise at its own expense insure and keep insured the said goods against loss or damage by fire, riot, civil commotion and all such other risks as the bank shall require for the full I market/replacement value thereof in an insurance office or office to be approved by the Bank and shall deliver the policies of insurance to the bank and shall likewise deliver the receipt for the last premium paid for every such policy of insurance and shall assign to the Bank every such policy of insurance 8 and shall pay to the Bank all proceeds of any policy received by the Borrower during the continuance of this security and deliver to the Bank the renewal receipt and polices. In default, the Bank may (but shall not bound) keep in good condition and render marketable and in good working order the said goods or effect or renew such insurance. Any premium paid by the Bank shall until repayment with interest at the rate aforesaid to be charge on the said goods and the said debts and assets hereby hypothecated. The Bank shall be entitled without prejudice to all its other rights and powers, to debit the amounts of such premium costs, charges and expenses to the cash credit accounts of the Borrower in such manner as it deems fit. All sums received under such insurance shall be applied in or towards liquidation of the amount for the time being due to the Bank has provided therein.”

12. As per the contract as clearly laid out it was the borrower's responsibility to get the goods insured and not that of the Bank. It was argued that there was no service which the bank was bound to provide that it failed to provide. Reliance was placed on the decision of this Commission in the case of **Union Bank of India vs. Tirumala Enterprises**, revision petition no. 3027 of 2015, decided 30.6.2020; **Shriram Transport Finance Company Ltd. vs. Sampat**, F.A. No. 578 of 2009, decided on 12.03.2024 and **Oriental Bank of Commerce vs. HS Traders & Ors.**, F.A. No. 2188 of 2017, decided on 25.02.2019.

13. In this case, it is clear that as per Cash Credit Agreement, the primary responsibility of getting the insurance done was of the complainant company. The bank could, but was not bound, to take out the same on behalf of the borrower. This was the express term of contract. The complainant company has shown no evidence that during the period of expiration of the

insurance policy till the date of occurrence, the complainant company took any step to get the stock insured. It is seen that the first letter written to the bank is also endorsed to National Insurance Company, so the complainant company was aware of the insurance policy and its details. Just because the bank had been taking the insurance in the past did not absolve the complainant of the primary responsibility to ensure insurance of the goods.

14. As regards the loss, there is no evidence to prove the actual loss other than the letters written by the complainant company to the police and the bank about the fire, nor any assessment made by the complainant company for the loss that occurred due to the fire. In view of the same, we are of the opinion that the bank was not deficient in service in providing insurance in terms of the Consumer Protection Act, 2019 in view of the decision laid down in the case of **Union Bank of India vs. Tirumala Enterprises(supra)** and **Oriental Bank of Commerce vs. HS Traders & Ors. (supra)**.

15. Consequently, the impugned order dated 10.01.2023 of the State Commission is liable to be set aside and the appeal of the bank is liable to be allowed. The appeal of the complainant company is liable to be dismissed.

16. In the result, the appeal no. 391 of 2023 of the bank is allowed and the order dated 10.01.2023 of the State Commission is set aside. The appeal no. 790 of 2023 of the complainant company, being without merit, is dismissed. Consequently, the complaint is dismissed.

17. Parties to bear their own cost. Pending application(s) if any, stand disposed of.

.....
**SUBHASH CHANDRA
PRESIDING MEMBER**

.....
**DR. SADHNA SHANKER
MEMBER**