

**IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION**

Date of Institution: 29.08.2013

Date of Hearing: 13.09.2024

Date of Decision: 22.11.2024

COMPLAINT CASE NO.- 484/2013

IN THE MATTER OF

**M/S MAJESTIC GRAPHIC AND
MACHINERY INDIA PVT. LTD.**

**THROUGH ITS MANAGING DIRECTOR,
B-88/1, MAYAPURI INDUSTRIAL AREA,
PHASE-I, NEW DELHI.**

(Through: Mr. Javed Ahmad, Advocate)

...Appellant

VERSUS

**UNITED INDIA INSURANCE CO. LTD.,
THROUGH ITS DIVISIONAL MANAGER,
DIVISION OFFICE,
VII, 10203, JAMUNA HOUSE,
THIRD FLOOR, PADAM SINGH ROAD,
KAROL BAGH, NEW DELHI.**

(Through: Mr. Naveen Kumar, Advocate)

... Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Counsel for the Complainant.

Mr. Harsh Kumar, with Mr. Hemang and Mr. Naveen Kumar,
counsel for the OP through VC.**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,****PRESIDENT****JUDGMENT**

1. The present Complaint has been filed before this Commission under Section 12 of the Consumer Protection Act, 1986, by the Complainant alleging deficiency in service on the part of Opposite Party and has prayed for the following reliefs:

*“a. Pass the order directing the Respondent to settle the claim of the complainant in view of Insurance Policy.
b. Direct the Respondent to pay compensation of Rs. 50 lacs to the complainant for the loss suffered by the complainant.
c. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

2. Brief facts necessary for the adjudication of the present complaint that the Complainant is a private limited company engaged in the business of publishing, printing, and bookbinding. A fire broke out at the complainant's factory, causing extensive damage to books and other valuable assets, amounting to approximately Rs. 50 lakhs. The Complainant immediately lodged an FIR and reported the incident to the respondent, informing them of the fire and requesting the appointment of a surveyor to assess the damage.

3. Subsequently, the Opposite Party appointed a surveyor who inspected the damaged premises and instructed the Complainant to submit the necessary documents for processing the insurance claim. The Complainant complied and submitted all the required documents. Despite this, no compensation was provided by the Opposite Party. The Complainant made repeated requests for the settlement of the claim, but the Opposite Party failed to release any compensation in accordance with the terms of the insurance policy.
4. Furthermore, the Bank of Rajasthan, which was involved in financing the Complainant's business, sent a letter to the Opposite Party urging them to settle the claim, but there was no response. The Complainant was directed by the Opposite Party's officials to complete certain formalities, but was informed that the process was still incomplete and that it would take further time to settle the claim.
5. In response to the ongoing delay, the Complainant filed a petition before the Hon'ble High Court of Delhi, seeking directions to settle the insurance claim along with compensation for the undue delay. The High Court granted the complainant the liberty to approach the appropriate forum for redressal of grievances.
6. As a result, the complainant has filed this fresh complaint to seek resolution of their claims and compensation for the losses suffered due to the delay in settlement.
7. The Opposite Party has denied all the contentions and averments in the present case and has raised preliminary objections as to the maintainability of the complaint case. The counsel of the Opposite Party contended that the Complainant is not a consumer under the Consumer Protection Act, 1986 as the insurance was taken for commercial purpose. The counsel for the Opposite Party further contended that the controversy between the parties cannot be decided in

the summary proceedings as there are disputed and complicated questions of facts involved in the present complaint.

8. The Opposite Party lastly submits that Complainant has not complied with the policy condition 6 (1) (b) and the Complainant has not only failed in submission of record and documents but has also failed in getting the joint physical inventory of damaged stocks, which the Opposite Party claims is the most important exercise to quantify the loss. Additionally, the failure of the Complainant in providing the documents like books, record and accounts required by the Surveyor led to the circumstances for non-assessment and non-settlement of the loss by the insurer.
9. The Opposite Party further contended that failing of complainant in providing the documents like books, record and accounts required by the Surveyor led the circumstances for non-assessment and settling of the loss by the insurer. As such the insured has not complied with the policy condition No. 6(1)(b) of the insurance policy which stipulates that:

“The insured shall also at the times at his own times at his own expense produce, procure and give to the company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents, investigation report (internal/external), proofs and information with respect to the claim and the origin and cause of the fire and the circumstances under which the loss or damage occurred, any matter touching the liability or the amount of liability of the company as may be reasonably required by or on behalf of the company together with a declaration on oath or any other legal form of the truth of the claim and of any matters connected therewith.”

10. The Surveyor M/s Soni & Company vide their report dated 24.03.2007 that the loss took place only on the paper side of the cuttings i.e. left over

remains of the books, which were stored on the 2nd floor of the premises. Further, it was found that the fire engulfed books which were either old editions or were old editions.

11. The Respondent further contends that the terms and conditions of the insurance contract are sacrosanct and that the rights and obligations are governed by the terms of the said contract. Further, the terms of the policy have to be construed as it is and such policy is not subject to any such derivation which is not intended.
12. The Complainant has filed his Rejoinder rebutting the written statement filed by the Opposite Party. Thereafter, both the parties filed their Evidence by way of Affidavit in order to prove their averments on record.
13. We have heard the counsel appeared on behalf of both the parties and perused the material available on record alongwith the judgement of the Hon'ble Supreme Court in *Maqbul Ahmad and Ors. Vs. Onkar Pratap Singh and Ors.*
14. The main issue before us is whether Complainant falls under the category of 'consumer' under the Consumer Protection Act, 1986.
15. It is imperative to refer to Section 2(d) of the Consumer Protection Act, 1986:-

*"Section 2(d): "Consumer "means any person who;-
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 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 Re-Sale or any Commercial Purposes; or*

(Hires or avails of any services 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 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)”

16. After the prima facie reading of the bare provision one may come to the conclusion that the complainant is not a consumer, however one has to read the statutory provision in consonance with the case laws which has given interpretation to the provision.

17. The Supreme Court in ***Laxmi Engineering Works v. P.S.G. Industrial*** extensively examined the definition of the term "consumer" as under: -

“11. Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means insofar as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration; (iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression 'resale' is clear enough. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a 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" (Collins English Dictionary) whereas the word 'commerce' means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary) . The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a 'consumer' within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion - the expression "large scale" is not a very precise expression - Parliament stepped in and added the explanation to Section 2(d)i) by Ordinance/ Amendment Act, 1993 The explanation excludes certain purposes from the purview of the expression "commercial purpose" - a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose.

18. The explanation however clarifies that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression 'consumer'. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a 'consumer'. In the

illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a "commercial purpose", to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., "uses them by himself" "exclusively for the purpose of earning his livelihood" and "by means of self-employment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer.) As against this a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person would not be a consumer. This is the necessary limitation flowing from the expressions "used by him", and "by means of self-employment" in the explanation. The ambiguity in the meaning of the words "for the purpose of earning his livelihood" is explained and clarified by the other two sets of words. "and after a fair

analysis of the definition "consumer" post-amendment 1993 finally held as under:

"21. We must, therefore, hold that: (i) The explanation added by the Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance 24 of 1993) with effect from 18-6-1993 is clarificatory in nature and applies to all pending proceedings. (ii) Whether the purpose for which a person has bought goods is a "commercial purpose" within the meaning of the definition of expression 'consumer' in Section 2(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case. (iii) A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self employment is within the definition of the expression 'consumer'."

19. Further it would be appropriate to refer the Apex Court judgement of decision in ***Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers and Ors. (2020) 2 SCC 265***, where it was observed

"That the purchase of goods/services should have a close and direct nexus with a profit generating activity. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser. Merely because a person under the Act may be a commercial enterprise, it is not excluded from the definition of consumer. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. What is important is to examine the transaction in reference to which the claim has been filed by a person who claims to be a consumer under the definition of the Act."

20. It is also imperative to refer to the dicta of the Supreme Court in *India Insurance Company Limited v. Levis Strauss (India) Private Limited* wherein, the Court has held as under:

“53. A contract of insurance is and always continues to be one for indemnity of the defined loss, no more no less. In the case of specific risks, such as those arising from loss due to fire, etc. the insured cannot profit and take advantage by double insurance. Brett, LJ in Castellain v. Preston [Castellain v. Preston, (1883) 11 QBD 380] said that : (QBD p. 386)

“...the contract of insurance... is a contract of indemnity. ... and that this contract means that the assured, in the case of loss ... shall be fully indemnified, but shall never be more than fully indemnified.”

21. Analysis of Section 2(d) along with the case laws leads us to the conclusion that in the instant case availing the service of insurance policy is clearly an act for indemnifying a risk of loss/damages and the complainant does not have a dominant nexus of profit generation from the same.

22. In the present case the complainant has availed the service of insurance to protect it from potential loss and the loss committed by fire would not in anyway generate profit rather put the complainant in status quo, i.e., in position before the fire. Thus, the complainant qualifies as a “consumer” under Section 2(1)(d) of the Act, 1986. The objection raised by the Opposite party lacks merit and should be dismissed.

23. The *second question* of consideration before us is *whether the present complaint involves complicated questions of facts, which cannot be decided by summary procedure adopted by this commission.*

24. The Consumer Protection Act, 1986, came into being in order to protect the interest of Consumers who are affected by the acts of the service providers, who in order to attract the Consumers, tend to make lucrative offers but when it comes to actually providing the offered services, they take a step back.

25. The Consumer Protection Act, 1986 defines 'Consumer' as follows:

“(2)

(d) "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 promised, 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;”

26. Deficiency has been defined under Section 2 sub-clause (g) of the Consumer Protection Act, 1986 which reads as follows:

“(2) (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;”

27. Returning to the facts of the present complaint, the perusal of the record shows that the Complainant had taken an insurance policy to safeguard their future losses and availed the services of the Opposite Party. However, the Complainant alleged in the complaint that the Opposite Party has failed to honour the terms of the insurance policy and failed to provide the claim for the losses suffered by him, due to which the present complaint was filed before this commission. There is nothing available on record which would reflect that there are such complicated questions involved which could not be settled based on the pleadings filed on behalf of the contesting parties.

28. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission and there is no bar with respect to the jurisdiction of this commission to entertain cases related to the deficiency in service on the part of insurance company in releasing the claim of the insured.

29. The *third question* for consideration before us is *whether the Complainant violated Condition no. 6 (1) (b) of terms and condition of the policy in question*

30.The Opposite Party contends that the Complainant has not complied with the policy condition 6(1)(b), which stipulates that:

“The insured shall also at all times at his own expense produce, procure and give to the company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents, investigation report (internal/external), proofs and information with respect to the claim and the origin and cause of the fire and the circumstances under which the loss or damage occurred, any matter touching the liability or the amount of liability of the company as may be reasonably required by or on behalf of the company together with a declaration on oath or any other legal form of the truth of the claim and of any matters connected therewith.”

31.The Opposite Party further denies the claim of the Complainant relying on the Surveyor’s report dated 24.03.2007 which revealed that the loss took place only of the paper side cuttings i.e. left over remaining of books, which were stored on 2nd floor of the premises. The Opposite Party argues that the fire occurred in discarded pieces of cuttings and old books, which were either outdated or of previous editions.

32. It is established that Condition No. 6(1)(b) of the insurance policy mandates that the insured party must, at their own expense, provide the insurer with all relevant documents, investigation reports, proofs, and details concerning the origin and cause of the fire, along with information on the loss or damage sustained. The condition further requires the insured to provide a declaration on oath or any other legal form regarding the truth of the claim and related matters.

33.

34. In this case, it is noted that the complainant failed to provide the necessary documents to the insurer and surveyor, including *“the related Books of Accounts /Documents/Information required for the assessment of the loss, failed to conduct the Joint Physical Verification of the Inventory of Damaged Stocks inspite of various reminder, failed to provide the valuation of the Safe Stock physically identified by us, failed to provide the value of the Salvage”*
35. Specifically, the Surveyor’s report dated 24.03.2007 reveals that the fire primarily affected paper cuttings and obsolete or old books, and the complainant did not provide sufficient evidence of the value of the goods damaged. Furthermore, there is no record of the complainant submitting investigation reports or adequately supporting the origin and cause of the fire as required under the policy.
36. While the complainant did lodge an FIR and reported the fire incident, which indicates an effort to comply with the procedural requirements of the policy, the failure to provide supporting documentation significantly undermines the claim. The lack of cooperation in submitting these critical documents impedes the insurer's ability to assess the claim accurately and settle it within the terms of the policy.
37. The Opposite Party (Insurer) is justified in raising concerns about the complainant's non-compliance with Condition No. 6(1)(b). The policy terms clearly stipulate that the insured must furnish all relevant details and documents to substantiate the loss and the amount claimed. Failure to do so constitutes a breach of the insurance contract, which can result in the denial of the claim, especially where the documents are essential for verifying the loss, the extent of the damage, and the amount of liability.
38. It is well-settled that in insurance contracts, strict compliance with the terms and conditions is essential. The courts have repeatedly held that the

failure to submit required documents can result in the dismissal of the claim, unless it can be shown that the insured party was unable to comply due to circumstances beyond their control, or if such failure did not materially affect the insurer's ability to assess the claim.

39. In this instance, there is no indication that the complainant was unable to provide the required documents, nor has it been demonstrated that the failure to do so did not affect the insurer's ability to process the claim. Therefore, the complainant's failure to comply with Condition No. 6(1)(b) constitutes a material breach of the contract.
40. The Complainant failed to provide the necessary documents and information as required by Condition No. 6(1)(b) of the insurance policy, it is concluded that the Complainant has violated this policy condition. As a result, the insurer (Opposite Party) is justified in denying the claim based on non-compliance with the terms of the contract.
41. Resultantly, the *present Complaint stands dismissed with no order as to costs.*
42. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
43. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
44. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On: **22.11.2024**

LR-SM