2025 LiveLaw (SC) 264

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SUDHANSHU DHULIA; J., PRASHANT KUMAR MISHRA; J.
February 28, 2025

CIVIL APPEAL NO. 7438 OF 2023

THE CHIEF MANAGER, CENTRAL BANK OF INDIA & ORS.
versus
M/s AD BUREAU ADVERTISING PVT. LTD & ANR.

CIVIL APPEAL NO. OF 2025 (@ DIARY NO. 20192 OF 2024)

M/s AD BUREAU ADVERTISING PVT. LTD.
versus
THE CHIEF MANAGER, CENTRAL BANK OF INDIA & ORS.

Consumer Protection Act, 1986 - Section 2(1)(d)(ii) - "Consumer" - Project Loan - Commercial Purpose - Deficiency in Service - Whether a borrower of a project loan for commercial purposes falls within the definition of "Consumer" - Held, no.

A company availing a project loan for the post-production of a movie, with the dominant intention of generating profits, does not fall within the definition of "Consumer" under Section 2(1)(d)(ii) of the Consumer Protection Act, 1986. The transaction constitutes a business-to-business transaction for a commercial purpose, and the explanation to Section 2(1)(d) regarding self-employment does not apply. The dominant purpose of the loan, even if partly for brand-building, is ultimately profit generation. The NCDRC lacks jurisdiction in such cases. *(Para 19 & 21)*

Consumer Protection Act, 1986 - Section 2(1)(d)(ii) - The "commercial purpose" exclusion in Section 2(1)(d)(ii) applies to loans availed for profit-generating activities. Business-to-business loan transactions for commercial purposes are outside the purview of the Consumer Protection Act. *(Para 19 & 21)*

Consumer Protection Act, 1986 - Section 2(1)(d)(ii) - 'dominant intention' - The dominant intention behind the transaction determines whether it is for a commercial purpose. Dominant purpose test is crucial in determining whether a person availing services qualifies as a 'consumer.' *[Relied on: National Insurance Company v. Harsolia Motors, 2023 LiveLaw (SC) 313 and Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers. (2020) 2 SCC 265; (Para 18 & 21)]*

Consumer Protection Act, 1986 - Section 2(1)(d)(ii) - Project Loan – Wrongful Reporting to CIBIL – Maintainability of Complaint before NCDRC - The NCDRC held the Central Bank of India liable for deficiency in service and wrongful reporting of the respondent company as a defaulter to CIBIL, thereby causing reputational and financial loss. The NCDRC awarded compensation of Rs. 75,00,000/- and litigation costs of Rs. 20,000/- in favor of the respondent, along with a direction to issue a certificate stating that the loan account was settled and that the wrongful reporting was incorrect. Held, the Respondent which availed a project loan of Rs. 10 crores for the post-production of a movie, did so with the dominant purpose of generating profits. Hence, it was a business-to-business transaction and fell within the ambit of 'commercial purpose.' Since the loan had a direct nexus with profit generation and commercial gain, the respondent did not fall within the definition of 'consumer'

under the Act. Consequently, the complaint before the NCDRC was not maintainable. *(Para 22)*

Counsel for the parties : Mr. Ashish Wad, Adv. Mr. Manoj Wad, Adv. Ms. Swati Arya, Adv. Ms. Akriti Arya, Adv. Mohd. Hadi, Adv. M/S. J S Wad And Co, AOR Mr. Viresh B. Saharya, AOR Mr. Akshat Agarwal, Adv. Mr. Rishabh Mathur, Adv. Respondent-in-person Mr. Dharav Shah, Adv. Mr. Dhawal Desai, Adv. Mr. Pranaya Goyal, AOR

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The question which arises in these two appeals for our determination is that whether the borrower of a project loan, falls within the definition of 'Consumer' under the provisions of the Consumer Protection Act, 1986 (hereinafter, '**the Act'**).

2. These statutory appeals arise from the order dated 30.08.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter, '**NCDRC**') in Consumer Complaint No. 23/2021. The appellant before us in Civil Appeal No. 7483 of 2023 is the Chief Manager, Central Bank of India and has filed the appeal under Section 23 of the Act, assailing the finding arrived at by the NCDRC holding that there was a deficiency in service on part of the appellant and thus, it is liable to pay compensation to the respondent No. 1, which is M/s Ad Bureau Pvt. Ltd., (a company engaged in the business of branding, consulting & advertising).

3. On the other hand, Civil Appeal (Diary) No. 20192 of 2024 has been filed by M/s Ad Bureau Pvt. Ltd., challenging the quantum of compensation awarded by the NCDRC, on the ground that the same has been awarded inadequately. For the sake of convenience, we shall refer to the parties as per their respective status in Civil Appeal No. 7483 of 2023.

4. The NCDRC vide its order dated 30.08.2023 has allowed the Consumer Complaint filed by respondent No.1 herein and has directed the appellants[1] to pay a compensation of Rs. 75,00,000/- to respondent No.1 and to issue a certificate stating that the loan account of respondent No.1 with the Central Bank of India was settled and no outstanding dues remained in the said account and also holding that the Bank had wrongly reported the status of respondent No.1 as a defaulter to CIBIL[2], which caused loss to the respondent No.1 in the market. Additionally, the appellants were also directed to pay to respondent No.1, litigation costs of Rs. 20,000/-.

5. At the outset, it would be necessary to state the relevant facts.

On 28.04.2014, a Project Loan of Rs. 10 crores was sanctioned by the Central Bank of India in favour of respondent No.1, which is a private limited company carrying on advertising business. The purpose behind availing this loan was that respondent No. 1 was to engage in the post-production of a movie. A property located at old D.No. 61, new D. No. 194, St. Mary's Road, Abhiramapuram, Chennai, which stood in the name of the Chairman and Managing Director of respondent No.1 was pledged as collateral for the loan. After availing the said loan, respondent No. 1 defaulted in repayment and its loan account and was classified as NPA[3] on 04.02.2015. When respondent No.1 failed to repay the amount even after issuance of Demand Notice by the appellant-bank, a Possession

[1] Appellant Nos. 1, 2 & 3 are the Chief Manager, Mount Road Branch, Chennai; Field General Manager, Chennai; and the Managing Director & Chief Executive Officer of the Central Bank of India respectively.

[2] Credit Information Bureau of India Limited.

[3] Non-Performing Asset.

Notice was issued on 21.05.2015 and pursuant to the same, symbolic possession of the property pledged as collateral for the loan was taken in terms of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '**SARFAESI Act'**).

6. Thereafter, on 09.10.2015 the Bank filed an application under Section 19 (1) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as **'RDDBFI Act'**) before the Debts Recovery Tribunal, Chennai for recovery of an amount of Rs 4,65,39,715/-. This application came to be allowed by the Debts Recovery Tribunal, Chennai vide order dated 05.12.2016 and the Bank was held to be entitled to recover an amount of Rs.4,65,39,715/- with interest @ 12% p.a. till the date of realisation along with costs. Pursuant thereto, a communication was addressed to the appellant-bank by respondent No.1 offering a One-Time Settlement of Rs. 3.56 Crores and the offer was duly accepted by the appellant-bank.

7. Thereafter, the appellant-bank called upon respondent No.1 to pay the 'delayed period interest' which was computed as Rs. 14.43 lacs. Admittedly, this amount was also paid by respondent No.1 to the appellant-bank, pursuant to which 'No-Dues Certificate' was issued on 13.01.2017 and 20.03.2017 by the appellant-bank towards respondent No.1. Further, a 'full-satisfaction memo' was also filed before the DRT by the appellant-bank, wherein the factum of payment of the one-time settlement amount and delayed interest by respondent No. 1 was accepted by the appellant-bank.

8. The precise case of the respondent No. 1 before the NCDRC, as well as before this Court, has been that the appellant-bank was grossly negligent and deficient in providing banking services to respondent No. 1 and has consequently caused monetary damages and a loss of reputation to it. As per the 'Master Circular on Wilful Defaulters'[4] by the Reserve Bank of India (hereinafter, '**RBI**'), all nationalised banks and financial institutions have to report information regarding borrower accounts which are classified as doubtful and loss accounts with outstanding amount aggregating Rs. 1 Crore and above. These borrowers are classified and reported as 'wilful defaulters' by the respective banks and financial institutions to the RBI, which in turn, consolidates the entire information reported in the form of a list on a yearly basis. The grievance of respondent No. 1 towards the appellant-bank has been that the appellant-bank, despite issuing a No-Dues Certificate and despite filing a Full-Satisfaction Memo before the DRT, incorrectly reported the name of respondent No. 1 to RBI as a defaulter with a total outstanding amount of Rs. 4.17 Crores.

9. This incorrect reporting by the appellant-bank not only led to a significant loss of goodwill and reputation, but it also resulted in the respondent No. 1 losing an exclusive advertising tender/license by the Airports Authority of India, which although, was initially awarded to respondent No. 1 but was subsequently cancelled for the reason that a Bank Guarantee was required to be submitted, but the same could not be done, as when the respondent No.1 approached HDFC Bank for issuance of the same, the bank refused to do so upon finding the name of respondent No.1 in the list of wilful defaulters.

10. Aggrieved by the wrongful reporting and the losses which it faced on account of the same, respondent No. 1 filed Consumer Complaint No. 23 of 2021 before the NCDRC. Vide Impugned Order dt. 30.08.2023, NCDRC partly allowed the complaint, holding that the appellant-bank was deficient in service and also engaged in an unfair trade practice.

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[4] Circular No. DBOD No. BC/CIS/47/20.16.002/94 dated 23.04.1994.

It was observed by the NCDRC that since the wrongful reporting by the appellant-bank constitutes a serious breach of duty, it is liable to compensate respondent No. 1 for the losses it has incurred and accordingly, the NCDRC awarded a compensation of Rs. 75,00,000/- to respondent No. 1 which was to be paid jointly and severally by the appellants herein and also directed them to pay litigation costs of Rs. 20,000/-. Further, the appellants were directed to issue a certificate in favour of respondent No. 1, wherein it was to be stated by the appellant-bank that loan account of respondent No. 1 stood settled and no outstanding dues remained. The appellant-bank had to further state that it had been wrongly reporting the status respondent No. 1 as a 'defaulter' from 31.03.2017 till 30.06.2020.

11. We have heard learned counsel for the appellants as well as Shri M. Abirchand Nahar, who appeared and argued as partyin-person, on behalf of respondent No. 1 and we have also heard the learned counsel for respondent No. 2, i.e. TransUnion CIBIL Limited.

12. At the outset, it has been submitted by the learned counsel for the appellants that the order dated 30.08.2023 of the NCDRC is not sustainable in law, as it was passed without first adjudicating whether the respondent No. 1 falls within the definition of consumer in terms of Section 2 (1) (d) (ii) of the Act. It has been further submitted by the learned counsel for the appellants as well as learned counsel for respondent No. 2 that respondent No. 1 does not come within the definition of 'consumer' under Section 2 (1) (d) (ii) of the Act since the service availed (sanction of project loan) by respondent No. 1 from the appellant-bank was purely for a commercial purpose and it was a loan transaction between two business entities. In other words, it was business-to-business transaction as opposed to a business-to-consumer transaction. This is the first limb of the argument. The second limb, which is a continuation of the first, is that this service was availed by respondent No.1 with the 'dominant intention' of generating profits and the main purpose behind the loan transaction was to increase/generate additional revenue for the company. In support of this argument, learned counsel(s) have relied upon two decisions of this Court in ***National Insurance Company Limited*** *vs.* ***Harsolia Motors & Ors.*** **(2023) 8 SCC 362** & ***Lilavati Kirtilal Mehta Medical Trust*** *vs.* ***Unique Shanti Developers***, **(2020) 2 SCC 265**.

13. Before dealing with the rival submissions advanced on behalf of the respondent No. 1, we consider it necessary to refer to Section 2 (1) (d) (ii) of the Act, which is reproduced as under:

(d) "consumer" means any person who—

(i) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(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;

(emphasis provided)

14. A plain reading of the above makes it clear that where a service is availed, for any "commercial purpose" then the person who has availed such a service is not a "consumer" for purposes of the Act. All the same, this is subject to a caveat which is provided by the Explanation to Section 2 (1) (d) of the Act. The explanation clarifies that when the person uses the goods bought, or avails any service for the sole purpose of earning his livelihood, by means of self-employment, then such a person would not be excluded from the definition of 'consumer' under the Act.

15. As a counter to the submission of the appellants that respondent No.1 is not a 'consumer' on account of fact that the it had availed the loan facility, with the purpose of generating profits for its business, respondent No. 1 would argue that it is squarely covered by the Explanation to Section 2 (1) (d) of the Act and that loan was availed by it only for 'self-use'. This argument was also put forth by respondent No. 1 before the NCDRC, where it claimed that loan amount of Rs. 10 crores was used by it to engage itself in the post-production of a movie titled "Kochadaiiyaan" and to see to it that the name of respondent No.1 is displayed on the movie title, the posters of the movie as well as the advertisements of the movie. In other words, it was a self-branding exercise, the sole purpose being building a brand name for respondent No.1, in order to earn livelihood and thus, there is no nexus to generation of profits.

16. We are not convinced by this argument put forth on behalf of respondent No. 1 for the simple reason that even if partly, it may be true that the loan was availed for a self-branding exercise, the dominant purpose behind brand-building itself is to attract more customers and consequently generate profits or increase revenue for the business. A bald averment that company engaged itself in the post-production of the movie solely for the purposes of brand-building does not alter the fundamental nature of the transaction, i.e. the availing of credit facility from the appellant-bank, which was purely a business-to-business transaction, entered into for a commercial purpose. Post-production of a film involves multiple activities, which finally gives shape and presentation to a film, which is a commercial venture.

17. In ***Lilavati Kirtilal Mehta Medical Trust*** *vs.* ***Unique Shanti Developers***, **(2020) 2 SCC 265**, this Court has observed that no strait-jacket formula can be laid down for determining whether an activity or transaction is for a commercial purpose and has laid down certain principles which are to be kept in mind. The relevant excerpt is reproduced hereunder:

"**19**. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is "for a commercial purpose":

19.1. The question of whether a transaction is fora commercial purpose would depend upon the facts and circumstances of each case. **However, ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or businesstobusiness transactions between commercial entities**.

19.2. **The purchase of the good or service should have a close and direct nexus with a profitgenerating activity**.

19.3. The identity of the person making thepurchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. 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 or their beneficiary."

(emphasis provided)

18. We are cognisant of the fact that respondent No.1 would not be excluded from the definition of consumer merely on account of the fact that it is a commercial entity/enterprise. But what has weighed with us in coming to the conclusion that in the instant case, respondent No.1 cannot be said to be a 'consumer' is the fact that the transaction in question i.e. obtaining a project loan did have a close nexus with a profitgenerating activity and in fact, the dominant purpose for getting this loan sanctioned was to generate profits upon successful post-production of the movie titled "Kochadaiyaan".

19. We may also refer to the decision of this Court in ***Shrikant G. Mantri*** vs. ***Punjab National Bank* (2022) 5 SCC 42**. The facts of this case were that the appellant therein was a stockbroker who availed an over-draft facility from the respondentbank, the purpose of which was to facilitate his daily transactions in the stock and share market. As collateral for the overdraft facility, the appellant therein had pledged his shares, which were not returned to him despite the matter being settled between the parties through a one-time settlement. Alleging deficiency in service by the respondentbank, the appellant approached the NCDRC which dismissed the complainant on the grounds of maintainability, holding that he is not a consumer under the provisions of this Act. When the matter came up before this Court, it was the appellant's case that he had availed the overdraft facility for his 'self-employment'. This Court found no merit in this argument and held that the overdraft facility was taken by the appellant therein to expand his business profits and the relationship between the appellant and respondent-bank would purely be a 'business-to-business' relationship and therefore, the transaction would clearly come within the ambit of the term "commercial purpose".

20. Further, in ***National Insurance Company Limited*** *vs.* ***Harsolia Motors & Ors.* (2023) 8 SCC 362**, this Court has laid down the determining factors which have to be kept in mind while considering whether a service is availed for a commercial purpose or not. The relevant excerpt is reproduced hereunder:

> **"39.** Applying the aforesaid test, two things are culled out : (*i*) whether the goods are purchased for resale or for commercial purpose; or (*ii*) whether the services are availed for any commercial purpose. The two-fold classification is commercial purpose and noncommercial purpose. If the goods are purchased for resale or for commercial purpose, then such consumer would be excluded from the coverage of the 1986 Act. For example, if a manufacturer who is producing product *A*, for such production he may be required to purchase articles which may be raw material, then purchase of such articles would be for commercial purpose. As against this, if the same manufacturer purchases a refrigerator, television or airconditioner for his use at his residence or even for his office has no direct or indirect nexus to generate profits, it cannot be held to be for commercial purpose and for aforestated reason he is qualified to approach the Consumer Forum under the 1986 Act.
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> **40.** Similarly, a hospital which hires services of a medical practitioner, it would be a commercial purpose, but if a person avails such services for his ailment, it would be held to be a non-commercial purpose. **Taking a wide meaning of the words "for any commercial purpose", it would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit**. Profit is the main aim of commercial purpose, but in a case where goods purchased or services hired is an activity, which is not directly intended to generate profit, it would not be a commercial purpose."

(emphasis provided)

21. From an analysis of the afore-mentioned decisions, it is quite clear that what is to be seen here is that whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the person who has availed the service. Therefore, it is our considered opinion that the respondent No.1 is not a 'consumer' in terms of Section 2 (1) (d) (ii) of the Act.

22. In view of the aforesaid, we find merit in this appeal and accordingly set aside the order dated 30.08.2023 passed by the NCDRC. The Civil Appeal stands allowed, accordingly.

Pending applications, if any, shall stand disposed of.

23. However, we deem it necessary to add that we have only dealt with the issue of maintainability of the Consumer Complaint filed by respondent No.1 before the NCDRC, and we have allowed this appeal only on the ground of lack of jurisdiction of NCDRC. We have not expressed any opinion on the merits of the dispute between the parties herein. We also clarify that this judgment shall not come in the way of respondent No.1 to pursue appropriate remedies in accordance with law.

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24. Delay condoned.

25. In view of the aforesaid, we see absolutely no scope for our interference with the order dated 30.08.2023 of the NCDRC as regards the quantum of compensation awarded.

26. The civil appeal stands dismissed, accordingly.

27. Pending application(s), if any shall stand disposed of.