

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

25th day of February 2025
CC 30/23 filed on 25/01/2023

Complainant : Astra Bio Science Ltd., Kinfra Industrial Park,
Koratty, Thrissur – 680 309. Rep. by Director,
AJIN ANTO M, S/o Anto M.R.,
Madathiparambil House, Nehru Nagar,
Second Avenue, Kunnankulam P.O.,
Thalappally Taluk, Thrissur – 680 503.
(By Adv. Laju Lazar, Thrissur)

Opposite Party : M/s Rita Pad Printing Systems, Block No.44 & 45,
Sector 18, Gurugram, Haryana – 122 015.
Rep. by The Director, Mr. Devesh Rai,
Plot No.44 & 45, Sector – 18, Gurugram,
Haryana – 122 015.
(Ex-parte)

FINAL ORDER

By Sri. Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under Section 35(1) of the Consumer Protection Act, 2019. The complainant is a company represented by one of its Directors, which is statedly engaged in the dealing of medical equipments and accessories. The complainant on 24/09/2024 statedly placed with the opposite party a purchase order for the manufacture and supply of “Moelock Special Pad Printing System based on Machine model MRV 100 Double Colour along with Flame treatment unit, Auto loading and auto unloading to print on to centrifuge – 15 ml tube for single variant (15 ml) with possibility to attach change part”, for a mutually agreed upon consideration of Rs. 28,32,000/- (Rupees Twenty

eight lakh thirty two thousand only) including GST and delivery charges. As per the terms and conditions of the purchase order, the machinery was to be delivered by the opposite party at the complainant's site within 70 days. The complainant claims to have paid the opposite party an advance sum of Rs.10 lakh by NEFT transaction. The machine was ordered by the complainant for the purpose of bringing about prints on centrifuge tubes. Allegedly, the opposite party failed to inform the readiness of the machine till September, 2021. But the complainant claims to have received on 21/09/21 certain printed samples, allegedly with defective printings, which the opposite party was informed of. The complainant statedly delegated its technicians to inspect the machines in question at the opposite party's premises and also to undergo pertinent training thereat. Allegedly, it was then noticed that the machine in question made heavy noise and had no safety guard or precautionary arrangements. The modifications brought about by the opposite party in the machines to cure the alleged defects, statedly evoked no result. The machine was not delivered till date. The complainant claims to have obtained work orders worth Rs.3 crore during the period from November 2020 to September 2021, the period mentioned having witnessed the severe out-break of Covid 19 pandemic. The complainant alleges that he could not accept the said work orders owing to the opposite party's having not delivered the machine in question, and consequently had undergone heavy profit loss. The complainant who is statedly not willing to take the defaulted machine, claims to be entitled to receive from the opposite party the refund of the advance sum of Rs.10 lakh that was paid to them. The complainant states that it had undergone a loss of more than Rs.3 crore owing to the fault on the part of the opposite party, but limits its profit to the tune of Rs.30 lakh for the purpose of compensation. The complainant alleges deficiency in service and adoption of unfair trade practice on the part of the opposite party. Hence the complaint.

The complainant prays for an order directing the opposite party to refund to it a sum of Rs.10,00,000/- (Rupees Ten lakh only) that it paid as advance, apart from other reliefs of compensation and costs.

2) Notice :

The Commission issued notice to the opposite party. Though the opposite party was represented through a lawyer, they failed to file their written version in time before the Commission. Resultantly, the proceedings against the opposite party were set ex-parte.

3) Evidence :

The complainant produced documental evidence that had been marked Exts. A1 to A8, apart from affidavit and notes of argument. Proceedings against the opposite party being ex-parte, no evidence adduced on their part.

4) Deliberation of the facts and evidence of the case :

The Commission has very carefully examined the facts and evidence of the case. Ext. A1 is a copy of the Quotation No.R RPPSL/2020-21/ABLK/AM/143 dtd. 18/08/2020 issued by the opposite party in favour of the complainant in respect of 'MORLOCK SPECIAL PAD PRINTING SYSTEM BASED ON MACHINE MODEL MRV 100 DOUBLE COLOR ALONG WITH PRE TREATMENT UNIT, MANUAL LOADING AND AUTO UNLOADING TO PRINT ONTO CYRO TUBES FOR SINGLE VARIANT (15 ml)' quoting a sum of Rs.24,15,000/-. Ext. A2 is copy of Purchase Order No. ABL/CG/055/2020-21 dtd.24/09/2020, issued by the complainant to the opposite party in respect of 'Moelock Special Pad Printing system based on machine model MRV 100 Double color along with Flame treatment unit, Auto loading and auto unloading to print onto centrifuge – 15 ml tube for single variant (15 ml) with possibility to attach change part', for a total consideration

of Rs.28,32,000/-, mentioning payment of a sum of Rs.5,00,000/- on 24th October. Ext. A3 is copy of letter dtd. 19/03/2022 issued by the complainant to the opposite party. Ext. A4 is print out of the NEFT transfer details in respect of a sum of Rs.5,00,000/- to the opposite party, UTR No.SBIN1202. Ext. A5 is print out of NEFT transfer details in respect of a sum of Rs.4,00,000/- to the opposite party, UTR No. SBIN3203. Ext. A6 is print out of NEFT transfer details in respect of a sum of Rs.1,00,000/- to the opposite party, UTR No. SBIN3203. Ext. A7 is copy of complainant's reply notice dtd. 08/04/2022. Ext. A8 comprises complainant's bank account statement for the dates 24/09/2020 & 30/10/2020.

5) Points of deliberation :

i) Maintainability ?

If yes,

ii) Whether there is any deficiency in service or adoption of unfair trade practice on the part of the opposite party, as alleged ? Also whether the complainant is entitled to receive refund of the advance sum it paid to the opposite party.

iii) Whether the complainant is entitled to receive any compensation from the opposite party ? If so, its quantum ?

iv) Costs ?

Point No.(i) :

6) Admittedly, the complainant is a company engaged in the business of dealing medical equipments and accessories. The opposite party is apparently the manufacturer of machines used for imprinting centrifuge tubes. The issue in question relates to the complainant's Ext. A2 purchase order issued to the opposite party for availing a printing system at a cost of Rs.28,32,000/- Ext. A2 purchase order is seen dated 24/09/2020 [In the complaint, the complainant is

seen to have erroneously made the mention that the purchase order was placed on 24/09/2024, which appears to be a typographic error]. Apparently, the transaction, concerned, is one of “business to business” (B 2 B) nature. It is trite law whether an activity or transaction is for commercial purpose or not, is a matter which cannot be decided by a straight jacket formula, but is one to be decided on the facts and circumstances of each case. This fact is unambiguously underscored by the Hon’ble Apex court by its judgement in ***Lilavati Kirtilal Mehta Medical Trust Vs Unique Shanti Developers***. Therefore, evidence adduced by parties will have to be evaluated on the basis of pleadings and thereafter the conclusion be arrived at. In the case at hand, it is an admitted fact that the complainant was already engaged in the business of dealing with medical equipments and accessories even before he issued Ext. A2 purchase order to the opposite party. Admittedly, the complainant issued Ext. A2 purchase order and attempted to obtain the printing system from the opposite party with a view to enhancing its profit. It is also an admitted fact that the complainant could not accept work orders worth more than Rs.3 crore, exclusively owing to the opposite party’s non-delivery of the machine in question, and that this fault on the part of the opposite party had inflicted drastic profit loss to the complainant. The complainant claims to have limited the profit loss to Rs.30 lakh, as well, for the purpose of compensation. It is a matter beyond doubt that the dominant intent or purpose of the impugned Ext. A2 purchase order, was profit generation of huge magnitude. Therefore, it becomes unequivocally evident from the averments of the complainant itself, that the impugned transaction was for a commercial purpose.

7) During the case proceeding, an amendment of crucial nature was sought by the complainant (IA 255/24), and was allowed resulting in the filing of an amended complaint on 24/04/2024. By the amendment brought about, the

complainant-company pleads that the business is run for livelihood. Section 2(7) of the Consumer Protection Act, 2019 reads as follows :

“ 2. Definitions : *****

(7) “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 service 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 service 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 service for any commercial purpose.**

Explanation – For the purposes of this clause –

- (a) the expression “commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;**
- (b) the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic**

means or by teleshopping or direct selling or multi-level marketing;”

8) In the instant case by the amendment brought about in the complaint, the complainant pleads that the business is run for livelihood. Once the purpose of an impugned transaction is evident to be commercial in nature, the onus is then on the complainant to bring his case to show that the impugned transaction or activity is for the purpose of earning livelihood by means of self employment. In the present case, the complainant - company which had admittedly issued Ext. A2 purchase order to procure the machine in question from the opposite party for expanding its business profits, failed to lead any evidence to probabalise its pleading of livelihood. Nor did the complainant have any pleading that it is run by means of self employment. No evidence to substantiate its pleading of livelihood has been led by the complainant, other than merely restating the same claim on affidavit, as well. Consequently the complainant does not fall within the term “consumer” as defined under Section 2(7) of the Consumer Protection Act, 2019.

9) Interestingly enough, a more exhaustive analysis of the case specifics would further emphasise our aforesaid finding. It is evident from Section 2(7) that a person falls within the broad term “consumer”, only if he buys any “goods” or avails / hires any “service” in the manner prescribed therein. Thereafter, the law throws the person out of the term “consumer”, if he buys such ‘goods’ or avails/hires such ‘service’ for any ‘commercial purpose’. The explanation (a) to Section 2(7) of the Consumer Protection Act, 2019 is an exception to an exception, which excludes a person from the term “commercial purpose”, ***if goods were purchased and used*** by him exclusively for the purpose of earning livelihood by means of self employment. In the case at hand, the impugned machine was admittedly not delivered to the complainant and not

ever used by him. In that perspective also, the complainant is not entitled to enjoy the exception envisaged under the explanation (a) Section 2(7) of the Act. On the other hand, if the issue involved is viewed as one that relates to imperfection or fault in respect of “service” on the part of the opposite party, the law takes a different dimension to the effect that explanation (a) Section 2(7) of the Act does not provide any exception (protection from exclusion) at all to a person who avails any service for commercial purpose. The erstwhile Consumer Protection Act, 1986, by the 2002 Amendment Act, envisaged that even if a person availed of any commercial service, if the services availed by him were exclusively for the purpose of earning his livelihood by means of self employment, he would still have been a ‘consumer’ for the purpose of the said Act i.e. the Consumer Protection Act, 1986. But the current Consumer Protection Act, 2019 by explanation (a) to Section 2(7) provides exception to exception only to a person who bought and used “goods” exclusively for the purpose of earning his livelihood by means of self-employment and not at all to one who avails any “service” for commercial purpose. Hence in the instant case, if it is viewed as a complaint relating to “service”, the complainant – company is not legally entitled to even claim the protection of the pleading of livelihood.

10) As had already been elaborated under para 6 above, the impugned transaction is proven to be “business to business” or “commercial” in nature intended for exponentially augmenting the complainant - company’s profit. For the reasons already discussed in detail in the foregoing paragraphs, the complainant - company cannot lawfully seek the protection of the exception to exception provided under explanation (a) to Section 2(7) of the Consumer Protection Act, 2019, as well. Resultantly, the complainant – company is not a ‘consumer’ as defined under Section 2(7) of the Consumer Protection Act, 2019.

To sum up, we wish to underscore the fact that the Consumer Protection Act revolves round the consumer and is designed to protect the interest of the consumers in “business to consumer disputes” and not for “business to business disputes”, or that involving transactions meant for generating profit hikes of astronomical magnitude. The Consumer Commissions are supposed to supplement the existing judicial system and not to supplant the same. The Hon’ble Apex Court had time and again emphasised this fact in a catena of its judgements including the one in ***Shrikant G Mantri Vs Punjab National Bank dtd. 22/02/2022 in Civil Appeal No.11397/16.***

All considered, we are of the firm view that the complainant - company does not figure within the four walls of the term “consumer” as defined under section 2(7) of the Consumer Protection Act, 2019 and consequently the complaint is not maintainable before the Commission.

Point No.(i) is thus proved in the negative. Needless to say, the other points mentioned above warrant no consideration of the Commission.

In the result, the complaint is dismissed.

The complainant - company is at liberty to agitate the appropriate Forum for remedy if any, required for its grievances.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 25th day of February 2025.

Sreeja S.
Member

Ram Mohan R
Member

C. T. Sabu
President

Appendix

Complainant's Exhibits :

- Ext. A1 copy of the Quotation No.R RPPSL/2020-21/ABLK/AM/143 dtd. 18/08/2020 issued by the opposite party in favour of the complainant in respect of 'MORLOCK SPECIAL PAD PRINTING SYSTEM BASED ON MACHINE MODEL MRV 100 DOUBLE COLOR ALONG WITH PRE TREATMENT UNIT, MANUAL LOADING AND AUTO UNLOADING TO PRINT ONTO CYRO TUBES FOR SINGLE VARIANT (15 ml)' quoting a sum of Rs.24,15,000/-.
- Ext. A2 copy of Purchase Order No. ABL/CG/055/2020-21 dtd.24/09/2020, issued by the complainant to the opposite party in respect of 'Moelock Special Pad Printing system based on machine model MRV 100 Double color along with Flame treatment unit, Auto loading and auto unloading to print onto centrifuge – 15 ml tube for single variant (15 ml) with possibility to attach change part', for a total consideration of Rs.28,32,000/-, mentioning payment of a sum of Rs.5,00,000/- on 24th October.
- Ext. A3 copy of letter dtd. 19/03/2022 issued by the complainant to the opposite party.
- Ext. A4 print out of the NEFT transfer details in respect of a sum of Rs.5,00,000/- to the opposite party, UTR No.SBIN1202.
- Ext. A5 print out of NEFT transfer details in respect of a sum of Rs.4,00,000/- to the opposite party, UTR No. SBIN3203.
- Ext. A6 print out of NEFT transfer details in respect of a sum of Rs.1,00,000/- to the opposite party, UTR No. SBIN3203.
- Ext. A7 copy of complainant's reply notice dtd. 08/04/2022.
- Ext. A8 comprises complainant's bank account statement for the dates 24/09/2020 & 30/10/2020.

Ram Mohan R
Member