IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER COMPLAINT NO. 3258 OF 2017
WITH
IA/330/2021
IA/1130/2021
(DIRECTIONS, DIRECTIONS)

Ms. Narinder Chopra
W/o Late Shri J. C. Chopra
Residing at
House No. 87, Sector 15A,
Noida, Uttar Pradesh ... Complainant

Versus

M/s. Jaiprakash Associates Limited
A Company incorporated under the
provisions of the Companies Act, 1956
having its Registered Office at:
Jaypee Greens, Sector 128,
NOIDA – 201304

Also at
"JA House"
63, Basant Lok, Vasant Vihar,
New Delhi - 110057 ... Opposite Party

BEFORE:
HON'BLE DR. S. M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. DINESH SINGH, MEMBER

For the Complainant	:	Mr. Rahul Malhotra, Advocate Mr. Varun Garg, Advocate
For the Applicant in IA/330/2021	:	Mr. Tushar Mahajan, Advocate with Mr. Sudhir Mahajan, Advocate
For the Applicant in IA/1130/2021	:	Mr. Navneet Kumar, Advocate
For the Opposite Party	:	Mr. Krishnan Venugopal, Sr. Advocate and Mr. Sukumar Pattjoshi, Sr. Advocate with

Mr. Sumeet Sharma, Advocate
Mr. Divyanshu Gupta, Advocate

Pronounced on : 16th March 2021

ORDER

Hon'ble Mr. Dinesh Singh, Member

Taken up through video conferencing.

1. This Complaint was instituted on 07.11.2017 before this Commission under Section 21(a)(i) **Jurisdiction of the National Commission** read with Section 22 **Power and Procedure applicable to the National Commission** and Section 12 **Manner in which complaint shall be made** of The Consumer Protection Act, 1986 (the 'Act 1986') by Smt. Narinder Chopra w/o late Sh. J. C. Chopra (the 'Complainant').

It was admitted on 20.11.2017 and notice was ordered to be issued to the Opposite Party M/s Jaiprakash Associates Limited (the 'Builder Co.').

The pleadings have been completed, the evidence has been taken, the matter is ready for final hearing.

2. The Consumer Protection Act, 2019 (the 'Act 2019') came into force on 20.07.2020 (certain provisions on 23.07.2020).

The Act 1986 stood repealed (Section 107 **Repeal and savings** of the Act 2019).

3. The Builder Co. moved an interlocutory application, being I.A. No. 5410 of 2020, with a prayer to "Return the instant Consumer Complaint No. 3258 of 2017 to appropriate forum having the pecuniary jurisdiction to adjudicate this Complaint".

National Consumer Disputes Redressal Commission * New Delhi-23 *

4. Vide its Order dated 14.09.2020, a co-ordinate Bench of this Commission

placed reliance on the directions contained in an administrative order dated 29.07.2020 of the Hon'ble President of this Commission ("- - - The Hon'ble President, National commission is pleased to observe that the Consumer Protection Act, 2019 which has come into force w.e.f. 20.07.2020 is not retrospective, but prospective in operation and, therefore, all the pending matters already filed before the District Commissions, State Commissions and the National Commission prior to 20.07.2020, the date on which the new Act came into being will continue to remain with those Commissions and the question of transferring them would not arise. - - -")

and dismissed the application ("- - - however, it is also apparent that the Benches of this Commission are bound by the administrative directions relating to the conduct of the official work including the judicial work. In view of the directions of the Hon'ble President of this Commission, which have been circulated, this application stands dismissed.- - -").

5. Hon'ble High Court of Delhi vide its **Order dated 23.11.2020** in **W. P. No. (C) 9267/2020 & CM Appl. 29908 of 2020 Jaiprakash Associates Limited vs. National Consumer Disputes Redressal Commission & Anr.** set aside the Order dated 14.09.2020 of this Commission, with direction that the issue raised be considered by this Commission on its own merits remaining uninfluenced by the administrative order of 29.07.2020 and in accordance with law:

> 4. Having considered the submissions made, the Impugned Order dated 14.09.2020 is set aside in as much as it does not record any reasons apart from the Administrative Order issued by

National Consumer Disputes Redressal Commission New Delhi-23

the learned President of NCDRC as a ground for rejecting the submissions made by the petitioner.

5. It is directed that the issue raised by the petitioner shall be considered by the learned NCDRC on its own merits remaining uninfluenced by the Administrative Order and in accordance with law.

7. It is made clear that this Court has not expressed any opinion on the merits of the submissions made by the petitioner on the pecuniary jurisdiction of the learned NCDRC.

6. Vide its Order dated 22.12.2020, the co-ordinate Bench of this Commission (which had placed reliance on the directions contained in an administrative order dated 29.07.2020 of the Hon'ble President of this Commission and had dismissed the application) ordered that the matter be listed before the Hon'ble President for necessary directions.

7. Putting up its note dated 15.01.2021 to Hon'ble President, the Registry of this Commission *inter alia* stated that "Vide Order dated 17.03.2020 Hon'ble President (Hon'ble Mr. Justice R. K. Agrawal) was pleased to recuse to hear this matter".

The said Order dated 17.03.2020 *inter alia* reads "List on 02.07.2020 before a Bench of which one of us (Justice R. K. Agrawal) is not a Member."

8. Hon'ble President, vide his kind minute dated 15.01.2021, ordered that the matter be placed before this Bench.

9. The Bench heard arguments on 29.01.2021, 08.02.2021, 09.02.2021 and 10.02.2021 from Mr. K. Venugopal, learned Senior Counsel for the Builder Co., Mr. S. Pattjoshi, learned Senior Counsel for the Builder Co., Mr. Rahul Malhotra, learned Counsel for the

National Consumer Disputes Redressal Commission
New Delhi-23

Complainant, Mr. T. Mahajan, learned Counsel for the Applicant in I.A. No. 330 of 2021 and Mr. N. Kumar, learned Counsel for the Applicant in I.A. No. 1130 of 2021.

I. A. No. 330 of 2021 & I.A. No. 1130 of 2021: For impleadment

10. I. A. No. 330 of 2021 is an application filed on behalf of the Complainant (the 'Applicant 1') in another Consumer Complaint pending before this Commission, being C.C. No. 344 of 2019, seeking to make submissions and to dismiss the application preferred by the Builder Co. and continue with the adjudication of the Consumer Complaints pending before this Commission prior to the coming into force of the Act 2019.

I.A. No. 1130 of 2021 is an application filed on behalf of the Complainant (the 'Applicant 2') in one more Consumer Complaint pending before this Commission, being C.C. No. 2440 of 2019, seeking to assist this Commission considering the importance of the law point involved in the present matter which would also affect the Applicant 2 and all other consumers on a pan India basis.

11. Learned Counsel for the Complainant and learned Senior Counsel for the Builder Co. made no objection.

12. The point of law being argued by the Builder Co. in the instant C.C. No. 3258 of 2017 will also have affect on the C.C. No. 344 of 2019 and on the C.C. No. 2440 of 2019.

In the interest of justice, to afford fair opportunity to the Applicant 1 and the Applicant 2, the I.A. No. 330 of 2021 and the I.A. No. 1130 of 2021 are allowed.

National Consumer Disputes Redressal Commission New Delhi-23

I.A. No. 5410 of 2020: Seeking return of the instant Consumer Complaint to the appropriate forum having the pecuniary jurisdiction to adjudicate this Complaint.

13. In compliance of Hon'ble High Court's Order dated 23.11.2020, the issue raised by the Builder Co. in seeking return of the Complaint to the appropriate Forum having the pecuniary jurisdiction to adjudicate this Complaint has to be decided on its own merit remaining uninfluenced by the administrative order of the Hon'ble President and in accordance with law.

14. Mr. K. Venugopal, learned Senior Counsel for the Builder Co., submitted that both Members of this Bench do not have a judicial background. He made a preliminary argument that the matter, which involves questions of law, cannot be heard by a Bench not having a judicial member. He further argued that this Bench is bound to take recourse to Regulation 12 of The Consumer Protection (Consumer Commission Procedure) Regulations, 2020 (the 'Regulations 2020') and refer this matter to the Hon'ble President of this Commission for constituting another Bench of which the Hon'ble President is a Member.

Learned Senior Counsel placed reliance on

Madras Bar Association vs. Union of India (2014) 10 SCC 1

State of Gujarat vs. Utility Users Welfare Association (2018) 6 SCC 21

K. K. Aggarwal vs. Sanjiv Nandan, Order dated 28.08.20 in Contempt Petition No. 429/2020 in C.A. No. 14697 of 2015

K. K. Aggarwal vs. Sanjiv Nandan, Order dated 07.12.2020 in Contempt Petition No. 429/2020 in C.A. No. 14697 of 2015

Rojer Mathew vs. South Indian Bank Ltd. (2020) 6 SCC 1

National Consumer Disputes Redressal Commission * New Delhi-23 *

DS

For ready convenience Regulation 12 of The Regulations 2020 quoted by learned Senior Counsel is reproduced below:

> **<u>Regulations 2020</u>**
>
> **Regulation 12**
>
> **Hearing by Benches** - Where a Bench, constituted by the President of the State Commission or the National Commission as provided under sub-section (2) of section 47 or sub-section (2) of section 58, as the case may be, does not have a member with judicial background and any complex question of law arises and there is no precedent to decide the law point, the Bench so constituted may refer the matter to the President of the State Commission or the National Commission, as the case may be, to constitute another Bench of which the President shall be a member.

[The articulation in Regulation 12 of The Consumer Protection Regulations, 2005 (the 'Regulations 2005'), framed under Section 30A of the Act 1986, is identical.]

Mr. S. Pattjoshi, learned Senior Counsel for the Builder Co. supported the arguments made by Mr. K. Venugopal.

15. The preliminary objections made by Mr. K. Venugopal, learned Senior Counsel, have, in fact, two distinct parts:

one: This Bench, comprising of Members not having a judicial background, lacks in competency under the law to hear an issue that involves questions of law, and is thus unlawfully constituted.

two: This Bench, comprising of Members not having a judicial background, should take recourse to Regulation 12 of the Regulations

National Consumer Disputes Redressal Commission ★ New Delhi-23 ★

2020 and refer the matter to the Hon'ble President for constituting another Bench of which the Hon'ble President is a Member.

16. Mr. R. Malhotra, learned Counsel for the Complainant argued that there is a precedent to decide the question of law involved here, being the **Order dated 12.10.2020** passed by a co-ordinate Bench of this Commission in **Diary No. 13929 – 13932 / NCDRC / 2020, M/s Sahyog Homes Ltd. & Ors. vs. Manoj Shah and other connected matters.**

Mr. T. Mahajan, learned Counsel for the Applicant 1 argued that whether or not to refer a matter to Hon'ble President under Regulation 12 is at the discretion of the Bench.

Mr. N. Kumar, learned Counsel for the Applicant 2, drew attention to the essential ingredients of Regulation 12. He emphasized on the word "may" used therein and argued that whether or not to refer a matter to Hon'ble President under Regulation 12 is at the wisdom of the Bench.

17. To place the two questions (para **15**) in the perspective, the following may first be stated.

[a] The Act 1986 provides that the jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof. A Bench may be constituted by the President with one or more Members as the President may deem fit.

<u>Act 1986</u> :

Section 20(1A) (i)

The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

Section 20 (1A) (ii)

National Consumer Disputes Redressal Commission ★ New Delhi-23 ★

A Bench may be constituted by the President with one or more members as the President may deem fit.

[b] The Act 2019 provides that the jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more Members as he may deem fit, provided that the senior-most Member of the Bench shall preside over the Bench.

Act 2019 :

Section 58. Jurisdiction of National Commission.

Section 58 (2)

The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit:

Provided that the senior-most member of the Bench shall preside over the Bench.

[c] This Bench has been constituted by the Hon'ble President of this Commission in exercise of the power under Section 58(2) of the Act 2019 (Similar power was provided under Section 20(1A)(ii) of the Act 1986.).

[d] At the kind wisdom of the Hon'ble President, Benches comprising of a single Member not having a judicial background were being earlier constituted when the National Commission was established under the Act 1986 (Section 9 **Establishment of Consumer Disputes Redressal Agencies**) and are also presently being constituted after the National Commission has been established under the Act 2019 (Section 53 **Establishment of National Consumer Disputes Redressal Commission**).

National Consumer Disputes Redressal Commission * New Delhi-23 *

DS

[e] In its judgment dated **18.03.1997** in **L. Chandra Kumar vs. Union of India and Ors.** in **Appeal (Civil) 481 of 1980** the Hon'ble Supreme Court *inter alia* framed the following question:

> (2) Whether the Tribunals, constituted either under Article 323A or under Article 323B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

The Hon'ble Court answered the question *inter alia* as below:

> "However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental--as opposed to a substitution - role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses Clause (3) of Article 32 of the Constitution......"
>
> (para 80 of the Judgment)
>
> ".....So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323B of the Constitution. ...."
>
> (para 81 of the Judgment)

"There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals......"

(para 82 of the Judgment)

".........It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted....... While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter."

(para 91 of the Judgment)

National Consumer Disputes Redressal Commission New Delhi-23

DS

"Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

National Consumer Disputes Redressal Commission
New Delhi-23

(para 94 of the Judgment)

"......For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass- roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases."

(para 96 of the Judgment)

[f] Statutory appeal under the Act 2019 (Section 67 **Appeal against order of National Commission**) [as well as under the Act 1986 (Section 23 **Appeal**)] lies before Hon'ble Supreme Court. Hon'ble High Court exercises superintendence (Article 227) over this Commission. This Bench's orders, functioning are subject to scrutiny, superintendence.

[g] In a case before a Bench of this Commission comprising of a single Member not having a judicial background, where the learned Counsel, citing Regulation 12 of the Regulations 2005, declined to argue the matter

National Consumer Disputes Redressal Commission * New Delhi-23 *

on merit on the ground that only a Bench consisting of a judicial member should hear the case, the Hon'ble Supreme Court made the following Order on **14.12.2018** in **HDFC Bank Ltd. vs. Anurag Gupta** in **SLP (C) No. 31303-31304 / 2018**:

Dated: 14.12.2018

ORDER

Leave granted.

The National Consumer Disputes Redressal Commission ("NCDRC") declined to condone a delay of twenty days in filing a revision against a decision of the State Consumer Disputes Redressal Commission. From the order of the NCDRC, we find that counsel appearing for the appellant declined to argue the matter on merits and in fact sought a transfer from the Bench which was hearing the proceedings to another Bench on the ground that only a Bench consisting of judicial members should hear the case. At the outset, we wish to make it clear that we disapprove of this conduct. The objection was thoroughly frivolous and an attempt to brow-beat the Bench.

We are apprised by the respondent who appears in person of the fact that the appellant all along appeared in the proceedings before the Bench concerned. We find that the refusal to argue the revision was unwarranted.

At the same time, we are equally conscious of the need to ensure that injustice should not result due to the behaviour of counsel. The issue which has been raised by the appellant before the NCDRC in revision ought to be addressed. An order imposing costs as a condition for condonation of delay would be appropriate.

National Consumer Disputes Redressal Commission * New Delhi-23 *

Consequently, we order and direct that the appellant shall within a period of four weeks from today pay to the respondent a sum quantified at Rs. 1 lakh, which shall be in addition to the costs which have been imposed by the NCDRC. Conditional on the aforesaid payment, the delay of 20 days in filing the revision shall stand condoned.

Since the dispute between the parties relates to the year 2002, we request the NCDRC to endeavour expeditious disposal of the revisional proceedings.

The impugned order is, accordingly, set aside.

The appeals are, accordingly, allowed. No costs.

<u>We also record the statement which has been made on behalf of the appellant by Mr. Dhruv Mehta, learned senior counsel that the objection which was urged before the NCDRC in regard to the Bench hearing the proceedings is not pressed.</u>

18. Having placed the two questions (para **15**) in the perspective, the same are disposed of as follows.

one: **This Bench, comprising of Members not having a judicial background, lacks in competency under the law to hear an issue that involves questions of law, and is thus unlawfully constituted.**

19. No Tribunal can examine the *vires* of its parent statute.

Specifically, no Bench can examine the validity of the provisions relating to composition of this Commission or relating to constitution of its Benches by the Hon'ble President of the Commission.

No Bench (of one or more Members) can question the kind minute of the Hon'ble President in constituting the said Bench.

20. This Bench can not and should not examine whether or not it lacks in competency under the law, whether or not it has been unlawfully constituted. Such question is misplaced before the Bench, it can not and should not be placed before the Bench.

21. This objection, being misplaced and misconceived, is dismissed.

***two*: This Bench, comprising of Members not having a judicial background, should take recourse to Regulation 12 of the Regulations 2020 and refer the matter to the Hon'ble President for constituting another Bench of which the Hon'ble President is a Member.**

22. This Bench is not in agreement with Mr. R. Malhotra, learned Counsel for the Complainant that the **Order dated 12.10.2020** of a co-ordinate Bench of this Commission in **Diary No. 13929 – 13932 / NCDRC / 2020, M/s Sahyog Homes Ltd. & Ors. vs. Manoj Shah and other connected matters** is a precedent and therefore this Bench may not take recourse to Regulation 12.

Whether or not the said Order dated 12.10.2020 is a precedent and is wholly applicable on the question at hand here has as yet to be argued and examined. If on arguments it is found to be a precedent and found to be wholly applicable to the question at hand, if this Bench views the question differently, the Bench can request the Hon'ble President to refer the question to a larger Bench of this Commission.

23. It is to note that "may" has been used rather than "shall" in Regulation 12 of the Regulations 2020 ("Where a Bench - - - does not have a member with judicial background and any complex question of law arises and there is no precedent to decide the law point, the Bench - - - may refer the

National Consumer Disputes Redressal Commission New Delhi-23

matter to the President of the - - - National Commission - - - to constitute another Bench of which the President shall be a member.")

It is, thus, at the considered wisdom of the Bench whether or not it considers it appropriate and necessary to refer a matter to Hon'ble President under Regulation 12.

The discretion, but, cannot be arbitrary or whimsical, it has to be rationally exercised with the application of mind (no discretion can be absolute).

24. In the matter at hand, this Bench is assisted by the learned Senior Counsel and the learned Counsel. It is the job of the learned Senior Counsel and the learned Counsel to produce the law before the Bench, it is the job of the Bench to pass an appraised reasoned order (which will be subject to scrutiny).

In its considered wisdom, the questions of law do not require referring the matter to Hon'ble President under Regulation 12.

25. This objection is dismissed.

26. The Bench however hastens to add that, irrespective of Regulation 12, if, during the course of the arguments, it finds that it may not be able to do justice to the questions at hand, the Bench will not hesitate to so record and place the matter before the Hon'ble President.

Return of the instant Consumer Complaint to the appropriate forum having the pecuniary jurisdiction to adjudicate this Complaint.

27. The issue raised in the I.A. No. 5410 of 2020 is hereinafter being examined on its merit.

28. The Builder Co.'s "Application on behalf of Respondent / Applicant for return of the captioned Consumer Complaints pending before this Hon'ble

Commission for want of competent pecuniary jurisdiction to adjudicate the same under Section 58 of The Consumer Protection Act" seeks to "Return the Consumer Complaint No. 3258 of 2017 to appropriate forum having the pecuniary jurisdiction to adjudicate this Complaint" "as the NCDRC ceased to have competent jurisdiction to entertain or adjudicate and pass any order in the pending complaint because of lack of pecuniary jurisdiction after coming into force of the Consumer Protection Act, 2019".

Contentions and Arguments

29. The following main contentions have been made by the Builder Co. in its application.

The original pecuniary jurisdiction for filing a Complaint before the National Commission has been completely changed. Earlier, under the Act 1986, the pecuniary jurisdiction of the National Commission as given in Section 21 (a) (i) **Jurisdiction of the National Commission** was "to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore". Now, under the Act 2019, the pecuniary jurisdiction of the National Commission as given in Section 58(1)(a)(i) **Jurisdiction of National Commission** is "to entertain complaints where the value of the goods or services paid as consideration exceeds rupees ten crores".

A perusal of Section 58(1)(a)(i) of the Act 2019 makes it clear that this Commission has the jurisdiction to entertain Complaints where the value of the goods or services paid as consideration exceeds rupees ten crore. It cannot entertain Complaints where the value of the goods or services paid as consideration does not exceed rupees ten crore. Section 58 of the Act 2019 is "an enabling as well as disabling provision".

National Consumer Disputes Redressal Commission * New Delhi-23 *

Keeping in view the consideration paid by the Complainant in the instant case (Rs. 97,31,017/-), this Complaint qualifies to be entertained by the District Commission established under the Act 2019, for which the pecuniary jurisdiction, as given in Section 34(1) of the Act 2019, is "to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees".

If this Complaint, which is capable of being entertained and decided by the District Commission, is decided by this Commission, the rights of parties to the Complaint will be "gravely prejudiced" as they will lose the "valuable statutory right" to Appeal/s or Revision/s available to them under the Act 2019.

It can be seen from precedents that even in cases of change of pecuniary jurisdiction by way of amendments, the cases pending in various courts are relegated to the courts of lowest competent jurisdiction. The same principle is applicable on the repeal of an Act.

Change of forum is not a choice of the parties, but is the choice of the legislature; therefore, the Complainant cannot as matter of right claim that this Commission only shall adjudicate his Complaint.

Change of forum is a matter of procedural law, no substantive right of the Complainant can be said to be taken away if this Commission returns the present Complaint to the appropriate forum having the pecuniary jurisdiction to adjudicate it.

The Act 2019 has the aim and object "to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto".

National Consumer Disputes Redressal Commission, New Delhi

45

After the coming into force of the Act 2019, the Act 1986 stands repealed by Section 107 **Repeal and savings** of the Act 2019.

Act 2019

Section 107. Repeal and savings.

(1) The Consumer Protection Act, 1986 (68 of 1986) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

A perusal of Section 107 makes it clear that "once a law is repealed and a new legislation has been put in its place, the rights and duties of the consumers would not be continued to be governed by the old enactment, except where actions under the existing laws had concluded. The rights and duties of the consumers ought to be governed as per the provisions of the" Act 2019.

The "applicability of the repealed legislation is only to the extent as provided in the Savings clause and nothing more. The saving provision is only limited to decided and closed matters and not applicable to pending matters".

As per the Section 107 what has been saved is anything done or any action taken or purported to have done or taken under the Act 1986, which has been repealed, if it is not inconsistent with the provisions of the Act 2019. Therefore, if, anything done, or any action taken or purported to

BS

have done or taken under the Act 1986, which has been repealed, is inconsistent with the provisions of the 2019, the provisions of the Act 2019 will prevail.

Section 107 of the Act 2019 provides that "anything done or any action taken or purported to have done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act". Therefore, the inconsistent provisions of the old Act 1986 have been repealed and the provisions of the new Act 2019 will apply.

30. Mr. K. Venugopal, learned Senior Counsel made the arguments for the Builder Co., supported by Mr. S. Pattjoshi, learned Senior Counsel.

31. Mr. K. Venugopal, learned Senior Counsel argued that courts on their judicial side are not bound by administrative orders. This Commission could not have held the change in pecuniary jurisdiction to be prospective without giving proper reasons for its decision. He placed reliance on:

Rajasthan High Court Advocates' Association v. Union of India & Ors. (2001) 2 SCC 294

All India Institute of Medical Sciences v. Sanjiv Chaturvedi & Ors. 2019 SCC Online SC 118

South Fields Paints & Chemicals (P) Ltd. v. New India Assurance Co. Ltd. & Anr. 2005 (10) SCC 628

A statute which affects substantive rights is prospective in operation unless made retrospective expressly or by necessary intendment, and a statute which merely affects procedure is retrospective in its application unless such a construction is textually not possible. A litigant has a vested right in substantive law but not in procedural law. Procedural change is always retrospective, and no one has any right to any forum. Provisions changing

National Consumer Disputes Redressal Commission
सत्यमेव जयते
New Delhi-23

ß

forum of remedy and procedure are always retrospective because they do not affect substantive rights. He placed reliance on:

Sudhir G. Angur & Ors. v. M. Sanjeev & Ors. (2006) 1 SCC 141

Maria Cristina De Souza Sodder & Ors. vs. Amria Zurana Pereira Pinto & Ors. (1979) 1 SCC 92

New India Assurance Co. Ltd. v. Smt. Shanti Misra, Adult (1975) 2 SCC 840

Hitendra Vishnu Thakur & Ors. Vs State of Madhya Pradesh (1994) 4 SCC 602

Nani Gopal Mitra vs State of Bihar AIR 1970 SC 1636

Anant Gopal Shorey vs. State of Bombay AIR 1958 SC 915

M.D. Frozen Foods Exports (P) Ltd. vs. Hero Fincorp Ltd. (2017) 16 SCC 741

Indiabulls Housing Finance Ltd. vs. Deccan Chronicle Holdings Ltd. 2018) 14 SCC 783

Rajendra Kumar v. Kalyan (2000) 8 SCC 99

Ramesh Kumar Soni vs. State of Madhya Pradesh (2013) 14 SCC 696

When pecuniary jurisdiction of courts are changed, cases pending in those courts get transferred to the court having pecuniary jurisdiction after it has been changed. The crucial test for deciding whether a court has the pecuniary jurisdiction to hear a suit is to see whether on the date of hearing it has the pecuniary jurisdiction or not. He placed reliance on:

National Insurance Co. Ltd. vs. Harjeet Rice Mills (2005) 6 SCC 45

Om Prakash Agarwal & Ors. v. Vishan Dayal Rajpoot & Anr. (2019) 14 SCC 526

Reena Sadhi v. Ajanta Enterprises (2008) 12 SCC 589

Gobardhan Lal Soneja v. Binod Kumar Sinha & Ors. 1991 SCC Online Pat 336

National Consumer Disputes Redressal Commission New Delhi

Para 1 and para 6 of the Statement of Objects and Reasons of the Act 2019 (- - - Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has not been fast due to various constraints. Several shortcomings have been noticed while administering the various provisions of the said Act. - - - The Bill provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Disputes Redressal Agencies, inter alia, relating to enhancing the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies - - -) make it clear that to address the admitted shortcomings in the administering of the various provisions of the Act 1986, *inter alia* the pecuniary jurisdiction of the District Commission, the State Commission and the National Commission has been enhanced.

The enhancement in the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies was *inter alia* for "timely and effective administration and settlement of consumers' disputes" as contained in the **Preamble** of the Act 2019 ("An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto").

Section 2(9)(iv) **Definitions** of the Act 2019 (" "consumer rights" includes the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora") makes it clear that now the consumer has the right to receive due consideration at appropriate fora i.e. the forum now having the pecuniary jurisdiction. Earlier this was mentioned in the **Statement of Objects and Reasons** of the Act 1986 ("It seeks, *inter alia*, to promote and protect the rights of consumers such as - - - the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums") but has now been made a part of the Act 2019 itself.

No one has a vested right to a particular forum, his right to be heard and to seek remedy is protected when he goes before the appropriate forum having the present pecuniary jurisdiction to entertain the Complaint.

"entertain" in "the District Commission / State Commission / National Commission shall have jurisdiction to entertain" in Section 34 **Jurisdiction of District Commission**, Section 47 **Jurisdiction of State Commission** and Section 58 **Jurisdiction of National Commission** of the Act 2019 means to "adjudicate upon" or "proceed to consider on merits". "application of judicial mind" is essential. "entertain" does not mean "initiation of proceedings", it means consideration on merit with the application of judicial mind. Complaints where the decision has not been reserved / pronounced after the application of judicial mind require to be sent before the appropriate fora now having the pecuniary jurisdiction therefor.

He placed reliance on:

Relevant extract of the Black's Law Dictionary (9th Edition)

Nusli Nesville Wadia v. Ivory Properties & Ors. (2020) 6 SCC 557

Hindustan Commercial Banks Ltd. v. Punnu Sahu (1971) 3 SCC 124

Outright repeal will destroy the effectiveness of the repealed Act in future and operate to destroy inchoate rights dependent on it. He placed reliance on:

State of Rajasthan v. Mangilal Pindwal (1996)] 5 SCC 60

Getting two fora for appeal instead of one does not cause any prejudice, rather it enlarges the right to appeal. He placed reliance on:

National Consumer Disputes Redressal Commission New Delhi

Kiran Singh v. Chaman Paswan AIR 1954 SC 340

Vide Section 107 **Repeal and savings** of the Act 2019 the Act 1986 has been repealed with no savings in sub-section (1) of Section 107 ("The Consumer Protection Act, 1986 (68 of 1986) is hereby repealed.").

"unless a different intention appears" in Section 6 **Effect of repeal** of The General Clauses Act, 1897 is significant and material. The intention in enacting the Act 2019 was to ensure that the pending Complaints should now go before the appropriate fora having the present pecuniary jurisdiction therefor.

Section 56 **Transitional provision** of the Act 2019 was necessitated by the effect of the repeal.

Section 34 **Jurisdiction of District Commission**, Section 47 **Jurisdiction of State Commission** and Section 58 **Jurisdiction of National Commission** of the Act 2019 are retrospective in their applicability, and require Complaints to be now entertained by the appropriate fora having the pecuniary jurisdiction therefor.

Considering the position of law as placed hereinabove, all Complaints pending adjudication before this Commission in which final arguments have not been heard and the order(s) have not been reserved or pronounced require to be immediately sent to the appropriate forum now having the pecuniary jurisdiction to adjudicate the respective Complaints.

32. Mr. Rahul Malhotra, learned Counsel for the Complainant argued that the question involved here has already been examined by this Commission in its **Order dated 12.10.2020** passed by a co-ordinate Bench

National Consumer Disputes Redressal Commission New Delhi-23

of this Commission in **Diary No. 13929 – 13932 / NCDRC / 2020, M/s Sahyog Homes Ltd. & Ors. vs. Manoj Shah and other connected matters.** The doctrine of *stare decisis* is applicable, this Bench is bound to follow the legal principles set by the co-ordinate Bench in its said Order of 12.10.2020.

The scheme and object of the legislation for protection of the interests of consumers will be defeated if the pending cases are transferred. "speedy and simple redressal to consumer dispute" in the **Statement of Objects and Reasons** of the Act 1986 and "timely and effective administration and settlement of consumers' disputes" in the **Preamble** of the Act 2019 are contra to the proposition that all Complaints pending adjudication at the various stages in which the decision has not been reserved or pronounced should be transferred to the fora now having the pecuniary jurisdiction under the Act 2019.

The Act 2019 does not in any manner contemplate transfer of pending cases. Had it been otherwise, the same would have been clearly spelt out in the Act and change-over provisions made in the Act itself or in the Rules thereunder.

Section 6 **Effect of repeal** of the General Clauses Act 1897 makes it clear that the pending proceedings will not be impacted in any manner. Sub-section (3) of Section 107 **Repeal and savings** of the Act 2019 ("The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act 1897 (10 of 1987) with regard to the effect of repeal.") expressly provides for the general application of Section 6 of The General Clauses Act, 1897. Section 6(e) provides that where any Act repeals any enactment, the

National Consumer Disputes Redressal Commission New Delhi-23

E3

repeal does not affect any legal proceeding or remedy and any such legal proceedings or remedy may be instituted, continued or enforced as if the repealing Act had not been passed.

He placed reliance on:

R. Kapilnath vs. Krishna (2003) 1 SCC 444

CIT v. R. Sharadamma (Smt), (1996) 8 SCC 388

SEBI v. Classic Credit Ltd. (2018) 13 SCC 1

M/s Southfield Paints & Chemicals P. Ltd. vs. New India Assurance Co. Ltd. & Anr. Order dated 08.04.2011 passed by Hon'ble National Consumer Disputes Redressal Commission in OP NO. 286 of 2000, OP No. 300 of 2000 & OP No. 315 of 2000

M/s Sahyog Homes Ltd. vs. Gautam Suresh Kumar, F.A. No. 674 of 2020 Order dated 12.10.2020

Babita Aggarwal & Ors. vs. S. K. Goel, O.P. No. 379 of 2002 Order dated 26.03.2003.

Premier Automobiles Ltd. vs. Dr. Manoj Ramachandran & Ors. I (1994) CPJ 88 (NC)

State of Punjab vs. Bhajan Kaur and Ors. (2008) 12 SCC 112

S. L. Srinivasa Jute Twine Mills (P) Ltd. vs. UOI (2006) 2 SCC 740

Shyam Sunder vs. Ram Kumar (2001) 8 SCC 24

33. Mr. Tushar Mahajan, learned Counsel for the Applicant 1 argued that whenever there is a repeal of an enactment, the consequences laid down in Section 6 **Effect of repeal** of The General Clauses Act, 1897 will follow unless a different intention appears, the provisions of the new Act i.e. the Act 2019 have to be seen to determine whether they indicate a different intention. A law which brings about a change in the forum does not affect pending actions unless an intention to the contrary is clearly

National Consumer Disputes Redressal Commission New Delhi-23

15

perceived, one way of which is by making a provision for change-over proceedings from the one court / tribunal to the other. There is no change-over provision in the Act 2019 or in the Rules framed thereunder. No litigant has any vested right in the matter of procedural law, but where the question is of change of forum it ceases to be a question of procedure only. The very nature of 'jurisdiction' in Section 34 **Jurisdiction of District Commission,** Section 47 **Jurisdiction of State Commission** and Section 58 **Jurisdiction of National Commission** of the Act 2019 makes it clear that the same has to be prospective and not retrospective.

Law relating to right of action and right of appeal is substantive in nature. Once a Complaint has been filed under the Act 1986, and is pending adjudication in the forum having the pecuniary jurisdiction therefor under the Act 1986, the same cannot be transferred to a lower forum and thereby increasing the number of levels of appeal and revision.

He placed reliance on:

Kanai Lal Sur vs. Paramnidhi Sadhukhan AIR 1957 SC 907

CIT, Bangalore vs. R. Sharadamma (1996) 8 SCC 388

State of Punjab vs. Mohar Singh AIR 1955 SC 84

Mohd. Idris & Ors. vs. Sat Narain & Ors. AIR 1966 SC 1499

Dewaji vs. Ganpatlal (1969) 1 SCR 573

R. Kapilnath (dead) through LR. vs. Krishna [(2003) 1 SCC 444

34. Mr. Navneet Kumar, learned Counsel for the Applicant 2 argued that the Section 3 **Act not in derogation of any other law** of the Act 1986 and the Section 100 **Act not in derogation of any other law** of the Act

65

2019 give the consumers an additional remedy besides those that may be available under other existing laws. When a consumer prefers a Complaint before a Consumer Disputes Redressal Agency, he ousts himself from other authorities / courts. Retrospective application of the provisions relating to jurisdiction in the Act 2019 should not be and can not be detrimental to the fair interest of the consumer.

Section 6 (e) of The General Clauses Act, 1897 protects the pending proceedings before this Commission. Had the legislature intended to transfer existing Complaints to fora below, it could have specifically given the provisions and procedure for the same. The very absence of such provisions and procedure in the Act 2019 itself shows that there is no different intention of the legislature in enacting the Act 2019 as may affect the general applicability of Section 6 **Effect of repeal** of the General Clauses Act, 1897.

35. The prayer in this case is "Seeking return of the instant Consumer Complaint to the appropriate forum having the pecuniary jurisdiction to adjudicate this Complaint".

However, whatever decision is taken herein, will have bearing on other Consumer Complaints pending adjudication at the various stages before this Commission.

As already said in para **1** above, in the instant case the pleadings have been completed, the evidence has been taken, the matter is ready for final hearing.

In this context, learned Senior Counsel for the Builder Co. argued that all Complaints pending adjudication before this Commission in which

National Consumer Disputes Redressal Commission * New Delhi-23 *

final arguments have not been heard and the order(s) have not been reserved or pronounced require to be immediately sent to the appropriate forum now having the pecuniary jurisdiction to adjudicate the respective Complaints.

The question thus in effect translates into whether all Complaints pending adjudication before this Commission at the various stages in which the order(s) have not been reserved or pronounced require to be sent to the appropriate forum now having the pecuniary jurisdiction therefor under the Act 2019.

36. Having heard the arguments of learned Senior Counsel and learned Counsel, this question is being examined hereinafter.

Whether all Complaints pending adjudication before this Commission at the various stages in which the order(s) have not been reserved or pronounced require to be sent to the appropriate forum now having the pecuniary jurisdiction therefor under the Act 2019

37. It may first be said that the question answered in the **Order dated 12.10.2020** passed by a co-ordinate Bench of this Commission in **Diary No. 13929 – 13932 / NCDRC / 2020, M/s Sahyog Homes Ltd. & Ors. vs. Manoj Shah and other connected matters** was that 'The right of Appeal which had accrued from the date of filing of the Complaint stands as a vested and substantive right and cannot be changed' (para 19 of the Order).

However, in para 13 of the said Order of 12.10.2020, the co-ordinate Bench of this Commission referred to a decision of a larger Bench of three Members of this Commission wherein enhancement in the pecuniary jurisdiction by an amendment to the Act 1986 was held to be prospective and not retrospective:

13. We may mention here that a question arose before a larger Bench of three-Members of this Commission in the case of ***"Premier Automobiles Ltd. vs. Dr. Manoj Ramachandran & Ors." [Reported in 1 (1994) CPJ 88 (NC)]***, as to whether consequent of the enhancement of pecuniary jurisdiction of the District Forum from ₹1 lakh to ₹5 lakh the State Commission has been divested of its jurisdiction to adjudicate upon Complaints having a valuation above ₹1 lakh and not exceeding ₹5 lakhs, which had been validly instituted before it prior to the commencement of the Consumer Protection (Amendment) Ordinance, 1993 with effect from June 18, 1993 and re-enacted by Consumer Protection (Amendment) Act, 1993 with retrospective effect from 18.06.1993 in conformity with the law as of then obtained. This Commission had held that a right to have the adjudication proceedings continued before the State Commission itself became vested in the Complainants when the validly instituted Complaints before the State Commission prior to the coming into force of the amending Ordinance whereby the provisions of Section 11 of the Consumer Protection Act were amended and there is no provision for transfer of proceedings from the State Commission to a District Forum or anything else indicative of Parliamentary intention that the said amendment is to have retrospective effect, the jurisdiction of the State Commission to continue the adjudication in respect of pending matters validly instituted prior to the coming into force the amendment stands unaffected. The relevant paragraphs of the Order passed by this Commission in ***"Premier Automobiles Ltd. vs. Dr. Manoj Ramachandran & Ors." [supra]*** is reproduced for ready reference:-

> "6. We have carefully examined the matter with reference to reported decisions of the Federal Court of India and the Supreme Court and we are firmly and clearly of opinion that the

view taken by the State Commission, is erroneous in law and that the impugned orders passed by it require to be set aside.

7. In our opinion the approach of the State Commission is seriously vitiated by the fact that instead of considering the crucial aspect as to whether the amendments introduced by the Ordinance are only prospective in operation or whether they would on the other hand affect pending proceedings and have the effect of divesting the litigants of their right to have their cases adjudicated upon by the very Forums before which they had been validly instituted in accordance with the law as it stood at the time of such institution, the State Commission laid undue emphasis on the word "entertain" which occurs in Sections 11 and 17 of the Act. It is well established principle to be kept in mind while construing the effect of any Amending Act that any amendment to a statute which affects the vested rights of an individual which are substantive in nature must be presumed to be only prospective in operation unless the Legislature by language which expressly or by necessary implication has clearly indicated its intention to bring about the change with retrospective operation. Generally and Amending Act should be taken to have been passed in order to advance the purpose of the Act as reflected in the Preamble thereto. The main scheme of the original enactment will ordinarily control the meaning of the amending provisions. The aim and purpose of the parent Act being to facilitate the speedy and inexpensive settlement of consumer disputes. This laudable objective will certainly not be advanced if the aforesaid provisions of the Amending Act are to be construed as requiring the State Commission to discontinue the adjudication of cases which have been pending before it having a valuation not exceeding five lakhs which may have already progressed to various stages of the trial procedure and to transfer all such cases to the District Forum where the entire

National Consumer Disputes Redressal Commission * New Delhi-28 *

DS

process will have to be commenced all over again right from the stage of issue of notices. The result of such transfer of pending cases will be only that the trial and final disposal of the cases would be considerably delayed and the complainants (consumers) would also be put to unnecessary additional expenditure by reason of the change of venue of the adjudication.

The paramount factor to be considered while interpreting the scope of an amendment which either takes away the pre-existing jurisdiction of a Court or Forum or brings about a substantial change in the limits of the jurisdiction is the Legislative intent; whether the Parliament has indicated by express words or by clear implication on intention that the changes brought about by the amendment should have retrospective effect so as to take away the vested rights of parties in relation to pending proceedings already instituted by them validly prior coming into force of the amendment. Unfortunately, this aspect has not at all been considered by the State Commission which appears to have rested its conclusion only on the fact that the expression "entertain" has to be construed as taking in not merely the initial filing of a proceeding but also the adjudication to be conducted thereupon. Reliance has been placed on certain rulings of the Supreme Court and of some High Courts wherein the scope of the expression "entertain" has been explained. We consider, with respect, that the State Commission was in error in thinking that a decision on the question as to whether the amending provision is prospective in operation or whether it has retrospective effect would depend upon the meaning of the word "entertain" occurring in the parent Act itself. We are also of the further view that the interpretation of the expression "substitution which is the only other aspect discussed by the

National Consumer Disputes Redressal Commission
New Delhi-23

State Commission in its order can hardly have any impact on the question as to whether the amendment in question has the effect of taking away the vested rights. While substitution no doubt can notes replacement, the question nevertheless remains whether such replacement is with retrospective effect or whether it has only prospective operation.

8. As early as in 1943, the Federal Court of India had authoritatively ruled in Venugopala Reddiar and Another v. Krishnaswami Reddiaralias Raja Chidambara Reddiar and Another - A.I.R. (30) 1943 Federal Court 24, that the right to continue a duly instituted suit before a particular Court or Forum is in the nature of a vested right and it cannot be taken away except by a clear indication of Legislative intention to that effect. By the Constitution Act, 1935 the territory of Burma was separated from British India and it ceased to be a part of British India. Dealing with the question whether the British Indian Court had jurisdiction to continue to adjudicate upon a suit validly instituted before it in respect of properties situated in Burma while the territory of Burma formed part of British India, the Federal Court held that since no contrary intention was expressly expressed or indicated by implication by any of the provisions contained in the Government of India Act, 1935 which brought about the separation, the British Indian Court continued to have jurisdiction to proceed with the trial of a suit which was already pending before it even though it related to properties situated in Burma. Dealing with the effect of Section 38(2)(e) of the Interpretation Act which provided that any legal proceeding in respect of any right acquired of accrued under the repealed enactment may be "continued" as if the repealing Act had not been passed, the Federal Court further said that:-

ДS

"The view has sometimes been taken that what is saved is a substantive right acquired under the repealed enactment and that the paragraph cannot be invoked in cases where the substantive right is not taken away by the repealing Act, but the forum for or the method of enforcing it is changed. It has, on the other hand, been maintained that a right to obtain relief in a suit pending at the time when the repealing enactment comes into operation is itself in the nature of a substantive-right."

The following observations made by their Lordships at page 28 of the Report is particularly apposite in the present context:-

"The true position, as we have already stated, is not whether there is an express provision permitting the continuance of pending proceedings, but whether there is any clear indication against the continuance of pending proceedings to their normal termination."

9. In Mohd. Idris and Others v. Sat Narain and Others -: A.I.R. (1966) S.C. 1499, a Constitution Bench of five Judges of the Supreme Court had to consider a similar question. In that case an application under Section 12 of the U.P. Agriculturists Relief Act for redemption of a mortgage of Sir Land had been filed by the party who figured as the respondent before the Supreme Court and the said application was pending before the Munsif, East Allahabad, at the time when the U.P. Zamindari Abolition and Land Reforms Act was amended by Section 67 of Act No. 16 of 1953 as a consequence of which the U.P. Agriculturists Relief Act stood repealed. The question raised in the appeal before the Supreme Court was whether after such repeal, the application for redemption which was still pending could continue to be tried by the Munsif, East Allahabad under

National Consumer Disputes Redressal Commission New Delhi-28

85

the U.P. Agriculturists Relief Act. Dealing with the said question, the Supreme Court held:-

> "There is nothing in the Abolition Act which takes away the right of suit in respect of pending action there is no provision in the Abolition Act that pending cases were to stand transferred to the Assistant Collector for disposal. Such provisions are commonly found in a statute which takes away the jurisdiction of one Court and confers it on another. From these two circumstances it is to be inferred that if there is at all any expression of intention, it is to keep Section 6 of the General Clauses Act applicable to pending litigation."

10. The same principle was reiterated by the Supreme Court in Manujendra Dutt v. Purneda Prasad Roy Chowdhury and Others,: A.I.R. (1967) S.C. 1419. The question which arose for consideration in that case was whether the deletion of Section 29 of the Calcutta Thika Tenancy Act, 1949 by Amendment Act (6 of 1953) had the effect of depriving the Thika Controller of his jurisdiction to continue the adjudication of a suit which was pending before him by virtue of an order of transfer to his Court passed by the Subordinate Judge of Alipore for adjudication under Section 29 of the Tikha Tenancy Act. Rejecting the contention advanced before it by the Counsel for the appellant that the deletion of Section 29 from the Calcutta Tikha Tenancy Act by Section 8 of the Amending Act of 1953 had the effect of depriving the Controller of his jurisdiction to try the suit, the Supreme Court observed thus :-

> "In our view this contention has no force. Though Section 29 was deleted by the Amendment Act of 1953 the deletion would not affect pending

National Consumer Disputes Redressal Commission
New Delhi

proceedings and would not deprive the Controller of his jurisdiction to try such proceedings pending before him at the date when the Amendment Act came into force. Though the Amendment Act did not contain any saving Clause, under Section 8 of the Bengal General Clauses Act, 1899, the transfer of the suit having been lawfully made under Section 29 of the Act its deletion would not have the effect of altering the law applicable to the claim in the litigation. There is nothing in Section 8 of the Amending Act of 1953 suggesting a different intention and therefore the deletion would not affect the previous operation of Section 5 of the Calcutta Thika Tenancy Act or the transfer of the suit to the Controller or anything duly done under Section 29. That being the correct position in law the High Court was right in holding that in spite of the deletion of Section 29, the Controller still had the jurisdiction to proceed with the said suit transferred to him."

11. Reference may also be made with advantage to the rulings of High Courts of Bombay, Madhya Pradesh and Punjab and Haryana in C.P. Bannerjee v. B.S. Irani,: A.I.R (1949) Bombay 182, Commissioner of Income-tax, M.P. v. A.N. Tiwari,: (1980) 124 ITR 680 (M.P.) and Commissioner of Income-tax v. Raman Industries, (1980) : 121 ITR 405 (P&H) where also similar views have been taken. In the first decision aforementioned Bhagwati, J. (Senior) sitting as a Judge of the Bombay High Court followed the ruling of the Federal Court cited supra: 1943 Federal Court 24) and held that-

"Where an action has been rightly instituted in a Court which had jurisdiction to entertain it, it would require

National Consumer Disputes Redressal Commission New Delhi-23

strong and distinct words to defeat such vested right which has accrued to the litigant."

It was further held that-

"The absence of a provision in the Amending Act for transfer of proceedings instituted in the original side of the High Court to the Small Causes Court had the result of continuing the jurisdiction of the High Court in the matter of determination and trial of suits which had been rightly received by it."

12. Likewise, in (1980): 121 ITR 405 cited above a Division Bench of the Punjab and Haryana High Court held that while a statute dealing with procedure is generally regarded as retrospective and its provisions will apply to proceedings pending at the time of its enactment, a statute which affects substantive vested rights will be only prospective in operation unless there is a clear indication by the legislature to the contrary effect. The learned Judges further observed that the jurisdiction of a Tribunal to try a case is vested right and is to be determined according to the law in force at the time of its institution and any change in law brought about while a case is pending cannot affect the right of parties to continue proceedings in that Tribunal in the absence of clear provisions to the contrary. To the same effect is the dictum of a Division Bench of the Madhya Pradesh High Court in Commissioner of Income-tax v. A.N. Tiwari, : (1980) 124 ITR 680. Therein the Division Bench referred to the rulings of the Supreme Court in Mohd. Idris and Others v. Sat Narain and Ors., : A.I.R. (1966) S.C. 1499 and Manujendra v. Purnedu Prosad Roy Chowdhury and Ors., : A.I.R. (1967) S.C. 1419 and held -

"It may be stated as a general principle that a law which brings about a change in forum does not affect

National Consumer Disputes Redressal Commission * New Delhi-73 *

> pending actions unless intention to the contrary is clearly evinced. One of the modes by which such an intention is shown is by making a provision for change-over of proceedings from the Court or tribunal where they are pending to the Court or tribunal which under the new law gets jurisdiction to try them."

13. The legal position is further placed beyond all realm of doubt by a very recent pronouncement of the Supreme Court in Commissioner of Income-tax, Orissa v. Shri Dhadi Sahu, JT : 1992 (6) S.C. 714 wherein a Division Bench consisting of Yogeshwar Dayal and Dr. A.S. Anand, JJ. had occasion to consider the question whether an amendment carried out in Section 274(2) of the Income-tax Act by the Taxation (Laws) Amendment Act, 1970 with effect from April 1, 1971 whereby the jurisdiction of the Inspecting Assistant Commissioner of Income-tax to hold proceedings for imposition of penalty under Section 271(1)(c) was restricted to cases where the income in respect of which particulars have been concealed or incorrect particulars have been furnished by the assessee exceeded Rs. 25,000/-. Prior to the said amendment, the jurisdiction to deal all cases concerned with imposition of penalty under Section 271(1)(c) where the minimum penalty imposable exceeded a sum of Rs. 1,000/- was vested in the Inspecting Assistant Commissioner of Income-tax. The question which arose for consideration before the Supreme Court was whether by reason of the amendment of Section 274(2) of the Income-tax Act, the Inspecting Assistant Commissioner stood divested of his jurisdiction to adjudicate upon proceedings pending before him for the imposition of penalty in cases where the income forming the subject matter of concealment etc. did not exceed Rs. 25,000/- which proceedings had been validly commenced by him prior to the coming into force of the amending Act or

whether they had all to be transferred? to the Income-tax Officer. Expressing their approval of the dictum laid down by the decisions of the Bombay, Madhya Pradesh and Punjab and Haryana High Courts cited above and following the earlier rulings of the Supreme Court in : A.I.R. (1966) S.C. 1499 and : A.I.R. (1967) S.C. 1419, the learned Judges held-

"That the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change over of proceedings, from the Court or the Tribunal where they are pending to the Court or the Tribunal which under the new law gets jurisdiction to try them."

It was further observed that-

> "It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceeding is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in-spite of the change of jurisdiction of the different Tribunals or forums."

14. The Supreme Court overruled the decision of the Karnataka High Court in Addl. Commissioner of Income-tax, Karnataka v. M.Y. Chandragi, (1981): 128 ITR 256 and also the decision of the Allahabad High Court in Commissioner of Income-tax v. Om Sons, (1979) : 116 ITR 215.

National Consumer Disputes Redressal Commission New Delhi

15. In the light of the principles laid down as above by the aforesaid decisions of the Federal Court of India and the Supreme Court and also by the rulings of the Bombay, Madhya Pradesh and Punjab and Haryana High Courts referred to supra which have all been approved in the latest judgment of the Supreme Court referred to above, it becomes clear that the correct legal position is that a right to have the adjudication proceeding continued before the State Commission itself became vested in the complainants when the validly instituted complaints before the State Commission prior to the coming into force of the amending Ordinance whereby the provisions of Section 11 of the Consumer Protection Act were amended. Since there is no provision for transfer of proceedings from the State Commission to a District Forum or anything else indicative of Parliamentary intention that the said amendment is to have retrospective effect the jurisdiction of the State Commission to continue the adjudication in respect of pending matters validly instituted prior to the coming into force the amendment stands unaffected. We hold that the contrary view taken by the Karnataka State Commission is incorrect and unsustainable in law and that the State Commission has acted illegally and without jurisdiction in directing the transfer of the case to the District Forum. Hence the impugned orders passed by the State Commission directing that the complaint petitions which had been validly instituted before it long prior to the commencement of the Amendment Ordinance should be sent to the Bangalore Urban District Forum for the reason that the value of goods or services and the compensation claimed therein did not exceed Rs. 5 lakhs are hereby set aside."

Similarly, in para 14 of the said Order of 12.10.2020, the co-ordinate Bench of this Commission referred to a decision of another larger Bench

National Consumer Disputes Redressal Commission
सत्यमेव जयते
New Delhi-28

of three Members of this Commission wherein enhancement in the pecuniary jurisdiction of District Forum, State Commission and National Commission by an amendment to the Act 1986 was held to be prospective and not retrospective.

14. The above said decision was followed by another Larger Bench of three-Members of this Commission in the cases of ***Original Petition No. 286 of 2000 – M/s. Southfield Paints and Chemicals Pvt. Ltd. Vs. New India Assurance Co. Ltd., Original Petition No. 300 of 2000* – Jan Seva Ashram Vs. T.I.L. Ltd. & Anr.** And ***Original Petition No. 315 of 2000 – Smt. Kalpana Ben & Ors. Vs. Kalpesh V. Parikh & Anr.*** – decided on 08.04.11 wherein this Commission has held that the amendment brought by the Amendment Act, 62 of 2002 regarding the pecuniary jurisdiction of District Forum, State Commission and this Commission is prospective in nature and not retrospective. Relevant paragraphs of the Order dated 08.04.11 passed in the aforesaid cases, are reproduced below for ready reference:-

> " Exactly the same point had arisen in the context of the Consumer Protection Amendment Act 50 of 1993, which came up for consideration before a three-Member Bench of this Commission in Premier Automobiles Ltd. vs. Dr.Manoj Ramachandran & Ors. – Revision Petitions No.400, 401, 402/1993 decided on 21.12.1993 – I(1994) CPJ 88 (NC). In terms of the Consumer Protection Amendment Act 50 of 1993, the pecuniary jurisdiction of the District Forums had been raised from Rs.1 lakh to Rs.5 lakh, State Commission from Rs.5 lakh to Rs.20 lakh and this Commission exceeding Rs.20 lakh. The question posed was answered in the following terms:
>
> > "The question raised in these three Revision Petition is whether consequent on the enhancement of the

pecuniary jurisdiction of the District Forum from rupees one lakh to rupees five lakhs, the State Commission has been divested to its jurisdiction to adjudicate upon complaints having a valuation above rupess one lakh and not exceeding rupees five lakh which had been validly instituted before it prior to the commencement of the amending Ordinance in conformity with the law as it then obtained."

After considering the judgements of Federal Court of India, the Supreme Court and various High Courts, this Commission came to the conclusion that the amendments were prospective in nature. Para-7 of the said judgement reads as under :

"In our opinion the approach of the State Commission is seriously vitiated by the fact that instead of considering the crucial aspect as to whether to amendments introduced by the Ordinance are only prospective in operation or whether they would on the other hand affect pending proceedings and have the affect of divesting the litigants of their right to have their case adjudicated upon by the very Forums before which they had been validly instituted in accordance with the law as it stood at the time of such institution, the State Commission laid undue emphasis on the word "entertain" which occurs in Section 11 and 17 of the Act. It is well established principle to be kept in mind while construing the affect of any Amending Act that any amendment to a statute which affects the vested rights of an individual which are substantive in nature must be presumed to be only prospective in operation unless the Legislature by language which expressly or by necessary

National Consumer Disputes Redressal Commission New Delhi-28

implication has clearly indicated its intention to bring about the change with retrospective operation. Generally and Amending Act should be taken to have been passed in order to advance the purpose to the Act as reflected in the Preamble thereto. The main scheme to the original enactment will ordinarily control the meaning of the amending provisions. The aim and purpose of the parent Act being to facilitate the speedy and inexpensive settlement of consumer disputed. This laudable objective will certainly not be advanced if the aforesaid provisions of the Amending Act are to be construed as requiring the State Commission to discontinue the adjudication of cases which have been pending before it having a valuation not exceeding five lakhs which may have already progressed to various stages of the trial procedure and to transfer all such cases to the District Forum where the entire process will have to be commenced all over again right from the stage of issue of notice. The result of such trial and final disposal of the case would be considerably delayed and the complainants (consumers) would also be put to unnecessary addition expenditure by reason of the change of venue of the adjudication.

The paramount factor to be considered while interpreting the scope of an amendment which either takes away the pre-existing jurisdiction of a Court or Forum or brings about a substantial change in the limits of the jurisdiction is the Legislative intent; whether the Parliament has indicated by express words or by clear implication on intention that the changes brought about by the amendment should have retrospective effect so as to take away the vested rights of parties in relation to pending proceedings already instituted by them validly prior coming into force of the amendment. Unfortunately, this aspect has not at all been considered by the State Commission which appears to have rested its conclusion only on the fact that the expression "entertain" has to be construed as taking in not merely the initial filing of a proceeding but also the adjudication to be conducted thereupon. Reliance has been placed on certain rulings of the Supreme Court and of some High Courts wherein the scope of the expression "entertain" has been explained. We consider, with respect, that the State Commission was in error in thinking that a decision on the question as to whether the amending provision is prospective in operation or whether it has retrospective effect would depend upon the meaning of the word "entertain" occurring in the patent Act itself. We are also of the further view that the interpretation of the expression "substitution" which is the only other aspect discussed by the State Commission in its order can hardly have any impact on the question as to whether the amendment in question has the effect of taking away the vested rights. While substitution no doubt cannotes replacement, the question nevertheless remains whether such replacement is with retrospective effect or whether it has only prospective operation."

We respectfully agree with the law laid down by this Commission in Premier Automobiles case (supra). Otherwise also, the law laid down by this Commission in the aforesaid

National Consumer Disputes Redressal Commission
New Delhi-23

AS

judgement is a binding precedent. Respectfully following the said decision, it is held that the amendments brought about by the Amendment Act 62 of 2002 regarding pecuniary jurisdiction of the District Forum, State Commission and this Commission are prospective in nature. The plea raised by the opposite parties that the amendments are retrospective in nature, is rejected.

38. The said decisions of two larger Benches of three Members of this Commission, quoted in paras 13 and 14 of the **Order dated 12.10.2020** passed by a co-ordinate Bench of this Commission in **Diary No. 13929 – 13932 / NCDRC / 2020, M/s Sahyog Homes Ltd. & Ors. vs. Manoj Shah and other connected matters**, were in relation to enhancement in 'pecuniary jurisdiction' by amendments to the Act 1986. Except for enhancement in pecuniary jurisdiction, there was no addition to or subtraction from the provisions relating to 'jurisdiction' (Section 11 **Jurisdiction of the District Forum**, Section 17 **Jurisdiction of the State Commission**, Section 21 **Jurisdiction of the National Commission** of the Act 1986).

The instant case is of repeal.

The method of computing 'pecuniary jurisdiction' has been significantly altered, a significant addition has been made re 'territorial jurisdiction' of the District Commission (Section 34 **Jurisdiction of District Commission**, Section 47 **Jurisdiction of State Commission**, Section 58 **Jurisdiction of National Commission** of the Act 2019). Provision for the State Government to establish regional Benches of the State Commission has been added (Section 42 **Establishment of State Consumer Disputes Redressal Commission**).

National Consumer Disputes Redressal Commission * New Delhi-23 *

This Bench, of two Members of this Commission, is not making a critique on the said decisions of larger Benches of three Members of this Commission.

39. Having heard the arguments and having considered the law produced by the learned Senior Counsel and the learned Counsel, this Bench is hereinafter making its examination of the questions placed before it.

40. Courts / Tribunals functioning in the judicial side are not fettered or affected by administrative orders regarding issue(s) that require an appraised reasoned order, on facts and law, which can be put to scrutiny.

In the instant case, in compliance of Hon'ble High Court's Order dated 23.11.2020, this Bench, constituted by the Hon'ble President of this Commission, is considering the issue on its own merit uninfluenced by the administrative order of 29.07.2020 and in accordance with law.

As such, the argument made by the learned Senior Counsel, that "Courts on their judicial side are not bound by Administrative Orders", was not necessary (this Bench is functioning accordingly).

41. It is presumed that Parliament is aware of the law laid down by Hon'ble Supreme Court when it enacts a statute. In other words, the judgments of Hon'ble Supreme Court cited by learned Senior Counsel and the learned Counsel were in the know of the Parliament when it enacted the Act 2019. Whether or not any provision(s) of the Act 2019 are *ultra vires* the Constitution will be examined by the Hon'ble Supreme Court if and as the matter goes before the Hon'ble Court.

National Consumer Disputes Redressal Commission New Delhi-23

42. Some legal principles, relevant to the question at hand, are enunciated below.

A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective expressly or by necessary intendment, a statute which merely affects procedure is presumed to be retrospective in its application unless such a construction is textually impossible.

Law relating to forum is procedural in nature, law relating to right of action even though remedial is substantive in nature.

Every litigant has a vested right in substantive law but no such right exists in procedural law.

If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

Retrospective application should not give rise to an anomaly or absurdity.

43. That 'pecuniary jurisdiction' of the Consumer Disputes Redressal Agencies has been enhanced under the Act 2019' does not convey the whole position.

The method of computing pecuniary jurisdiction has been significantly altered.

A significant addition has been made in the options available to the consumers regarding territorial jurisdiction of the District Commission.

A significant addition has been made to enable the State Governments to establish regional Benches of the State Commissions.

'pecuniary' jurisdiction and 'territorial' jurisdiction, both, together, constitute 'jurisdiction', the one cannot be taken in isolation of the other.

The following comparative perusal may be made:

Act 1986	**Act 2019**
Section 11.	**Section 34.**
Section **11. Jurisdiction of the District Forum.**—(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs. (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,— (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or (b) any of the opposite parties, where there are more than one,	**34. Jurisdiction of District Commission.-** (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit. (2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,— (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

National Consumer Disputes Redressal Commission New Delhi-23

at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.	(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or (c) the cause of action, wholly or in part, arises; or (d) the complainant resides or personally works for gain. (3) The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.
Section 17. **17. Jurisdiction of the State Commission.** — (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction— (a) to entertain—	**Section 47.** **47. Jurisdiction of State Commission.-** (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction— (a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and (ii) appeals against the orders of any District Forum within the State; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.	(i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit; (ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees; (iii) appeals against the orders of any District Commission within the State; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or

	with material irregularity.
Section 21.	**Section 58.**
Section 21. Jurisdiction of the National Commission. - Subject to the other provisions of this Act, the National Commission shall have jurisdiction— (a) to entertain— (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and (ii) appeals against the orders of any State Commission; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.	**Section 58. Jurisdiction of National Commission.** (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction— (a) to entertain— (i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crores: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit; (ii)complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees; (iii)appeals against the orders of any State Commission; (iv)appeals against the orders of the Central Authority; and (b) to call for the records and pass appropriate orders in any consumer

National Consumer Disputes Redressal Commission New Delhi-23

	dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

The method of computation of pecuniary jurisdiction in the Act 1986 is "value of the goods and services and the compensation, if any, claimed".

The method of computation in the Act 2019 is "value of the goods or services paid as consideration".

In the Act 1986 the territorial jurisdiction of the District Forum has been taken from Section 20 of the CPC, while omitting the *Explanation* thereto.

Act 1986	**CPC**
Section 11. Jurisdiction of the District Forum. (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed	**Section 20. Other suits to be instituted where defendants reside or cause of action arises.** Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction – (a) the defendant, or each of the

rupees twenty lakhs. (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,— (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or	defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises. *Explanation*.- A corporation shall be deemed to carry on business at its sole or

National Consumer Disputes Redressal Commission New Delhi-28

(c) the cause of action, wholly or in part, arises.	principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

In the Act 2019 while retaining sub paras (2) (a) to (c) in Section 11 **Jurisdiction of the District Forum** of the Act 1986, a significant addition has been made by adding sub para (2) (d) in Section 34 **Jurisdiction of District Commission** of the Act 2019 ("(2) (d) or the complainant resides or personally works for gain").

Section 16 **Composition of the State Commission** of the Act 1986 does not provide for regional Benches of the State Commission. Section 42 **Establishment of State Consumer Disputes Redressal Commission** of the Act 2019 provides that "the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit".

It is readily evident that when the method of computing the 'pecuniary' jurisdiction of the Consumer Disputes Redressal Agencies is adopted under the Act 2019, and the 'value of the goods or services and the compensation claimed' is substituted with the 'value of the goods or services paid as consideration', most of the Complaints pending adjudication before this Commission will go to the State Commission or the District Commission, and most of the Complaints pending adjudication before the State Commission will go to the District Commission.

National Consumer Disputes Redressal Commission New Delhi-23

(The instant Complaint pending adjudication before this Commission, where the consideration paid was Rs.97,31,017/-, will go to the District Commission.)

Considering the options available to the consumers apropos 'territorial' jurisdiction of the District Commission, in many cases there will be more than one District Commission having the 'territorial' jurisdiction to entertain the Complaints (the 'pecuniary' jurisdiction will be the same in the each of the them).

With the addition of the option of "or the complainant resides or personally works for gain" by sub-section (2)(d) in Section 34 **Jurisdiction of District Commission**, in many cases the Complainants before the District Commissions may prefer transfer of their Complaints to the District Commission where the Complainant resides or personally works for gain.

Retrospective application of the provisions relating to jurisdiction in the Act 2019 (Section 34 **Jurisdiction of District Commission**, Section 47 **Jurisdiction of State Commission**, Section 58 **Jurisdiction of National Commission**) will give rise to an anomalous and absurd situation, method or workability will not exist.

Change of forum in the instant case cannot be treated as a question of pure procedure, applicable retrospectively, by (erroneously) taking the general principle that 'procedural law is retrospective in its application' as a mechanical rule of thumb to be applied without application of mind, ignoring the significant alterations made in the provisions re 'jurisdiction', ignoring the anomaly and absurdity that it will create, ignoring that method or workability will not exist.

National Consumer Disputes Redressal Commission New Delhi-23

53

The significant alterations made in the provisions re 'jurisdiction', the whole scheme of 'jurisdiction' created by the Act 2019, can but only be of prospective applicability, the textual connotation and the legislative intent can only be construed to be of prospective applicability.

44. A new enactment, bringing about a change in the forum, with significant alterations in the provisions relating to 'jurisdiction', does not affect the pending proceedings unless an intention to the contrary is visible. One way of showing such intention is to have a provision for change-over from the one forum to the other.

The Act 2019 does not contain any provision that the pending Complaints before the National Commission or the State Commission shall be transferred to the fora now having the pecuniary jurisdiction therefor.

The Consumer Protection (Consumer Disputes Redressal Commission) Rules, 2020 (the 'Rules 2020'), made by the Central Government in the exercise of the powers conferred by Section 101 **Power of Central Government to make rules** of the Act 2019, do not contain any rule that the pending Complaints before the National (or State) Commission shall be transferred to the fora now having the pecuniary jurisdiction therefor.

45. "entertain" in Section 21(a)(i) **Jurisdiction of the National Commission** of the Act 1986 ("- - - the National Commission shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crore"), as also "entertain" in Section 58(1)(a)(i) **Jurisdiction of National Commission** of the Act 2019 (" - - - the National Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as

National Consumer Disputes Redressal Commission * New Delhi-23 *

83

consideration exceeds rupees ten crores"), construes to 'adjudicate upon' or 'proceed to consider on merits' and not 'initiation of proceedings'.

In the instant case of C. C. No. 3258 of 2017, as already said in para **1**, the pleadings have been completed, the evidence has been taken, the matter is ready for final hearing.

The argument made by the Builder Co. that application of judicial mind will only be at the stage of final hearing, when the case is reserved for order / when the order is pronounced, is erroneous.

In the Complaints entertained under the Act 1986, before the coming into force of the Act 2019, there was application of judicial mind in (a) the hearing on admission, to see whether the allegations made therein contained ingredients of 'defect' or 'deficiency' or 'unfair trade practice' or 'restrictive trade practice', for which remedy is available under the said Act; (b) passing the various interlocutory orders, as are open to review or scrutiny; (c) deciding the preliminary issues re maintainability; (d) deciding on condoning delay in cases filed beyond limitation; (e) passing the various orders regarding interim relief; and, in cases, (f) allowing, during the adjudication of the Complaint, part of the prayer made, with the residual part being left for final adjudication; (g) etc.

The proposition furthered by the Builder Co., to (mechanically) transfer all Complaints pending adjudication at the various stages before this Commission, is untenable.

46. Right of action is a substantive right. To institute an action is to commence it by the filing of a Complaint. The jurisdiction, powers and authority of the National Commission is exercised by its Benches, and

National Consumer Disputes Redressal Commission ★ New Delhi-23 not by its office / registry. As such, all Complaints instituted before this Commission prior to the coming into force of the Act 2019 have to be necessarily listed by the office / registry before the appropriate Bench, for the Bench to hear.

Looking at it another way, the right that his Complaint will be heard by a Bench of this Commission accrues to a Complainant the moment he institutes his Complaint.

The appropriate forum to hear a Complaint instituted before the coming into force of the Act 2019 will be the forum having the jurisdiction under the Act 1986, under which the Complaint was filed and which was in place when the Complaint was filed.

47. The **Statement of Objects and Reasons** of the Act 1986 says of "To provide speedy and simple redressal to consumer disputes". Its **Preamble** says of "An Act to provide for better protection of the interests of consumers". The **Statement of Objects and Reasons** of the Act 2019 says of "simplifying the consumer disputes adjudication process of the Consumer Disputes Redressal Agencies". Its **Preamble** says of "for timely and effective administration and settlement of consumers' disputes". The Act 2019 is in continuum to the Act 1986, the **Statement of Objects and Reasons** and **Preamble** of the Act 2019 have to be read in conjunction with the **Statement of Objects and Reasons** and **Preamble** of the Act 1986.

It is difficult to propose that the intention behind the repeal of the Act 1986 and the enactment of the Act 2019 was to put the Complainants, having their Complaints in the various stages of adjudication before this Commission, to prejudice, to deny them 'speedy', 'simple', 'timely' and

National Consumer Disputes Redressal Commission New Delhi-23

'effective' redressal to their disputes. ('speedy', 'simple', 'timely' and 'effective' redressal benefits the Opposite Parties also.)

48. Not (erroneously) transferring the Complaints pending adjudication at the various stages before the National Commission and the State Commission, not (erroneously) allowing the Complainants to prefer change in District Commission on the addition of the option of "or the complainant resides or personally works for gain" vide sub-section (2)(d) in Section 34 **Jurisdiction of District Commission** of the Act 2019, is the correct position, equally applicable to the Complainants and to the Opposite Parties, without anomaly or absurdity, with method and workability, as per the textual connotation and the legislative intent.

49. A plain reading of Section 6 **Effect of repeal** of The General Clauses Act, 1897 shows that the Complaints instituted under the Act 1986 and at the various stages of adjudication before this Commission shall continue to be adjudicated by the Commission irrespective of the fact that the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies has been altered.

> **The General Clauses Act, 1897**
>
> **Section 6. Effect of repeal.** Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

National Consumer Disputes Redressal Commission New Delhi-23

AS

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Even if there is no express mention of the general applicability of Section 6 **Effect of repeal** in an Act enacted after the coming into force of The General Clauses Act, 1897, Section 6 is applicable.

Sub-section (3) of Section 107 **Repeal and savings** of the Act 2019 expressly provides that "The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.".

<u>Act 2019</u>

Section 107. Repeal and savings.

(1) The Consumer Protection Act, 1986 (68 of 1986) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with

National Consumer Disputes Redressal Commission * New Delhi-23 *

the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

Where repeal of an enactment is concomitant with a new legislation, Section 6 **Effect of repeal** of The General Clauses Act, 1897 is applicable even in the absence of a saving clause. Whether the new legislation shows a different intention has to be gauged by considering all the relevant provisions of the new law holistically.

The method of computing 'pecuniary jurisdiction' has been significantly altered, a significant addition has been made re 'territorial jurisdiction' of the District Commission, provision for the State Government to establish regional Benches of the State Commission has been added. New provisions, which were not there in the Act 1986, have been incorporated in the Act 2019. Certain provisions have additions to and subtractions from the corresponding provisions in the Act 1986.

No textual connotation or legislative intention to upset the Complaints already pending adjudication before the National Commission or the State Commission or the District Commission is visible in the Act 2019.

Sub-section (e) of Section 6 of the General Clauses Act, 1897 specifically protects the pending proceedings ('The repeal shall not affect any legal proceeding or remedy and any such legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed.').

National Consumer Disputes Redressal Commission New Delhi-23

Conclusion

50. Section 34 **Jurisdiction of District Commission,** Section 47 **Jurisdiction of State Commission** and Section 58 **Jurisdiction of National Commission** of the Act 2019 are prospective in operation and not retrospective.

The Complaints instituted before the coming into force of the Act 2019 shall be adjudicated by the District Commission, the State Commission and the National Commission in accordance with the provisions regarding jurisdiction contained in Section 11 **Jurisdiction of the District Forum,** Section 17 **Jurisdiction of the State Commission** and Section 21 **Jurisdiction of the National Commission** of the Act 1986 under which the Complaints were instituted.

51. The I.A. No. 5410 of 2020 filed by the Builder Co. is dismissed.

52. The Act 2019 is for the protection of the interests of consumers, in recognizedly a fight amongst unequals. In the instant case, the Complainant had to argue the I.A. No. 5410 of 2020 which was of general applicability to all similarly situate Complainants and not specific to his instant Complaint (seeking refund of the amount paid by him to the Builder Co. with interest / compensation / cost of litigation). His case was listed for final hearing when the I.A. No. 5410 of 2020 was filed by the Builder Co.

The Applicant 1 and the Applicant 2 would have been affected by the order made on the interlocutory application filed by the Builder Co. in the instant case, they had to intervene and argue on the interlocutory application of general applicability.

National Consumer Disputes Redressal Commission

The Complainant and the Applicant 1 and Applicant 2 were unnecessarily put to trouble and had to incur cost of litigation on an application of general applicability, which application fails on its merits.

It is just and conscionable to direct the Builder Co. through its chief executive to pay cost of litigation of Rs. 50 thousand each to the Complainant, the Applicant 1 and the Applicant 2 (total Rs. 1.50 lakh), within four weeks of the pronouncement of this Order, failing which the Builder Co. through its chief executive shall be liable for '*Enforcement*' and '*Penalties*' as per the law.

53. The instant C.C. No. 3258 of 2017 be listed before the appropriate Bench for final hearing on 09.04.2021.

54. The Registry is requested to send a copy each of this Order to the Builder Co., its chief executive and its learned Counsel, as well as to the Complainant and to his learned Counsel, within three days. The stenographer is requested to upload this Order on the website of the Commission today itself.

National Consumer Disputes Redressal Commission New Delhi-23

16/03/2021

NCDRC PAID

Sd/-

(DR. S.M. KANTIKAR)
PRESIDING MEMBER

Sd/-

(DINESH SINGH)
MEMBER

16/03/2021