

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 833 OF 2020

1. M/S. PYARIDEVI CHABIRAJ STEELS PVT. LTD.Complainant(s)
Versus
1. NATIONAL INSURANCE COMPANY LTD. & 3
ORS.Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Complainant : Mr. Joy Saha, Sr. Advocate
With Mr. Jayabrata Mukherjee, Advocate
Mr. Ajinkya Tiwari, Advocate

For the Opp.Party :

Dated : 28 Aug 2020

ORDER

M/s Pyaridevi Chabiraj Steels Pvt. Ltd., Howrah, West Bengal (hereinafter referred to as “the Complainant”) have approached this Commission by filing a Complaint being Consumer Complaint No. 833 of 2020 against National Insurance Company Ltd., Kolkata, West Bengal and three other Parties seeking the following reliefs:

“91. That the Complainant seeks financial reliefs on account of financial loss and detriment to the life and livelihood of its stakeholders and for the restoration of the Company. The total sum claimed for the restoration of the Factory Premises being Rs.28,23,05,135/- and relief from NPA which includes:

- a. The sum of Rs.9,96,50,500/- for the restoration of damaged and tilted buildings.*
- b. The sum of Rs.73,03,656/- for the expenditure already incurred in restoration and replacement of Plant and Machinery.*
- c. The sum of Rs.9,92,12,841/- for the loss of stocks.*
- d. The sum of Rs.86,38,138/- for restoration and replacement of Plinth and foundation.*
- e. The sum of approximately Rs.6,75,00,000/- for relief from NPA Other Reliefs and compensation sought:*
- f. Interest at the rate of 18% from the date of occurrence of the event.*

- g. Rs.1,00,00,000/-for mental pain and agony of the stakeholders.*
- h. Rs.2,72,00,000/- (Approx.) towards compensation on account of loss of business. As Prior to the incident the business of the Company was growing at the rate of 25% every year.*
- i. An amount towards ante lite, pendent lite and future interest as the Hon'ble Commission deemed fit.*
- j. Cost of the litigation as deemed fit by this Hon'ble Commission;*

X. Prayer Clause

In view of the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Commission may kindly be pleased to grant:

- a. The above mentioned Compensation/ relief sought.*
- b. Compensation for deficiency in service on account of wrongful repudiation of the Claim in its entirety in contravention of the terms and conditions of the 'Standard Fire and Special Perils' Policy of Insurance, delay caused by the Respondents in settlement of the claim and non-determination of the estimate of loss sustained by the manufacturing unit of the Complainant;*
- c. Any order(s) which this Hon'ble Forum may deem fit in the interest of justice, equity and good faith."*

2. From a perusal of the averments made in the Complaint, we find that on 2nd June, 2016 the Complainant had taken Insurance Coverage from National Insurance Company Limited, Kolkata, West Bengal under its Standard Fire and Special Perils Policy initially for a total sum of Rs.28,00,20,000/- (Rupees Twenty eight crores and twenty thousand only) by paying a premium of Rs.3,20,525/- (Rupees Three lac twenty thousand five hundred and twenty five only) only. The Complainant further took an additional security coverage of Rs.13,00,00,000/- (Rupees Thirteen crores only) on 25th August, 2020 by paying a premium of Rs.1,23,037/- (Rupees One lac twenty three thousand and thirty seven only). According to the Complainant, Howrah Region where the Factory Premises of the Complainant is situated was severely hit by heavy rainfall, storm and river water flooding causing extensive coverage of water logging of Howrah Region for several days. Flood water had risen 4-5 feet inside the factory premises of the Complainant, which is abutted by banks of the river Ganga on two sides causing considerable damage to Buildings, Plants and Machinery and Stocks of the Complainant. It caused tilting and partial collapse of Factory Building, damaged several machines and electrical installations and damaged stocks, which was buried under a pile of concrete debris from the collapsed roof of a covered loading/

unloading area. The Complainant informed the National Insurance Company Limited, Kolkata on 05.09.2020 about the loss suffered and for making the payment of the loss suffered by estimating it.

3. After exchange of correspondence and personal interaction the National Insurance Company Limited, Opposite Party No.1 vide letter dated 29.11.2018 repudiated the claim of the Complainant. Thereafter, the Complainant sought the Survey Report from the Opposite Party No. 1 and finally in January, 2020, the Complainant through J Mukherjee & Associates, Advocates and Solicitors sent a letter to the National Insurance Company Limited calling upon the Insurance Company to withdraw the letter of Repudiation for making payments under the Insurance Policy.

4. The Consumer Complaint was sent by Ajinkya Tiwari, learned Counsel for the Complainant via Gmail only on 31.07.2020. The Office had registered the Complaint on 05.08.2020. Therefore, this Complaint is to be considered under the provisions of the Consumer Protection Act, 2019 (hereinafter referred to as “the Act of 2019”) which had come into force with effect from 20.07.2020/ 24.07.2020.

5. In the present case a preliminary point arises as to how this Consumer Complaint is maintainable before the National Consumer Disputes Redressal Commission (hereinafter referred to as “the National Commission”) because the value of the consideration paid in the present case i.e. premium paid for taking the Insurance Policies was only Rs.3,20,525/- and Rs.1,23,037/- the total of which comes to Rs.4,43,562/- (Rupees Four Lac forty three thousand five hundred and sixty two only), which is less than the consideration paid of more than Rs.10,00,00,000/- (Rupees Ten crores) as provided under Section 58 (1) (a) (i) of the Act of 2019.

6. Mr. Joy Saha, learned Senior Counsel on behalf of the Complainant submitted that under Section 21 (a) (i) of the Consumer Protection Act, 1986 (hereinafter referred to as “the Act of 1986”) the National Commission had the jurisdiction to entertain Complaints where the value of the good or services and compensation, if any, claimed exceeds Rs.1,00,00,000/- (Rupees One crore), whereas under Section 58 (1) (a) (i) of the Act of 2019 the National Commission has jurisdiction to entertain Complaints where the value of the goods or services paid as consideration exceeds Rs.10,00,00,000/- (Rupees Ten crores). According to the learned Senior Counsel only the value of the compensation claimed has been omitted from Section 58 (1) (a) (i) of the Act of 2019 and the present Consumer Complaint is maintainable and this Commission will have the pecuniary jurisdiction to entertain the present Complaint. He further submitted that a liberal view should be taken as if “the word value of consideration paid” is taken to be the amount paid for the purchase of goods or services by a Consumer then even though Insurance Policy taken by the Consumer be above 10,00,00,000/- (Rupees Ten crore), factually there will no instance of making payment by any Consumer premium of more than 10,00,00,000/- (Rupees Ten crore) and if such a strict view is taken then the claims regarding Insurance will have to be necessarily filed either before the District Consumer Disputes Redressal Commission or before the State Consumer Disputes Redressal Commission and not before the National Consumer Disputes Redressal Commission, which will create great hardship to such Consumers.

7. The submission made by the learned Senior Counsel appearing for the Complainant cannot be accepted. It is no doubt true that under the Act of 1986, pecuniary jurisdiction was to be determined by taking the value of the goods or services and compensation, if any, claimed. Meaning thereby that the value of the goods or services as also the compensation is to be added to arrive at a conclusion as to whether the National Commission has the jurisdiction or not. This law was laid down by a three Member Bench of this Commission in Ambrish Kumar Shukla & 21 Ors.

Vs. Ferrous Infrastructure Pvt. Ltd, I (2017) CPJ I (NC) . Thus in the Act of 1986 it was “the value of the goods or services and the compensation claimed” taken into consideration while determining the pecuniary jurisdiction. For example, if a person has agreed to purchase a Flat/ Apartment/ Plot for about Rs.60,00,000/- and he is claiming refund as also compensation of Rs.50,00,000/- then the value will exceed Rs.1,00,00,000/- and the Consumer Complaint has to be filed before the National Commission. Similar, would be the case of taking Insurance Policy of above Rs.1,00,00,000/-or may be below Rs.1,00,00,000/- but taking into consideration the premium paid and the compensation claimed if the value exceeds Rs.1,00,00,000/- the Consumer Complaint has to be filed before the National Commission.

8. It appears that the Parliament, while enacting the Act of 2019 was conscious of this fact and to ensure that Consumer should approach the appropriate Consumer Disputes Redressal Commission whether it is District, State or National only the value of the consideration paid should be taken into consideration while determining the pecuniary jurisdiction and not value of the goods or services and compensation, and that is why a specific provision has been made in Sections 34 (1), 47 (1) (a) (i) and 58 (1) (a) (i) providing for the pecuniary jurisdiction of the District Consumer Disputes Redressal Commission, State Consumer Disputes Redressal Commission and the National Commission respectively.

9. For ready reference the provisions of Sections 34 (1), 47 (1) (a) (i) and 58 (1) (a) (i) of the Act of 2019 are reproduced below:

“34. (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:”

“47. (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 paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore:”

“58. (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 crore:”

10. From a reading of the aforesaid provisions it is amply clear that for determining the pecuniary jurisdiction of the District Commission, State Commission or National Commission the value of the goods or services paid as consideration alone has to be taken and not the value of the goods or services purchased/ taken. Therefore, we are of the view that the provision of Section 58 (1) (a) (i) of the Act of 2019 are very clear and does not call for any two interpretations

11. In view of the foregoing discussion, we are of the considered opinion that as the value of consideration paid by the Complainant is only Rs.4,43,562/- (Rupees four lac forty three thousand five hundred and sixty two only), which is not above Rs.10,00,00,000/- (Rupees Ten crore), the National Commission has no jurisdiction to entertain the present Consumer Complaint and it is accordingly dismissed as not maintainable.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER