

19.08.2019, held complaint not maintainable as, according to the State Commission, the complainant (appellant herein) was not a “consumer” as per Section 2(1)(d) of the Consumer Protection Act, 1986².

2. Aggrieved by the State Commission’s order, the appellant filed First Appeal No. 1977 of 2019 before the National Consumer Disputes Redressal Commission, New Delhi³ which was dismissed, *vide* order dated 15.06.2020, affirming the order of the State Commission.

3. The issue which falls for our consideration is whether in respect of the goods purchased/services availed, the appellant would qualify as a “consumer” as defined in Section 2(1)(d) of the 1986 Act.

Facts

4. The complainant (appellant herein), a company incorporated and registered under the Companies

² 1986 Act

³ NCDRC

Act, 1956, filed a consumer complaint before the State Commission claiming, *inter alia*, that, - it is engaged in export and import of medical devices and equipment; with an intent to install and implement an export/ import documentation system at its plant, it sought a software; in connection therewith, it purchased a product licence of “*Brillio Opti Suite*”, a software, from the respondent; requisite payment for the purchase was made, but the software did not function properly. In consequence, claiming deficiency in service, the complaint was filed, *inter alia*, for refund of the entire amount paid by the complainant to the respondent towards (a) product licence cost and (b) additional development cost together with interest at the rate of 18%.

5. The respondent contested the complaint claiming, *inter alia*, that the complaint is not maintainable as the complainant is not a consumer as defined in Section 2 (1) (d) of the 1986 Act.

6. The State Commission *vide* its order dated 19.08.2019 held that since purchase of the software license was for a commercial purpose, the complainant would not qualify as a “consumer”; hence, the complaint is not maintainable.

7. Aggrieved by the order of the State Commission, the appellant filed an appeal before NCDRC, which came to be dismissed by the impugned order.

8. We have heard learned counsel for the parties.

Submissions on behalf of the appellant

9. On behalf of the appellant, it was contended that software was purchased for self-use; appellant was the end user and had no intention to transfer/ sell it for profit, therefore, it cannot be said that purchase was for commercial purpose; moreover, purchase of goods/ services for self-utilization with no intention to directly generate profit from it, would qualify the purchaser of such goods or services as a “consumer” by virtue of Explanation to Section 2(1)(d) of the 1986 Act, 1986. Decision of this Court in ***Lilavati Kirtilal***

Mehta Medical Trust v. Unique Shanti Developers and Ors⁴ was relied to contend that identity of a person making the purchase, or the value of the transaction, is not conclusive to determine whether it is for a commercial purpose. What is to be seen is the dominant purpose for the transaction, that is, whether it is to facilitate some kind of profit generation for the purchaser / other beneficiary. Additionally, it was argued that since the software was not directly linked to generation of profit, the transaction cannot be considered as one for a commercial purpose so as to disqualify the appellant from being a “consumer”.

9.1. Reliance was also placed on decision of this Court in ***Sunil Kohli and Anr. v. Purearth Infrastructure Ltd.***⁵ to contend that if purchaser of a property puts it to commercial use to earn his livelihood, by way of self-employment, such a

⁴ (2020) 2 SCC 265

⁵ (2020) 12 SCC 235

purchaser would be a consumer. Based on those decisions, learned counsel for the appellant contended that since the appellant had purchased the software for installing and implementing an export/ import documentation system for self-use as an end user thereof, and not for resale or transfer or conversion in any manner, the appellant would qualify as a consumer and, therefore, the view to the contrary taken by the State Commission as well as NCDRC is against the law and liable to be set aside.

Submissions on behalf of respondent

10. Per contra, on behalf of the respondent, it was submitted that the software "*Brillio Opti Suite*" is admittedly for carrying out professional activities.

The software is customized to provide support to the appellant in managing its business affairs by performing various functions such as Export Document Set, Clubbing/Spitting SAP Sales Documents, Clubbing of Bill of Exchange, Advance Payment/FIRC, CHA Charges Tracking, Duty

Drawback (All Industrial rate), Letter of Credit Management, Container Indents and Tracking, Export Credit Guarantee Corporation (ECGC) Policy Management, Export Packing Credit Handling, FOREX Forward Cover Management. Thus, the software was used by the appellant to create documents necessary for import and export of its goods and also to track consignments and benefits available under various Government Schemes. The use of the software therefore had a direct nexus with profit-generating activity of the appellant. Besides above, the disputes dealt with under the 1986 Act are business to consumer and not business to business. Additionally, it was contended, if statutory provisions are interpreted in the manner as suggested by the appellant, then business to business transactions would also fall as consumer disputes thereby defeating the very purpose of the 1986 Act, which is to provide simple and speedy redressal of consumer disputes. In support of its submissions, the learned

counsel for the respondent placed reliance on decisions of this Court in ***Lilavati Kirtilal Mehta Medical Trust (supra); National Insurance Co. Ltd. v. Harsolia Motors and Ors***⁶ and ***Shrikant G. Mantri v. Punjab National Bank***⁷.

Discussion/ Analysis

11. Before we set out to consider whether the appellant is a “consumer” as defined in Section 2(1)(d) of the 1986 Act, it would be useful to reproduce the definition of “consumer” as contained in Section 2(1)(d) of the 1986 Act. The same reads as under: -

“(d) “**consumer**” means any person who, —

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, **but does not include a person who**

⁶ (2023) 8 SCC 362

⁷ (2022) 5 SCC 42

obtains such goods for resale or for any commercial purpose; or

- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person **[but does not include a person who avails of such services for any commercial purpose]**

Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;”

(Emphasis supplied)

12. Sub-clause (i) of Clause (d) of sub-section (1) of Section 2 of the 1986 Act in simple terms provides that “consumer” means any person who buys any goods for a consideration. However, it excludes from its purview a person who obtains such goods for resale or for any commercial purpose. Sub-clause (ii) of Clause (d) of sub-section (1) of Section 2 in simple

terms provides that a person who hires or avails of any services for a consideration shall also be a consumer provided such services are not for any commercial purpose. Explanation to clause (d) of sub-section (1) of Section 2 of 1986 Act carves out an exception by clarifying that commercial purpose does not include use by a person of goods bought and used or/ and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment.

13. In **Karnataka Power Transmission Corporation and Anr. v. Ashok Iron Works Private Ltd.**⁸, this Court had an occasion to consider the true import of the term “person” as defined in Section 2(1)(m) of the 1986 Act⁹; as per which, “person” includes,—(i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a co-operative society; (iv) every other association of persons

⁸ (2009) 3 SCC 240

⁹ **Section 2(1)(m)**. “person” includes,—(i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a co-operative society; (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not.

whether registered under the Societies Registration Act, 1860 (21 of 1860) or not. Upon consideration of the aforesaid definition in conjunction with the definition of “person” as provided in section 3 (42) of the General Clauses Act, 1897¹⁰, this Court held as follows:

“20. Section 3 of the Act, 1986 upon which reliance is placed by learned counsel for KPTC provides that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. This provision instead of helping the contention of KPTC would rather suggest that the access to the remedy provided to the Act of 1986 is an addition to the provisions of any other law for the time being in force. It does not in any way give any clue to restrict the definition of the `person'.

21. Section 2(1)(m) is beyond all questions, an interpretation clause, and must have been intended by the Legislature to be taken into account in construing the expression `person' as it occurs in Section 2(1)(d). While defining `person' in Section 2(1)(m), the Legislature never intended to exclude a juristic person like company. As a matter of fact, the four categories by way of enumeration mentioned therein is indicative, categories (i), (ii) & (iv) being unincorporate and category (iii) corporate, of its intention to include body corporate as well as body un-incorporate. The definition of `person' in Section 2(1)(m) is inclusive and not exhaustive. It does not appear to us to admit of any doubt that company is a person within the

¹⁰ **Section 3(42).** – “person” shall include any company or association or body of individuals, whether incorporated or not.

meaning of Section 2(1)(d) read with Section 2(1)(m) and we hold accordingly.”

14. We respectfully agree with the view taken by this Court in **Karnataka Power Transmission Corp. and Anr** (supra) that the definition of “person” in Section 2(1)(m) is inclusive and not exhaustive. Therefore, there can be no doubt that even an incorporated company could be a consumer within the meaning of Section 2(1)(d) read with Section 2(1)(m) of the 1986 Act.

15. As to when an activity or transaction of purchase of goods or services availed can be understood as for a commercial purpose, this Court, in **Lilavati Kirtilal Mehta Medical Trust** (supra), after considering number of decisions, culled out broad principles for its determination. The relevant paragraphs of the said decision are extracted below:-

“19. To summarize from the above discussion, though a straight- jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is “for a commercial purpose”:

19.1 The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, “commercial purpose” is understood to include manufacturing/ industrial activity or business-to-business transactions between commercial entities.

19.2 The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

19.3 The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4 If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of ‘generating livelihood by means of self-employment’ need not be looked into.”

16. What is clear from the above decision is that the identity of the person making the purchase, or the value of the transaction, is not conclusive to determine whether the transaction or activity is for a commercial purpose. What is to be seen is the

dominant intention or dominant purpose for the transaction i.e. whether it is to facilitate some kind of profit generation for the purchaser(s) and/or its/their beneficiary. If it is found that the dominant purpose behind purchasing goods or services is for personal use and consumption of the purchaser, or is otherwise not linked to any commercial activity, the question whether such purchase is for generating a livelihood by means of self-employment need not be looked into. However, where the transaction is for a commercial purpose then it might have to be considered whether it is for generating livelihood by means of self-employment or not.

17. The aforesaid judgment underscores that ordinarily commercial purpose is understood to include manufacturing/ industrial activity or business to business transaction between commercial entities.

18. There is a difference between a self-employed individual and a corporation. The goods purchased

by a self-employed individual for self-use for generating livelihood would fall within the explanation even if activity of that person is to generate profits for the purpose of its livelihood. But where a company purchases a software for automating its processes, the object is to maximise profits and, therefore, it would not fall within the explanation of Section 2(1)(d) of the 1986 Act.

19. In **Sunil Kohli** (supra), a decision relied by the appellant, the complainants were non-resident Indians residing abroad. They intended to shift to India and therefore, with an intention to earn their livelihood, they booked a shop with the opposite party. The allegations in the complaint were that the complainants had paid instalments to the opposite party and despite full payment, the opposite party failed to deliver possession. Consequently, complainants sought compensation and delivery of possession. The opposite party therein contested the proceedings by claiming that the complainants had

booked the shop for commercial purpose therefore they cannot be termed “consumer”. In the light of earlier decisions of this Court in **Laxmi Engineering Works v. P.S.G. Industrial Institute**¹¹ and **Cheema Engineering Services v. Rajan Singh**¹², this Court considered the evidence on record to determine whether the premises were booked by the complainants with an intention of self-employment / self-use. Upon finding that the complainant(s) were not employed any more in foreign land and had disclosed their desire to come to India to start a business, this Court held them to be consumer(s).

20. The decision in **Sunil Kohli** (supra) will not be of help to the appellant as that was a case of unemployed individual(s) who had booked a shop for self-employment; whereas, in the case on hand, the appellant is a company engaged in commercial activity of import/export, and the goods/services

¹¹ (1995) 3 SCC 583

¹² (1997) 1 SCC 131

purchased/availed by the company were to automate its business processes with a view to augment its efficiency and profits. Thus, whether those goods/ services purchased/availed are for self-use, in our view, would not make a material difference.

21. In ***Virender Singh v. M/s. Darshana Trading Co. through its partner Sanjay Seth (Dead) & Anr. (Special Leave to Appeal (C) No.5510 of 2020, decided on 18.03.2025)***, the complainant, had purchased machines by which the manufacturing of die could be done at cheaper cost and with more precision. As there were defects in the machine, a complaint was filed before the State Commission, wherein the preliminary objection raised was that since the machine was purchased purely for commercial purposes, the complainant is not covered under the definition of a consumer. The objection was sustained by the State Commission and its decision was affirmed by the National Commission. The matter travelled to this Court.

Argument raised was that since the machine was purchased for self-use/ self-employment, it cannot be a commercial purpose. In support of its submission an earlier decision of this Court in **Paramount Digital Colour Lab & others v. Agfa India Pvt. Ltd. & Ors.**¹³ was cited. Upholding the decision of the National Commission, this Court held that though it is correct that if goods or services purchased or availed are for self-employment, it cannot be categorized as commercial purpose, but each case has to be seen in light of its own facts. Thereafter, while distinguishing the case of **Paramount Digital** (supra), it was held:

“In this case cited above i.e., Paramount Digital (supra), there were two unemployed graduate persons who had purchased the machine evidently for self-employment. But in the present case, the petitioner/ complainant was already running a business as a commercial venture and admittedly he had purchased the machine to expand his business. It is not a case where the petitioner was himself operating the machine, but he had employed workmen who were doing the job for him. Under these circumstances, no matter how small the venture is, it cannot be

¹³ (2018) 14 SCC 81

called self-employment for the purpose of the Act and therefore, we find no scope to take a different view than the one taken by the State Commission and the National Commission.”

22. In the case on hand also, the complainant had been an established company doing business which bought the product license to automate its processes. In such circumstances, the object of the purchase was not to generate self-employment but to organize its operations with a view to maximise profits. In our view therefore, the case of the complainant does not fall within the Explanation to Section 2(1)(d) of the 1986 Act.

23. In **National Insurance Co. Ltd. v. Harsolia Motors and Ors** (supra), another decision relied by the appellant, the complainant, a commercial entity engaged in the business of sale of vehicles, took fire insurance policy from the appellant, an insurance company, covering its office, showroom, garage, machinery lying in the showroom premises, etc. The complainant's case was that damages were sustained

during Godhra riots and, therefore, the complainant was entitled to be indemnified under the policy of Insurance. Aggrieved by action of the insurance company, claiming deficiency in service, a complaint was filed. The Insurance Company took an objection that the complainant was not a consumer as per Section 2(1)(d) of the 1986 Act because its ultimate object is to earn profits. The State Commission upheld the objection; against which, the complainant filed an appeal before the National Commission. The National Commission held that the expression used “*for any commercial purpose*” would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit, but in a case where goods purchased or services availed are not intended to generate profit, it would not be a commercial purpose. Therefore, it was held, when a person takes an insurance cover for indemnification of actual loss suffered, the intention is not to generate profits. Consequently, the complainant

would be a consumer. Upholding the above view of the National Commission, this Court observed:

“39. Applying the aforesaid test, two things are culled out; (i) whether the goods are purchased for resale or for commercial purpose; or (ii) whether the services are availed for any commercial purpose. The two-fold classification is commercial purpose and non-commercial purpose. If the goods are purchased for resale or for commercial purpose, then such consumer would be excluded from the coverage of the Act, 1986. For example, if a manufacturer who is producing product A, for such production he may be required to purchase articles which may be raw material, then purchase of such articles would be for commercial purpose. As against this, if the same manufacturer purchases a refrigerator, television or air-conditioner for his use at his residence or even for his office has no direct or indirect nexus to generate profits, it cannot be held to be for commercial purpose and for afore-stated reason he is qualified to approach the Consumer Forum under the Act, 1986.

40. Similarly, a hospital which hires services of a medical practitioner, it would be a commercial purpose, but if a person avails such services for his ailment, it would be held to be a non-commercial purpose. Taking a wide meaning of the words “for any commercial purpose”, it would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit. Profit is the main aim of commercial purpose, but in a case where goods purchased or services hired is an activity, which is not directly intended to generate profit, it would not be a commercial purpose.

41. In other words, to make it further clear, let us have certain illustrations, as to whether the transaction falls for commercial purpose or whether the complainant can be held to be a

“consumer” within the scope and ambit of Act, 1986.

41.1 A CT scan machine was purchased by a Charitable Trust and that was found to be defective, the question raised whether the machinery was purchased for a commercial purpose and whether the appellant was a consumer. From the narration of facts, this Court in *Kalpavruksha Charitable Trust v. Toshniwal Bros. (Bombay) (P) Ltd.* held that the machine was purchased by the Charitable Trust for commercial purpose as every person who takes a CT scan has to pay for it and the services rendered are not free and thus the Trust was not a consumer.

41.2. In *Rajeev Metal Works v. Mineral & Metal Trading Corpn. of India Ltd.*, a manufacturer imported raw material through statutory authority that acted as a canalizing agency for manufacture and sale of the finished product. The appellant approached the National Commission alleging that the respondent had not supplied the required quantity demanded by the appellant. This Court held that the purchase was for a commercial purpose and the manufacturer was not a “consumer” for the purpose of the Act, 1986.

41.3. The bank which had taken bankers indemnity insurance policy from the insurance company and suffered loss owing to some of transactions in one of its branches, raised an insurance claim stating that it is owing to dishonesty of Branch Manager and the claim was repudiated by the insurance company stating that the alleged loss was because of some dishonesty of the Branch Manager and this being for commercial purpose, may not be a consumer.

41.4. The complainant is a private limited company running a diagnostic clinic and alleges that Xray machine purchased by the complainant from the opposite party was defective. If an objection is raised that as machine was purchased for commercial purpose and the complainant

cannot be said to be a consumer as defined under the Act, 1986 as he has been employed for commercial purpose and has been carrying out business for profit indeed the complainant is not a consumer under the Act, 1986.

41.5. A company purchased the EPBX system for the better management of the business of the company for commercial purpose and the complaint filed for alleged supply of defective system may not be covered by the explanatory clause of Section 2(1)(d) of the Act, 1986 as the transaction has no nexus to generate profits.

42. Thus, what is finally culled out is that each case has to be examined on its own facts and circumstances and what is to be examined is whether any activity or transaction is for commercial purpose to generate profits and there cannot be a straightjacket formula which can be adopted and every case has to be examined on the broad principles which have been laid down by this Court, of which detailed discussion has been made.”

24. Based on paragraphs 39 and 41.5 of the decision in **Harsolia Motors** (supra), the learned counsel for the appellant submitted that if the goods purchased or services availed are for convenience/ comfort or for better management of the business of the company, and the complaint is filed for compensation on account of defective supplies or deficient services, a consumer complaint would be maintainable.

25. In our view, if we read paragraphs 39 and 41.5 in conjunction with other paragraphs of the judgment in **Harsolia Motors** (supra), more particularly paragraph 42, what becomes clear is that if the transaction has a nexus with generation of profits, it would be treated as one for a commercial purpose. The examples of purchase of refrigerator, television or air-conditioner cited in paragraph 39 (supra), as one not relating to generation of profit, makes the position clear. These products/ goods are for comfort having no direct nexus to generation of profits. But if a transaction has nexus with generation of profits, it would be for a commercial purpose. However, whether a transaction has nexus with generation of profits or not is to be determined on the facts of each case by taking into consideration, *inter alia*, the nature of the goods purchased or services availed and the purpose for which it is purchased or availed. If upon consideration of all relevant factors the picture that emerges is one which reflects that the

object of the purchase of goods/ services is to generate or augment profit, the same would be treated as for a commercial purpose.

26. Besides above, the question that fell for consideration before this Court in **Harsolia Motors** (supra) was whether the insurance services availed were for commercial purpose or not. Insurance service by its very nature is to secure the insured against a prospective loss on account of unforeseen circumstances. Therefore, the dominant object of availing that service is not to generate profit but to secure oneself against unforeseen losses. In that context, this Court took the view that availing of insurance services would not be a transaction for a commercial purpose even though it may be a business to business transaction. The other illustrations / examples cited in the judgment do not constitute the ratio decidendi of that decision.

27. In the instant case, not only the complainant is a commercial entity, the purchase of goods/ services

(i.e., software) from the respondent was with a view to automate the processes of the company which were linked to generation of profit inasmuch as automation of business processes is undertaken not just for better management of the business but to reduce costs and maximise profits. Thus, in our view, the transaction of purchase of goods/ services (i.e., software) had a nexus with generation of profits and, therefore, *qua* that transaction the appellant cannot be considered a consumer as defined in Section 2(1)(d) of the 1986 Act.

28. For the foregoing reasons, we are of the considered view that both the State Commission as well as the National Commission were justified in holding that the goods /services purchased/ availed by the appellant were for a commercial purpose and therefore the appellant is not a “consumer” as per Section 2(1)(d) of the 1986 Act.

29. The appeal lacks merit and is, accordingly, dismissed. There is no order as to costs.

30. Pending applications, if any, stand disposed of.

There is no order as to costs.

.....J.
(J. B. PARDIWALA)

.....J.
(MANOJ MISRA)

New Delhi;
November 13, 2025.