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Supreme Court holds that the definition of “consumer” under the Consumer Protection Act, 1986 includes a commercial entity consuming goods or services for non-business purposes

The Supreme Court of India (“**Supreme Court**”) has in its recent decision of *National Insurance Co. Ltd. v. Harsolia Motors & Ors.*¹ held that the definition of “consumer” under Section 2 (1)(d) of the Consumer Protection Act, 1986 (“**CP Act**”) includes a commercial entity provided that the goods purchased, or services availed are not linked to any profit generating activity. The Supreme Court further clarified the scope of the restrictive term “*for any commercial purpose*” appearing in Section 2 (1)(d) of the CP Act.

Brief Facts

Harsolia Motors (“**Respondent No. 1**”), a commercial entity engaged in the business of sale of vehicles took a fire insurance policy from National Insurance Co. Ltd. (“**Appellant**”) to cover its office, showroom, garage, machinery lying in the showroom premises etc. Respondent No. 1 alleged that the premises and items were damaged in a fire during the Godhra riots in 2002. Consequently, Respondent No. 1 raised a claim with the Appellant for the insured sum under the insurance policy, which claim came to be rejected by the Appellant. Aggrieved by the rejection of its claim, Respondent No. 1 instituted a consumer complaint before the State Consumer Disputes Redressal Commission, Gujarat (“**State Commission**”) under the CP Act *inter alia* seeking compensation from the Appellant in terms of the insurance policy (“**Complaint**”).

The State Commission held that the Complaint was not maintainable since Respondent No. 1 ran its business from its premises with a view to earn profits and as such, was not a “*consumer*” under Section 2 (1)(d) of the CP Act. The State Commission found that the activity undertaken by Respondent No. 1 fell within the purview of a “*commercial purpose*” and was thus, excluded from the purview of the CP Act.

Respondent No. 1 preferred an appeal before the National Consumer Disputes Redressal Commission (“**National Commission**”) against the order passed by the State Commission. The National Commission recorded a finding that the expression “*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 the goods purchased or services hired are not employed in an activity used to generate profit, it would not be a “*commercial purpose*”. In this backdrop, the National Commission held that a person who takes an insurance policy to cover an envisaged risk for indemnification of actual loss suffered, does not ordinarily do so with the intent to generate profits. Accordingly, the National Commission held that Respondent No. 1 was a “*consumer*” under Section 2 (1)(d) of the CP Act and remanded the matter to the State Commission for consideration on merits.

¹ 2023 SCC OnLine SC 409

The Appellant challenged the order passed by the National Commission before the Supreme Court.

Issue before the Supreme Court

Whether the insurance policy taken by Respondent No. 1, for a commercial enterprise, amounts to hiring of services for a “*commercial purpose*”, which is excluded from the purview of the definition of a “*consumer*” under Section 2 (1)(d) of the CP Act?

Decision of the Supreme Court

The Supreme Court dismissed the Appeal *inter alia* observing the following:

1. The provisions of the CP Act have to be construed in favour of a consumer to achieve the purpose of the CP Act which is a social benefit-oriented legislation.
2. A commercial enterprise or a ‘person’ as defined under Section 2 (1)(m) of the CP Act (which includes a firm, whether registered or not) is not excluded from the definition of a ‘consumer’ provided in Section 2 (1)(d) of the CP Act.
3. The fact that the insured (Respondent No. 1) is a commercial enterprise is unrelated to the determination of whether the insurance policy will be regarded as a “*commercial purpose*” under Section 2 (1)(d) of the CP Act.
4. Profit is the main aim of a commercial purpose, but in a case where the goods purchased or services hired is an activity not directly intended to generate profit, it would not be a commercial purpose. Some illustrations include – (a) where machinery purchased to undertake medical tests is found to be defective, a consumer complaint would not be maintainable under the CP Act since the machinery is used for a commercial purpose and every person taking the test would have to pay for the services rendered²; (b) a consumer complaint for short supply of raw material imported for the manufacture and sale of a finished product would not be maintainable since the raw material was to be used for a commercial purpose³; (c) defects in a system purchased for the better management of the business of the company may not be covered under the purview of a commercial purpose, given that the transaction does not have a direct nexus to the generation of profits.
5. With respect to the facts of the present case, the determination to be made is whether the insurance service had a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose of the transaction was to facilitate some kind of profit generation for the insured.
6. The insurance policy did not have any direct nexus with profit generation and therefore, Respondent No. 1 was rightly held to be a “*consumer*” under Section 2 (1) (d) of the CP Act by the National Commission.

Conclusion

This decision restricts the scope of the term “*for any commercial purpose*” under Section 2 (1)(d) of the CP Act and expands the definition of a consumer. This judgment is likely to have an effect on the way fresh matters instituted under the Consumer Protection Act, 2019 are decided. The definition of a ‘consumer’ under Section 2 (1)(d) of the old CP Act is similar to the definition of a ‘consumer’ under Section 2 (7) of the Consumer Protection Act, 2019 and also includes the exclusionary term “*for any commercial purpose*”. Given this position, there could be an exponential increase in consumer complaints instituted by corporates under consumer protection law.

² Kalpavruksha Charitable Trust v. Toshniwal Brothers (Bombay) Pvt. Ltd. & Anr. (2000) 1 SCC 512.

³ Rajeev Metal Works & Ors. v. Mineral & Metal Trading Corporation of India Limited (1996) 9 SCC 422.

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