

# SUPREME COURT OF INDIA

Punj Lloyd Limited

Vs.

Corporate Risks India Pvt. Ltd.

C.A.No.1026 of 2007

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

11.12.2008

## JUDGMENT

### **Tarun Chatterjee,J.**

1. This appeal is directed against the final order dated 14th of September, 2006 of the National Consumer Disputes Redressal Commission (hereinafter referred to as the "Commission") at New Delhi in Consumer Complaint No 81 of 2006 whereby, the Commission had dismissed the complaint in limine without giving notice to the respondent on the ground that the appellant had raised disputed questions and contentions which were beyond the purview of the Commission.

2. The relevant facts as emerging from the case made out by the appellant have been mentioned in a nutshell: The appellant is an engineering construction company serving customers in the hydrocarbon and infrastructure sectors in the global markets, delivering projects and services in pipelines, tankage etc. The appellant was awarded a contract in the Uran - Trombay Pipeline Project with the Oil and Natural Gas Corporation of India. The contract of the appellant with the Oil and Natural Gas Corporation of India obliged the appellant to arrange for insurance covering risks during the construction process in the project. There are only a few insurers and re-insurers competent and willing to undertake such risks according to the knowledge of the appellant.

3. The respondent is a company registered with the Insurance Regulatory and Development Authority and is an insurance and re-insurance broker which had approached the appellant in August 2005, explaining that it had the competence and expertise to arrange the specialized and high-priced insurance and re-insurance cover required for the Uran-Trombay Pipeline Project. The appellant thereupon based upon the assurance of the respondent, appointed it as its insurance broker for arranging the desired insurance/re- insurance for the project. The respondent, by a letter dated 17th of August, 2005, conveyed to the appellant that it had short-listed the Oriental Insurance Company Ltd. and the premium for the requisite insurance would be US \$ 1,369,128.5 (one million three hundred sixty-nine thousand one hundred

twenty eight dollars and fifty cents); equivalent to approximately Rs. 6.16 crores, plus service tax.

4. On 19th of August, 2005 the appellant had written to the Oriental Insurance Company Ltd. admitting that the premium amount would be paid to it. Thereafter on 25th of August 2005, the appellant confirmed the appointment of the Oriental Insurance Company as its lead insurer through a letter addressed to the same. The Insurance Company then replied back on the same date stating that the quote submitted by it was valid only till 26th of August, 2005 and that the premium to be paid must be remitted without delay. The appellant received the said letter on 29th of August, 2005, three days after the expiry of the quote and hence immediately communicated the lapse of the insurance company to the respondent. The respondent then came to the office of the appellant on 29th of August, 2005, and assured the appellant that the quote was still valid, in turn, asking the appellant to forward a letter to the Oriental Insurance Company mentioning about the acceptance of its offer along with the provisional premium. The appellant immediately handed over the Oriental Insurance Company's letter dated 25th of August 2005, and another letter dated 29th of August 2005 on behalf of the appellant to the insurance company along with a cheque bearing No. 367340 towards the provisional premium of Rs. 25 lacs thereby reconfirming its mandate, to the Director of the respondent company for submission to the Oriental Insurance Company. The Respondent, by its letter dated 31st of August 2005, informed the appellant that it had forwarded the letter dated 29th of August 2005, written by the appellant for the insurance company along with the premium, to the said insurance company. On 1st of September 2005, the appellant received a letter from the Oriental Insurance Company informing them that the policy had been rejected as the given deadline had not been adhered to and that the sum of Rs.25 lacs was held by the insurance company as a deposit and not as a premium. Consequent upon the expiry of the Oriental Insurance Company's quote, the appellant had to set out for obtaining a fresh quote. The best quote available at that moment was the one that was offered to them by ICICI Lombard General Insurance Company Ltd. but at a much higher premium. The appellant had no other option but to take the quote offered at Rs. 11, 4004967. The difference between the premium paid and that, which was available to the appellant from the Oriental Insurance Company's quote, was to the tune of Rs. 5, 26, 70,654. Thus aggrieved, the complainant wrote to the respondent on 25<sup>th</sup> of October 2005, bringing to the respondent's notice of its breaches and the resultant losses and therefore seeking due fulfillment of these losses within a period of 30 days. There was no response on the part of the respondent and, therefore, the appellant again forwarded a letter to the respondent on 1st of December 2005, seeking a clarification whether the respondent had notified a claim under its professional indemnity policy. The appellant received no response to this letter either. Ultimately the appellant filed a complaint under section 12 and section 21 of the Consumer Protection Act, 1986 (herein after referred to as the "Act") before the Commission pertaining to loss suffered on account of the respondent's negligence, incompetence and deficiency in service. The Commission, by its impugned order dated 14th of September, 2006, dismissed the complaint of the appellant in limine on the ground that it involved disputed questions and contentions which were beyond the purview of the Commission.

5. Being aggrieved by the order of the Commission, the appellant has preferred this statutory appeal before this Court under the Act.

6. The pivotal question that needs to be decided while dealing with this appeal is, whether the Commission was justified in dismissing the complaint in limine on the ground that the case involved disputes and questions which were contentious before issuing any notice to the respondent and without even prima facie going into the merits of the case.

7. Before we proceed further to decide the aforesaid question, it would be appropriate to quote the impugned order of the Commission which is as follows:

"Considering the disputed questions and the contentions which are sought to be raised by the complainant, in our opinion, this complaint is not required to be dealt with under the Consumer Protection Act, 1986. Hence, the complaint is not entertained. However, it is made clear that it would be open to the complainant to approach the Civil Court or any other Authority for redressal of their grievances, as advised. We make it clear that this complaint was filed on 24.8.2006 before this Commission and some time was taken for deciding the same. If there is any delay, it would be open to the complainant to file proper application for condonation of delay on the basis that the matter was pending before this Commission. The complaint stands disposed of accordingly."(Emphasis supplied)

8. We have heard the learned counsel appearing on behalf of the parties and perused the materials on record. In our view, the Commission was not justified in rejecting the complaint of the appellant in limine without issuing notice to the respondent and before allowing him to place his defence before it. Reasons are stated as under :-

9. Mr. P.S. Narasimha, learned counsel appearing for the complainant-appellant submitted, relying on a judgment of this Court in the case of *CCI Chambers Coop. HSG. Society Ltd. Vs. Development Credit Bank Ltd.*<sup>1</sup> that the decision arrived at by the Commission was premature in view of the fact that before issuing any notice to the respondent and before taking pleadings of both the parties on record, the Commission could not have formed an opinion as to the nature and scope of the enquiry, i.e., whether the questions arising for decision in the light of the pleadings of the parties required a detailed and complicated investigation into the facts which were incapable of being undertaken in a summary and speedy manner. Mr. Narasimha further argued that the Commission ought to have justifiably formed an opinion on the need of driving away the complainant to the civil court which could only be done after the pleadings of both the parties were placed before the Court. Accordingly, Mr. Narasimha contended that the matter must be sent back to the Commission to issue notice on the respondent to place their defence before it and thereafter to form an opinion as to whether the Commission would be justified in entertaining the complaint of the appellant.

10. This submission of the learned counsel for the appellant was seriously disputed by Mr. Ranjit Kumar, learned senior counsel appearing for the respondent. According to Mr. Ranjit Kumar, the Commission was fully justified in relegating the appellant to approach the civil

court on consideration of the disputes raised by the appellant in the complaint itself. He further submitted that the disputes raised by the appellant would show that the nature and scope of the complaint would require a detailed and complicated investigation into the facts, which was incapable of being undertaken in a summary and speedy manner. In support of this submission, he relied on two decisions of this Court one of which is *Synco Industries Vs. State Bank of Bikaner & Jaipur and Others*<sup>2</sup>. Relying on this decision of this Court, learned senior counsel for the respondent contended that even before issuing any notice, it was open to the Commission to look into the statements made in the complaint for the purpose of coming to a finding that pleadings made in the complaint would require thorough investigation of facts for which evidence had to be led which could not be decided in a summary manner and for which civil court should be approached. The other decision relied on by him, is the decision reported in *Dr. J.J. Merchant and others Vs. Shrinath Chaturvedi*<sup>3</sup>. Accordingly, he contended that this Court may not interfere with the impugned order of the Commission even in the exercise of its statutory power under the Act.

11. Having considered the rival submissions of the counsel appearing for the parties and after going through the complaint in detail and after taking into consideration the decisions noted hereinabove; we are of the opinion that the submissions of Mr. Narasimha must be accepted.

12. In our view, as already observed, the Commission was not justified in relegating the complainant/appellant to approach the civil court for decision only on the ground that the complaint disclosed disputed questions and contentions which is not required to be dealt with under the Act. For this purpose, we have looked into the statements made in the complaint in detail and in depth. From a look at the statements made in the complaint, it would be difficult to say that the complaint has disclosed complicated questions of fact which cannot be gone into by the Commission and the same can only be gone into by the Civil Court before bringing the respondent on record and asking him to file his defence. The decisions, relied on by Mr. Ranjit Kumar and noted namely, *Synco Industries' case (supra)* and the decision in *Dr. J.J. Merchant's case (Supra)* were duly considered by Two-Judge Bench of this Court in *CCI Chambers case (supra)* in detail and after considering the aforesaid two Three-Judge Bench decisions of this Court, as mentioned herein above, and after explaining the same, Lahoti, CJ, (as His Lordship then was), held that the nature of averments made in the complaint was not by itself enough to arrive at a conclusion that the complaint raised such complicated questions as could only be determined by the Commission. While coming to this conclusion, Lahoti CJ, (as his Lordship then was), in paragraph 6 of the aforesaid case in page no. 236 observed as follows:

"It cannot be denied that fora at the national level, the State level and at the district level have been constituted under the Act with the avowed object of providing summary and speedy remedy in conformity with the principles of natural justice, taking care of such grievances as are amenable to the jurisdiction of the fora established under the Act. These fora have been established and conferred with the jurisdiction in addition to the conventional courts. The principal object sought to be achieved by establishing such fora is to relieve the conventional courts of their burden which is ever-increasing with the mounting arrears and whereat the disposal is

delayed because of the technicalities. Merely because recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any forum under the Act to the person aggrieved."(Emphasis supplied)

13. Again in paragraph 7 of the aforesaid decision, it was observed:

"A three-Judge Bench of this Court recently in Dr. JJ. Merchant Case, (Supra) specifically dealt with the issue as to the guidelines which would determine the matter being appropriately dealt with by a forum under the Act or being left to be heard or decided by a Civil Court. ....The decisive test is not the complicated nature of questions of fact and law arising for decision. The anvil on which entertain ability of a complaint by a forum under the Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary enquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence. It has to be remembered that the fora under the Act at every level are headed by experienced persons. The National Commission is headed by a person who is or has been a Judge of the Supreme Court. The State Commission is headed by a person who is or has been a Judge of a High Court. Each District Forum is headed by a person who is, or has been, or is qualified to be a District Judge. We do not think that mere complication either of facts or of law can be a ground for the denial of hearing by a forum under the Act."(Emphasis supplied).

14. In Dr. JJ Merchant's case (supra), this Court, dealing with the contention that complicated questions of fact cannot be decided in summary proceedings, also held as under :-

"It was next contended that such complicated questions of fact cannot be decided in summary proceedings. In our view, this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that the Commission or Forum is required to have summary trial, would hardly be a ground for directing the consumer to approach the civil court. For the trial to be just and reasonable, long- drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provided sufficient safeguards."(Emphasis supplied).

15. Following the aforesaid observations of this Court as quoted herein-above, in the aforesaid decision of CCI Chamber's case (supra) and also the observations in Dr. JJ Merhant's Case (supra) which have been noted herein- above, we are of the view that the

decision arrived at by the Commission is premature. The Commission ought to have issued notice to the respondent and placed the pleadings on record. When pleadings of both the parties were made available before the Commission, only then the Commission should have formed an opinion as to the nature and scope of enquiry, i.e., whether the facts which arose for decision on the basis of the pleadings of the parties required a detailed and complicated investigation of facts which was incapable of being undertaken in a summary and speedy manner, then only the Commission should have justifiably formed an opinion on the need of relegating the complaint to a civil court. That apart, in view of the admitted fact that the respondent was never served with any notice and not present before the Commission, therefore, it was not known to the Commission, what would be the defence and contentions of the respondent and what questions and disputes would really arise there from until and unless both sides place their respective cases before the Commission. At that stage, it is difficult for the Commission also to hold whether the disputed questions and contentions could not be decided by the Commission and the same must be relegated to the Civil Court. Every complaint of the consumer is related to a dispute and will raise disputed questions and contentions. If there was no dispute, then there would be no complaint. Therefore, the ground for rejection of the complaint namely, "it arises disputed questions and contentions" was definitely irrelevant. Therefore, the Commission was not justified in rejecting the complaint only on this ground. In any view of the matter, it is not evident from the order of the Commission that it had considered the nature of disputed questions of fact for which the complainant should be relegated to the Civil Court for decision. In view of our discussions made hereinabove and relying on the principles enunciated by this Court in the aforesaid decisions, we are, therefore, of the view that the Commission was not justified in rejecting the complaint merely by stating that the complicated nature of facts and law did not warrant any decision on its part before even issuing notice to the respondent and directing the filing of his defence, which, in our opinion, cannot be said to be decisive.

16. The appeal is, therefore, allowed to the extent indicated above. The decision of the commission is set aside. The complaint is sent back to the Commission to be heard afresh in consistent with the observations made above. There will be no order as to costs.

<sup>1</sup>(2003) 7 SCC 233

<sup>2</sup>(2002) 2 SCC 1

<sup>3</sup>(2002) 6 SCC 635