

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH**

First Appeal No.1004 of 2022

Date of Institution : 21.11.2022

Date of Reserve : 06.02.2024

Date of Decision : 20.02.2024

Amazon Seller Services Pvt. Ltd., Registered Office: at Brigade Gateway, 8th Floor, 26/1, Dr.Rajkumar Road, Malleshwaram (W), Bengaluru-560055, Karnataka, India through its Authorized Signatory Mr.GS Arjun Kumar.

.....Appellant/Opposite Party No.1

Versus

1. Ms.Jaspreet Kaur, W/o Sandeep, Assistant Professor, 16/2A Staff Colony, Sardar Beant Singh State University, Gurdaspur (Punjab)-143521.

.....Respondent No.1/Complainant

2. Alpha Bitra, AB434/Silvar Stone Arced Shinganpurgam, Katargam, Surat, Gurajat, 395004.

.....Respondent No.2/Opposite Party No.2

First Appeal under Section 41 of the Consumer Protection Act, 2019 against the Order dated 24.06.2022 passed by the District Consumer Disputes Redressal Commission, Gurdaspur.

Quorum:-

**Hon'ble Mrs. Justice Daya Chaudhary, President
Ms. Simarjot Kaur, Member**

- | | |
|--|--------|
| 1) Whether Reporters of the Newspapers may be allowed to see the Judgment? | Yes/No |
| 2) To be referred to the Reporters or not? | Yes/No |
| 3) Whether judgment should be reported in the Digest? | Yes/No |

Present :-

For the appellants : Sh. Atul Goyal, Advocate
For respondent No.1 : Sh. Sandeep, Auth. Rep.
For respondent No.2 : Service dispensed with
vide order dated 28.04.2023

SIMARJOT KAUR, MEMBER

Appellant/Opposite party No.1 i.e. Amazon Seller Services Pvt. Ltd., has filed the present Appeal **under Section 41 of the Consumer Protection Act, 2019 (in short 'The Act')** being aggrieved by the **impugned Order dated 24.06.2022 passed by the District Consumer Disputes Redressal Commission, Gurdaspur (in short 'the District Commission')** whereby the **Complaint filed by the Complainant had been partly allowed.**

2. It would be apposite to mention that hereinafter the parties will be referred, as have been arrayed before the District Commission.

3. Brief facts of the case are that the Complainant- Ms.Jaspreet Kaur had placed an online order of foldable laptop desk for home (black) from website Amazon.in on 12.05.2021 having its invoice # GJ-1573782235-2122 and Order # 407-1207875-8022715. However, the Complainant had received the rice bowl in dirty condition on 18.05.2021 instead of aforesaid wooden laptop table. He called the customer care of OP No.1. In response to his call the customer care of OP No.1 had offered to refund the money but the Complainant had requested for replacement of the item/product. Thereafter, an Inquiry was setup by the Amazon agent for receiving the wrong item (order : 407-1207875-8022715). It was mentioned in the Complaint that the Complainant had received an email from OP No.2, a carbon copy of the same was sent to OP No.1 stating that "Sorry by mistake

8140377067". Thereafter, no communication was received. She had again sent an email through sandeep@ddu.du.ac.in to officer@amazonpay.in. However, no reply was received. An online Complaint was also filed with the National Consumer Helpline (NCH) with Grievance Number :2803590. In response to that OP No.1 had replied that no refund/exchange could be offered as the delivered produced was not returned within the stipulated period, as per the terms of the policy of Amazon. On closing of Complaint, OP No.1 sent an email on 27.06.2021 to the Complainant and offered full refund as the replacement was not possible at that point of time. The complainant being not satisfied with the assurances had preferred to file the Complaint before the District Commission with the prayer that directions be issued to OPs to refund the amount of Rs.380/- along with interest @ 18% PA and GST etc. Besides, an amount of Rs.20,000/- as compensation and Rs.5,000/- be paid as cost of litigation.

4. Upon issuance of notice by the District Commission, OP No.1 filed its reply and raised certain preliminary objections allegations/averments made in the Complaint were wrong. OP No.1 had referred to Section 2(1)(w) of the I.T. Act' 2000 which defines an e-commerce market place as an 'intermediary' for display of products by the 3rd Party Sellers and thereafter purchase by a number of buyers. As per Section 79 of the Act, OP No.1 cannot be held liable for the 3rd Party Contract on its e-commerce site. Further, the contract of 'Sale' between the Seller (the OP2) and the Buyer (the Complainant) the Intermediary (the OP1) cannot be held responsible/ liable being not a

party to the Sale-Contract. As per Section 79 of the Act the OP cannot be held liable for 3rd Party Content on its e-commerce site. Further, the contract of 'Sale' between the Seller (the OP2) and the Buyer (the Complainant) the Intermediary (the OP1) cannot be held liable being not a party to the Sale-Contract. It was an inter se dispute between the complainant and the OP No.2 Vendor. The OP No.1 had been unnecessarily dragged into the litigation without any application of mind. The OP No.1 had pleaded that the Complainant had not covered under the definition of 'Consumer' as per CPA Act' 2019. The product was delivered on 18.05.2021 Complainant had raised the grievance after closure of the 'return-window' at their end. However, OP No.1 had also offered full refund but the Complainant insisted upon the delivery of the original product as per her orders. OP No.1 had also denied all allegations and has prayed for deletion of its name from the array of OP No.1. It was prayed for dismissal of the Complaint.

5. OP No.2 was proceeded against ex-parte vide order dated 29.04.2022 by the District Commission.

6. By considering the averments made in the Complaint as well as in the reply thereof, the Complaint filed by the Complainant **was partly allowed vide order dated 24.06.2022 passed by the District Commission. The relevant part of said order is reproduced as under:-**

“10. In the light of the all above, we party allow the complaint and order the OP1 Amazon Co. to arrange delivery of the product as ordered by the complainant through the OP2 Vendor or any

of its other vendors besides paying her Rs.5,000/- as compensation for having caused her harassment on account of delivery of totally different product that that ordered and delay cum physical harassment to her Professor Spouse and wasting of his valuable time non-productively that cannot be compensated in terms of money and also to pay another Rs.5,000/- as cost of litigation etc.

11. We also find during the present proceedings that the titled opposite parties being accomplices in the unfair trade practice have unscrupulously exploited an unknown uncounted number of consumers and are thus liable to punitive damages and thus we order the titled opposite parties to deposit a sum of Rs.10,000/- in the District consumer Legal Aid A/c. The awardees are further ordered to ensure/afford compliance to all our above orders within 45 days of the receipt of the certified copies of these orders otherwise an additional interest @ 9% PA shall get attracted on the aggregated awarded amount from the date of filing of the present complaint till the payment stands made, in full.”

7. The appellant/OP No.1 has filed the present appeal being aggrieved by the order dated 24.06.2022 passed by the District Commission by raising a number of arguments.

8. **Mr.Atul Goyal, Advocate**, learned counsel for the Appellant has submitted that Respondent No.1/Complainant had placed an order i.e., LXNR Laptop Wooden Foldable table (Black) vide order No.40712078758022715 on 12.05.2021 from the independent third party seller i.e. Alpha bita Respondent No.2. Respondent No.1/Complainant had alleged delivery of a wrong product i.e. Rice Bowl in the dirty condition, instead of wooden laptop table. Respondent No.1/Complainant had raised grievance with the Respondent No.2/Seller on 18.05.2021. Despite the expiry of return window on

01.06.2021, a full refund was offered to the Respondent No.1/Complainant without admitting any liabilities vide an email dated 27.06.2021. However, the Respondent No.1/Complainant had insisted for a replacement. Learned Counsel has also submitted that the contract of sale was executed between the Complainant and Respondent No.2/Seller and as such there was no privity of contract between the Appellant/OP No.1 and Respondent No.1/Complainant. Learned Counsel has further submitted that the item was packed, sealed, shipped and delivered to the Complainant by Respondent No.2/Seller without any involvement of the Appellant. The liability, if any, with respect to the delivery of the wrong product or non-receipt of refund can only be fastened upon Respondent No.2/Seller. The Appellant was merely operated an e-commerce marketplace. The onus/proof of deficiency was solely upon the Respondent No.1/Complainant and not on an intermediary. Learned counsel has further submitted that click on 'Conditions of Use' at Amazon portal, it has clearly displayed the conditions of use. Before ordering the consumer customer, he/she has to click on condition of use i.e. I agree or not agree.

9. Learned Counsel for the Appellant has also submitted that Clause 3 of the Conditions of Use has categorically stated the legal position of Appellant that it merely operates an e-commerce marketplace to facilitate sale transactions the between the buyer and independent third-party seller. Further, Clause 13 of the Condition of Use states that Appellant is not liable. At the end learned Counsel has submitted that the role of the Appellant is limited as an intermediary

and the Appellant cannot be held responsible for the contents of package/refund. The Appellant has not even received the amount paid from the customers purchase of commodities from their marketplace. The consideration amount paid by the customers was in lieu of their order as paid directly to the independent Third party seller i.e. Respondent No.2 as per the RBI directions dated 24.11.2009. Learned Counsel has relied upon judgment of Hon'ble Supreme Court of case titled as "**SGS India Limited Vs. Dolphin International Limited**" Civil Appeal No.5759 of 2009, "**M/s Magma Fincorp Ltd. Vs. Rajesh Kumar Tiwari**", Civil Appeal No.5622 of 2019, judgment of Hon'ble National Commission of case titled as "**Paras Jain Vs. Amazon Seller Services (P) Ltd.**", Consumer Case No.930 of 2017, in support of his arguments.

10. **Mr.Sandeep, the Authorized Representative of Respondent No.1/Complainant** has submitted that the Respondent No.1/Complainant had raised the grievance with Respondent No.2/Seller on 18.05.2021 and with the Appellant on post expiry of return window. Despite the expiry of the return window of the product on 01.06.2021, a full refund was offered to the Complainant but without admitting any liabilities vide email dated 27.06.2021. The Amazon package was delivered on 18.05.2021, at approximately 9:30 am. Immediately upon discovering that a wrong product had been received, the matter was reported to OP No.1 and a request for replacement was made. The inquiry for supplying incorrect product was officially lodged on the same day i.e. 18.05.2021 at around 2:00 pm. The second time the Complaint was filed to amazonpay-nodal-officer, Mr.Sujash Biswas

on 25.06.2021 through email to which reply was still awaited. Then on 25.06.2021, the Respondent No.1/Complainant had approached NHC National Consumer Helpline to which the Appellant had replied that no refund/exchange was availed as the delivered product was not returned within the stipulated period. Thus as per the terms of Policy of Amazon the matter was closed. The Authorized Representative of Respondent No.1/Complainant has further submitted that an infringement of the contract and a violation of consumer rights had arisen as a result of contradiction in Amazon's Replacement Policy. As per the replacement policy of Amazon if a different item is received from their description on the product detail page on amazon.in then the buyer qualifies for free replacement. The Complainant had purchased the said item from Amazon.in website and thus a right was accrued to the Complainant for free replacement of the product. However, the request for a replacement was declined, and instead a full refund was proposed by OP No.1. It was averred that the replacement of the product was declined despite the fact that the item was available in the stock/inventory of the same seller. Thus, the Appellant had violated its own replacement policy available on Amazon.in. Besides, the Appellant was an agent and co-seller of respondent No.2/Seller and was not merely an intermediary. The Appellant had role to play in the harassment and loss caused to the complainant due to supply of Rice Bowl (in dirty condition) instead of wooden laptop table. The Company earns revenue every time a consumer clicks and visits its website. It is the duty of the intermediary to verify the bona fides of the seller registered with OP No.1. Intermediaries are required to provide service enabling delivery of online contents to the end user. "Intermediary" has

been defined in **Section 2(w) of the Information Technology Act, 2000** and thereafter the guidelines have been issued, titled as 'Information Technology (Intermediary Guidelines) Rules, 2011'. To provide protection to the intermediaries, general conditions have been framed as **Safe Harbour Protection subject to restrictions mentioned in Sub-Sections (2) and (3) of Section 79 of the Information and Technology Act, 2000**. Amazon should ensure that product being sold on its marketplace by the seller is genuine. The buyers cannot presume that all products sold through the electronic market place by the sellers are genuine. The portal has to certify that the products shipped are inspected before delivery to the buyers. In the present case, seller had opted to list the availability of the said product on the electronic market place on Amazon and had used 'fulfilled by Amazon' (FBA) service. In such cases, Amazon does not break open the seal of the products but it has mechanism in (Fulfilment Centers) FCs to ensure that the products are genuine and they take photographs of the product before dispatch. Amazon must have taken photographs with weight. The packing must have been video-recorded, but no such evidence had been placed on record. The Appellant/Amazon is not a mere broker or intermediary as considered in the commercial world. It was acting as a representative or agent of OP No.2/Seller during the negotiation. The said transaction was routed through Appellant/Amazon when the contract was executed between the Complainant and OP No.2. Therefore, the Appellant/Amazon was personally answerable for the supply and delivery of goods/products. Authorized Representative of Respondent No.1/Complainant has relied upon judgment of Hon'ble National Commission of case titled as

“Emerging India Real Assets Pvt. Ltd. Vs. Kamer Chand & Anr., Revision Petition No.765 of 2016, decided on 30.03.2016 and judgment of State Commission Chandigarh of case titled as **“Amazon Sellers Service Pvt. Ltd. Vs. Gopal Krishan and Ors.”**, FA No.27 of 2017, decided on 17.02.2017, in support of his arguments.

11. Respondent No.2/Opposite party No.2 chose not to appear before the District Commission despite service and was proceeded against ex parte. Therefore, the averments made in the Complaint deemed to have been admitted by it.

12. We have heard the arguments raised by learned Counsel for the Appellant and Authorized Representative of Respondent No.1. The service of Respondent No.2 had been dispensed with vide order dated 28.04.2023. We have also carefully perused the impugned order passed by the District Commission as well as the relevant documents available on the file.

13. Facts relating to filing of complaint by the complainant before the District Commission, reply thereof and after hearing the oral arguments raised by the parties and passing of impugned order dated 24.06.2022 by the District Commission and thereafter filing of present Appeal before this Court by the Appellant/OP No.1 are not in dispute.

14. Admittedly, Respondent No.1/complainant had placed an online order of foldable laptop table (Black) for consideration amount of Rs.380/- from the website of Amazon/Appellant and a wrong product was received by her. The Appellant/OP No.1 refused to replace the said product as it was not returned within the stipulated exchange

window period. Meaning thereby that the wrong product received by the Respondent No.1/Complainant was not returned within 30 days of delivery for full refund as mandated by Amazon customer service. In spite of the said condition the Appellant/OP No.1 still offered full refund of the said product to the Respondent No.1/Complainant, which was declined by her. She insisted upon replacement of the product. The Appellant/OP No.1 has reiterated that it cannot be held liable as per provision of Section 79 of the IT Act, which has been perused by us. The provision reads as under :-

Section 79: Exemption from liability of intermediary in certain cases:-

- 1) *Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information data or communication link made available or hosted by him.*
- 2) *The provisions of sub-section (1) shall apply if –*
 - a) *The function of the intermediary is limited to provide access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or*
 - b) *The intermediary does not*
 - i) *Initiate the transmission,*
 - ii) *Select the receiver of the transmission, and*
 - iii) *Select or modify the information contained in the transmission;*
 - c) *The intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.*
- 3) *The provisions of sub-section (1) shall not apply if*

a) The intermediary has conspired or abetted or aided or induced, whether by threats or promise or authorize in the commission of the unlawful act;

b) Upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner. Explanation- for the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary. As stated above, being an intermediary."

15. The issue for determination before us is that as to whether online marketplace operator/portal can be held liable for deficiency in service/unfair trade practice for the violation of right of Respondent No.1/Complainant, who was a consumer in the present case?

16. It has been observed by us that the Amazon-OP No.1 has placed on record Conditions of Use (Annexure-C). However no agreement had been executed between the Appellant/OP No.1 and OP No.2, to operate in its marketplace has been tendered as evidence by the Appellant/OP No.1. In the absence of the same an adverse inference is to be drawn against OP No.1 and the benefit of safe harbor protection subject to restrictions as provided under Sub-Sections (2) and (3) of Section 79 of the Information and Technology Act, 2000 cannot be given to OP No.1 i.e. the immunity provided to online market place by the said act. In the present Appeal the Complaint of the Respondent No.1/Complainant has to be dealt as per the provisions of

Consumer Protection Act 2019. The Respondent No.1 had availed services of OP No.1 to purchase foldable laptop desk. Thus, the Respondent No.1/Complainant is covered under the definition of Consumer in the said Act. The said provision of the Act i.e. Section 2 (7) reads as under:-

2 (7) "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 obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any service 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 service 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 service for any commercial purpose.

Explanation.—For the purposes of this clause,—

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

As per the aforesaid provision of the Act, OP No.1 cannot be absolved of its responsibility towards delivery of wrong product to the Respondent No.1/Complainant.

17. In the present case OP No.2/seller was registered with Amazon and it used 'Fulfilled by Amazon' Service (FBA). The said service allows businesses to use Amazon to store, pick, pack and ship customer's order. When a business entity becomes an Amazon seller

and use the aforesaid service is undertaken then the said entity only needs to send its products to Amazon fulfilment centers, which are in turn delivered to the consumers. Therefore, in said terms Appellant/OP No.1 cannot escape from its responsibility under the garb of 'intermediary' and safe harbor protection under Section 79 of IT Act, 2000.

18. We have no doubt that Appellant/OP No.1 was acting as a representative or agent of OP No.2 in the transaction/contract that took place between Complainant and OP No.2. Thus, the contract between the complainant and OP No.2 was also concluded through the Appellant/OP No.1. In view of this, Appellant/OP No.1 is personally answerable for the supply and delivery of wrong goods and consequences arising out of said breach of contract. It was bounden duty of the Appellant as facilitator to ensure that goods sold through any individual are manufactured as per quality standard. If the product purchased through the platform of Appellant was wrong it cannot escape its liability.

19. Online market place Company earns revenue each time a consumer clicks and visits on its website. The same is done as per the terms and conditions between the online portal company and the sellers for a consideration. Moreover, the sellers are registered with Appellant/OP No.1/e-commerce market place.

20. In the light of above discussion, OP No.1 is held personally and jointly liable for the 'deficiency in service' and harassment caused to the Complainant. Accordingly, we do not find any merit in this Appeal

and the same is hereby **dismissed** and the order dated 24.06.2022 passed by the District Commission is **upheld**.

21. The appellant had deposited an amount of Rs.11,233/- at the time of filing the appeal with this Commission. Said amount, along with interest, which has accrued on the amount deposited by the appellants, if any, shall be remitted by the Registry to the District Commission after the expiry of 45 days of sending of certified copy of the order to the parties. The concerned parties may approach the District Commission for release of the same and the District Commission may pass the appropriate order in this regard, in accordance with law.

22. Since the main case has been disposed of, so all the pending miscellaneous applications, if any, are accordingly, disposed of.

23. The appeal could not be decided within the statutory period due to heavy pendency of court cases.

**(JUSTICE DAYA CHAUDHARY)
PRESIDENT**

**(SIMARJOT KAUR)
MEMBER**

February 20, 2024

(Rupinder 2)