

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

CONSUMER CASE NO. 886 OF 2020

1. M/S. FREIGHT SYSTEM (INDIA) PRIVATE  
LIMITED

.....Complainant(s)

Versus

1. OMKAR REALTORS & DEVELOPERS PRIVATE  
LIMITED & ANR.

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. DINESH SINGH,PRESIDING MEMBER**

**For the Complainant :** Mr. Vivek Kohli, Sr. Advocate with

Ms. Bharti Chawla, Advocate

**For the Opp.Party :**

**Dated : 25 Jan 2021**

**ORDER**

**ORDER**

**HON'BLE MR. DINESH SINGH, PRESIDING MEMBER**

**Taken up through video conferencing.**

1. This Complaint has been filed by M/s Freight System (India) Private Limited (the 'Complainant Co.') under Section 58(1)(a) read with Section 59 of The Consumer Protection Act, 2019 (the 'Act 2019').

2. Mr. Vivek Kohli, learned senior Counsel for the Complainant Co. was heard on admission on 20.01.2021.

The record was perused.

The Complaint contains allegations against the Opposite Party No. 1, Omkar Realtors and Developers Private Limited, the builder / developer (the 'Builder Co.') and the Opposite Party No.

2, The Summit Business Park Cooperative Society Limited, the maintenance agency (the 'Maintenance Society').

3. The subject matter of the Complaint is 11 units, together admeasuring 17,203 sq. ft., comprising the entire Mezzanine Floor of Summit Business Bay Andheri, purchased by the Complainant Co. from the Builder Co. for a total consideration of Rs. 17,95,30,000/-.

4. On the preliminary issue of whether the Complainant Co. is a 'consumer' under the Act 2019, learned senior Counsel submitted that the said 11 units have been purchased by the Complainant Co. for its office. He argued that the Complainant Co.'s office has no direct and close nexus with its profit generating activity, the dominant purpose of purchasing space for its office in the business park is not linked to its commercial activity.

In support of his argument he principally relied on Hon'ble Supreme Court's judgment dated 14.11.2019 in **Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers & Ors. IV (2019) CPJ 65 (SC)** and on this Commission's Order dated 08.07.2016 in **Crompton Greaves Limited & Anr. vs. Daimler Chrysler India Private Limited & Ors. (Consumer Case No. 51 of 2006)** .

Learned senior Counsel submitted that the Complainant Co. is a 'consumer' under Section 2(7)(ii) of the Act 2019.

5. Section 2(7) of the Act 2019 is first reproduced for ready convenience.

**Section 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 prom-ised, 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 purposes 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;

6. A company is included in the definition of ‘person’ contained in Section 2(31), it is not *per se* precluded from being ‘consumer’, provided, if, for a particular purpose, it meets the requirements of ‘consumer’ as defined in Section 2(7) of the Act 2019.

‘housing construction’ falls under ‘service’ in Section 2(42).

Sub-section (ii) of Section 2 (7) specifically stipulates “but does not include a person who avails of such service for any commercial purpose”.

7. On the face of it itself:

[a] ‘housing construction’ under the definition of ‘service’ in Section 2(42) cannot be construed to include construction of a commercial complex for commercial activity; and

[b] commercial space in a commercial complex for an office of a company engaged in a business to generate profit is for ‘commercial purpose’.

8. *Explanation* (a) to Section 2 (7), that “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.”, provides an exception for ‘goods’, not for ‘service’.

Even if a simile with ‘goods’ is conjectured, “exclusively for the purpose of earning his livelihood” has to be adjudged rationally and logically with the due understanding and significance of “exclusively” and “livelihood” and “self-employment”. Reasonable and logical interpretation has to be kept limited and confined to reason and logic, not hypothesized towards anyhow allowing anyone in.

9. A plain reading of Section 2(7)(ii) and Section 2(42) of the Act 2019 makes it clear that the Complainant Co., which has purchased commercial space for its office in a commercial complex, is not a ‘consumer’ under the Act 2019.

10. Denial to avail additional remedy in consumer protection fora to a ‘person’ who is not a ‘consumer’ does not take away or affect his right to agitate his case in an appropriate forum / court as per the law. Conversely, the availability of additional remedy in consumer protection fora does not take away the option of a ‘consumer’ to agitate his case in any other appropriate forum / court. As such, if, for a particular purpose, a company does not meet the ingredients of ‘consumer’ under the Act 2019, it will not be left remediless, it can avail of remedies available under other existing laws.

11. Whether, for a particular purpose, a company is a ‘consumer’, has principally to be determined by examining the facts and specificities of the case.

This has been settled by Hon’ble Supreme Court in the **Lilavati Kirtilal Mehta Medical Trust** case, wherein the Hon’ble Court has held that:

7. 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’:

(i) 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.

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

(iii) 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.

(iv) 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.

(emphasis supplied)

The Hon’ble Court has also laid-down ‘broad principles’, including the yardsticks of ‘close and direct nexus’ and ‘dominant purpose’.

The summarization made by Hon’ble Supreme Court in the **Lilavati Kirtilal Mehta Medical Trust** case has to be rationally and logically adopted, with the due understanding and significance of “a straight-jacket formula cannot be adopted in every case” and “broad principles” and “The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case” and “close and direct nexus” and “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.” and “dominant purpose”.

If, for a particular purpose, a company wants to enter the consumer protection fora, whether or not it is a ‘consumer’ has to be (reasonably and logically) adjudged in the given facts and specificities of each case (“a straight-jacket formula cannot be adopted in every case” ; “The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case”).

“The identity of the person making the purchase - - - is not conclusive to the question of whether it is for a commercial purpose.” also implicitly conveys that the distinctive difference between the each of the juridical persons with the each of the other has also to be appreciated.

A company is differently placed from a trust, and moreso a medical trust.

The tests of ‘close and direct nexus’ and ‘dominant purpose’ for a company have to be adopted *inter alia* keeping in mind that a company is distinctively different from a medical trust providing

hostel facilities to nurses working in its hospital, as in the **Lilavati Kirtilal Mehta Medical Trust** case.

The tests of ‘close and direct nexus’ and ‘dominant purpose’ cannot be mechanically extrapolated to every juridical person without keeping in mind that every juridical person is distinctively different from the each of the other.

**12.** The question here relates to purchase of commercial space in a commercial complex, in its own name, as its, the company’s, property, its immovable capital assets.

Human resource is an integral part of the operating requirements of a company, it is an indispensable part of its operating requirements, without which it cannot undertake its profit-generating activity.

Capital expenditure for its human resource decidedly has a ‘close and direct nexus’ with a company’s profit generating activity, the ‘dominant purpose’ is decidedly linked to its commercial activity.

To view the capital expenditure on human resource in isolation or opacity to its profit-generating activity, as to anyhow enable a company to fall in the definition of ‘consumer’, is *per se* illogical and incorrect, and it defeats the purpose for which “but does not include a person who avails of such service for any commercial purpose.” has been specifically provided in Sub-section (ii) of Section 2(7).

**13.** It has also to be noted that a company creating immovable capital assets in the form of lands and buildings, in its own name, for its office, is differently placed from a company buying a car, in its own name, ‘solely or principally’ for the personal use of its Directors or employees.

A car is not an immovable capital asset in the nature of lands and buildings. The two cannot be equated, drawing a simile is non sequitur.

Thus, creation of immovable capital assets in the form of lands and buildings is materially different from the question which was answered as below by a bench comprising three members of this Commission in the **Crompton Greaves Limited** case.

11. For the reasons stated hereinabove, the issue referred to the larger Bench is answered as follows:

(a) if a car or any other goods are obtained or any services are hired or availed by a company for the use/personal use of its directors or employees, such a transaction does not amount to purchase of goods or hiring or availing of services for a commercial purpose, irrespective of whether the goods or services are used solely for the personal purposes of the directors or employees of the company or they are used primarily for the use of the directors or employees of the company and incidentally for the purposes of the company.

(b) The purchase of a car or any other goods or hiring or availing of services by a company for the purposes of the company amount to purchase for a commercial purpose, even if such a car or other goods or such services are incidentally used by the directors or employees of the company for their personal purposes.

14. The question at hand, in respect of a company purchasing commercial space for its office in a commercial complex, is also materially different from a company indemnifying its raw materials, goods in process, finished goods, plant and machinery, lands and buildings, etc., by taking insurance. In such case, the purpose is indemnification against perils, nothing *per se* to do 'closely and directly' with its profit-generating activity, the 'dominant purpose' is not linked with its commercial activity, as such the company straightaway falls within the meaning of 'consumer' in accordance with Section 2(7), without necessitating a detailed exposition.

15. It may be added for completeness that the lands and buildings of a company, its property, its immovable capital assets, should ordinarily not be viewed in isolation of its objects as given in its Memorandum (Section 4(1)(c) of The Companies Act, 2013).

A company formed with charitable objects, etc. (Section 8 of The Companies Act, 2013), which has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment, or any such other object, and intends to apply its profits, if any, or other income in promoting its objects, and intends to prohibit the payment of any dividend to its members, is differently placed from a company formed with the sole intention of earning profit.

Learned senior Counsel submitted that the Complainant Co. is not a company formed with charitable objects, etc.

16. The Complainant Co.'s case, that it is a 'consumer', fails on its facts and on the law. It may however also be observed here that anyhow allowing anyone into consumer protection fora has adverse ramifications, including *inter alia* :

[a] evasion of court fee in civil courts; and

[b] eroding into the time and resources of consumer protection fora, which could otherwise be better devoted to the ordinary general consumers, who straightaway fall, *ex facie*, in the definition of 'consumer' (without having to write a treatise to enable their anyhow entry into the fora).

17. To conclude:

[a] the Complainant Co. does not fall in the definition of 'consumer' contained in Section 2(7) of the Act 2019; and

[b] it does not get benefit from the **Lilavati Kirtilal Mehta Medical Trust** case and the **Crompton Greaves Limited** case.

18. The Complaint is dismissed as not maintainable before this Commission.

19. It is made explicit that the merit of the dispute between the opposing sides has not been entered into. The Complainant Co. is free to agitate its case in any appropriate forum / court as per the law.

20. The Registry is requested to send a copy each of this Order to the Complainant Co. and to its learned Counsel within three days of its pronouncement.

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**DINESH SINGH**  
**PRESIDING MEMBER**