

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/19/386
(Date of Filing : 16 Oct 2019)**

1. BIJU JACOB

ARACKAL HOUSE, AIMURY P O, MUVINCHUVADU,
KURUPPAMPADY, ERNAKULAM-683544

.....Complainant(s)

Versus

1. HEWLETT PACKARD (HP)

GLOBAL SOFT PVT LTD 24, SALARPURIA ARENA
ADUGODI, HOSUR ROAD, BANGLORE-560030
KARNATAKA, INDIA

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 21 Feb 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 21st day of February
2024.

Filed on: 16/01/2019

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Member Smt.Sreevidhia.T.N

C.C. No. 386/2019

COMPLAINANT

Biju Jacob, S/o. A.K. Jacob Arackal house, Aimury P.O. Mavinchuvadu, Kuruppampady,
Ernakulam District, Pin 683 544.

(Rep. by Adv. C.J. Soloman & K.B. Sajan, Surya Complex, Near Sasatha Temple, Perumbvoor

VS

OPPOSITE PARTIES

1. M/s. HEWLETT-PACKARD (HP) Global Soft Pvt. Ltd., 24, Salarpuria Arena Adugodi, Hosur Road Bangalore - 560 030, Karnataka. Rep. by its Directors (1) Anjana Mary Perumal (2) Ashok Waran(3) Sumeer Chandra.
2. M/s. HEWLETT-PACKARD, HB 91, Ramaswamy Colony Street A, 6th Cross Road, Opp. More Super Market, Panampilly Nagar, Ernakulam, Cochin 682 036. Rep. by its Branch Head Mr. Cinesh Sreedhar
3. Skynet Computers, Building No. XV/420-C1 Kaniyamkudy Buildings, KSRTC Road, Perumbavoor - 683 542 . Rep. by its Proprietor Mr. Eldho

(Rep. by Adv. Bilna T. Thambi, Perumbavoor)

FINAL ORDER

D.B. Binu, President.

1. **A brief statement of facts of this complaint is as stated below:**

The complaint has been filed under Section 12 (1) of the Consumer Protection Act, 1986, and outlines a dispute between a businessman, the complainant, who operates a Language Training Institute specializing in IELTS, and the opposite parties, including HP India Corporate Office (1st opposite party), its Regional Kerala Office (2nd opposite party), and a retail shop selling HP computers (3rd opposite party). The crux of the matter revolves around the purchase of an HP laptop (model HP II AD105TU x360, serial number 8CG83209QN) for Rs. 35,000 on October 17, 2018, from the 3rd opposite party. The laptop was under a one-year warranty, as stipulated by the manufacturer and communicated at the point of sale, covering the replacement of the laptop or its components in case of defects.

The complaint highlights a sequence of events where the complainant faced issues with the laptop's keyboard starting August 15, 2019. Upon reporting the issue to the 3rd opposite party and subsequently to HP Customer Care, the complainant received assurances of support. However, despite multiple communications, service requests, and assurances of engineer visits, the problem remained unresolved. This lack of action and resolution led to the complainant being unable to use the laptop for business purposes, including managing email communications and booking IELTS tests, purportedly resulting in a business loss of Rs. 3 lakhs.

The complaint accuses the opposite parties of violating the warranty terms by failing to repair or replace the defective laptop, attributing to the complainant's financial loss and mental distress. It posits that the laptop sold did not meet the standard quality expected from such a product and criticizes the opposite party's negligent attitude.

In seeking redress, the complainant demands replacement of the laptop or a full refund, compensation of Rs. 1 lakh for mental agony and harassment, and another Rs. 1 lakh for business losses attributed to the defective laptop along with a payment of Rs. 10,000 towards the costs incurred by the complainant.

2) Notice

The Commission sent a notice to the opposite parties, who subsequently appeared and submitted their versions.

3)THE VERSIONS OF THE FIRST AND SECOND OPPOSITE PARTIES

The opposite parties emphasize their global reputation for manufacturing high-quality IT products, including laptops, printers, and scanners. They detail their stringent quality control processes and certifications, highlighting their commitment to delivering products that meet both customer satisfaction and regulatory requirements.

The opposite parties deny all allegations of deficiency in service and product defects, except for those explicitly admitted in their statement. They assert that the complaint is vague, baseless, and lacks documentary evidence. They raise preliminary objections to the maintainability of the complaint, arguing it is an abuse of the legal process, lacks merit and does not constitute a 'consumer dispute' as defined by the Consumer Protection Act. They claim the complainant has not proven any manufacturing defect or deficiency in service.

They detail their warranty policy, stating that the laptop in question was covered by a one-year onsite warranty, which has since expired. They acknowledge the complaints made by the complainant regarding the keyboard but argue that efforts to resolve the issue were hampered by the complainant's unavailability. They highlight the sophisticated nature of electronic equipment like laptops, which require proper handling and maintenance by the user. They assert that any mishandling or use of pirated software by the complainant could have contributed to the issues experienced.

The opposite parties describe their attempts to address the complainant's concerns, including ordering replacement parts and offering repair services. They claim the complainant refused these solutions and instead insisted on a full replacement or refund, which is not supported by their warranty policy. They reference legal judgments to support their stance that there has been no deficiency in service, and that their actions have been by their warranty and service obligations. They argue that the complainant's demands for replacement or refund fall outside the scope of their warranty terms.

The opposite parties conclude by stating that the complainant has failed to establish a prima facie case against them, and as such, the complaint should be dismissed with costs. They deny any deficiency in service or product defect and request the dismissal of the complaint. This written statement serves as a comprehensive rebuttal to the complaint, focusing on legal, technical, and procedural grounds to argue that the complaint lacks merit and should be dismissed.

4)THE VERSION OF THE THIRD OPPOSITE PARTY

The opposite party indicated that the actual purchase date of the HP 11 AD105TU X360 laptop was October 17, 2018, contrary to the complainant's claim of August 17, 2019. This leads them

to deny the statement regarding the purchase date in the complaint.

Skynet Computers details the transaction, noting the laptop was sold for Rs. 28,389.83, with an additional HP backpack costing Rs. 1,271.18, excluding taxes. With SGST and CGST included, the total amounted to Rs. 35,000, under invoice number 3175.

The 3rd opposite party asserts that at the time of purchase, they correctly informed the complainant about the warranty conditions, specifying that any issues within the warranty period would need to be addressed by HP's customer care, as Skynet Computers is not responsible for repairs or replacements under the warranty.

Skynet Computers denies responsibility for the issues raised in the complaint, stating they advised the complainant to contact HP's customer care for the problem within the warranty period. The 3rd opposite party claims no further contact from the complainant regarding this issue and places responsibility on the 1st and 2nd opposite parties for the matters discussed.

The response emphasizes that Skynet Computers is not responsible for repairing or replacing the laptop during the warranty period nor for any business losses suffered by the complainant. They deny any irresponsible attitude, asserting that the laptop sold met the quality standards expected of the HP brand.

Skynet Computers denies joint and vicarious liability for replacing the laptop or compensating the complainant, stating that the responsibility lies solely with the manufacturer (the 1st opposite party) and the 2nd opposite party during the warranty period.

The 3rd opposite party asserts that the 1st and 2nd opposite parties should be held responsible for any loss incurred by the complainant. Skynet Computers believes the claims made in the complaint have been misrepresented and that there is no cause of action against them.

Finally, Skynet Computers submits that the complainant is not entitled to any relief or costs claimed in the complaint as compensation, arguing that the complaint lacks merit and should be dismissed with costs to them.

5) Evidence

The complainant submitted a proof affidavit along with 4 documents, which were marked as Exhibits A-1 to A-4. The complainant was examined as PW-1.

Exhibit A-1: This is the original invoice No.3175 dated October 17, 2018, issued by Skynet Computers (the 3rd opposite party) for the purchase of the HP11AD105TU X360 laptop.

Exhibit A-2: These are true copies of SMS messages received from customer care dated August 19, 2019, and August 24, 2019.

Exhibit A-3: This is a copy of the written complaint dated October 3, 2019, that was sent to the authorized officer of the 2nd opposite party.

Exhibit A-4: This is the acknowledgment card dated October 6, 2019, which serves as proof of receipt of the letter dated October 3, 2019, by the authorized officer of the 2nd opposite party.

The first and second opposite parties filed a proof affidavit and one document. The third opposite party also produced one document.

6) The main points to be analyzed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

7) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, as per Section 2 of the Consumer Protection Act, 1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The original invoice No.3175 dated October 17, 2018, was issued by the 3rd opposite party for the purchase of the laptop (**Exhibit A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019 (**Point No. i**) goes against the opposite parties.

The present case pertains to a dispute arising out of the purchase of an HP laptop by the complainant from the third opposite party. The complaint alleges deficiencies in service and product defects, leading to financial losses and mental distress for the complainant.

- A. **Maintainability of the Complaint:** The first contention raised by the opposite parties revolves around the maintainability of the complaint. They argue that the complaint lacks merit, is baseless, and does not constitute a 'consumer dispute' as defined by the Consumer Protection Act. However, according to Section 2(d) of the Consumer Protection Act, 1986, a consumer is defined as a person who buys goods for a consideration paid or promised or partly paid and partly promised. The complainant provided **Exhibit A-1**, the original invoice dated October 17, 2018, issued by the third opposite party, demonstrating that the complainant falls within the definition of a consumer. Hence, this argument goes against the opposite parties.
- B. **Deficiency in Service and Unfair Trade Practice:** The complainant has alleged a deficiency in service and unfair trade practice on the part of the opposite parties. The crux of the complaint lies in the malfunctioning of the laptop's keyboard, which the complainant reported just two days before the official purchase date. Despite assurances of support from the opposite parties, including multiple communications and service requests, the issue remained unresolved. The opposite parties, while denying any responsibility, failed to provide adequate evidence to rebut the complainant's claims. Furthermore, the complainant provided documentary evidence in the form of SMS messages (**Exhibit A-2**) and a written complaint (**Exhibit A-3**), which were acknowledged by the authorized officer of the second opposite party (**Exhibit A-4**). These pieces of evidence establish a prima facie case of deficiency in service and unfair trade practice.
- C. **Entitlement to Relief:** Considering the evidence presented by the complainant and the submissions of the opposite parties, it is evident that the complainant has suffered financial losses and mental distress due to the defective product and the negligent attitude of the

opposite parties. The complainant is entitled to relief under the Consumer Protection Act, of 1986.

D. Costs of Proceedings: Given the circumstances of the case, the opposite parties have failed to provide substantial evidence to counter the complainant's claims. Therefore, the costs of the proceedings shall be borne by the opposite parties.

E. Liability of the Opposite Parties:

The opposite parties are collectively liable for the deficiencies in service and unfair trade practices. Despite attempts to shift responsibility, all three opposite parties are deemed responsible for the defective product and the resultant losses incurred by the complainant.

In conclusion, the complaint is deemed maintainable, and the opposite parties are found to be liable for the deficiencies in service and unfair trade practices. The complainant is entitled to relief as per the Consumer Protection Act, 1986, and the costs of the proceedings shall be borne by the opposite parties. The complainant diligently pursued a resolution of the issue with the opposite parties and provided documentary evidence to support their claims. Conversely, the opposite parties failed to adequately address the complainant's concerns and provide satisfactory solutions, thereby violating their obligations under the warranty terms and the Consumer Protection Act, of 1986.

The National Consumer Disputes Redressal Commission, adjudicated Revision Petition No. 166 of 2017 in the case of **Eicher Motors Ltd. vs. Avinash Shetye & Anr.** The judgment, delivered on December 5, 2023, addressed a dispute arising from the purchase of a vehicle, which was alleged to have manufacturing defects, and **the failure of Eicher Motors Ltd. to honour the warranty, constituting a deficiency in service under Sections 2(1)(g), 14(1)(d), and 21(b) of the Consumer Protection Act, 1986.**

The conduct of the opposite parties highlights the imperative to protect consumer rights, compelling manufacturers, retailers, and service providers to adhere to their duty of delivering quality products and services. The opposite parties were found to have breached their warranty commitments by not ensuring prompt and efficient repair or replacement of the faulty laptop, constituting a service deficiency and negligence concerning consumer rights.

We find that issues (i) to (iv) also favour the complainant, as they are a result of the serious deficiency in service on the part of the Opposite Parties. Naturally, the complainant has experienced a significant amount of inconvenience, mental distress, hardships, financial losses, etc., due to the deficiency of service and unfair trade practices by the Opposite Parties.

In view of the above facts and circumstances of the case, we are of the opinion that the Opposite Party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The opposite parties are directed to either replace the laptop with a new one of the same model or refund the full purchase price to the complainant.
- II. The opposite parties shall compensate the complainant with ₹50,000 (Fifty Thousand Rupees Only) for the deficiency in service and unfair trade practices, which led to mental agony, hardships, and financial losses, including those incurred in his business due to the defective laptop.
- III. The opposite parties shall also reimburse the complainant with ₹10,000 (Ten Thousand Rupees Only) towards the costs of the proceedings.

The Opposite Parties are hereby held jointly and severally liable for compliance with the directives stated above. The Opposite Parties must fulfil these directives within 30 days from the date they receive a copy of this order. Should there be a failure to comply within the stipulated timeframe, the amounts specified in directives (i) and (ii) will accrue interest at a rate of 9% per annum, calculated from the date the complaint was filed (16.10.2019) until the full realization of the amounts due.

Pronounced in the Open Commission on this the 21st day of February, 2024.

Sd/-

D.B.Binu, President

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V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/by Order

Assistant Registrar

Appendix

Complainant's Evidence

Exhibit A-1: This is the original invoice No.3175 dated October 17, 2018, issued by Skynet Computers (the 3rd opposite party) for the purchase of the HP11AD105TU X360 laptop.

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Exhibit A-3: This is a copy of the written complaint dated October 3, 2019, that was sent to the authorized officer of the 2nd opposite party.

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Opposite party's Exhibits

Nil

Despatch date:

By hand: By post

kp/

CC No. 386/2019

Order Date: 21/02/2024

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**