

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 123 OF 2016**

(Against the Order dated 31/12/2015 in Complaint No. 06/2011 of the State Commission  
Jharkhand)

1. L. G. ELECTRONICS INDIA PVT. LTD.  
THROUGH ITS MANAGER (LEGAL)AR, HAVING ITS  
REGISTERED OFFICE AT: D-3, P3B, A WING THIRD  
FLOOR, RELIGARE BUILDING,  
DISTRICT-CENTRE, SAKET,  
NEW DELHI

.....Appellant(s)

Versus

1. JAGANATH LIFE CARE PVT. LTD. & ANR.  
THROUGH ITS DIRECTOR SUDHIR KUMAR, R/O.  
RADIAM ROAD, P.O. RANCHI, P.S. LALPUR,  
DISTRICT-RANCHI  
2. LUCKY VAIYA NEAR OVER BRIDGE,  
MAIN ROAD,  
RANCHI

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER  
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

FOR THE APPELLANT : MR. GAJINDER KUMAR, ADVOCATE  
MR. CHANDRA SHEKHAR, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENT-1 : MR. ROHINI KUMAR, ADVOCATE  
FOR THE RESPONDENT-2 : NEMO

**Dated : 27 September 2023**

**ORDER**

**JUSTICE SUDIP AHLUWALIA, MEMBER**

This Appeal has been filed by the Appellant, L.G Electronics India Pvt. Ltd./Appellant/Opposite Party No. 1 under Section 19 of the Consumer Protection Act, 1986 against the impugned Order dated 31.12.2015 passed by the Jharkhand State Consumer Disputes Redressal Commission, Ranchi in Consumer Complaint No. 06/2011, whereby the Complaint filed by the Complainant was partly allowed.

2. The brief facts leading to this First Appeal are that Shree Jagannath Hospital & Research Centre/Complainant had placed an order with LG Electronics India Pvt Ltd./Opposite Party No. 1, for installation of 'L.G Multi Power System (MPS) Tropical Plus Air Conditioning System' in the Hospital and Operation Theatre vide letter dated 09.02.2010 after being satisfied with the Quotation and terms and conditions dated 04.02.2010 sent by

the Opposite Party No. 1. The Complainant along with the purchase order sent vide letter dated 09.02.2010 had requested the Opposite Party No.1 to submit the piping drawings and unit indoor & outdoor location, pursuant to which they had provided the same which were also approved by the Complainant. It was submitted that as per the offer dated 04.02.2010, the Opposite Party No. 1 was supposed to complete the entire work of designing, supply and installation within 40 days from the date of approval of the drawings, but even after expiry of more than 1.5 years, the Air Conditioning System was not installed and made functional, although a sum of Rs.7,00,000/- was received by the Opposite Parties on 12.05.2010. It was further stated that only a cooling system was installed by the Opposite Parties which was not operative even in summers and only a temperature of 32 to 34 C could be maintained in the Operation Theatre. Therefore, a Legal Notice dated 13.05.2011 was issued to the Opposite Party. The Opposite Party replied to the Notice and shifted its liability on its dealer/ Opposite Party No.2 thereby failing to remove the defective Air Conditioning System. Being a Hospital, Complainant and its patients suffered problems during operations due to absence of proper Air Conditioning System.

3. Thus, alleging deficiency in service on the part of the Appellant and Respondent No. 2 herein, the Complainant filed the consumer complaint, seeking directions to the Opposite Parties to refund of Rs. 7 lacs alongwith interest @ 18% p.a. from the date of payment i.e. 12.05.2010 till date of payment. In addition, the Complainant demanded a compensation of Rs. 80 lakhs for mental agony & harassment and Rs. 1 lakh as litigation cost.

4. The Complaint was resisted by the Opposite Party by filing a written statement, in which it was stated that the Complainant is not a 'Consumer' within the meaning of Section 2(d) of the Consumer Protection Act, 1986. Further, it was stated that the matter could not be adjudicated by the Ld. State Commission in view of the 'Arbitration Clause' contained in Quotation and Terms and Conditions and Section 8 of the Arbitration and Conciliation Act, 1996. It was also stated that the Opposite Party No.1 had given the offer to the Complainant on 13.01.2010 but, because the Complainant wanted to deal with the Opposite Party No.2/Lucky Vanijya, the offer was amended and revised. It was also stated that the sum of Rs.7 Lacs paid by the Complainant was towards material to be supplied to the Hospital which was duly supplied by the Opposite Party No.1. The Opposite Party No.1 had also requested the Complainant to release advance payment to enable them to supply the balance machines but the Complainant failed to pay the said amount. The completion of entire work within 40 days was linked with release of 50% advance payment along with order and drawing approval from customer within 2 days of submission of drawing. However the payment was released on 12.05.2010 and the layout drawings were changed by the Complainant several times. It was also stated that the Opposite Party No.1 had already installed the required Air Conditioner in the hospital of the Complainant for the aforesaid amount, but since the Complainant had failed to pay the advance for supply of remaining goods, any problem alleged by the Complainant in the said air conditioner was solely due to fault of the Complainant.

5. The State Commission noted in its order dated 31.12.2015 that inspite of notice to Opposite Party No. 2, none appeared on behalf of Opposite Party No. 2. Hence, the Order for proceeding *Ex-parte* against them was passed.

6. The Ld. State Commission partly allowed the Complaint while observing that the Company gave quotation for supply, installation and commissioning of a specific Air-Conditioning System and the Hospital paid an advance of Rs. 7.00 lakhs through the Dealer of the Company and the Company did not install and commissioned the agreed Air Conditioning System. It was further observed that Hospital required the Air Conditioning System for its operation theatre and there was nothing to show that revenue is generated from such Air Conditioning System. Hence, the Complainant was a Consumer. Reliance was placed on two judgements of this Commission in "*M/s. Harsolia Motors Vs. M/s. National Insurance Co. Ltd., I (2005) CPJ 27 (NC)*" and "*(1996) 1 CPR (NC) 102*" and following directions were issued to the Opposite Party No. 1 :

*"Within six weeks, from this order, the Company is directed to*

- i. remove the installation made by it from the Hospital and return the advance amount of Rs. 7 lacs along with simple interest @ 9% p.a. from the date of receipt i.e. 12.5.2010 till the date of payment;*
- ii. pay a sum of Rs. 50,000/- as compensation for mental agony and harassment.*
- iii. pay Rs. 25,000/- as litigation cost; failing which, the Hospital will be entitled to take steps for compliance of this order in accordance with law.*

7. Being aggrieved by the above Order passed by the State Commission, First Appeal No. 123/2016 has been filed by the Opposite Party No.1 against the Complainant and Opposite Party No.2 before this Commission, with a delay of 4 days. Vide order dated 01.03.2016, stay was granted on the operation of the impugned order subject to deposit of 50% of the total amount awarded along with upto date interest.

8. The Opposite Party No.1/ Appellant has filed the present Appeal on the ground that said Air Conditioning System was required by the Complainant/ Respondent No.1 for serving its patients with better facilities, which is an activity on a large scale for the purposes of making profits and not for self employment and to earn livelihood. Thus, the Hospital is not a consumer within the meaning of Section 2(1)(d) of the Act and placed reliance on various judgements to support its contention.

9. The Opposite Party No. 1/Appellant has also relied upon various judgements in the Written Submissions, to set aside the impugned Order, as the Complainant/Respondent No.1 is not a consumer as after the Amendment Act, 2002, the definition of consumer excluded goods or services hired or availed for commercial purpose, unless the services are availed by persons exclusively for the purpose of earning his livelihood by means of self-employment.

10. We have heard the Ld. Counsels for both the Parties and perused the material on record.

11. The vital question to be considered is whether installation of the Air-conditioning equipment in the Hospital's Operation Theatre is meant purely for comforting the surgeons, or patients, in which case it certainly would not amount to usage for any commercial purpose. However, if such equipment is a standard/intrinsic necessity associated with the surgical procedures, the purpose of which undoubtedly is to generate profits by way of

performing such surgeries, in that case, such purchase/installation of the Air-conditioning equipment would be for a commercial purpose and therefore stands barred in view of Section 2(1) (d) of the Consumer Protection Act, 1986.

12. We, therefore, on 11.7.2023 directed both sides to place the relevant instructions, if any, of the concerned Medical Authority to understand whether installation of the Air-conditioning equipment in the Operation Theatre is a mandatory requirement for the purpose of surgery or not. Both sides, thereafter, filed the revised guidelines for the Air-conditioning in Operation Theatres issued by the National Accreditation Board for Hospitals and Healthcare Providers in 2018. Perusal of the same shows that certain specifications have been prescribed regarding Air-conditioning in Operation Theatres which are otherwise necessary but not mandatory for the SHCOs and HCOs implementing pre-entry certification standards. Nevertheless for this purpose, two groups have been divided for the Operation Theatres which are as follows-

***“D. For this purpose operation theatres have been divided into two groups:***

- 1. Type A (Erstwhile Super Specialty OT):*** Type A OT means operation theatres for Neurosciences, Orthopaedics (Joint Replacement), Cardiothoracic and Transplant Surgery (Renal, Liver, Heart, etc.).
- 2. Type B (Erstwhile General OT):*** This includes operation theatres for Ophthalmology, day-care surgeries and all other basic surgical disciplines.”

13. The requirements for both the above categories of Operation Theatres have thereafter been mentioned as follows-

***“REQUIREMENTS – Type A (Erstwhile Super Specialty OT)***

***1. Air Changes Per Hour:***

- *Minimum total air changes should be 20 based on biological load and the location.*
- *The fresh air component of the air change is required to be minimum 4 air changes out of total minimum 20 air changes.*
- *If Healthcare Organisation (HCO) chooses to have 100% fresh air system then appropriate energy saving devices like heat recovery wheel, run around pipes etc. should be installed.*

2. **Air Velocity:** *The airflow needs to be unidirectional and downwards on the OT table. The air face velocity of 25-35 FPM (feet per minute) from non-aspirating unidirectional laminar flow diffuser/ceiling array is recommended.*
3. **Positive Pressure:** *The minimum **Positive pressure** recommended is 2.5 Pascal (0.01 inches of water). There is a requirement to maintain positive pressure differential between OT and adjoining areas to prevent outside air entry into OT. Positive pressure will be maintained in OT at all times (operational & non-operational hours).*
4. **Air handling in the OT including air Quality:** *Air is supplied through Terminal HEPA (High-Efficiency Particulate Air) filters in the ceiling. The HEPA can be at AHU level if it not feasible at terminal level inside OT. The minimum size of the filtration area should extend one foot on all sides of the OT table.*
5. **Air Filtration:** *The AHU (i.e. air handling unit) must be an air purification unit and air filtration unit. There must be two sets of washable flange type filters of efficiency 90% down to **10 microns** and 99% down to **5 microns** with aluminium/ SS 304 frame within the AHU. The necessary service panels to be provided for servicing the filters, motors & blowers. HEPA filters of efficiency 99.97% down to **0.3 microns** or higher efficiency are to be provided. Air quality at the supply i.e. at grille level should be Class 100/ISO Class 5 (at rest condition). Note: class 100 means a cubit foot of air should not have more than 0.5 microns or larger.*
6. **Temperature & Relative Humidity:** *It should be maintained  $21^{\circ}\text{C} \pm 3^{\circ}\text{C}$  (except for Joints replacement where it should be  $18^{\circ}\text{C} \pm 2^{\circ}\text{C}$ ) with corresponding relative humidity between **20 to 60%**, though the ideal RH is considered to be **55%**. Appropriate devices to monitor and display these conditions inside the OT may be installed.*

#### **REQUIREMENTS – Type B (Erstwhile General OT)**

1. **Air Changes Per Hour:**
  - *Same as Type A OT requirements above*
2. **Air Velocity:**
  - *Same as Type A OT requirements above*
3. **Positive Pressure:**
  - *Same as Type A OT requirements above*
4. **Air Filtration:**

- *The AHU (i.e. air handling unit) must be an air purification unit and air filtration unit. There must be two sets of washable flange type filters of efficiency 90% down to **10 microns** and 99% down to **5 microns** with aluminium/SS 304 frame within the AHU. The necessary service panels to be provided for servicing the filters, motors & blowers. HEPA filters of efficiency 99.97% down to **0.3 microns** or higher efficiency **may be provided**. The Air quality at the supply i.e. at grille level should be class 1000/ISO Class 6 (at rest condition). Note: Class 1000 means a cubic foot of air must have no more than 1000 particles measuring 0.5 microns or larger.*

#### **5. Temperature and Humidity:**

*The temperature should be maintained at  $21^{\circ}\text{C} \pm 3^{\circ}\text{C}$  inside the OT at all times with corresponding relative humidity between 20 to 60%. Appropriate devices to monitor and display these conditions inside the OT may be installed.”*

14. It has also been specified in Clause 5 of the Requirements that the temperature should be maintained at  $21^{\circ}\text{C} \pm 3^{\circ}\text{C}$  inside the Operation Theatres at all times with corresponding relative humidity between 20% to 60%.

15. Even otherwise, it was the own case of the Complainant/Hospital in Para 8 of its original Complaint –

**“8. That it is humbly stated and submitted that the complainant has been repeatedly requesting the opposite party that they have not installed the air conditioning system because the meaning of air conditioning system for Operation Theatre and Hospital is totally different what they have installed in the Hospital and Operation Theatre but the opposite parties have not given any heed to the request made by the complainant and thus the same also goes to prove that there is deficiency and negligency on part of the opposite party.**

**9. That it is also not out of the place to mention that the system what the opposite parties have installed in the Hospital of the complainant is only a cooling system installed and which is not operative even in summer and the temperature is maintained only 32 to 34 C in the operation theatre and the same also creates serious problem the complainant has informed to the opposite party but the opposite party has not given any heed to the same and thus liable themselves to pay the compensation for their negligency and deficiency in service.”**

16. It, therefore, becomes crystal clear even by the own case of the Complainant/Hospital, that the Air-conditioning system sought to be installed in its Operation Theatre was different from the normal Air-conditioning, which is obviously in view of the aforesaid guidelines governing the temperature and other conditions required inside the Operation Theatre for safety and well-being of the patients to preclude any chances of infection etc., and the specifications were therefore clearly not for the purpose of physical comfort of the Doctors or attending medical staff alone. Such installation was hence an inherent necessity for the purpose of conducting safe surgeries inside the Operation Theatre, the undeniable purpose of which was generation of profits which is undoubtedly a commercial purpose.

17. The Ld. State Commission in its impugned Order has placed reliance upon two previous decisions of this Commission, of which notice is taken as follows-

***“16. In the case reported in I (2005) CPJ 27 (NC) Harsolia Motors Vs. National Insurance Co. Ltd., the Hon’ble National Commission inter alia held as follows.***

***“21. If the goods are purchased for resale or for commercial purpose then such consumer would be excluded from the coverage of Consumer Protection Act, 1986. Such illustration could be that a manufacturer who is producing one product ‘A’, for such production he may be required to purchase articles, which may be raw-material, then purchase of such articles would be for commercial purpose. As against this, the same manufacturer if he purchases a refrigerator, a television or an air-conditioner for his use at his residence or even in his office, it cannot be held to be for commercial purpose and for this purpose he is entitled to approach the consumer forum under the Act (emphasis supplied).***

***17. In the five members bench judgment of Hon’ble National Commission reported in (1996) 1 CPR (NC) 102 Jay Kay Puri Engineers Vs. Mohan Breweries & Distilleries Ltd., it was inter alia held as follows:***

***“The installation of the air-conditioning system is only to provide comfort in the residence used by the officers of the Company on their visits to Delhi, may be in connection with their official and business activity. The Guest House is not used for any commercial purpose but only for the residence of the Officers of the Company. The supply and installation of the air-conditioning system in the Guest House is not for the purpose of commercial activities of the complainant of the Brewery and Distillery at Madras, or the Glass Division at Pondicherry or Sugar Industry in Orissa or manufacturer of Beer and I.M.F.L. at Ghaziabad. The air-conditioning system in the Guest House has no close or direct nexus with the commercial activity carried on by the Company.” (emphasis supplied).***

18. It is, however, now to be noted carefully that in the present case, the installation of the Air-conditioner in the Operation Theatres was undoubtedly not for the physical comfort of the Doctors or attending medical staff or even for the concerned patients only for their comfort as a necessary requirement to maintain certain temperature of the Operation Theatres in terms of the official guidelines. By performing the surgeries in such Operation Theatres, the Complainant/Hospital was certainly charging the patients for such service on account of which the observation of the Ld. State Commission to the effect that “there is nothing to show that revenue is generated from such air-conditioning system” cannot be regarded as an accurate appreciation of the dispute because, without installation of such Air-conditioning system, the Operation Theatre of the Hospital itself could not be made functional in compliance of the requisite guidelines, and no revenue as a consequence could have been generated without ensuring the installation of the Air-conditioning system before conducting the surgeries.

19. For the aforesaid reasons, this Commission is of the view that installation of the specific Air-conditioning system which according to the Complainant itself is altogether different from the Air-conditioning required in the normal parlance, and without which performance of surgeries in the Operation Theatres would not be possible, renders such installation as being for a commercial purpose i.e. of generating profits/revenues from surgeries. The Complainant therefore would not appear to be a ‘Consumer’ within the meaning under Section 2(d) of the Consumer Protection Act, 1986.

20. Consequently, the impugned Order of the Ld. State Commission is held to be untenable and the Appeal is therefore allowed after setting aside the same.

21. The complaint filed on behalf of the Respondent/Complainant is therefore dismissed. The said Respondents are however at liberty to pursue their remedy in accordance with law in any other appropriate Forum.

22. Parties to bear their own costs.

23. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J  
**SUDIP AHLUWALIA**  
**PRESIDING MEMBER**

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**MEMBER**