

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
PANIPAT.**

CONSUMER COMPLAINT NO: 93 of 2021
DATE OF INSTITUTION: 16.03.2021
DATE OF ORDER: 18.10.2023

M/s Sidharath Wollen Mills, Arjun Nagar, Kabri Road, Panipat, through its proprietor Sh. Mukesh Singla.

.....COMPLAINANT

VERSUS

Axis Bank Ltd., Gaylord Hotel Building, Near HDFC Bank, G.T. Road, Panipat.

..OPPOSITE PARTY/RESPONDENT

COMPLAINT UNDER CONSUMER PROTECTION ACT

BEFORE: - Dr. R.K. Dogra, President
Dr. Suman Singh, Member

Present: - Shri B.S. Jaglan, Advocate for the complainant.
Shri Avdesh Jindal, Advocate for the opposite party.

ORDER (DR.R.K.DOGRA, PRESIDENT)

The instant complaint has been filed by proprietor Mukesh Singla **u/s 35 of the Consumer Protection Act** against the opposite party alleging deficiency in service and unfair trade practice on the part of the opposite party.

FACTUAL ASPECTS

2 The brief facts of the complaint are that Mukesh Singla, proprietor (hereinafter to referred as 'complainant') is running business of woolen shoddy yarn etc. at Arjun Nagar, Kabri Road, Panipat. The complainant has maintained an account with opposite party bank. In the month of **July 2011**, the complainant ordered to import Viscose Knitted Fabric from Shaoxing County

Kuku Trade Company Ltd., China for the value USD 36,972.60. On arrival of the said goods at Tuglakabad, New Delhi, the officials of custom Department asked to furnish a bank guarantee of Rs.1,48,930/- in favour of the department to avoid delay in release of said goods. Accordingly the complainant furnished guarantee of Rs.1,48,930/- dated 01.10.2011 for the period of one year i.e. 01.10.2011 to 30.09.2012 in favour of Deputy Commissioner of Customs, ICD Tuglakabad, New Delhi through the Op bank vide bank Guarantee No.**02400100000056**. The said bank guarantee was got extended for further one year i.e. upto 30.09.2013. Before issuing the bank guarantee, the Op bank took an FDR bearing account No.911040050842871 and maturity date 01.10.2012 having interest @ 9.40% per annum and its maturity amount was Rs.1,63,431/-. After expiry of the stipulated period, the complainant asked the bank to release the amount of aforesaid FDR and upon this, the Op bank asked the complainant that the said FDR was auto renewal mode and interest was compounded quarterly and advised the complainant to keep the amount deposited in FDR. In the month of October, 2020, the said FDR lastly matured and the complainant asked to release his amount but the opposite party postponed the matter under one lame excuse or the other. So, it is therefore, requested that present complaint may kindly be accepted and Op may be directed to pay the amount of Rs.1,48,930/- alongwith compound interest @9.40% per annum from 01.10.2011 to date of actual payment and Rs.50,000/- as compensation alongwith Rs.11,000/- as litigation expenses.

3. Upon notice, opposite party appeared and submitted that the complainant requested to the answering bank to issue a bank guarantee of **Rs.1,48,930/-** in favour of Deputy Commissioner Of Customs, New Delhi. On request of complainant, the opposite party issued a bank guarantee bearing number 0240010000056 on dated 01.10.2011 against a fixed deposit of same amount i.e. Rs.1,48,930/-. This FDR have the feature of auto renewal after its maturity. It is further submitted that the bank guarantee was also extended time to time till **30th September 2016** on the request of the complainant. The complainant till today had not submitted the discharge letter from the beneficiary of bank guarantee. The complainant approached opposite party to release his FDR and answering bank requested the complainant to submit the discharge letter from the beneficiary of the bank guarantee. It is further submitted that the answering opposite party is ready to release the FDR of complainant, if the complainant submit the discharge letter from the beneficiary of bank account. The complainant cannot get over the terms of the agreement by merely labeling the act of the opposite party as a deficiency in service The opposite party denied all the other allegations of the complainant and prayed for dismissal of the present complaint.

EVIDENCE LED BY COMPLAINANT

4 In support of his case, learned counsel for the complainant has tendered in evidence the affidavit of complainant as **Exhibit CW1/A** and closed the evidence after tendering the following documents:

Photocopy of :-

Copy of Aadhar Card of proprietor **Ex. C-1**

Extension of validity of FDR **Ex. C-2**

Account statement **Ex. C-3**

Letter to Deputy Commissioner of Customs **Ex. C-4**
ICD, Tuglakabad

Commercial Invoice Dated 14.01.2020 **Ex. C-5**

5. On the other hand, no evidence has been led by OP, hence the evidence of Op was closed vide order dated **24.05.2023**.

6 After considering the arguments and perusing the whole documents placed on file by both the parties, the following **points** have been found to be made out:-

- 1 **Whether the complaint of the complainant is maintainable? OPC.**
2. **Whether the complainant is entitled to get amount from the opposite party along with interest etc? OPC**

STAND TAKEN BY THE COMPLAINANT

7 The counsel for the complainant has contended that in the month of **July 2011**, the complainant ordered to import Viscose Knitted Fabric from Shaoxing County Kuku Trade Company Ltd., China for the value USD 36,972.60. On arrival of the said goods at Tuglakabad, New Delhi, the officials of custom Department asked to furnish a bank guarantee of Rs.1,48,930/- in favour of the department to avoid delay in release of said goods. Accordingly the complainant furnished guarantee of **Rs.1,48,930/- dated 01.10.2011** for the

period of one year i.e. **01.10.2011 to 30.09.2012** in favour of Deputy Commissioner of Customs, ICD Tuglakabad, New Delhi. The said bank guarantee was got extended for further one year i.e. upto **30.09.2013**. It is further argued that despite so many requests made by the complainant to the Op for release of the FDR alongwith interest but the same were lingered on by the Op on the one pretext or the other. A separate letter were also written but all in vain. The act of the Op is certainly falling within the ambit of deficiency in service and complainant is certainly entitled for getting release the FDR and compensation for harassment along-with litigation expenses.

STAND TAKEN BY THE OPPOSITE PARTY

8. The counsel for the OP has argued that it is correct upto the extent that FDR obtained as bank guarantee bearing No. **02400100000056** on dated 01.10.2011 against a fixed deposit of **Rs.1,48,930/-** with the condition of feature of auto renewal schemes after its maturity. The maturity of the FDR was extended time and again. It is further argued that Op is ready to release the FDR Of the complainant, if complainant submits the discharge letter from the beneficiary of bank guarantee. The complaint is also not maintainable because the complainant has concealed the true and material facts from the Commission rather it is the fault of the complainant who did not submit the discharge letter from the beneficiary of the bank guarantee. All other contentions raised by counsel for the complainant are also liable to be declined and present complaint which is not maintainable may kindly be dismissed with costs.

9 We have heard the arguments advanced by the learned counsel for the parties and perused the whole record available on file. Our point-wise findings with reasons thereof are as under:-

FINDINGS

POINT NO.1

10. In order to establish this point, the complainant has furnished the documents **Ex.C1 to Ex.C5** in which it has been specifically mentioned that there was extension of FDR as per terms and conditions of original bank guarantee. It is also proved on the file that the liability under the guarantee was restricted to **Rs.1,48,930/-** and the guarantee shall remain in force until **30.09.2013**. In view of extension clause, the FDR were extended for further one year on expiry of the maturity date. The complainant intended to withdraw the FDR upto the date of maturity but the Op lingered on the matter by one way or the other. The prerogative of the complainant was snatched by the bank authority by extending the FDR time and again whereas complainant was in need of said amount and the bank authority had no power to withheld the said amount and it was option of the complainant either to extend or withdraw the FDR. So, it can also be concluded that the Op did not dare to appear before this Commission to pursue his case and even the evidence of the complainant remained un rebutted and unchallenged at the instance of the Op. From all this, it can very well be said that the present complaint is liable to be accepted and this point is hereby returned in favour of the complainant.

POINT NO.2.

11. So far as **point No.2** is concerned, having a glance over the detailed findings on **Point No.1**, this point has become redundant because no iota of evidence has been led on the file at the instance of OP and at the same time the complainant is certainly entitled for release his FDR upto the date of maturity Hence, this point is also hereby returned in favor of the complainant.

FINAL ORDER

12 Having heard the rival contentions raised by learned counsel for both the parties and after perusing the whole record, this Commission is of the firm opinion that the complaint of the complainant is maintainable and well proved and Op is hereby directed to release the FDR amounting to **Rs.1,48,930/-** along with interest @ **9 % p.a.** from the date of maturity of FDR till its actual realization. The opposite party is further directed to pay **Rs.5,000/-** to the complainant on account of compensation as well as **Rs.5,500/-** as litigation expenses within a period of **45 days**, failing which the complainant shall be entitled for seeking @**12% p.a.** interest from the date of award till its realization.

13 In case, opposite party failed to do so, then the complainant can file the execution petition under **section 71 of Consumer Protection Act, 2019** and in that eventuality, the opposite parties may also be liable for prosecution under **Section 72** of the said Act. Copies of this order be sent to the

party free of costs, as per rules, and this order be promptly uploaded on the website of this Commission. File be consigned to the record room after due compliance.

**Announced in Open Court
Dated:18.10.2023**

**Sd/-
(Dr. R.K. Dogra)
President,
District Consumer Disputes
Redressal Commission, Panipat**

**Sd/-
(Dr. Suman Singh)
Member,
District Consumer Disputes
Redressal Commission, Panipat**