

IN THE COURT OF THE DIST. CONSUMER DISPUTES REDRESSAL COMMISSION, CUTTACK.

C.C. No.156/2023

Dr. Sunil Kumar Rath,

... Complainant.

Vrs.

Flip Kart Internet Pvt. Ltd.,

Located at: Building Alyssa, Begonia & Clover,

Embassy Tech Over, Outer Ring Road,

Devarabeesanahalli, Village-Bengaluru,

Bangalore-560103.

...Opp. Party

Present: Sri Debasish Nayak, President.

Sri Sibananda Mohanty, Member.

Date of filing: 15.05.2023

Date of Order: 18.12.2023

For the complainant: Self

For the O.P. : None.

Sri Debasish Nayak, President

Case of the complainant as made out from the complaint petition in short is that he had purchased a packet of Cadbury's Bournvita Chocolate health drink pouch on 22.4.2023 for a price of Rs.1818/- through the O.P but on delivery of the said product he found that the said product was a damaged one for which the complainant had drawn the attention of the O.P as the said product was of different size having no date label. But the O.P had remained silent for which the complainant had issued legal notice to the O.P on 24.4.2023 and ultimately when no result yielded, the complainant has come up with this case before this Commission seeking direction to the O.P in order to refund the consideration amount of Rs.1818/- as paid by him towards the said damaged product as received alongwith a sum of Rs.50,000/- towards compensation for his mental agony and harassment and

further to bear the cost of his litigation expenses. The complainant has also prayed for any other order as deemed fit and proper.

Together with his complaint petition, the complainant has annexed copies of several documents to prove his case.

2. The O.P has contested this case and has filed his written version through which he has stated that he is only an intermediary thereby providing electronic platform in order to facilitate the sales transaction in between the intending buyers and sellers. Thus, according to him he has no role to play in the product sold and received by the complainant of this case. Being an electronic platform the case against him as initiated by the complainant is liable to be dismissed and thus the question of refund and compensation does not arise.

3. Keeping in mind the averments as made in the complaint petition and the contents of the written version of the O.P, this Commission thinks it proper to settle the following issues in order to arrive at a proper conclusion here in this case.

- i. Whether the case of the complainant is maintainable?
- ii. Whether there was any deficiency in service on the part of the O.P ?
- iii. Whether the complainant is entitled to the reliefs as claimed by him?

Issue no.ii.

Out of the three issues, issue no.ii being the pertinent issue in this case, is taken up first for consideration here.

Perused the contents of the complaint petition, written version, the written notes of submissions as filed from either sides as well as copies of the documents as available in the case record. It is noticed that the complainant had infact purchased one packet of Bournvita of Cadbury's Company through the O.P on 22.4.2023 and had paid the consideration price of Rs.1818/-. According to him, the product that which he received was of different size and was also a damaged product. In this regard he has made several correspondences and has also sent legal notice to the O.P. But as it appears, the O.P had remained silent without responding to the complainant. While perusing the written version of the O.P, it is noticed that one Miss. Sanchi Chhabra has filed affidavit mentioning therein that she is the authorised signatory of the O.P and thus she has filed the written version on behalf of the O.P. In the capacity of authorised signatory, she had acted on behalf of the O.P and had entrusted Mr. Samarendra Kumar Mohanty and some other. Learned advocates to appear and contest for the O.P here in this case. There is no Letter of Authority filed on behalf of the said Miss Sanchi Chhabra by the O.P here in this case in order to apprise this Commission that infact the O.P Company through its Board of Director's resolution had entrusted the said Miss Sanchi Chhabra to sworn in affidavit and to file written version on behalf of the O.P here in this case. In this connection it would be worthwhile to quote the pertinent decision of our Hon'ble Supreme Court in Civil Appeal No.2014 of 2011(Arising out of SLP(C) No.18179/2009, in the case of State Bank of Travancore Vs. M/s. Kingston Computers (I) Pvt. Ltd. decided on 22.02.2011 wherein it is held that, "In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K. Shukla was appointed as a Director of the company to file suit against the appellant and authorised Shri Ashok K.Shukla to do so. The Letter of Authority issued by Shri Raj K.Shukla, who described himself as the Chief Executive Officer of the company, was nothing but a scrap of paper because no resolution was passed by the Board of Director's delegating its powers to Shri Raj K.Shukla to authorise another person to file suit on behalf of the company.

In the result, the appeal is allowed, the impugned judgment is set aside and the one passed by the trial Court dismissing the suit of the respondent is restored." Thus, the written version as filed here in this case cannot be taken into account since because the O.P has not filed any Letter of Authority by their company thereby authorising Miss Sanchi Chhabra to file the written version.

So keeping in mind the valuable findings of the Hon'ble Apex Court, when the person who has filed written version on behalf of the O.P in this case has not produced any Letter of Authority, the written version of the O.P here in this case cannot be taken into consideration. The plea of the O.P that they are only online platform facilitators effecting the trade in between the buyer and seller having no role to play in the trade does not hold good. It is because, the C.P.Act,2019 has categorically mentioned at Regulations-4 & 5 of the Consumer Protection(E.Commerce Rules) 2020 about the Duties and Responsibilities of the E.Commerce platform in order to ensure that a genuine transaction is taking place and they should provide the proper and correct address of the trader to the seller in case of any requirement to that effect and also to supervise about the genuinity of the product sold and purchased. Thus, keeping the facts and circumstances of this case in mind, it is noticed that infact the O.P is found to be deficient in it's service and also has practised unfair trade here in this case. Accordingly, this issue is answered in favour of the complainant. Hence, it is so ordered;

Issues no.i & iii.

From the discussions as made above, the case of the complainant is definitely maintainable and the complainant is entitled to the reliefs as claimed by him. Hence, it is so ordered;

ORDER

The case is allowed on contest against the O.P. The O.P is thus directed to refund the complainant the cost of the product i.e. Rs.1818/- alongwith interest thereon @ 12% per from 22.04.2023 till the total amount is quantified. The O.P is also directed to pay compensation of sum of Rs.30,000/- to the complainant towards his mental agony and harassment as well as to pay a further sum of Rs.10,000/- towards cost of litigation of the complainant. This order is to be carried out within a period of 30 days from the date of receipt of copy of this order.

Order pronounced in the open court on the 18th day of December,2023 under the seal and signature of this Commission.

Sri Debasish Nayak

President

Sri Sibananda Mohanty

Member