

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CCPA APPEAL NO. 4 OF 2022

(Against the Order dated 04/11/2022 in Complaint No. J-25/72/2021 of the CCPA DELHI)

1. CLOUDTAIL INDIA PRIVATE LIMITED

GROUND FLOOR, REAR PORTION, H-9, BLOCK B-1,
MOHAN COOPERATIVE INDUSTRIAL AREA, MATHURA
ROAD, NEW DELHI-110044

.....Appellant(s)

Versus

1. CENTRAL CONSUMER PROTECTION AUTHORITY

CCPA WING, IIPA, IP ESTATE, RING ROAD NEW DELHI-
110002

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

FOR THE APPELLANT :

MR. ANAND GROVER, SR. ADVOCATE
MR. HARSH HIROO GURSAHANI, ADVOCATE
MR. ABHISHEK MANCHANDA, ADVOCATE

FOR THE RESPONDENT :

MR. SIDDHARTHA SINHA, ADVOCATE
MS. ANU PRIYA NISHA MINZ, ADVOCATE
MR. NRING CHAMWIBO ZELIANG, ADVOCATE
MR. ABHINAV BANSAL, ADVOCATE

Dated : 23 August 2023

ORDER

JUDGEMENT

1. Heard Mr. Anand Grover, Sr. Advocate, assisted by Mr. Harsh Hiroo Gursahani, Advocate, for the appellant and Mr. Siddhartha Sinha, Advocate, for the respondent.
2. Above appeal has been filed from the order of Central Consumer Protection Authority dated 14.11.2022, passed in Case No.J-25/72/2021, directing the appellant to recall 1033 pressure cookers, sold by the appellant in the country, refunding its price to the consumers, within 45 days and imposed a penalty of Rs.100000/-, for selling the pressure cooker, in violation of Quality Control Order, 2020.
3. Ministry of Commerce and Industry, Government of India, in exercise of its power under Section 17 read with Section 25, of Bureau of Indian Standards Act, 2016, issued Domestic Pressure Cooker (Quality Control) Order, 2020, (for short the Order) vide Notification dated 21.01.2020, published in the Gazette of India on 21.01.2020, making it mandatory for domestic pressure cooker to conform to the corresponding Indian Standard and bear Standard Mark under a licence from Bureau of Indian Standards, as per Scheme-I of Schedule-II of Bureau of Indian Standard (Conformity Assessment) Regulation, 2018, w.e.f. 01.08.2020. Ministry of Commerce and Industry, Government of India, in exercise of

its power under Section 16 read with Section 25, of Bureau of Indian Standards Act, 2016, vide Notification dated 23.06.2020 published in the Gazette of India on 23.06.2020, changed the enforcement date w.e.f. 01.02.2021.

4. Clouddtail India Private Limited (the appellant) was doing e-commerce through Amazon website i.e. www.amazon.in in India. The appellant listed 'Amazon Basics Stainless Steel Outer Lid Pressure Cooker, 4 Litre' on above website and sold 1033 pressure cookers in India after 01.02.2021. These pressure cookers were manufactured by "Zhejiang Supor Company Limited, Damaiyu Economic Investment Zone, Yuhuan, Taizhou, Zhjiang, China" and bears "European Commission Standard" mark as established in the European Union and were imported into India, prior to issue of the Order.

5. Central Consumer Protection Authority (the respondent) is a statutory authority constituted under Section 10 of the Consumer Protection Act, 2019 (for short as the Act). The respondent, in exercise of its power under Section 18 of the Act, issued notice dated 29.11.2021 to the appellant to show cause as it were selling pressure cooker in violation of the Order, which was liable to be held as defective, violative of consumer right and amounts to unfair trade practice, within the meaning of the Act.

6. The appellant submitted its reply dated 11.01.2022, stating that the pressure cookers in question were manufactured by "Zhejiang Supor Company Limited, Damaiyu Economic Investment Zone, Yuhuan, Taizhou, Zhjiang, China" and conforms to the "European Commission Standard" mark as established in the European Union Directives-2014/68/EU granted by TUV SUD, valid up to 13.12.2030 and holds a valid certification of conformance. Above company was an importer of the said product across the world including the countries like U.S.A., Canada and France etc. In order to ensure that the product is of requisite quality, the appellant used to carry out a pre-shipment inspection by a nominated third party inspection agency. When it passes the criteria specified in inspection protocol, the product is imported. The appellant imported the pressure cookers after obtaining inspection report. There was no complaint, related to safety of the pressure cooker, since its introduction in the market. The appellant has suspended import of this product in India prior to 01.02.2021, i.e. enforcement of the Order. The Order mandates domestic pressure cooker to certify and conform to Indian Standard IS 2347:2017. Section 17 of Bureau of Indian Standards Act, 2016 deals with deceitful use of BIS mark by the manufacturer and is not applicable for an importer. The pressure cooker is neither 'defective' within the meaning of Section 2(10) nor the appellant has committed any 'unfair trade practice' within the meaning of Section 2(47) of the Act. The product meets all objective criteria of Bureau of Indian Standards Act, 2016 and Consumer Protection Act, 2019 and the notice is liable to be discharged.

7. Central Consumer Protection Authority fixed 09.03.2022 for oral arguments. The appellant submitted its written arguments dated 11.03.2019. Along with written submission, the appellant has also produced a Test Report dated 15.02.2022, from Delhi Test House, (a National Accreditation Board for Testing and Calibration Laboratory) and Certificate of the "European Commission Standard" mark as established in the European Union Directives-2014/68/EU granted by TUV SUD. The appellant has also produced Answer Sheet of the Frequently Asked Questions, as answered by Bureau of Indian Standard (uploaded in February, 2019 and (uploaded on 14.11.2019). The appellant supplied a copy of the Reply dated 31.12.2021 submitted to BIS and details of the customers, to whom pressure cooker

were sold after 01.02.2021. Central Consumer Protection Authority called for a report from Director General Investigation, who submitted his report dated 04.07.2022 that after enforcement of the Order, manufacture, import, sell, distribution, hire, lease, store or exhibit for sale is violative of Section 17 of Bureau of Indian Standards Act, 2016. Central Consumer Protection Authority also called for a report from Department for Promotion of Industry and Internal Trade, as to whether any exemption was granted on import, in respect of applicability of the Order, who submitted its Report dated 28.09.2022 that no such exemption was issued by it, permitting sale of pressure cooker in the country, imported prior to the date of enforcement of the Order, which has no BIS mark.

8. After hearing the arguments of the appellant, Central Consumer Protection Authority, vide its order dated 04.11.2022, held that after enforcement of the Order on 01.02.2021, any domestic pressure cooker, offered for sale in India, is required to conform IS 2347 :2017. From the letter of Department for Promotion of Industry and Internal Trade, dated 28.09.2022, it is clear that no exemption had been granted for sale of such pressure cookers, which were imported prior to 01.02.2021. The pressure cookers which do not conform IS 2347 :2017 are liable to be held as defective within the meaning of Section 2(10) of the Act and violative of the consumer's right as defined under Section 2(9) of the Act. Admittedly, the appellant had sold 1033 pressure cookers after 01.02.2021, which did not conform IS 2347 :2017. On these finding, the appellant has been directed to recall 1033 pressure cookers, sold by the appellant in the country, refunding its price to the consumers, within 45 days and a penalty of Rs.100000/-, has been imposed upon it for selling the pressure cooker, in violation of Quality Control Order, 2020. Hence this appeal has been filed.

9. The counsel for the appellant argued that the pressure cookers in question were manufactured by "Zhejiang Supor Company Limited, Damaiyu Economic Investment Zone, Yuhuan, Taizhou, Zhjiang, China" and conform to the "European Commission Standard" mark as established in the European Union Directives-2014/68/EU granted by TUV SUD, valid up to 13.12.2030 and holds a valid certification of conformance. The appellant also produced a Test Report dated 15.02.2022, from Delhi Test House, (a National Accreditation Board for Testing and Calibration Laboratory), which clearly mentioned that the pressure cooker conforms "Air Pressure Test", "Proof Pressure Test", "Bursting Pressure Test", "Bending Strength Test", "Fatigue Resistance Test", "Heat Resistance Test", "Burning Resistance Test", "Staining Test", "Mechanical Shock Test" "Dry Heat Test". Section 2(10) of the Act defines defect as "any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained by any law for the time being enforce or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and expression "defective" shall be construed accordingly. As per above report no shortcoming or imperfection was found in the pressure cooker in respect of its quality, potency or standard. The product is safe for use. Finding of Central Consumer Protection Authority that pressure cooker was 'defective' raising presumption due to not having ISI mark is illegal. In any case, violation of Domestic Pressure Cooker (Quality Control) Order, 2020 may attract the provisions of Bureau of Indian Standards Act, 2016 and not the Consumer Protection Act, 2019. Answer Sheet of the Frequently Asked Questions, as answered by Bureau of Indian Standard (uploaded in February, 2019 and (uploaded on 14.11.2019) clearly provided that if product had been imported to India before last date of implementation or manufactured by domestic

manufacturers before the last date of implementation, then such product can be sold. The order has been passed ignoring above answer of Bureau of Indian Standard. Similarly sale of pressure cooker is not an “unfair trade practice”. Central Consumer Protection Authority can impose penalty only in cases of “unfair trade practice”. Under Section 20 of the Act, Central Consumer Protection Authority has to exercise its power on the basis of investigation report. In the present case, the proceeding against the appellant has been started first and then report dated 04.07.2022 from Director General Investigation, was obtained. Administrative Authority can exercise power in conformity of law. Any violation of it, annul the subsequent action. Impugned order is illegal and liable to be set aside.

10. I have considered the arguments of the counsel for the parties and examined the record. There is no dispute that the appellant had sold 1033 pressure cookers in India, which did not conform IS 2347 :2017, after coming into force of Domestic Pressure Cooker (Quality Control) Order, 2020 on 01.02.2021. So far as reliance of the appellant upon Answer Sheet of the Frequently Asked Questions, as answered by Bureau of Indian Standard (uploaded in February, 2019 and (uploaded on 14.11.2019) are concerned, these questions were not in respect of pressure cooker and no reliance can be placed on it.

11. The argument of the appellant is that these pressure cookers conform to the “European Commission Standard” mark as established in the European Union Directives-2014/68/EU granted by TUV SUD and had valid certification of conformance. The appellant also produced a Test Report dated 15.02.2022, from Delhi Test House, (a National Accreditation Board for Testing and Calibration Laboratory), showing that pressure cooker fulfil all the norms of safety as prescribed by Bureau of Indian Standard as such the finding that defective within the meaning of Section 2(10) of the Act, is illegal.

12. The term “consumer rights” as defined under Section 2 (9) of is quoted below:

Section 2 (9) "consumer rights" includes,— (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property; (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices; (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices; (iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora; (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and (vi) the right to consumer awareness.”

The word “defect” as defined under Section 2(10) of the Act is quoted below:

2 (10) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly.”

13. Section 2(10) of the Act used the phrase “standard which is required to be maintained by law”. The Bureau of Indian Standards Act, 2016 was enacted to provide for the establishment of a national standard body for the harmonious development of the activities of standardization, conformity, assessment and quality assurance of goods, articles, process, system and services and for matters connected therewith or incidental thereto. In exercise of powers under the Bureau of Indian Standards Act, 2016, the various standards marks have been prescribed for the various goods. For domestic pressure cooker also, marks have been prescribed. Ministry of Commerce & Industry, Government of India in exercise of its powers under Section 17 read with Section 25 of the Bureau of Indian Standards Act, 2016 issued Domestic Pressure Cooker (Quality Control) Order, 2020 which was enforced w.e.f. 01.02.2021. Section 16 of the Bureau of Indian Standards Act, 2016 directs compulsory use of standard mark. Since the Quality Control Order, 2020 has been enforced, then it has become compulsory for using the standard mark. While considering the similar provision of trade mark, the Supreme Court in **Sumat Prasad Jain vs. Sheoanam Prasad (Dead) & Ors (1973) 1 SCC 56** held that trade mark denotes the manufacture or quality of the good. Delhi High Court in **Bottled Water Processor Association vs. Union of Inida, 2010 SCC Online Delhi 2038** and Andhra Pradesh High Court in **Sri Seetharamanjaneya Swamyvari Seva Sangam vs. Superintending Engineer, APSPDCL, 2015 SCC Online Hyd. 335** highlighted the significance of BIS standards and held that people at large will be put to risk and public interest would be jeopardised if the safety standards are not complied with.

14. Section 2 (10) of the Act uses the phrase “standard” which required to be maintained by law. Thus, BIS mark is required to be maintained by the law as it denotes the quality of the good and if BIS mark is not maintained, then certainly, the defects as defined under Section 2 (10) of the Act comes into play and the goods can be said to be defective. In spite of the fact that it bears the European Commission Standard Marks or in any subsequent test report it has satisfied the norms of Bureau of Indian Standard. The right of the consumer has also to be looked into. The consumer has right to purchase the product bearing BIS mark only after 01.02.2021. If BIS mark is not fixed or certified and the product is sold then the right of the consumer has been violated. The Central Consumer Protection Authority has not committed any error in holding the defect in the pressure cooker of the appellant only for the reason that it did not bear BIS mark as after enforcement of the Domestic Pressure Cooker (Quality Control) Order, 2020, it was mandatory.

15. So far as the power of Central Consumer Protection Authority is concerned, the power has been detailed under Section 18 of the Consumer Protection Act, 2019. Section 18 (1) (a) provides to protect, promote and enforce the rights of the consumer. Under Section 18 (2) (a), the Central Consumer Protection Authority can exercise its power suo moto and to protect the consumers’ interest it can pass any suitable order. Under Section 20 of the Act, the Central Consumer Protection Authority may pass such order as may be necessary. Therefore, Central Consumer Protection Authority has passed the order for recalling the domestic pressure cookers sold in violation of Domestic Pressure Cooker (Quality Control) Order, 2020 and imposed penalty for violation of the order. It cannot be said that it was without jurisdiction. The argument that only in case of unfair trade practice, the penalty can be impose under Section 21 (7) of the Act, is not liable to be accepted inasmuch as under Section 20 of the Act, the Central Consumer Protection Authority can pass such order as may

be necessary in its discretion. Thus, imposition of penalty cannot be held as without jurisdiction.

16. So far as argument of procedural irregularity is concerned, under Section 2 (1) (a) CCPA has jurisdiction to initiate proceeding suo moto. After initiation of the proceeding, report dated 04.07.2022 has been obtained from Director General (Investigation). The appellant has been given full opportunity of hearing to meet out the notice as well as the report. I do not find any procedural irregularity in the matter.

ORDER

In view of the aforesaid discussion, the appeal has no merit and is dismissed.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER