CHENNAI
THE HINDU • MONDAY, SEPTEMBER 9, 2013

CAVEAT EMPTOR

Are you a consumer?

ISSUE One who obtains goods or services for commercial purposes is not seen as a consumer

Rajkumar owns a travels company and when one of the vehicles that he purchased in the company's name gave repeated trouble and there was no effort from the dealer's end to rectify the problem, he decided to seek legal remedy. However, he was advised against approaching the consumer forum as the vehicle was used for commercial purpose and therefore he would not fit the definition of a consumer as described under the Consumer Protection (CP) Act.

The word consumer is the pivot of the Act. The term does not include a person who obtains goods for resale or any commercial purpose, or who avails himself of services for any commercial purpose.

Numerous cases are being dealt with by the consumer fora with regard to the issue of "commercial purpose". In one such case, the complainant, a private limited company, was running a diagnostic, laboratory, skin and VD clinic. The complainant alleged that the X-ray machine purchased from the opposite party was defective. The defence that the machine was purchased for commercial purpose was negated by the district forum and the State commission. But, in revision, the national commission held that the complainant was not a consumer as defined under the CP Act and that the machine purchased was employed for commercial purpose and for carrying on business for profit.

In another instance, the complainant, a chartered accountant, had purchased a computer for official purpose. From the beginning, the computer did not function properly. Complaints were made from time to time and though technicians attended whenever a complaint was preferred, there was frequent breakdown and the company failed to rectify the defects to make the computer functional. So, the complainant asked for a refund of the cost of the computer and damages. The State commission allowed the complaint and held that since the sale was covered by a warranty, the purchaser was a consumer in respect of services rendered. Nevertheless, the national commission held that since complaints were attended to, there was no deficiency in service but only defect in goods, and since the computer was purchased for a commercial purpose, the complainant was not a consumer, and dismissed the complaint.

At the same time, it is fairly well established that a 'company' would also be a 'consumer' under the provisions of the CP Act. For example, in Jay Kay Puri Engg. & Another v. Mohan Breweries & Distilleries Limited, the complainant was an incorporated company and its complaint was that an air-conditioner supplied by the opposite party was defective. While holding that the air-conditioner supplied to the guest house of the company had no direct nexus with the commercial activity of the company and therefore supply of defective product amounted to gross deficiency in service, the national commission held that a company was a consumer.

The words 'commercial purpose' have a wide connotation, and the determination of purpose in a consumer case should be done by taking into account a number of factors such as the nature of the complaint, the scope of business, the investment involved, the profits earned and to be earned in future and so on.

S. SAROJA

(The writer works with CAG, which offers free advice on consumer complaints to its members. For membership details / queries contact 2491 4358 / 2446 0387 or helpdesk@cag.org.in)