

COMPETITION APPELLATE TRIBUNAL

C.A. No. 197/2008

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Pankaj Tyagi ...Applicant

Versus

Reliance Communication Ltd. & anr. ...Respondents

Appearances: Mr. Rajiv Raj Jamwal, Advocate for the Applicant
None for the respondent

ORAL ORDER
17-09-2010

List the matter on 9th November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

R.A. No. 07/2010 IN
UTPE No. 77/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin,
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF

G. Com Systems & Solutions (P) Ltd. ...Complainant

Versus

Avag Global Commet Ltd. & ors. ...Respondents

Appearances: Mr. N. B. Sudarshan, Advocate for the Complainant
None for the respondent

ORAL ORDER
17-09-2010

In view of the clear order dated 9th September, 2009, there is no petition pending for consideration. As a matter of fact the applicant states that he has not filed any application after repeal of the statute. Even if that being so, since the earlier application filed by him was allowed to be withdrawn, nothing survives before this Forum. If the applicant has remedy under any other law, needless to say, he can avail the same. We make it clear that we have not expressed any view. Review Application is disposed of.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE No. 123/2009

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Johnson & Johnson Ltd.

...Complainant

Versus

Emami Ltd.

...Respondent

Appearances: Ms. Rajeshwari Shukla, Advocate for the
Complainant
Dr. V. K. Aggarwal, Advocate with Mr. Abhijeet
Swaroop, Advocate for the respondent

ORAL ORDER
17-09-2010

In view of the order of the Hon'ble Supreme Court dated 14th
May, 2010 in Civil Appeal No. 1284 of 2010, nothing further
survives for consideration. The present petition is disposed of.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

R.A. No. 06/2010 IN
UTPE No. 261/1996

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin,
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF

Sanjeev Goel & anr.

...Complainants

Versus

Krishna Continental Ltd.

...Respondent

Appearances: Mr. Manish Srivastava, Advocate for the
Complainant
None for the respondent

ORAL ORDER
17-09-2010

The order dated 22nd January, 2010 is recalled and UTPE No.261/1996 is restored to its original position. Review Application is disposed of.

The matter shall be listed on 8th November, 2010.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

Contempt Application NO. _____ /2001
RTPE No. 176/1999

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin,
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF

Bansilal Arora Trust & ors.Complainants

Versus

Skipper Tower (P) Ltd. & anr. ...Respondents

Appearances: Ms. Purna Priyadarshini, Advocate for the
Complainant
Mr. G. L. Rawal, Sr. advocate with Mr. Vishwa
Bhushan Arya, Advocate for the respondent

ORAL ORDER
17-09-2010

Put up on 8th November, 2010.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

R.A. No. 09/2010
C.A. No. 143/2001

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin,
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF

Parashvanath Alloys (P) Ltd.Applicant

Versus

U.P. Power Corpn. & anr. ...Respondents

Appearances: Mr. Yunus Malik, Advocate for the Applicant
Mr. Daleep Kumar Dhayani, advocate for Mr.
Pradeep Misra, Advocate for the respondent

ORAL ORDER
17-09-2010

Arguments heard. Order is reserved.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

RTPE No. 60/2001

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

D.G. [I & R]

...Complainant

Versus

Coca Cola Company & Ors.

...Respondents

Appearances: Mr. Rakesh Vashist, ADG for the D.G. [I & R]
Mr. Aditya Narain, Advocate for the respondent

ORAL ORDER
17-09-2010

The affidavit of evidence shall be filed within four weeks. If any documents are filed, the admission/denial of the documents shall take place on 27th October, 2010. The matter shall be listed on 9th November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 85/2002

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Quality of India ...Applicant

Versus

Philips Electronics India Ltd. ...Respondent

Appearances: Mr. S. C. Sharma, Advocate for the Applicant
Mr. Rajeev Virmani, Sr. advocate with Ms. Mukta
Dutta, Advocate for the respondent

ORAL ORDER
17-09-2010

Further cross-examination of Mr. Mahender Aggarwal is concluded. With this evidence of the applicant is closed.

The affidavit of evidence shall be filed within four weeks. If any documents are filed, the admission/denial shall take place on 28th October, 2010 and the matter shall be listed on 2nd November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 33/2008

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Siddharth Textile (P) Ltd. ...Applicant

Versus

Pioneer Asia Wind Turbines ...Respondent

Appearances: Mr. N. Ashok Kumar, A/R for the Applicant
Mr. Sharath Sampath, Advocate for the respondent

ORAL ORDER
17-09-2010

Further cross-examination of Mr. N. Ashok Kumar is concluded.
With this evidence of the applicant is closed.

The affidavit of evidence shall be filed within four weeks. If any documents are filed, the admission/denial shall take place on 11th November, 2010 and the matter shall be listed on 23rd November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 24/2003

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Otis Elevator Co. (I) Ltd. ...Applicant

Versus

Indef Hercules Hoists Ltd. & anr. ...Respondents

Appearances: Mr. Monark Gahlot, Advocate for the Applicant
Mr. Sandeep Khurana, Advocate for the respondent

ORAL ORDER
17-09-2010

Applicant has not filed any other documents as according to it all the relevant documents are on record.

List the matter on 11th November, 2010 for further cross-examination of the applicant's witness.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

UTPE No. 29/2004

C.A. No. 20/2005

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Anu Texchem Products (P) Ltd. & anr. ...Complainants

Versus

M/s. New India Assurance Co. Ltd. ...Respondent

Appearances: Mr. A. P. Singh, Advocate for the Complainant
Mr. Vishnu Mehra, Advocate with Mr. R. L. Kadamb,
Advocate for the respondent

ORAL ORDER
17-09-2010

List the matter on 11th November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

UTPE No. 146/2007

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Manoj Kumar Goel ...Complainant

Versus

M/s. Central Himalayan &
Development Co. Ltd. ...Respondent

Appearances: Ms. Rashmi Jain., Advocate for the complainant
Mr. Rajeev Khanna, Advocate for the respondent

ORAL ORDER
17-09-2010

A copy of the affidavit has been supplied to the learned counsel for the respondent. Learned counsel for the applicant states that certain documents are to be exhibited. The same shall be filed with copies to the learned counsel for the respondent within four weeks. The admission/denial shall take place on 29th October, 2010. List the matter on 19th November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A No. 85/2002

On Oath

Further cross-examination of Mr. Mahender Aggarwal by Mr. Rajiv Virmani, Advocate for the respondent

I do not have the statement of account for the transaction with the respondent company for the year 1997-1998 which was directed to be produced by the Commission on 13.03.2008. The credit note to which a reference has been made in paragraph 3 of my affidavit dated 25.07.2004 is not available and therefore I cannot produce it though there was an undertaking to do so while my statement was recorded on 15.02.2009. It is a fact that a letter was written in the letter-head of one NGO with which I am running business in my premises whereby refund of security deposit was demanded. Since there was no transaction on a particular date therefore I demanded refund of the security deposit. It is not a fact that there was a termination of dealership in January, 1998 since there was no supply made to me, I made enquiries at the office of the respondent and was told that my dealership has been terminated and therefore I demanded a refund of the security amount. I do not accept the suggestion that there was no vindictive action against me. It is not a fact that I was ever asked to take the amount of security after adjustment of the amounts due from me. It is not a fact that I refused to accept the offer made by the respondent which was made before the Commission on 02.01.2004. It is not a fact that I am deposing falsely.

Cross-examination concluded.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

R.O. & A.C.
17-09-2010

COMPETITION APPELLATE TRIBUNAL

C.A No. 33/2008

On Oath

Further cross-examination of Mr. N. Ashok Kumar by Mr. Sharath Sampath, Advocate for the respondent

Except sub-paragraph 2 of paragraph 7 of the Purchase Order there is no other mention of renewal of Operation and Maintenance (warranty and post-warranty). It is a fact that another agreement for Annual Operation and Maintenance was to be entertained only in sub-paragraph 2 of paragraph 7 dated 13.10.2005. In terms of clause (d) of paragraph 10, the request was made for training of technicians for a period of two weeks. The first request in this regard was made on 28.02.2006, as is evidenced from the letter dated 28.02.2006 (Annexure No. 4). Though there is no specific reference but clause 10(d) in the letter, referred to above, it is clearly mentioned about the effective participation in the maintenance activity. It is not a fact that there was no demand for training by us or that the offer for training by the respondent on 12.05.2007, as a matter of courtesy, though there was no legal obligation for doing so. It is a fact that we were getting our Central Processing Unit (CPU) repaired by some other party. It is not a fact that the respondent refused to give CPU on rent because we were getting it repaired though some other party. It is not a fact that there was no Annual Maintenance Contract and that in the absence of it, the payment of Rs.10,000/- as referred to in paragraph 19 of my affidavit was made. It is a fact that there was no Annual Maintenance Contract executed after the validity period of purchase order dated 13.10.2005. We have no standard norms for output therefore there is no truth in the suggestion that in the month of April-May, 2007, the output was upto the standard. We have made reference of the Amaravati Textile to substantiate our claim for compensation. It is a fact that interest has

to be paid irrespective of the production. It is not a fact that compensation application has been filed with the intention of harassing the respondent. It is not a fact that the loss claimed was suffered on account of our deficiency and for that respondent is not responsible for the same. It is not a fact that the respondent has complied with the requirement of the purchase order in its entirety and that we have failed to comply with certain terms. It is not a fact that after key of the wind turbine generator were handed over to us the respondent has no further obligation and that we were to operate it on our own. It is not a fact that respondent was willing to supply the spares on payment basis and that we refused to accept it. The reason for refusal was because it was offered about six weeks later. Though there is stipulation in the Purchase Order about arbitration of the jurisdiction of the Civil Court, Chennai because of unfair trade practice, the MRTTP Commission has jurisdiction to deal with the matter. It is incorrect to suggest that I am deposing falsely.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

R.O. & A.C.
17-09-2010

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

Compensation Application No.98 of 2003

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

IN THE MATTER OF :-

Dr. (Mrs.) Abha Bhatnagar,
W/o Dr. Sunil Bhatnagar,
R/o C-4 A/52A, Janakpuri,
New Delhi-110058.

....Applicant

Versus

Sterling Holiday Resorts (India) Ltd.
Through Manager (Customer Service),
R-23, 1st Floor,
Greater Kailash, Part-I,
New Delhi-110048.

....Respondent

Appearances : Shri Nitin Bhardwaj, Advocate for the Applicant.

None for the Respondent.

ORDER

DR. JUSTICE ARIJIT PASAYAT, CHAIRMAN

This Compensation Application has been filed under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the "Act").

2. The basic grievance of the applicant is that the respondent published an advertisement in the year 1996 stating that an

exquisite holiday resort at Bhimtal (Uttanchal) can be taken as a holiday package. In the advertisement it was stated that a massive area of 16 acres with apartments therein are fully furnished to the best of standards with CCTV, channel music, telephones, well equipped kitchenette and several other facilities with the offer of indoor and outdoor fun activities. Applications were invited for membership of 99 years upto 2099 for the said holiday package at a consideration of Rs.63,600/-. The respondent had further stated in the advertisement that the members could use these apartments in the said holiday resort within a period of 2 years and in case the same does not happen, the respondent would pay 18% compensation on the amount deposited. Relying on the said advertisement, applicant issued a cheque dated 30.07.1996 for Rs.63,600/- in favour of the respondent which was encashed. The respondent issued a certificate of membership dated 19.08.1996 with receipt acknowledging the payment of amount by the applicant. Thereafter, no effective steps were taken by the respondent. For about two years there was no response as regards the holiday resort and therefore applicant wrote to the respondent and demanded 18% compensation as per the terms and conditions of the package along with amount deposited. The respondent vide its letter dated 21.07.1998 acknowledged the request of the applicant and assured that payment would be made by a cheque shortly. Contrary to the assurance nothing was paid. The applicant again wrote to the respondent reminding them about their earlier acknowledgement and promises. The respondent vide its letter dated 24.07.2000 offered for conversion of the

applicant membership clearly against the terms and conditions of the earlier membership both in respect of period of membership and the amount deposited at the time of membership. The respondent reduced the holiday plan of the applicant from 99 years to 50 years and asked to purchase additional units of the said membership with additional payment of Rs.9,000/-. Since applicant had opted for taking the apartment at Bheemtal, she refused the subsequent offer of the respondent and wanted payment of amount with interest. The respondent admitted that the planned resort at Bheemtal did not come up as per the schedule, but offered facilities of the resorts at other places. Since the applicant was not willing to accept the alternative as suggested by the respondent, the application for compensation has been filed.

3. A reply has been filed by the respondent in which it has been stated that there was no intentional or unintentional lapse on the part of the respondent and all possible efforts were made to accommodate the applicant. The respondent is not liable to pay damages and compensation to the applicant as no financial loss has been caused to the applicant.

4. Issues were framed, affidavits of evidence were filed and admission and denial of the documents took place.

5. Heard learned counsel for the applicant. None appears for the respondent.

6. The factual position asserted by the applicant has virtually been accepted by the respondent except saying that there was no intentional or unintentional misleading of the factual scenario and no financial loss has been caused to the applicant. At this juncture, it is to be noted that the respondent has accepted that resort could not be completed at Bheemtal within the stipulated time. However, alternatives were offered to the applicant, which she refused to accept it. As noted above, the undisputed position that the applicant had booked the resort at Bheemtal and refused the alternatives suggested by the respondent. It is necessary to take note of Clause 4.2 of the Agreement, which reads as follows :-

“In case of the Company not providing apartment in the allotted holiday resort due to non-completion of construction and the equivalent stay facility is not provided by the company then the company shall pay damages calculated at the rate of 18% per annum on the amount paid by the Timeshareholder for the period of delay.”

(underlined for emphasis)

7. A bare perusal of the clause shows that the liability to pay 18% damages arises when the allotted resort is not provided due to non-completion of construction and equivalent stay facility is not provided by the company. In the instant case, the alternative stay facility has been offered to the applicant, which she did not accept. Therefore, the clause has no prima-facie application so far as payment of 18% damages is concerned.

8. However, the facts remain that the allotted resort was at Bheemtal and the respondent has admittedly not provided the said

resort to the applicant and she has demanded money back. In this background, we dispose of the compensation application with the direction that the amount deposited by the applicant shall be returned to her with 12% interest per annum from the date of deposit, till the repayment is made. The Compensation Application is accordingly disposed of.

Pronounced in open Court on 17th day of September, 2010.

(Dr. Arijit Pasayat)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

17.09.2010
CA 146/2002

IN THE MATTER OF:

SH. VIRENDER PAUL.
Vs.
M/S. NANDA BUILDERS.

APPEARANCES:Sh. Virender Paul, Applicant in person.

Sh. R.K. Jain, Advocate for the respondent.

The matter is fixed for admission/denial of the Respondent's documents.

The learned counsel for the respondent states that admission/denial of their documents has already taken place on 16.02.2005 and they do not intend to file any additional documents.

The admission/denial of the respondent documents is completed.

The matter shall be placed before the Hon'ble Tribunal on 30.09.2010.

(V. Sreenivas)