

COMPETITION APPELLATE TRIBUNAL

30(177)UTPE/2008

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Asha Kanungo ...Complainant

Vs.

Ansal properties & Industries Ltd. ...Respondent

Appearances : Shri B.R. Kanungo, Representative of the
Complainant

Shri Virendra Prakash, Clerk of the counsel for the
Respondent

ORAL ORDER

24th September 2010

At the request of the learned counsel for the respondent, the
matter is adjourned to 8th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 33/2005

CA 56/2006

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

N. Jayaram ...Complainant

Vs.

Ansal properties & Industries Ltd. ...Respondent

Appearances : Shri Bahar U. Barqi, Advocate for the Complainant

Shri Virendra Prakash, Clerk of the counsel for the
Respondent

ORAL ORDER

24th September 2010

At the request of the learned counsel for the respondent, the
matter is adjourned to 8th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 56/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Mr. Raj Kumar Bansal ...Complainant

Vs.

M/s. Ansal properties & Infrastructure Ltd. ...Respondent

Appearances : Shri B.R. Sachdeva along with
Shri Sanjay Sharma, Advocates for the
Complainant

Shri Virendra Prakash, Clerk of the counsel of the
Respondent

ORAL ORDER

24th September 2010

At the request of the learned counsel for the respondent, the
matter is adjourned to 8th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 45/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

Kuoni Travel (I) Pvt. Ltd. ...Respondent

Appearances : Shri R. Vashist, ADG for the DG

ORAL ORDER

24th September 2010

Issue Notice to the Respondent. The matter shall be listed on 8th
November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 70/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Hastimal Chhajar ...Complainant

Vs.

LIC Housing Finance Ltd. ...Respondent

Appearances : None for the Complainant

Ms. Shikha Sharma, Proxy counsel for
Shri S.K. Sharma, Advocate for the Respondent

ORAL ORDER

24th September 2010

As a last chance, four week's time is granted to comply with the order dated 18th May 2010. The matter shall be listed on 1st December 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 78/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

M/s. Sidh Bhoomi Alloys Ltd. ...Complainant

Vs.

M/s. ICICI Home Finance Co. Ltd. ...Respondent

Appearances : None for the Complainant

Shri Sumit Goel along with
Shri Anand Shankar Jha, Advocates for
Respondent Nos. 1-6

ORAL ORDER

24th September 2010

None appears for the complainant. An application has been moved to delete the name of Respondent No. 1 i.e. Mr. K.V. Kamath. His personal name stands deleted. The name of Respondent No.1 shall be described as ICICI Home Finance Company Ltd. The MA is disposed of.

The matter shall be listed on 1st December 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 91/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Vikas Gupta ...Complainant

Vs.

M/s. Vatika Ltd., Gurgaon ...Respondent

Appearances : Shri B.R. Sachdeva along with
Shri Sanjay Sharma, Advocates for the
Complainant

None for the Respondent

ORAL ORDER

24th September 2010

Rejoinder shall be filed within four weeks. The matter shall be
listed on 14th December 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 07/2004

CA 24/2008

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Ajit Bhardwaj ...Complainant

Vs.

DLF Universal Ltd. & Others ...Respondent

Appearances : Shri Bankey Bihari, Advocate for the Complainant

Shri Aditya Narain, Advocate for the Respondent

ORAL ORDER

24th September 2010

Reply shall be filed within two weeks. The matter shall be listed on
12th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 73/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

M/s. Ochoa Laboratories Ltd. ...Respondent

Appearances : Shri R. Vashist, ADG for the DG

None for the Respondent

ORAL ORDER

24th September 2010

Notice has been served. No reply has been filed. The matter shall
be listed on 2nd December 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 74/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

Welcure Drugs and Pharmaceuticals Ltd. ...Respondent

Appearances : Shri R. Vashist, ADG for the DG

Shri P.K. Mittal, Advocate for the Respondent

ORAL ORDER

24th September 2010

Reply shall be filed within two weeks. Rejoinder, if any, shall be filed within three weeks thereafter. List this matter on 2nd December 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 75/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

M/s. Vodafone Essar Mobiles Pvt. Ltd. ...Respondent

Appearances : Shri R. Vashist, ADG for the DG

Shri N. Ninoba Bhoopathy, proxy counsel for
Shri Navin Chawla, Advocate for the Respondent

ORAL ORDER

24th September 2010

Heard. The following issues are framed for consideration :

- (i) Whether the allegation of unfair trade practice on the part of the respondent is established?
- (ii) If the answer to the first question is in the affirmative, whether such practices have prejudicial to the public interest.

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

The matter shall be listed on 8th December 2010 for cross-examination of the complainant's witness.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

RA 10/2006 in
CA 77/2003

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Shashi Paliwal ...Complainant

Vs.

Suman Motels Ltd. ...Respondent

Appearances : None for the Parties.

ORAL ORDER

24th September 2010

In view of the order of the Hon'ble Supreme Court in Civil Appeal No. 6263-6264 of 2009, the matter is fixed for the purpose of complying with the directions of the Hon'ble Supreme Court. The parties shall now produce further documents which are relevant to the proceedings at the time of final hearing of the matter.

The matter shall be listed on 2nd December 2010 for arguments.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

RTPE 540/1987

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

Reliable Paper Stores & Ors. ...Respondent

Appearances : Shri R.D. Makheeja, Advocate for the DG

Shri Rajesh Kumar Malhotra, Advocate for the
Respondent

ORAL ORDER

24th September 2010

List this matter on 26th October 2010 along with connected matters.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

CA 552/2000

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Adita Apparels ...Complainant

Vs.

NOIDA ...Respondent

Appearances : None for the Complainant

Shri Ravinder Kumar, Advocate for the
Respondent

ORAL ORDER

24th September 2010

The order dated 18th May 2010 relating to payment of cost shall be complied with within a week, if it is not already done. The matter shall be listed on 2nd December 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 113/2000

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

Gillette India (I) Ltd. ...Respondent

Appearances : Shri R.D. Makheeja, Advocate for the DG

Dr. V.K. Aggarwal, Advocate for the Respondent

ORAL ORDER

24th September 2010

Written synopsis shall be filed by the learned counsel for the DG
within four weeks. The matter shall be listed on 25th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 111/2001

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Sanjay Singh ...Complainant

Vs.

Gillette India (I) Ltd. ...Respondent

Appearances : None for the Complainant

Dr. V.K. Aggarwal, Advocate for the Respondent

ORAL ORDER

24th September 2010

Written synopsis shall be filed by the complainant within four weeks.

The matter shall be listed on 25th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

CA 22/2001

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Vinod Kumar ...Applicant

Vs.

Gillette India (I) Ltd. ...Respondent

Appearances : None for the Complainant

Dr. V.K. Aggarwal, Advocate for the Respondent

ORAL ORDER

24th September 2010

Written synopsis shall be filed by the applicant within four weeks.

The matter shall be listed on 25th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 180/2000

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

Gillette India (I) Ltd. ...Respondent

Appearances : Shri R.D. Makheeja, Advocate for the DG

Dr. V.K. Aggarwal, Advocate for the Respondent

ORAL ORDER

24th September 2010

Written synopsis shall be filed by the learned counsel for the DG
within four weeks. The matter shall be listed on 25th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 04/2004

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Rajesh Sharma ...Complainant

Vs.

M/s. Rajendra Properties & Industries
Ltd. ...Respondent

Appearances : Shri Vivek Suri, Advocate for the Complainant

Proxy Advocate for the Respondent

ORAL ORDER

24th September 2010

Written synopsis in terms of the order dated 20th August 2009 shall be filed within four weeks. The matter shall be listed on 1st November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

CA 270/2000

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Anil Kumar Dhaniwala & Anr. ...Complainant

Vs.

Skipper Construction Ltd. ...Respondent

Appearances : None for the Complainant

Shri Ashok Kumar, Representative of the
Respondent

ORAL ORDER

24th September 2010

None appears for the complainant. The affidavit of evidence of the respondent shall be brought on record within three weeks for the purpose of cross-examination. The matter shall be listed on 1st November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

CA 542/2000

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

Chen Synthropsy Ltd. ...Complainant

Vs.

Symnach Engineers ...Respondent

Appearances : Proxy for the Complainant

Shri V.N. Raghupathy, Advocate for the
Respondent

ORAL ORDER

24th September 2010

It is stated that the witness whose affidavit of evidence filed has since been retired and the learned counsel for the respondent states that the affidavit of the substituted witness shall be filed within four weeks. The matter shall be listed on 15th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

RTPE 279/1995

CA 87/1997

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

M/s. Idemitsu Kosan Co. Ltd. & Anr. ...Respondent

Appearances : Shri R.D. Makheeja, Advocate for the DG
Shri Anil Kr. Mishra, Advocate for the Informant

Shri S.S. Kumar, Advocate for Respondent No.1
Shri V. Singh, Advocate for Respondent No.2

ORAL ORDER

24th September 2010

The revised affidavit of evidence of Respondent No.2 shall be filed within four weeks. A copy of the same would be supplied to the learned counsel for the DG as well as to the learned counsel for Respondent No.1.

The matter shall be listed on 25th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 38/2003

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

V.K. Nijhawan ...Complainant

Vs.

Vishal Properties (P) Ltd. & Anr. ...Respondent

Appearances : Proxy counsel for Advocate for Respondent No.1
Shri Ravinder Kumar, Advocate for Respondent
No.2

ORAL ORDER

24th September 2010

At the request of the learned counsel for Respondent No.1, the
matter is adjourned to 12th November 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

UTPE 79/2009

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF:

DG [I & R] ...Complainant

Vs.

M/s. Reliance Industries & Ors. ...Respondent

Appearances : Shri R. Vashist, ADG for the DG

ORAL ORDER

24th September 2010

Re-list the matter on 27th September 2010.

[Dr. Justice Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

Compensation Application No.143 of 2001

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

IN THE MATTER OF :-

Shri Parsvanath Alloys Private Limited
84/21 (1A)
Fazalganj
Kanpur

...Applicant

Versus

Uttar Pradesh Power Corporation Limited
Shakti Bhavan
14, Ashok Marg Lucknow through its
Managing Director cum Chairman

The General Manager
Uttar Pradesh Power Corporation Limited
Jhansi Zone
Jhansi, Uttar Pradesh

....Respondents

Appearances : Mr. Yunus Malik, advocate for the Applicant.

Mr. Daleep Kumar Dhayani, advocate for Mr.
Pradeep Mishra, advocate the Respondent.

ORDER

DR. JUSTICE ARIJIT PASAYAT, CHAIRMAN

This application for compensation has been filed under Section 31 read with Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the 'Act') before the Monopolies and Restrictive Trade Practices Commission (in short the "Commission").

The case of the Applicant in short in the petition claiming compensation for proposed loss and damages caused to it due to the unfair and monopolistic trade practices of Respondent no. 1 in exploiting its monopolistic position as the sole distributor and transmitter of electrical energy in Orai where the factory of the Applicant is situated, by giving deficient and interrupted electricity supply. It is stated that the terms and conditions of supply of electrical energy by the Respondent no. 1 are set out in a standard form contract entitled "Agreement for the supply of Electrical Energy to the Consumers having Contracted Demand of more than 75 KW (or 100 BHP)" (hereinafter referred to as "Agreement" which incorporates vide Clause 2, the provisions of the Electricity Act, 1910 (in short the Electricity Act). The terms and conditions constitute a representation or "holding out" on the part of Respondent No.1 i.e. Uttar Pradesh Power Corporation Limited (in short the Corporation) as to the quality and quantity of supply of electrical energy by it. These terms and conditions are in effect non-negotiable since Respondent no. 1 is the only supplier of electricity in Orai. Reference is made to Rules 54 and 55 of the Indian Electricity Rules, 1956 (in short the "Rules") which declare that the Electricity Act stipulates the voltage and frequency of supply that will be guaranteed to consumers. Under Rule 54 it is stated that "except with the written consent of the consumer or with the previous sanction of the State Government, a supplier shall not permit the voltage at the point of commencement of supply to vary from the declared voltage:

- (i) In case of low or medium voltage by more than 6 per; or

- (ii) In case of high voltage by more than 6 per cent on the higher side or by more than 9 per cent on the lower side;
or
- (iii) In case of extra high voltage by more than 10 per cent on the higher side or by more than 12.5 percent on the lower side.

The Applicant's voltage requirement is 33 Kilovolts. The respondent no. 1 demanded payment under the following heads from the Applicant before releasing the electricity to it:

(a)Service Line charge	Rs.
2,25,653.00	
(b)Security on 2700 KVA load @ Rs. 550.00 per KVA	
Rs.14,85,000.00	
(c)System Loading Charges @ Rs. 650.00 per KVA	
<u>Rs.17,55,000.00</u>	
	Total
Rs34,65,653.00	

It is the case of the Applicant that the demand under heading (c) was ultra vires and in contravention of the express terms of the Agreement which as per Clause VI of the Schedule to the Electricity Act does not require the payment of any system loading charges as a pre-condition for the release of energy. In paragraph 15 of the complaint it has been stated that the electricity supply to the Applicant belatedly commenced and the same was deficient. On repeated occasions the voltage supply was below the declared amount and complete power break down also occurred regularly throughout. It

has been stated in para 55 that the deficiency in the quality and quantity of production caused by the default in the supply of electricity has also resulted in loss of reputation of the Applicant. In para 56 it has been stated that the supply continued to be deficient and the Applicant continued to suffer loss. In para 54 it has been stated that the fluctuations in supply, deficiency in voltage and frequent power shut downs have reduced life span of the plant and machinery. Therefore compensation has been claimed as follows:-

For delay of 1 year in providing electricity Connection causing loss of cash surplus	Rs. 6,514,000.00
For loss of production from January 1999 to April 2001 Rs.30,939,000.00	
For damage to machinery from January 1999 to April 2001	Rs.57,08,000.00
For System Loading Charges	Rs.17,55,000.00
For 60% of tariff paid 3,57,06,943.20	Rs.
For loss of reputation owing to Default In electricity supply <u>2,00,00,000.00</u>	<u>Rs.</u>
Total	10,06,22,943.20

In the reply filed by the respondents a preliminary objection has been raised that since replying respondents are public utility and are discharging their obligations as per the provisions of Electricity Act and the Electricity (Supply) Act, 1948 (in short The Supply Act) and the Rules and Regulations framed there under and they are not indulging in any trade and thus the application is not maintainable.

It has been also pointed out that Section 37(3) and Section 38(1)(c) and (k) of the Act are applicable to the facts of the case and in any event the provisions of Section 2(i) and 36 A are not applicable in the present case. Finally it has been submitted that all that the Applicant is alleging relates to deficiency of service and therefore the Commission has no jurisdiction to deal with the matter.

Rejoinder affidavit has been filed reiterating primarily the stands taken in the Compensation Application.

Voluminous data has been placed on the record by the parties. The basic issue is regarding the jurisdiction of the Commission to deal with the matter. The statements in the Compensation Application and submissions made at the time of hearing of the application primarily focus on the alleged deficiency of service.

We have perused the entire contents of the application filed by the Applicant and on such perusal it is noticed that there is no allegation that there was any false representation or misleading representation by the respondents regarding their services.

In *KLM Royal Dutch Airlines versus Director General of Investigation and Registration* (2009) 1 SCC 230 it has been inter-alia observed by the Supreme Court as under:-

“12. We have already extracted the definition of “unfair trade practice” and also other relevant provisions. There is no definition of “deficiency of service” or “deficiency” provided in the MRTP Act but the expression “service” has been defined in Section 2(r). In terms of such definition, “service” means which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, chit fund, real estate, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the

purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

13. The appellant herein is engaged in the business of transportation of goods by airlines, and therefore, there could be no dispute with regard to the fact that they were providing service when they accept baggages to be carried by air. A representation is also made that the cargo would be delivered at the destination with all promptness. If there is a failure in carrying out the said representation there would be a case of deficiency in their service. Negligence in providing prompt service or service as expected may also be presumed if they fail to deliver the said goods within a reasonable time at the destination. But the issue in the present case is as to whether any such deficiency in service could be said to amount to an unfair trade practice as envisaged under the provisions of the aforesaid MRTP Act.

14. The Act, particularly, the provisions of Section 36A envisage that in order to be a case of unfair trade practice there has to be unfair method or deceptive practice indulging in false representation of the kinds mentioned in various clauses of Section 36A(1) of the MRTP Act, Clauses (ii) and (vi) deal with cases of false representation and also a false and misleading representation whereas clause (iv) envisages making a representation that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have. The aforesaid provisions cannot be said to be attracted in the present case for there is no allegation either by M/s Maharajah and co. or by the Director General that any such representation was made by the appellant airlines regarding their performance, uses or benefits which their services do not have. So far as the other two clauses are concerned and in order to make out a case for attracting the said provision, there has to be a case of false statement and a case of misleading representation made by the service provider.

18. In *Colgate Palmolive (India) Ltd. v. MRTP Commission* (2003) 1 SCC 129 this Court laid down five ingredients which have to be established before a trade practice can be said to be an unfair trade practice. The Court laid the ingredients in the following manner: (SCC p. 133, para 16)

“16. A bare perusal of the aforementioned provision would clearly indicate that the following five ingredients are necessary to constitute an unfair trade practice:

1. There must be a trade practice [within the meaning of Section 2(u) of the Monopolies and Restrictive Trade Practices Act].
2. The trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services.
3. The trade practice should fall within the ambit of one or more of the categories enumerated in clauses (1) to (5) of Section 36-A.
4. The trade practice should cause loss or injury to the consumers of goods or services.
5. The trade practice under clause (1) should involve making a ‘statement’ whether orally or in writing or by visible representation.”

19. Before it can be said that the act amounts to an unfair trade practice the complainant is required to show that the trade practice was employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services and also that which is the statement or advertisement which is the false representation of the kind specified in the sub-clauses of clause (1) of Section 36-A. In this regard reference may also be made to the observations made by this Court in *Man Roland Druckmaschinen Ag v. Multicolour Offset Ltd* (2004) 7 447 . (SCC pp. 454-55, para 12)

“12. In the case of an unfair trade practice as invoked by Respondent 1 the object of inquiry is a statement which is a false representation of the kind specified in sub-clauses (i), (ii) or (iii) of clause (1) of Section 36-A or is an advertisement of the kind specified in sub-clauses (vii) or (viii) thereof. The statement or advertisement is the trade practice. The further requirement under the section is that the trade practice complained of must be for the purpose of promoting the sale, use or supply of goods or for promoting the provision of any service. The sale, use or supply need not, for the purposes of the section, actually have taken place although it may be relied upon by the complainant to establish the falsity of the representation.”

20. Whether a statement constitutes a false or misleading representation will depend upon the facts and circumstances of each case. It is not possible to provide an exclusive list of the statements which may constitute false or misleading representation, nor can there be any straitjacket formula evolved thereof for the said purpose. However, the statements of the nature which are wilfully made knowingly false, or made recklessly without honest belief in its truth, and made with the purpose to mislead or deceive will definitely constitute a false or misleading representation. In addition, a failure to disclose a material fact when a duty to disclose that fact has arisen will also constitute a false or misleading representation.”

In *Lakhanpal National Ltd. versus MRTP Commission* (1989) 3 SCC 251 Supreme Court held that the object of Section 36A of the Act is to bring honesty and truth in the relationship between the manufacturer and the consumer and when a problem arises as to whether a particular act can be condemned as unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such representation made by the manufacturer on the

common man. The Supreme Court also stated that there could be another question posed as to whether an Act leads a reasonable person in the position of a buyer to a wrong conclusion. The Court finally held that the issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense.

The applicant has squarely failed to establish any unfair and/or monopolistic trade practice by placing materials/evidence in that regard. The pleadings relates to deficiency of service. There can be no dispute to the settled legal proposition that the Court or Tribunal is not permitted to decide a case going out of pleadings of the parties nor the evidence led on a non-existing plea is permitted to be taken into consideration. (See Life Insurance Corporation of India & Ors. Versus Jyotish Chandra Biswas (2000) 6 SCC 562; Om Prakash Gupta versus Ranbir B. Goyal (2002) 2 SCC 256 and Ashutosh Gupta versus State of Rajasthan versus Ors. (2002) 4 SCC 34).

Above being the position, the inevitable conclusion is that the Compensation Application is not maintainable before the Commission. Needless to say it is open to the applicant to move an appropriate forum. We express no opinion in that regard.

This application is accordingly disposed of.

Pronounced in open Court on day 24th September, 2010.

(Dr. Arijit Pasayat)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member