Date of pronouncement:-07.08.2026

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

REVISION PETITION NO.2484 OF 2018

Against the order dated 18.4.2018 in Appeal No.934/2016 of the State Commission U.P.)
WITH
NC/IA/16589/2018 CONDONATION OF DELAY)
NC/IA/10632/2024 (CONDONATION OF DELAY IN FILING REPLY)
NC/IA/7192/2026 (WAIVER OF COSTS)

RAKESH KUMAR GUPTA
S/O KAILASH NATH GUPTA,
GRAM-KHATAN
TEHSILSHAHGANJ,
DISTRICT-JAUNPUR
UTTAR PRADESH **...PETITIONER**

VERSUS

SURAYA STEEL HARDWARE,
SITUATED AT-
MOHALLA C-3-25A,
MALDHIYA VARANASI THROUGH
MANAGER–ASHISH **...RESPONDENT**

BEFORE:
HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), PRESIDING MEMBER
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

Appearance at the time of arguments:-

For the Petitioner : Ms. Namrata Chandorkar, Advocate.

For the Respondent : Mr. Dinkar Tiwari, Advocate.
Mr. Talat Chaudhary, Advocate.

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

ORDER

1. Present Revision Petition has been preferred on behalf of the petitioner/complainant, challenging Order dated 18.04.2018 passed by learned State Consumer Disputes Redressal Commission, UP, Lucknow (***hereinafter referred to as "State Commission"***), whereby the First Appeal No.934 of 2016 preferred by the respondent/opposite party was allowed. Thereby the Order dated 31.03.2016 passed by the learned District Consumer Disputes Redressal Forum, Jaunpur allowing CC No.40 of 2015 was set aside.

The petitioner and respondent are hereinafter referred to as complainant and opposite party respectively, as appearing in the complaint, for sake of convenience.

2. Facts fall within a narrow compass. Petitioner/complainant claims to be a contractor engaged in construction work on a small scale for earning his livelihood by way of self-employment. Complainant undertook a construction contract worth Rs.2 lacs for construction of house of one Vanshraj Yadav and for execution of contract purchased SS steel pipes weighting 9 kg. 900 gms. from Surya Steel Hardware (OP/respondent) for a total consideration of Rs.43,277/- along with 26 'stap' for Rs.7,100/- and other construction material. Complainant further

claims to have purchased 180 pieces of ‘Dandli’, which were found unsuitable for intended work due to incorrect dimensions.

3. Complainant alleged that an excess amount of Rs.60/- per pipe, totalling Rs.1,560/- was charged by OP. Further, SS pipes supplied by the OP/respondent were deficient in weight by approximately 2.8 kg per pipe and when the complainant sought replacement of 32 defective pipes, the same were neither replaced, nor refund was made by OP. Consequently, complainant claims to have suffered substantial financial loss owing to supply of deficient and defective material by the OP.

4. OP/respondent, apart from disputing deficiency in service challenged the maintainability of the complaint on the ground that complainant was engaged in construction activity for commercial purpose and, as such, did not fall within the definition of ‘consumer’ under Section 2(1)(d) of the Consumer Protection Act, 1986.

5. *Vide* Order dated 31.03.2016, learned District Forum partly allowed the claim holding that the complainant undertook the contract for earning his livelihood and, therefore, fell within the definition of ‘consumer’. Further, complainant was held entitled to Rs.43,277/- from OP towards 32 pieces of SS pipes with interest @ 7% per annum from 20.12.2014.

6. FA No.934 of 2016 preferred on behalf of OP challenging the Order passed by learned District Forum, was allowed by the learned

State Commission, holding that the complaint was not maintainable as the complainant did not fall within the definition of 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986.

7. Aggrieved against the Order passed by the learned State Commission, complainant/petitioner has preferred the present Revision Petition and prays for restoration of Order passed by the learned District Forum, whereby the complainant was allowed.

8. The reasons recorded by the learned State Commission vide impugned Order dated 18.04.2018 may be reproduced for appreciation of contentions raised on behalf of the respective counsels:

> *"According to complaint, the respondent/complainant asked to the appellant/defendant to give another pipe after changing that pipe, on which, he received back the pipe sold earlier from the respondent/complainant and did not give him the new pipe. On this, the respondent/complainant gave Notice to him, even thereafter, he did not return the pipe, on which, he has filed complaint before the District Forum and has made demand of compensation of Rs.4,00,000/- and to get returned value of the material purchased from the appellant/defendant.*
>
> *The appellant/defendant, by appearing before the District Forum, has submitted (filed) his written Statement, in which, contents of the complaint have been denied and it has been stated that the respondent/complainant is not consumer under Consumer Protection Act. Therefore, the complaint is not admissible.*
>
> *The District Forum, by considering upon the statements of both the parties and evidence available at the case file, has given*

preference to the contents (facts) of the complaint and has passed order as mentioned above.

The District Forum, in their impugned order, has considered the respondent/ complainant as Consumer on this ground that he has not sold S.S. Pipe in that form, which he purchased from the appellant /defendant and has not taken the same to sell the same in that form.

According to Section 2 (J) (D) Consumer Protection Act, if any person gets any object with the purpose of re-sale or commercial purpose, he shall not be Consumer under this Act and it is clear from the contents itself of the complaint that the respondent/complainant has taken the pipe in question from the appellant/defendant for business of his contract and the above-said pipe was to be used by the respondent/complainant with the commercial purpose in the work received on contract. Therefore, keeping in view the provision of Section 2 (J) (D) of the Consumer Protection Act, on the basis of contents mentioned in the complaint, the respondent/complainant doesn't come under the category of Consumer under Consumer Protection Act. Therefore, complaint filed on his behalf is not admissible under Consumer Protection Act. In these circumstances, the impugned Judgment and Order, that has been passed by the District Forum, is without jurisdiction and is liable to be set aside.

Hence, appeal is allowed and by setting aside the impugned judgment and order passed by the District Forum, complaint is dismissed with this exemption to the respondent/complainant that he is free to file proceedings before the competent Court or Officer as per rules."

9. Learned counsel for the complainant/petitioner contends that learned State Commission erred in holding that complainant did not fall within the definition of 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986 and emphasizes that the goods in question were

purchased by the complainant for use in the construction project undertaken by him for earning livelihood and were not for re-sale. Learned counsel further contends that the issue, whether a transaction is for a commercial purpose or not, is essentially a question of fact, which needs to be determined in the facts and circumstances of each case as observed in ***Laxmi Engineering Works v. P.S.G. Industrial Institute,*** **MANU/SC/0271/1995.** Placing reliance upon ***Paramount Digital Colour Lab v. AGFA India (P) Ltd.,*** **MANU/SC/0245/2018**, she argues that a person who purchases goods for earning his livelihood by means of self-employment falls within the definition of 'consumer' and is not excluded merely because the goods are used in an income generating activity. Learned counsel submits that complainant squarely falls within the exception carved out to the definition of 'consumer' in Section 2(1)(d) of the Consumer Protection Act, 1986, since the goods were to be utilized only for executing small construction work undertaken by the complainant. In support of the contentions, reliance is further placed upon ***Brajbhushan Painkra v. Director, First House,*** **Revision Petition No.132 of 2017** decided by this Commission on 16.11.2023**;** ***Jyoti CNC Automation Ltd. and Ors. V. Lal Singh Panesar & Sons and Ors.,*** **FA No.2066 of 2018** decided by this Commission on 26.04.2024**;** ***Jayem Impex v. Hiteshbhai Gokalbhai Maru,*** **Revision**

Petition No.4529 of 2014 and IA/9122/2014 (Stay) decided by this Commission on 15.01.2015 and ***Kion india Pvt. Ltd. v. Jogender Singh Hooda,*** **Review Application No.110 of 2024 in RP/1583/2022** decided by this Commission on 22.04.2024**.**

10. *Per contra*, learned counsel for OP supports the Order passed by the learned State Commission and submits that complainant does not fall within ambit of 'consumer' as provided under Section 2(1)(d) of the Consumer Protection Act, 1986 complaint is not maintainable since the goods were purchased by the complainant for a commercial purpose. Referring to the pleadings, he submits that there is a clear admission of having purchased the goods for construction contract for financial gain and, as such, commercial nature of transaction is stated to be implicit. He emphasizes that exception carved out for purchase of goods for earning of livelihood within Section 2(1)(d) of the Consumer Protection Act, 1986 is of narrow amplitude and the transaction of present nature is not envisaged. Learned counsel further emphasizes that the construction work was to be carried by the complainant through employment of masons and labourers at site and hired labour/workforce and, as such, it cannot be inferred that the purchase of goods by the complainant was by way of self-employment. In support of the contentions, learned Counsel for OP places reliance upon ***Virender***

Singh v. M/s Darshana Trading Co. Thr. Its Prop. Sanjay Seth (Dead) & Anr., **SLP (C) No.5510/2020 decided by the Hon'ble Supreme Court on 18.03.2025.**

11. Learned counsel for OP also contends that reliance placed by learned counsel for petitioner/complainant on ***Paramount Digital Colour Lab v. AGFA India (P) Ltd.*** (supra) is misplaced and distinguishable, since the purchasers in the said case were unemployed graduates who had purchased the machinery exclusively for their personal self-employment and livelihood. However, in the present case, complainant is stated to be carrying the construction project by employing masons and labourers.

12. We have given considered thought to the contentions raised and perused the record carefully.

Section 2(1)(d) of the Consumer Protection Act, 1986 defines 'consumer' as under:-

> *"(d) "**consumer**" means any person who, —*
> *(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, **but does not include a person who obtains such goods for resale or for any commercial purpose**; or*

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person ***[but does not include a person who avails of such services for any commercial purpose]***

Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;*"*

(Emphasis supplied)

13. In terms of clause (d) of sub section (1) of Section 2 of the Consumer Protection Act, 1986 'consumer' means any person who buys any goods for consideration but excludes from its purview a person who obtains such goods for resale or for commercial purpose. Sub-clause (ii) of clause (d) of Subsection (1) of Section 2 further provides that a person who hires or avails of any services for a consideration shall be a 'consumer' provided such services are not availed for any commercial purpose. **The explanation to Clause (d) of Subsection (1) of Section 2 clarifies that 'commercial purpose', does not include use by a person of goods bought and used by him and services availed by**

him, exclusively for the purposes of earning his livelihood by means of self-employment.

14. This commission *vide* Order dated 11.12.2025 in ***Spectrum Aero Private Limited v. UPS SCS (India) Private Limited,*** **CC No.955 of 2018** broadly referred to the principles referred to in ***Karnataka Power Transmission Corporation v. Ashok Iron Works Private Ltd.,*** **(2009) 3 SCC 240** and the observations in para 16 & 17 therein may be beneficially reproduced for reference:

> **"16.** Hon'ble Apex Court in ***Karnataka Power Transmission Corporation v. Ashok Iron Works Private Ltd., (2009) 3 SCC 240*** *held that an incorporated company could be a 'consumer' within ambit of Section 2(1)(d) read with Section 2(1)(m) of the Consumer Protection Act, 1986 which defines 'person'. It may further be noticed that broad principles for determining whether an activity or transaction of purchase of goods or services availed is for commercial purpose have been culled out by Hon'ble Apex Court in* ***Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*** *(supra) and may be beneficially reproduced for reference:-*
>
> *"19. To summarize from the above discussion, though a straight-jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is "for a commercial purpose":*
>
> *19.1 The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.*

19.2 The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

19.3 The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4 If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of 'generating livelihood by means of self-employment need not be looked into."

17. *In the light of afore-said principles referred to above, it is well settled that ordinarily, business-to-business transactions between two commercial entities are understood to be for commercial purpose but mere identity of the person making the purchase or availing the service is not conclusive to determine whether the transaction or activity is for a commercial purpose. The dominant intention or dominant purpose of the transaction is required to be looked into to determine, if the transaction is to facilitate some kind of profit generation for the purchaser/beneficiary. If the dominant purpose for the purchase of goods or availing the services is for personal use and consumption of the purchaser or is otherwise not linked to any commercial activity, the question whether such purchase is for generating a livelihood by means of self-employment need not be looked into. However, where the transaction is for a commercial purpose, then it might have to be considered whether it is for generating livelihood by means of self-employment or not."*

15. Based upon judicial precedents, it is well settled that there is a difference between a self-employed individual and a corporation. If the goods are purchased by a self-employed individual for self-use for generating livelihood, the same would fall within explanation to Section 2(1)(d) of Consumer Protection Act, 1986 even if the activity is for the purpose of generating profits for purpose of his livelihood. However, wheresoever a company purchases the goods, the object if apparently to maximise profits whereby the transaction would not fall within explanation to Section 2(1)(d) of the Consumer Protection Act, 1986. Even an incorporated company, may, in a given case be a consumer within meaning of Section 2(1)(d) if the dominant intention or dominant purpose for the transaction is not for facilitating some kind of profit generation activity.

16. Observations in para 21 in ***Poly Medicure Ltd. v. Brillio Technologies Pvt. Ltd, (*2026) 3 SCC 201** may also be beneficially reproduced wherein the cases of ***Virender Singh v. Darshana Trading Co. Thr. Its Prop. Sanjay Seth (Dead) & Anr.*** (supra) along with ***Paramount Digital Colour Lab v. AGFA India (P) Ltd.*** were referred and provide an insight into the cases wherein goods or services purchased or availed have been considered for self-employment:

> ***"21.*** *In* ***Virender Singh v. Darshana Trading Co. [Virender Singh v. Darshana Trading Co., (2025) 13 SCC 801 : 2025 SCC OnLine***

SC 2589] *, the complainant, had purchased machines by which the manufacturing of die could be done at cheaper cost and with more precision. As there were defects in the machine, a complaint was filed before the State Commission, wherein the preliminary objection raised was that since the machine was purchased purely for commercial purposes, the complainant is not covered under the definition of a consumer. The objection was sustained by the State Commission and its decision was affirmed [Virender Singh v. Darshana Trading Co., 2020 SCC OnLine NCDRC 290] by the National Commission. The matter travelled to this Court. Argument raised was that since the machine was purchased for self-use/self-employment, it cannot be a commercial purpose. In support of its submission an earlier decision of this Court* ***in Paramount Digital Colour Lab v. AGFA India (P) Ltd. [Paramount Digital Colour Lab v. AGFA India (P) Ltd., (2018) 14 SCC 81 : (2018) 4 SCC (Civ) 467]*** *was cited. Upholding the decision [Virender Singh v. Darshana Trading Co., 2020 SCC OnLine NCDRC 290] of the National Commission, this Court held that though it is correct that if goods or services purchased or availed are for self-employment, it cannot be categorized as commercial purpose, but each case has to be seen in light of its own facts. Thereafter, while distinguishing the case of Paramount Digital [Paramount Digital Colour Lab v. AGFA India (P) Ltd., (2018) 14 SCC 81 : (2018) 4 SCC (Civ) 467] , it was held : (Virender Singh case [Virender Singh v. Darshana Trading Co., (2025) 13 SCC 801 : 2025 SCC OnLine SC 2589] , SCC para 6)*

> *"6. … In the case cited above i.e. Paramount Digital [Paramount Digital Colour Lab v. AGFA India (P) Ltd., (2018) 14 SCC 81 : (2018) 4 SCC (Civ) 467] , there were two unemployed graduate persons who had purchased the machine evidently for self-employment. But in the present case, the petitioner/complainant was already running a business as a commercial venture and admittedly, he had purchased the machine to expand his business. It is not a case where the petitioner was himself operating the machine, but he had employed workmen who were doing the job for him. Under these circumstances, no matter how small the venture is, it cannot be called "self-employment" for the purposes of the Act and therefore, we find*

no scope to take a different view than the one taken by the State Commission and the National Commission."

17. Keeping in perspective the settled principles as referred to above, the question for consideration is whether the purchase of steel pipes etc. by the complainant for use in a small construction contract was for re-sale or commercial purpose or the activity carried by the complainant falls within exception to Section 2(1)(d) of the Consumer Protection Act, 1986, whereby commercial purpose does not include purchase and use of goods by a person exclusively for earning his livelihood by means of self-employment.

18. In the present complaint, apparently, the complainant bought the goods for executing a small construction contract and is distinguishable from a big commercial venture. The goods/pipes etc. were to be essentially used for construction work subject to approval of the owner of the premises offering the contract. The complainant was to essentially provide the labour and skills for carrying the construction work. The goods used for the construction were admittedly rejected by the owner of the premises being of inferior quality. The goods were not to be sold on profit by the complainant to the owner of the premises but had to be accounted for against the bills of purchase and being of requisite quality. We are of the considered opinion that in the facts and circumstances,

mere employment of a few labourers for essentially discharging the primary obligation of construction work for carrying out the contract, does not bring the purchase of goods by the complainant within commercial objective of earning the profits by re-sale of goods. It may be observed that generally, in small work contracts for construction/repairs etc., the contractor charges for providing the workmanship and the provision/use of goods in small quantity is incidental to the contract and subject to approval by the person availing of the services of such contract. Since the purchase and use of the pipes in the present case is not primarily for earning the profits by re-sale of goods but is linked to earning of livelihood by self-employment, the complaint is maintainable under exception to Section 2(1)(d) of the Consumer Protection Act, 1986.

19. For aforesaid reasons, we are unable to concur with the findings of learned State Commission, whereby the complaint has been held to be barred under Section 2(1)(d) of the Consumer Protection Act, 1986. Considering the evidence on record, the Order passed by the learned District Forum directing OP/respondent to pay Rs.43,277/- along with simple interest @ 7% per annum *w.e.f.* 20.12.2014 till realization and cost of Rs.1,000/- is restored. In the eventuality, the OP/respondent fails to pay the aforesaid amount within a period of four weeks from the date

of passing of this Order, the amount shall be payable with interest @ 10% per annum from the date of default till realization.

The Order passed by the learned State Commission is accordingly set aside. Revision Petition is allowed subject to further litigation cost of Rs.10,000/- to be paid by OP/respondent. Pending applications, if any, also stand disposed of.

A copy of this Order be provided to both the parties, by the Registry.

Sd/-

…….....……..……..

(AVM J. RAJENDRA, AVSM VSM) (RETD.)

PRESIDING MEMBER

Sd/-

.....……..……..

(ANOOP KUMAR MENDIRATTA, J)

MEMBER

sd/ar/B-4/reserved matter