

Consumer Dialogue

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Key Omissions in the Financial Consumer Protection Proposals

Consumers International, which represents 220 consumer organisations in 115 countries, together with national consumer organisations in all G20 countries, expressed dismay that the proposals for financial consumer protection being considered by G20 finance ministers “still fall short of what is required”, through a jointly signed open letter to G20 finance ministers, which met on October 14, 2011.



In September 2010, Consumers International working with consumer organisations in all G20 countries launched the ‘Consumers for Fair Financial Services’ campaign calling for the G20 to take urgent action to support financial consumer protection. Following the launch of the campaign, the G20 leaders meeting in Seoul in November 2010 requested the Financial Stability Board (FSB) to report on options to enhance protection in consumer finance (credit), and the G20 finance ministers requested the ‘Organisation for Economic Cooperation and Development’ (OECD) to develop a set of ‘high level principles on financial consumer protection’. Both proposals will now be presented to G20 finance ministers in Paris, on October 14-15, 2011 and the G20 leaders in November.

While Consumers International and its members contributed formally to the process, there is disappointment that key demands were not included in the final submission. The global consumer rights movement believes crucial omissions in new G20 proposals on financial services, to be considered by the meeting, will mean they do little to improve protection for consumers from bank failures and will fail to remove risky mortgages and poor credit services from the market.

The letter urges the G20 to “remember that weak consumer protection in the form of irresponsible mortgage lending was both a catalyst for the financial crisis, and is a long-standing concern of ‘ordinary people’ who use financial services every day.”

As outlined in the open letter, the proposals “do not include any explicit reference to deposit guarantees in the event of bank failures, nor do [they] support the adoption of minimum standards for financial products.” Consumers International believes these are crucial steps for avoiding any future financial crises.

Consumers International also calls for G20 leaders to support the establishment of a new international organisation to champion financial consumer protection in banking and the provision of credit. Consumers International has proposed that the organisation is based on an existing network of national financial consumer protection agencies and has an independent consumer panel to monitor, challenge and advice.

Upcoming Activities

- PIM Second Phase Year Two at the block or below level
- Final Report of Research Survey Year Two
- Second Briefing Paper on relevant Consumer Issue
- Stakeholder Roundtable Feedback Conference at Jaipur on November 29, 2011



Ministry of
Consumer Affairs,
Food & Public
Distribution
Government of India

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District Level Training Workshops

A total of 11 workshops under the second round of District Level Training Workshops (DLTWs) were organised in Tonk on August 29-30, 2011; in Dholpur and Kota on September 05-06, 2011; in Dausa and Alwar on September 08-09, 2011; in Churu and Chittorgarh on September 12-13, 2011; in Jodhpur on September 20-21, 2011; in Jalore on September 22-23, 2011; in Bundi on September 26-27, 2011; and in Sikar on September 29-30, 2011.

These DLTWs were targeted to empower consumers at the grassroots and to ensure effective and strong consumer movement in 12 project districts, which would influence the entire state of Rajasthan. DLTWs were intended to fill the need of a strong consumer movement at the grassroots by furnishing proper information, methodology, procedures and an approachable redressal mechanism to the people. It will help the consumer activists to get acquainted with grievance redressal mechanism for speedy, inexpensive and effective justice in project districts, which will further support the underprivileged classes in their respective blocks.



Publication of Posters and Briefing Paper

During the period, four posters on relevant consumer issues were published, which will be used for wider dissemination of awareness among the common masses.

A briefing paper entitled 'Consumer's Participation in the Standardisation Process' was also published. The main objective of the briefing paper is to increase informed participation and interventions by consumers and consumer organisations to make the standardisation process more effective and consumer-friendly.



Multi-Level Marketing Firms under Scanner

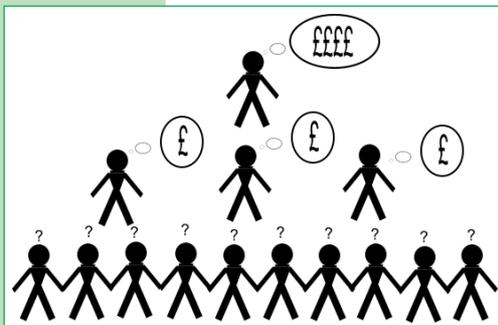
The Economic Offences Wing of Mumbai Police and the Ministry of Corporate Affairs (MoCA), Government of India are separately investigating several so-called multi-level marketing (MLM) firms, largely on the basis of complaints made by individuals, who invested money in them. The wing is preparing a report on the companies being investigated along with preventive steps to be put in place to deal with MLMs.

The investigations came in the wake of a public interest case filed against MLM Speak Asia Online. Meanwhile, after initiating an investigation against Speak Asia by the Serious Fraud Investigation Office, the MoCA plans to investigate some other MLM companies.

MLMs typically run a network, where sellers of the company's product or service, in turn, hire more sellers. These sellers or agents earn money not only from the products and services they sell, but also from the products and services the people they hire sell. Some MLMs require sellers to pay a substantial amount upfront to enter the network and they get some products in return and effectively function as ponzi schemes with individuals in the network earning money as long as the network keeps growing. The people at the apex of the network, the promoters of the firm, earn the most. Such MLM firms are also called direct selling or referral companies.

Rules and laws regarding the operation and regulation of MLMs is unclear and several individuals, who have burnt their fingers with investments in such companies have complained to various bodies.

On the other side, the MoCA has itself initiated a probe into the activities of all MLM companies registered abroad but with business operations in India. A preliminary report on such MLM companies and others was given to the Ministry by the Registrar of Companies (RoC), Delhi. The Ministry has ordered a closer scrutiny into the affairs of six companies that were covered in the report. RoC is expected to give its second report on the firms soon.





Lawyers Not Mandatory to Fight A Case in Consumer Forum

In an important judgement, the Supreme Court clarified that hiring a lawyer is not mandatory for a person to fight his case in a consumer forum and he can plead his case personally or through his agent. The three judge bench comprising Justice Dalveer Bhandari Justices, M K Sharma and Anil R Dave cited the Consumer Protection Act (COPRA) and said that it clearly mentions that a person can plead his case through his agent and it would be against the consumer to force him to hire the services of an advocate for his case.

The court was responding to the plea of Bar Council of India which pleaded that only advocates should be allowed to appear before a consumer forum.

This removes the clutter out of the consumers' minds. It also keeps away the vested interest. What if the advocate wants to prolong the case and all the consumer wants is a simple solution like an apology from the defendant? In majority of the cases, the consumer wants only a simple solution and it is a matter of ego tussle.

In 2002, a South Mumbai Consumer Forum barred the non-advocates from pleading for a party to a dispute. As per the consumer law, complainant and defendant can argue their cases in person or appoint an advocate or an agent. The Consumer Forum said that although the provisions of the Maharashtra Consumer Protection Rules 2000 allowed complainants and defendants to appoint an authorised agent to represent them before the state commission or district forum, the agent was supposed to remain a mute spectator and had no right to argue before the forum. It cited the rulings of the apex court and the Bombay High Court, the forum pointed out the higher courts' observation that a recognised agent had no right of audience before a judicial authority. The non-agents can be consumer activists or a relative.

(Frontier India, 31.08.11)

Muscle Power to Recover Vehicle Loans Cannot be Permitted

It is well known that the private banks use muscle power to recover loans. The National Consumer Disputes Redressal Commission (NCDRC) in a recent order came down heavily on such barbaric methods of recovery. What more, the Commission held that even the hire purchase agreement is *ab initio* void. The Commission observed that 'employing muscle power to recover vehicle loans cannot be permitted in a civilised society where there is effective rule of law. Procedure of law may be slow, but that is no excuse for use of force'.

The complainant, Vijayalaxmi, purchased *Maruti Omni* after taking a loan for ₹1,82,396 from the petitioner bank. Thereafter, on the said loan amount, the petitioner included interest and directed the complainant to pay ₹2,71,636 in 60 equal monthly instalments of ₹4,604 each. One instalment was paid in advance at the time of taking the loan.

Complainant had paid instalments to the Bank from May 2000 up to January 2003 but in January 2003, her husband met with an accident and, therefore, she was unable to pay some instalments in time. Due to these circumstances, she requested the bank for one-time settlement, which got settled at ₹60,000. After reading the said letter, the husband of the complainant pointed out as to how the amount could be paid on the same day of the receipt of the said letter. In response to this, Bank, stated that 14 days time was given for making the payment and a letter to that effect was also given.

Despite this, after few days, two persons came to her house stating that they have come from the Bank to collect the payment. She informed them about the letter received by her from the bank and that the amount was to be paid within 14 days. But the custody of the vehicle was taken by the said two persons and the complainant and her husband were asked to accompany them to the bank. Further, facts stated by her reveal **that some musclemen were** appointed by the bank, to repossess the vehicle, who took away the van.

Thereafter, the complainant lodged a complaint about the forceful seizure of the vehicle. But, the police neither registered any complaint nor took any action. The complainants then visited the office of the bank after few days with ₹60,000 for depositing the same in the bank. They were asked to come again after few days as prescribed by the bank. There was no proper response. After two days, they were told that the vehicle had already been sold by the Bank.

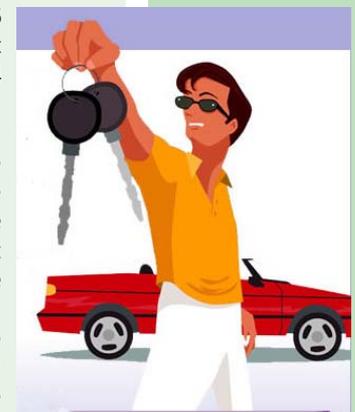
The complainant further stated that the Bank had sold the vehicle to M/s. Chinchin Motors for more than ₹1 lakh. Thereafter, the Chinchin Motors sold the same to one Navin of Vikaspuri, New Delhi.

The Commission concluded that any clause in the agreement which gives unrestricted right of entry in the premises of the complainant to take possession of the vehicle would be in violation of the established legal system in a civilised society and in some cases, it may amount to offences punishable under the Indian Penal Code.

The District Forum ordered payment of ₹1,50,000 along with interest and ₹5000 for mental harassment. On appeal by the Bank, the State Commission imposed a punitive penalty of ₹50,000 which was also to be paid to the complainant.

Now the National Commission confirmed the order of the District Forum and set aside the punitive damages imposed by the State Commission with additional compensation to pay ₹10,000 as costs to the complainant.

(www.lawyersclubindia.com, 30.09.11)





Limitation Period is Key to Insurance Claims

Limitation period means the time within which a person must file his case before a judicial authority for exercising his rights. This period is to be calculated from the date of the cause of action. This term does not have any definition, but it is well settled that “cause of action” is a mixed question of fact and law. It has consistently been held that for insurance disputes, the cause of action starts from the date of rejection of the claim.

Yet, a recent judgment of the Supreme Court is being misinterpreted out of context to claim that the date of rejection of the claim is irrelevant as the limitation period starts from the date of the incident or occurrence of loss in respect of which the claim is lodged. Consequently, consumers are at the receiving end as any complaint filed after two years of the date of the incident is being rejected as time barred without considering the date of rejection of the claim.

The manner of computing the limitation period for insurance claims is given under Article 44 (b) of the Limitation Act 1963, which states that time is to be calculated from “the date of the occurrence causing the loss, or where the claim on the policy is denied either partly or wholly, the date of such denial”.

In *Sirpur Paper Mills Ltd. v/s National Insurance Co. Ltd. II* (1997) CPJ 36 (NC) the full five member bench of the National Commission has interpreted the law on the subject. A fire occurred in October 1986. The claim was rejected in November 1986. The insured made representations to the insurance company which appointed a surveyor, who submitted his report in April 1989. The insurance company slept over the claim and ultimately rejected it in August 1994. Aggrieved by the rejection of the claim, the insured filed a consumer complaint in 1995. The issue before the National Commission was whether the claim was time-barred or not. The Commission held that since the claim was under consideration by the insurance company, it would be just and fair to consider that limitation would begin to run from the date of final rejection of the claim.

In *Oriental Insurance Co. Ltd. v/s Prem Printing Press I* (2009) CPJ 55 (SC), a similar issue came up. After the claim was rejected, the insured sent representations to the insurance company to review the claim. The insurance company agreed to reconsider it, and later re-affirmed the rejection. The question was whether the starting point for computing the limitation period would be the date of first rejection or the final rejection. The Supreme Court observed that by stating that the matter was under fresh consideration, the insurance company had “dangled a carrot of hope”, because of which the insured had not taken legal action. Hence, the limitation period cannot be computed from the date of the original rejection of claim, but would have to be calculated from the date when the claim was rejected for the second time after reconsideration.

(The Insurance Times, 02.09.11)

Insurer to Pay for Prawn Crop Loss

The NCDRC directed United India Insurance Company to pay compensation to Isnar Aqua Farma and another shrimp cultivator on Andhra coast for the severe loss of harvest due to a disease. The insurance company had insured the crop after due examination. However, there was total loss of crop despite all care. In the case of one farmer, the total weight of the dead prawns was 50585 kgs, average body weight as 17.78 gms and total value ₹94,97,952. The cause of death was noted as “White Spot Disease”.

The Marine Products Export Development Authority had confirmed the losses. The insurance company resisted the demand arguing that “no insured peril could have resulted in such a sudden and total loss of culture in all the ponds. The only explanation is that the cultures had already been removed from the pond much earlier to the claimed occurrence date.” The National Commission described this as “strange logic, which has led to even stranger conclusion.” It asked insurer to pay the compensation without delay.

(Business Standard, 25.07.11)

